

No. 24-3278

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

CHRISTIN HEAPS,
Plaintiff-Appellant,

v.

DELAWARE VALLEY REGIONAL HIGH SCHOOL
BOARD OF EDUCATION, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of New Jersey (Civ. No. 3:24-cv-00107)

**BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION OF
NEW JERSEY, EDUCATION LAW CENTER, AND GARDEN STATE
EQUALITY IN SUPPORT OF DEFENDANTS-APPELLEES AND
AFFIRMATION**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, amici curiae American Civil Liberties Union of New Jersey, Education Law Center, and Garden State Equality state that they do not have a parent corporation and that no publicly held corporation owns 10 percent or more of their stock.

Dated: September 9, 2025

s/ Ezra D. Rosenberg

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INTEREST OF AMICI CURIAE¹

For more than 60 years, the **American Civil Liberties Union of New Jersey** (“**ACLU-NJ**”) has defended liberty and justice guided by the vision of a fair and equitable New Jersey for all. The ACLU-NJ’s mission is to preserve, advance, and extend the individual rights and liberties guaranteed to every New Jerseyan by the State and Federal Constitutions in courts, legislative bodies, and communities. Founded in 1960 and based in Newark, the ACLU-NJ is a nonpartisan organization that operates on several fronts—legal, political, cultural—to bring about systemic change and build a more equitable society. In all these arenas, the ACLU-NJ advocates for the rights of LGBTQ+ individuals, including children, on equal terms with all others. ACLU-NJ members and supporters include transgender and gender-nonconforming students and their parents and guardians.

Founded in 1973, **Education Law Center** (“**ELC**”) is a non-profit and non-partisan legal advocacy organization that pursues justice and equity for public school students by enforcing their right to a high-quality education in safe, equitable, non-discriminatory, integrated, and well-funded learning environments.

¹ The parties have consented to the filing of this amici brief. Under Fed. R. App. P. 29(a)(4)(E), the undersigned counsel certifies that no counsel for a party authored this brief in whole or in part and that no person other than amici curiae made a monetary contribution intended to fund the preparation or submission of this brief.

ELC has long worked to ensure that public schools create and promote safe, inclusive learning environments, particularly for marginalized groups of students, including LGBTQ+ students. ELC has extensive experience litigating on behalf of students in state and federal courts on constitutional and statutory issues and has served as an amicus curiae in numerous state and federal cases, including, most recently, *Mahmoud v. Taylor*, before the United States Supreme Court.

Garden State Equality Education Fund (“GSE”) was founded in 2004 and is the largest LGBTQ+ advocacy organization in New Jersey, with more than 150,000 members. Its mission is to provide quality, innovative community programs, educate and train service providers, and pass pro-equality policies to protect and meet the needs of LGBTQ+ New Jerseyans. In the arena of education, GSE engages in advocacy, policy work, and trainings to ensure that New Jersey schools are safe and affirming environments for transgender and nonbinary students. GSE engages with stakeholders in New Jersey schools at all levels, including by:

- Providing training and guidance to school administrators and staff,
- Advocating for students at state and local board of education meetings,
- Presenting at student assemblies,
- Supporting parents of transgender students, and

- Providing direct support to and programming for transgender and nonbinary students.

SUMMARY OF ARGUMENT

Everyone has a gender identity. Simply put, gender identity is a person's core sense of belonging to a particular gender. *See, e.g., Doe v. Ladapo*, 676 F. Supp. 3d 1205, 1210 (N.D. Fla. 2023). There exists a broad societal intuition that cisgender people know their own gender identity; thus, for example, no one asks a boy who is not transgender for a doctor's note before using his pronouns. Similarly, no one asks a child whose legal name is "Margaret" for a medical diagnosis before calling her "Peggy," or assumes that someone preferring to use their middle name in public settings must have a medical condition. Referring to people by their preferred names, even if entirely distinct from the name on their birth certificate, is a social norm that has long been accepted as a sign of respect towards an individual's preference and identity. The same is true of transgender and gender nonconforming individuals who may choose to use a name and pronouns different than what they had used before. Using gendered honorifics (like "Sir" or "Ms.") or pronouns (whether gendered, like "he/him" or "she/her," or not, like "they/them"), not to mention preferred names, is an acknowledgement of individual dignity, regardless of that person's gender identity and whether that identity conforms to their gender assigned at birth.

Contrary to Plaintiff's assertions, in no way does the Constitution compel schools to deny students the basic measure of respect of (a) using the student's requested name and pronoun and (b) allowing the student to decide when it would be appropriate to share information with others, including their parents. While the substantive component of the Due Process Clause protects the rights of parents to direct the upbringing of their children, nothing in the Constitution demands that state actors affirmatively notify parents whenever a student shares some aspect of their personