

# Parental Notification Policy

## ACTION TOOL KIT



COALITION FOR PARENTAL RIGHTS

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School districts' policies should reflect the importance of the parents' role in raising their child. Parents are a critical component of a child's well-being and when parents are active participants, children thrive academically and emotionally. This is why it is crucial to have strong parent-school partnerships. Such partnerships ensure that the child has a strong network of support outside the walls of the classroom and allows teachers and parents to work together to help identify and address any potential barriers to the child's social and academic growth.

The Parental Notification Policy is a key tool in bridging the gap between the school and the parent, so a strong partnership of support can exist. The policy simply states that parents should be notified if their child has encountered any significant physical injury, expressed suicidal intent, or is requesting to be identified or treated as a gender that does not align with the sex on the student's birth certificate. This brings parents into the conversation regarding some of the most important aspects of the students' life.

This Parental Notification Policy tool kit will prepare you to introduce this important policy to your school board, articulate the issues this policy seeks to solve, and see a positive change in your community.

-Coalition for Parental Rights



# ACTION STEPS

- 1) Download the Parental Notification Policy document, insert your school district's name in the designated areas, and save as a PDF. This is the policy you will be presenting to your school board.
  - ⇒ To download the policy document, [click here](#).
- 2) Familiarize yourself with the Parental Notification Policy, the issues this policy seeks to address, as well as the supporting arguments for adopting this policy by reading the FAQ's, Talking Points, and Benefits of Strong Parent-School Partnerships, found in this toolkit.
- 3) Read the school board policy for your district regarding parental notification.
- 4) Gather support prior to bringing the issue before the school board. You can gather support by:
  - ⇒ Finding like-minded groups, organizations, places of worship, and civic groups that would be likely to support this policy.
  - ⇒ Educating the public on what is happening in the district and why this policy is needed (again, you can refer to the other areas of this toolkit to help educate others).
  - ⇒ Looking for support amongst parents, teachers, and other members of the community that would be interested in the issue this policy addresses.
  - ⇒ Documenting the support of individuals and groups by creating a petition in support of the Parental Notification Policy. Ask the groups if you can add their name to the list of supporters for this policy. This petition will help you show your school board that this policy has strong support in the community.
- 5) Familiarize yourself with the procedures of your school board meetings. You can find this information on your school district's website and by attending or watching school board meetings online.
- 6) If possible, try to learn the position of your board members. It is helpful to know where they stand on this issue or similar issues to identify possible allies. To find this information, view your board members' social media pages, watch previous board meetings (these are usually found on the school district's website), and speak to others who may have worked with these members.
- 7) If you have a board member who seems likely to support this policy, reach out and schedule a meeting to present this policy and see if the board member would be willing to place the policy on the school board agenda to be introduced and



voted on in an upcoming school board meeting. See Tips for Approaching Your School Board, found in this toolkit to help prepare for this meeting.

- 8) If you do not seem to have a school board member who would be likely to support this policy, you can place the item on the agenda yourself. CA ed code 35145.5 allows members of the public to place an item on the board agenda.
- 9) Once you have a date when this agenda item will be heard, reach out to the supporters you have formed in action step 3, and ask them to come support the policy at the meeting.
  - ⇒ Other ways to activate your supporters include creating a social media graphic to post on various platforms, sending emails, and sending letters.
  - ⇒ Include the date, time, and location in your messaging.
  - ⇒ Equip supporters with the policy language and talking points.
  - ⇒ Inform those in support that they can speak at the school board meeting during the designated time.
- 10) Attend the school board meeting to stand in support of this policy. Be prepared to speak for the allotted amount of time. Again, you can prepare through the other sections in this tool kit.
  - ⇒ In your designated time to speak, articulate the issue this policy seeks to solve, a summary of what this policy consists of, and (if created) the list of supporters you have documented.
- 11) After this meeting, the adoption of the policy depends on the school board members and how they decide to proceed. Stay engaged in the process by attending future board meetings and participate in opportunities to advocate for the proposal.



# Parental Notification Policy

The \_\_\_\_\_ School District strives to foster trust between the district and parent(s)/guardian(s) of its students. To that end, the board supports the fundamental rights of parent(s)/guardian(s) to direct the care and upbringing of their children, including the right to be informed of and involved in all aspects of their child's education to promote the best outcomes.

It is the intent of \_\_\_\_\_ School District in enacting this Parental Notification Policy to do all of the following:

- (i) Provide procedures designed to maintain and, in some cases, restore trust between school districts and parent(s)/guardian(s) of pupils.
- (ii) Bring parent(s)/guardian(s) into the decision-making process for mental health and social-emotional issues of their children at the earliest possible time in order to prevent or reduce potential instances of self-harm.
- (iii) Promote communication and positive relationships with parent(s)/guardian(s) of pupils that promote the best outcomes for pupils' academic and social-emotional success.

It is the policy of the \_\_\_\_\_ School District that district employees, administrators and certificated staff collaborate with parent(s)/guardian(s) in evaluating the needs of students having academic, attendance, social, emotional, or behavioral difficulties and in identifying strategies and programs that may assist such students in maximizing their potential.

This Parental Notification Policy requires the following:

1. Principal/designee, certificated staff, and school counselors, shall notify the parent(s)/guardian(s), in writing, within three days from the date any district employee, administrator, or certificated staff, becomes aware that a student is:

- (a) requesting to be identified or treated, as a gender (as defined in Education Code section 210.7) other than the student's biological sex or gender listed on the student's birth certificate or any other official records. This includes any request by the student to use a name that differs from their



legal name (other than a commonly recognized diminutive of the child's legal name) or to use pronouns that do not align with the student's biological sex or gender listed on the student's birth certificate or other official records.

(b) accessing sex-segregated school programs and activities, including athletic teams and competitions, or using bathroom or changing facilities that do not align with the student's biological sex or gender listed on the birth certificate or other official records.

(c) requesting to change any information contained in the student's official or unofficial records.

2. The principal/designee, or staff shall notify the parent(s)/guardian(s) of the student immediately or as soon as reasonably possible, that the student has experienced any significant physical injury while on school property or participating in a school sponsored activity.

3. All district employees shall take every student's statement regarding suicidal intent seriously.

(a) Whenever an employee, administrator or certificated staff member suspects or has knowledge of a student's suicidal intentions based on the student's verbalizations or act of self-harm, the employee, administrator, or staff member shall promptly notify the principal or school counselor, who shall implement district's intervention protocols, as appropriate, and shall notify the parent(s)/guardian(s) immediately, or as soon as reasonably possible.

(b) When a suicide attempt or threat is known, the principal or designee shall ensure student safety by taking the following actions:

(i) Immediately secure medical treatment and/or mental health services as necessary;

(ii) Keep the student under continuous adult supervision until the parent/guardian and/or appropriate support agent or agency can be contacted and has the opportunity to intervene;

(iii) Notify law enforcement and/or other emergency assistance if a suicidal act is being actively threatened and remove other students from the area in the event of an active suicidal act.



(c) The principal or designee shall document the incident in writing, including the steps that the school took in response to the suicide attempt or threat.

(d) School employees shall act only within the authorization and scope of their credential or license. An employee is not authorized to diagnose or treat mental illness unless specifically licensed and employed to do so. (Education Code 215)

4. The principal/designee or certificated staff shall notify the parent(s)/guardian(s) of any incident or complaint of a verbal or physical altercation involving their child, including bullying by or against their child, within three days of the occurrence.

(a) Any student, parent/guardian, or other individual who believes that a student has been subjected to bullying or who has witnessed bullying may report the incident to a teacher, the principal, district compliance officer, or any other available school employee.

(b) Any complaint of bullying, whether it is discriminatory or nondiscriminatory, shall be investigated and resolved in accordance with law and the district's Uniform Complaint Procedures (UCP) specified in Administrative Regulation (AR) 1312.3.

5. Unless otherwise specified, the notification required in Sections 1 through 4 above, can be by telephone, mail, email, or conference. The district employees who make such notification shall either keep a record of such notification (if written) or document such notification (if verbal) and place the record or documentation in the student's official student information system.

6. For purposes of this Board Policy, Family Code section 6924, Health and Safety Code section 124260, and Education Code section 49602(c), inclusion of parent(s)/guardian(s) is appropriate unless specifically prohibited by law.



# Talking Points

- ⇒ Kids do not have privacy from their parents.
- ⇒ Laws or policies that give kids privacy from their parents do not exist.
- ⇒ Public schools should not keep secrets from parents about their children.
- ⇒ Kids don't have the capacity to make decisions about their health and safety as minors.
- ⇒ Parents are a critical component of a child's well-being. They have a right to guide a child's upbringing and be intimately involved in any decision related to a child's health, safety, and well-being.
- ⇒ This has been public policy in California from the beginning. Parents have been seen as partners in education, not spectators.
- ⇒ Nobody is more interested in the well-being and safety of a child than their own parents.
- ⇒ Who has the best interests of kids in mind? Is it their parents or the government?
- ⇒ Kids are the domain of their family and their parents, not the government.
- ⇒ Teachers should never have to lie to parents about their children's gender transition in order to keep their jobs.
- ⇒ In instances where a child has encountered any significant physical injury, parents want to know and should be notified.
- ⇒ It is critical that parents are notified if the suicidal intent of a child is suspected or if a school employee has knowledge of such intent.
- ⇒ Parents object to public schools implementing policies that exclude parents from the affairs of their children.



- ⇒ Public Schools are implementing secret transitioning policies under the false notion that state and federal laws give little children a right to privacy from their own parents.
- ⇒ The Parental Notification Policy is simple. It simply states that if the school is actively involved in the social transitioning of a minor at school among his or her peers, if the student states suicidal intent, or if the child encounters significant physical injury, the parent must be notified.
- ⇒ This policy doesn't "out" anyone.
  - The policy does not change how a child identifies, nor does it forbid them from changing how they identify.
  - The policy simply states that parents have a right to know what is happening with their own child.



# Frequently Asked Questions

## *Frequently Asked Questions to Help You Understand How School Personnel Misuse Privacy Laws to Conceal Information from Parents*

A successful public education requires an open and honest relationship between parents and schools. The relationship between teacher and parent has been sacrosanct, as parents entrust teachers and schools with educating their children. In the recent past, the relationship of trust has been eroded as school personnel misinterpret two laws--one federal and one state law--to convince schools to keep vital information from parents, and not just omit information but actively conceal information from parents without a sound legal basis. Requiring teachers and schools to lie to parents creates a schism between parents and teachers, and between teachers, who find it reprehensible to lie, and their employers. It also creates a wedge among teacher, parent, and student, leaving students to grapple with whom they should trust.

Parents, not schools, possess the fundamental right to raise their children. (*Toxel v. Granville* (2000) 530 U.S. 57) (parents have a fundamental right under the Fourteenth Amendment to oversee the care, custody, and control of a child.) Parents have the right to direct activities and make decisions regarding the child's care and control, education, health, and religion. This constellation of parental interests is "essential." (*Meyer v. Nebraska* (1923) 262 U.S. 390, 399). Parental rights are among the "basic civil rights of man." (*Skinner v. Oklahoma* (1942) 316 U.S. 535, 541). They are "far more precious ... than property rights." (*May v. Anderson* (1953) 345 U.S. 528, 533).

The purpose of this FAQ document is to provide accurate information regarding the Family Educational Rights and Privacy Act (FERPA) and AB 1266 (codified as Education Code section 221.5). School officials claim that these laws obligate all school personnel to conceal a child's gender change from their parents if the child has requested that parents not be notified. This claim is both misleading and inaccurate. Additionally, the following information explains why the proposed Parental Notification Policy is not only morally defensible, but also legally permissible.

### **What is FERPA?**

The Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. §-1232g; 34 CFR Part 99) is a federal law designed to safeguard the confidentiality of a student's education records. FERPA protects the right of parents to access information about their child from the school and protects against third parties obtaining information about



a student. FERPA grants specific rights to parents concerning their child's educational records.

### **Does FERPA allow schools to hide a student's gender identity from the student's parents or guardian upon the request of the student?**

No. FERPA does NOT grant rights to minor students to prevent a parent or guardian from accessing or seeing the student's records.

FERPA DOES NOT give school permission to hide information from parents, including a child's decision to change his/her gender identity, name, or other information. Even if a school characterizes the student's gender identity as an "unofficial record" or some other euphemism, the school is violating both the letter and the spirit of FERPA and exposes itself to litigation. In fact, a school that has a policy to deny or effectively prevent parents from access to their student's records can lose its federal funding. (20 U.S.C. §1232g(a)(1)(A) and (B) (Parents can protect against a school's hidden agenda by routinely requesting their student's school records.)

### **Does the California Education Code require transparency with a student's records?**

Yes. Under California Education Code §51101(a)(10), parents have the right "to be informed by the school and participate in the education of their children of their children, as follows: . . . To have access to the school records of their child . . ."

### **What is AB 1266?**

AB 1266 was enacted in 2013 and codified as Education Code 221.5. Schools routinely refer to AB 1266 by its bill number. This anti-discrimination law mandates only that students be allowed to participate in sex-segregated school programs and activities, such as athletic teams and competitions, and use school facilities, based on their gender identity, regardless of the biological sex recorded on their school records. It says nothing about concealing a student's gender identity from parents.

### **Does AB 1266 require schools to withhold information from parents if their student is using a name other than their legal name, using bathrooms, or changing rooms, or participating in sports teams that does not correspond with their sex on their official records?**



No. AB 1266 pertains exclusively to the availability of classes, sports teams, bathrooms and changing rooms on the basis of gender identity, rather than biological sex. It specifies that “a student has the right to participate in sex-segregated school programs, activities, including sports teams and events, and utilize facilities in accordance with their gender identity, irrespective of the gender listed on the student’s records.”

AB 1266 does not address a student’s records, nor does it provide a requirement for, or a mechanism for, a school’s concealment from parents of a student’s use of bathrooms, changing rooms, or other facilities that do not align with the student’s biological sex, or the sex marked on their official records. AB 1266 does not require a school to deceive a parent about the sports team or class that their student participates in. AB 1266 makes no reference to a “chosen name” of a student and is silent as to a school concealing from parents the name or pronouns being used by a student. Any such interpretation greatly expands AB 1266 beyond its plain language. Schools that change a student’s name, depending upon the person being addressed, are deceiving parents and guardians. Moreover, in doing so, such schools are unilaterally engaging in promoting a psychosocial intervention without the consent or knowledge of the parents and may be practicing medicine without a license. Deceptive behavior places schools in precarious situations by inviting litigation by the parents, as has already occurred in two school districts in California. (See *Konen v. Cabreira* and *Regino v. Staley*.) AB 1266 has never authorized concealing information from parents. Instead, it is the school’s responsibility to keep parents informed of any changes in their child’s gender identity, since school districts have no compelling reason, legal or otherwise, to deceive parents.

The law presumes that parents will act in the best interests of their own children. Public schools should not participate, intentionally or by omission, in hiding secrets from parents, nor collude with minors to deceive parents.

### **Does the California Constitution guarantee an unlimited right to privacy for minors?**

The California Department of Education attempts to justify its current policy by citing the Article 1, Section 1 of the California Constitution. This section provides that: “All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.” Minor’s privacy rights vis-a-vis their parents are extremely limited. These rights do not include schools deceiving or hiding gender identity information from parents. In fact, as stated above, schools are obligated under FERPA to be forthright with parents. The limited privacy rights extend only between the minor and his/her doctor or attorney, not to public school teachers,



principals, or administrative personnel, except as provided through FERPA. Most importantly, these rights DO NOT apply to the communication to parents of vital information about their minor children.

Students who present at school with a gender identity that does not comport with their biological sex, and who have shared that information with the school by name change, pronoun usage, choice of facility etc., are publicly sharing that information with everyone, except potentially with their parents. The child's alternate identity is even shared with substitute teachers, school office staff, and parent volunteers.

### **Is it morally right and legally permissible to require school officials to reveal a minor's gender transition to their parent or guardian?**

Yes, a policy that promotes transparency and open communication between school personnel and parents regarding a minor's gender identity is both morally correct and legally permissible. California's Education Code section 233.5 states that teachers shall "impress upon the minds of the pupils the principles of morality, truth, ... to teach them to avoid idleness, profanity, and falsehood, ..." Parents have the right to participate in the education of their children, "as mutual and respectful partners". (Educ. Code §51101.) Schools encouraging students to lie to parents and being active participants in that lie contradicts the law.

It is crucial to recognize that parents play a vital role in the lives of their children, and they have a fundamental right to be intimately involved in their education and upbringing.

It is universally accepted that children do better in school and are more socially and emotionally healthy when they have involved, informed, and caring parents. This is also true for children who identify as transgender. California codified this axiomatic principal in Education Code §51100 (b), which states, "Research has shown conclusively that early and sustained family involvement at home and at school in the education of children results ... in improved pupil achievement. "From a legal standpoint, schools have a duty to protect the welfare of their students and to provide a safe and supportive learning environment. This includes respecting the role parents play in the lives of students. By working collaboratively with parents, schools can better meet these obligations and create a positive working partnership with students and their families.



# Tips for Approaching Your School Board

- ⇒ **Understand the Process:** Familiarize yourself with the school board's policies and procedures for accepting and reviewing policy proposals (You should be able to find this information on your school district's website). This knowledge will help you navigate the process effectively and ensure that you follow the appropriate steps.
- ⇒ **Be Clear When Defining the Issue:** Clearly articulate the problem or area of improvement that the policy proposal aims to address. Familiarize yourself with the "Talking Points" and "Benefits of Strong Parent-School Partnerships" in this toolkit to help highlight the ways this policy will benefit students, parents, and schools in addressing the issues.
- ⇒ **Seek Support:** Engage with others in your school community, such as teachers, parents, students, or community organizations, who may share your concerns. Seek their support and endorsements for your proposal. The support of multiple community members will lend credibility, strengthen your position, and let the school board members know that there are many who will be watching how they respond to this proposal.
- ⇒ **Be Professional and Respectful:** Approach the school board with professionalism and respect. Maintain a respectful demeanor throughout your interactions, even if you encounter resistance or differing opinions. Maintaining professionalism will enhance the likelihood of a positive response from the school board members.
- ⇒ **Anticipate Questions and Concerns:** Anticipate the potential questions or concerns that board members may have and prepare well-thought-out responses. To help prepare, you can familiarize yourself with the FAQ section of this toolkit.
- ⇒ **Follow Up and Stay Engaged:** After the presentation, follow up with a thank-you note or email to express your gratitude to the board members for their time and consideration. Continue to stay engaged in the process by attending future board meetings, participating in discussions, and advocating for your proposal.

Remember, approaching your school board with a policy proposal requires persistence, patience, and effective communication. By following these tips, you will be better equipped to present your proposal confidently and increase the likelihood of positive outcomes for your school community.



# Benefits of Strong

# Parent-School Partnerships

## **ACADEMIC SUCCESS**

- When parents are actively involved in their child's education, it positively impacts academic achievement and leads to improved grades and test scores.
- Parental involvement, including regular communication with teachers, is associated with higher student achievement in both elementary and secondary schools.

## **POSITIVE BEHAVIORAL OUTCOMES**

- Parental involvement is linked to better school behavior, reduced absenteeism, and decreased disciplinary issues.
- Parent-school partnerships contribute to a positive school climate and promote a sense of belonging and engagement among students.

## **SOCIAL-EMOTIONAL DEVELOPMENT**

- Parental involvement in schools is associated with improved social skills, increased self-esteem, and enhanced social-emotional development in children.
- When parents are engaged in their child's education, it fosters a sense of support, motivation, and emotional well-being, contributing to overall positive mental health outcomes.

## **IMPROVED ATTENDANCE & GRADUATION RATES**

- Parental involvement is linked to improved attendance rates and decreased dropout rates among students.
- Parent-school partnerships play a crucial role in keeping students on track to graduate, as involved parents can help identify and address any potential barriers to their child's educational success.

## **BRIDGE BETWEEN HOME & SCHOOL**

- Parents as partners help bridge the gap between home and school environments, creating a cohesive support system for children's learning.
- Home-school communication, collaboration, and shared decision-making, leads to a more comprehensive and holistic education for children.





## **INCREASED PARENTAL SATISFACTION & CONFIDENCE**

- Parental involvement fosters a sense of satisfaction and confidence among parents in their ability to support their child's education effectively.
- Engaged parents feel empowered and have a stronger voice in advocating for their child's needs, contributing to a positive parent-school relationship.





June 14, 2023

*Via Electronic Mail Only*

**Re: Legal Opinion Memorandum in Strong Support of the Model California Parent Notification Policy**

Dear California School Board Member,

The National Center for Law & Policy (NCLP) is a non-profit civil rights advocacy organization which focuses on the protection and promotion of religious freedom, the sanctity of life, parental rights, and other civil liberties. The NCLP engages in constitutional litigation in state and federal courts. The National Center is also active in the areas of public policy and education. As the chief counsel of the NCLP, I am a constitutional attorney who is admitted and qualified to practice before the Supreme Court of the United States. My wife is a public school teacher, and we have three children who have all been publicly educated.

I have prepared this legal memorandum because the rights of parents must be respected, honored and protected in our great nation's public schools. To that noble end, the NCLP strongly supports the Model California Parent Notification Policy (MCPNP).<sup>1</sup> This policy has been legally vetted and approved by several respected legal organizations, including ours. It is a good policy that simply requires educators to promptly notify parents about important facts and circumstances involving their child's health and well-being on public school campuses. Parents must decide what is best for their children, not the state.

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<sup>1</sup> Two Model Policies are attached here. The first is a broader and more comprehensive policy which requires parental notification when a student suffers a significant physical injury, makes a statement of suicidal intent, is involved in a verbal or physical altercation, including bullying, or is identifying or requesting to be identified as a gender other than the student's biological sex. The second is a more narrowly focused policy requiring parental notification when a student is identifying or requesting to be identified as a gender other than the student's biological sex. School districts are free to adopt either policy, according to their needs.



The memo highlights both legal and public policy concepts that all public school districts must understand when determining best practices in this sensitive area involving the families and children that that you serve. First, parental authority is paramount and is well-protected by the Fourteenth Amendment to U.S. Constitution and many key decisions of the U.S. Supreme Court. Second, states like California do not possess unlimited power to coercively impose their viewpoints regarding human sexuality on children and families in our public schools. Third, there are no federal or state laws including, but not limited to, FERPA, AB 1266 or student “privacy rights,” that limit school districts from notifying parents about the health and well-being of their children at public schools, or that mandate educators lie to parents. Even if there were, the U.S. Constitution is the “supreme law of the land” any such laws would almost certainly be deemed an unconstitutional infringement of paramount parental constitutional rights by the U.S. Supreme Court. Fourth, school districts that foolishly ignore parents and families will continue to shrink and experience significant losses. Finally, this memo explains how the Model Policy properly honors parents and respects the legal rights of families.

### **Parental Authority Is Paramount in Guiding Children under Their Care**

Parental rights are among the very “basic civil rights of man.” *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942). These rights are “far more precious ... than property rights.” *May v. Anderson*, 345 U.S. 528, 533 (1953). The freedom of parents to raise children, guided by their love for their children and their conscience, is so important that it is constitutionally protected. Indeed, parents’ “fundamental right and liberty interest” to “oversee the care, custody and control of their children” is protected by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. *Troxel v. Granville*, 530 U.S. 57, 57 (2000). These freedoms include the right to direct their child’s activities, make decisions regarding their child’s care, and control their child’s education, health, and religion. This constellation of familial interests is “essential to the orderly pursuit of happiness by free men.” *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

These fundamental parental rights exists precisely because parents and legal guardians are best positioned to understand, love, and raise children. It is axiomatic and should not be controversial that mothers and fathers, not the state, are in a much better position to authentically love, know, understand, and make better informed decisions on behalf of children in their custody, care, and control. Parents are more closely tied to their children than other adults, including teachers, not only by blood or adoption, but by profound and enduring familial bonds, as well as deep commitments to their child’s health and well-being, personal formation, and human flourishing.



Significantly, the U.S. Supreme Court recognizes this foundational truth and presumes that parents are best physically and emotionally equipped and situated to lead, guide, and direct their child:

“The law’s concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions. More important, historically, it has been recognized that natural bonds of affection lead parents to act in the best interests of their children.”

*Parham v. J. R.*, 442 U.S. 584, 602 (1979).

Therefore, parents’ rights “presumptively include[ ] counseling [their children] on important decisions.” See *H.L. v. Matheson*, 450 U.S. 398, 410 (1981).

The MCPNP is important because it appropriately acknowledges and respects the very special and unique role, rights, and responsibilities of parents and legal guardians. Because parents, quite naturally and organically, have the primary right and obligation to raise their children, parental authority should be honored and respected by state officials and educators, not questioned, undermined or sabotaged. Public school administrators, teachers and guidance counselors must be careful to be partners with parents and legal guardians, and must not view them or treat them as adversaries with whom they must withhold and conceal important health and safety information involving their child. Specifically, California school districts should not withhold important health and safety information from parents and legal guardians including, but not limited to, whether the child is involved in bullying incidents, a verbal or physical altercation, is suicidal, or is exhibiting gender dysphoria at school.

### **State Authority Is Limited in Imposing Its Divergent Orthodoxies on Children and Their Families**

While the state has an important role in the education of the public, its power is limited by important constitutional considerations. “[A] [s]tate’s interest in universal education ... is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children...” *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972).



Legally, the family is a completely separate legal entity from the state, and maintains a separate, distinct and superior sphere of authority over children and legal guardians, as compared to the state. That is why the U.S. Supreme Court has repeatedly affirmed that its “decisions have respected the private realm of family life *which the state cannot enter.*” *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158, 166 (1944) (emphasis added). Indeed, the high court again acknowledged the fundamental responsibility and right of parents, not the state, to instruct and train children, when it wrote:

“The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children ... [t]he child is not the mere creature of the state; those who nurture him and direct his destiny [i.e., parents and guardians] have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”

*Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

Therefore, children belong first to their parents and families, before the state. Unfortunately, however, California has enacted a great deal of legislation in recent decades which has undermined and severed the natural bonds between parents and children, ignoring, weakening, and destroying the fundamental and constitutionally secured rights of parents and families. If we are to remain a free people in a free republic, as opposed to submitting to overreaching government on the road to oppressive tyranny, the locus of authority and control of the family must remain with parents, and must never be ceded to the state.

Furthermore, our public schools and educators must be both mindful and careful to not question, undermine, attack, supplant, or strive to replace the sincerely-held philosophical and religious beliefs of families whose students they serve.

“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”

*West Virginia v. Barnette*, 319 U.S. 624 (1943).

The state, including our public schools, is the servant of the people, not their master. With rare and narrow exceptions, parents must remain free to raise their children as they deem best. Therefore, state legislators and state educators must refrain from the statist impulse to abuse their authority and influence by coercively imposing government-preferred orthodoxies, especially those implicating human sexuality, on



students and their families. The state must educate, not indoctrinate. Indeed, the U.S. Constitution's First Amendment<sup>2</sup> requires that the state must respect the divergent world views, including religious beliefs and practices, of the families it serves. This is true even if educators personally strongly object to the beliefs of a family, including their religious faith.

Withholding vital information from parents teaches children a horrible lesson: That it is acceptable to not tell the truth and conceal important information from the very persons who are best situated to love and protect them—their parents or legal guardians. We appropriately teach our children not to lie, and not to keep secrets from parents as a safety measure—to protect them from unsafe people, particularly adult child predators. When perhaps the second most important adult authority figure in the child's life—their teachers—go against what parents teach their children, this confuses and destabilizes a child. It drives a wedge between parent and child, making children more vulnerable to manipulation and abuse, including sexual abuse.

### **A Student's Right to Privacy Does Not Trump Parent Rights, nor Do Other Federal or State Laws Forbid Parental Notification**

A minor's right to privacy does not supersede the right of parents to direct the care and upbringing of their child. Minor students are not "little adults" nor do they inherently possess any absolute rights to autonomy or privacy, particularly vis-à-vis their parents. In fact, the "laws concept of the family rests on the presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions." *Parham*, 442 U.S. at 602. Indeed, it is well-documented that the brain's pre-frontal cortex, critical for reasoned judgment and decision making, is not fully developed until 25 years of age.<sup>3</sup> Therefore, the best way to protect the mental and physical health and safety of children is not to speciously claim that "student privacy" somehow magically trumps all other ethical and legal considerations, including fundamental parental rights and religious liberty, or that minor students ought to make important life altering decisions *only* with state employees, cut-off and separated from their parents and family. Rather, best practices are that parents, as primary decision makers, should be provided important and accurate information involving their child's well-being at school in a timely manner.

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<sup>2</sup> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech...."

<sup>3</sup> *Maturation of the adolescent brain*, Published online 2013 Apr 3. doi: 10.2147/NDT.S39776 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/#:~:text=The%20development%20and%20maturation%20of%20the%20prefrontal%20cortex%20occurs%20primarily,the%20age%20of%2025%20years> (NIH, Last accessed June 13, 2023).



Robust parental rights are actually supported, not undermined, by federal law. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) protects the privacy of student education records, however the protection is against disclosure to unauthorized third parties, not parents. In fact, FERPA gives parents the right to inspect and review their child’s education records, and this right only transfers to the student once they turn 18 years old. FERPA does not authorize public schools to either actively conceal information or to lie to parents about their child’s important health and safety information. Federal law does not require that parents be kept in the dark about important issues concerning the child’s welfare, including gender dysphoria.

Furthermore, California law, as some falsely claim, does not require schools to conceal a student’s gender identity from their parents, nor does it mandate lying to parents. Nonetheless, some anti-parent organizations deceptively claim that AB 1266<sup>4</sup> somehow mandates public educators keeping parents in the dark about their child’s health and safety at school regarding gender identity. This is objectively not true. AB 1266 merely concerns itself with access to school facilities and programs based on gender-identity; it says nothing about, nor does it require, an administrator or teacher to lie to parents or conceal important information from parents.

Furthermore, even if FERPA, AB 1266, or another federal or state statute did somehow explicitly mandate that school districts mislead parents about their child’s sexuality, health and safety—which they do not, as already explained above—such a provision would be blatantly unconstitutional. As most of us learned in Civics 101, as prescribed in Article VI, the U.S. Constitution, including the Fourteenth Amendment’s protection of fundamental parental rights, is the “the supreme law of the land” and overrules any federal or state law to the contrary (“This Constitution...shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”). Therefore, any and all federal or state law to the contrary must yield.

Yet, ignoring the U.S. Constitution and key decisions of the U.S. Supreme Court, opponents of parental rights and parental notification falsely assume two things, both of which are not true: First, that in regards to students who question their gender identity, all parents will fail to act in the best interests of the health and safety of their own child (i.e., assuming parents will engage in child abuse and/or will counsel what is not objectively best for the child). Second, that all state educators will always act in the best interest of a child’s health and safety (not engaging in child abuse and always

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<sup>4</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB1266](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1266) (last accessed June 9, 2023)

counseling what is objectively best for the child). This unfounded and misguided viewpoint improperly degrades and defames the fundamental rights of parents to make family decisions, and simultaneously elevates educators to a more powerful position of authority than parents in a child's life that they are not qualified to assume. As the Supreme Court explained, the fact "that some parents may at times be acting against the interests of their children ... creates a basis for caution, but is hardly a reason to discard wholesale those pages of human experience that teach that parents generally do act in the child's best interests. *Parham*, 442 U.S. 584, 602-603 (internal quotes and citations omitted). Therefore, at a minimum, California public school districts and educators should not engage in the dubious business of concealing the truth or deceiving parents about their child's health and safety, including their sexuality.<sup>5</sup> Vague claims about "student privacy" do not trump well-established parental rights guaranteed by the Fourteenth Amendment.

### **School Districts That Ignore Parents and Families Will Continue to Suffer Great Losses**

California voters overwhelmingly support the fundamental constitutional right of parents to raise their children, including requiring parental notification by schools. A June 12, 2023 Rasmussen poll shows ninety-one percent (91%) believe parents, not the government, have the greater responsibility to raise a child.<sup>6</sup> Eighty-two percent (82%) of California likely voters disagree with the statement, "A person loses their parental rights when a child enters public school," including sixty-nine percent (69%) who strongly disagree. Only twelve percent (12%) think parental rights are lost when children enter public school.<sup>7</sup> Specifically, when it comes to parental notification, voters strongly support policies like the MCPNP. Eighty-four percent (84%) of California voters would support a local law that required parents to be notified of any major change in a child's

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<sup>5</sup> While purporting to advocate for "parental rights," the ACLU improperly privileges a student's purported "privacy rights" over the well-established constitutional right of parents to raise their children, pitting state educators against families and children against their parents. The ACLU speciously assumes that parents will mistreat and /or abuse children struggling with gender identity and sexual orientation and that "affirming" unrelated government employees are always better equipped to help children facing human sexuality issues, when they write: "School officials may think their doing the right thing, but revealing a student's sexual orientation or gender identity to their parents not only violates the student's privacy rights, but can open an LGBT child to hostility, rejection, and even violence from their parents." Significantly, however, there is no evidence that there is an actual epidemic where the majority of parents are actually abusing their children who struggle with gender dysphoria, nor can they produce any evidence thereof. <https://www.aclu.org/news/lgbtq-rights/trans-students-should-be-treated-with-dignity-not-outed-by-their-schools>

<sup>6</sup> *California Voters Support Parental Rights by Overwhelming Margins* [https://www.rasmussenreports.com/public\\_content/politics/partner\\_surveys/california\\_voters\\_support\\_parental\\_rights\\_by\\_overwhelming\\_margins](https://www.rasmussenreports.com/public_content/politics/partner_surveys/california_voters_support_parental_rights_by_overwhelming_margins) (last accessed June 14, 2023).

<sup>7</sup> *Id.*



physical, mental, or emotional health or academic performance, including sixty-six percent (66%) who would strongly support such a law.<sup>8</sup> If such a law included notifying parents of a child identifying, requesting to identify, or being treated as a gender that doesn't align with their biological sex, sixty-two percent (62%) of California voters would be more likely to support it..."<sup>9</sup>

This means that California school districts that fail to listen to, respect, and honor parents and families will likely face significant negative consequences, including losing the enrollment of thousands of students and, with them, millions of dollars in funding. In 2019 through 2022 alone, more than 1.2 million students disenrolled in public schools nationwide with fourteen percent (14%) of them enrolling in private schools, twenty-six percent (26%) moving to home schooling, and twenty-six percent (26%) attributed to a declining school age population.<sup>10</sup> If California continues its current overreaching, authoritarian anti-parent, anti-family and anti-religion campaign, it will continue to alienate parents and families and the mass exodus of students enrolled in public schools is likely to only continue and accelerate.

### **The Model Policy Properly Honors Parents and Respects the Legal Rights of Families**

The model policy properly respects the authority of parents to raise and direct their child, and honors the special parent-child bond and relationship. It provides important information to parents about their child including whether a student suffers a significant physical injury, makes a statement of suicidal intent, is involved in a verbal or physical altercation (including bullying), or is identifying or requesting to be identified as a gender other than the student's biological sex. This important information must be provided to parents within three days of the educator's knowledge, and allows parents to fulfill their obligations as parents.

Parents are not a public enemy; they are an ally. In an environment of growing distrust of public education and documented enrollment decline, I submit that school districts that prioritize the honoring and affirming of parents and the health and well-being of children will enjoy significantly better customer satisfaction sentiments and will likely fare much better. The model policy equips parents to fulfill their moral and legal

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *With Plunging Enrollment, a "Seismic Hit" to Public Schools*, NY Times, <https://www.nytimes.com/2022/05/17/us/public-schools-falling-enrollment.html> (last accessed June 14, 2023)



obligations to their children by giving them important health and safety information in a timely manner. It empowers parents to raise their children—not the state.

In conclusion, because parents and legal guardians retain the constitutional rights embodied in the Fourteenth Amendment and are more optimally situated to understand what is truly in the best interest of their children, I strongly recommend that all California school districts carefully consider and adopt the Model California Parent Notification Policy. Please feel free to contact me if you have any further questions.

Sincerely,

A handwritten signature in blue ink that reads "Dean R. Broyles". The signature is fluid and cursive, with the first name "Dean" being the most prominent.

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



*For more information and resources, visit [www.carentalrights.com](http://www.carentalrights.com).*

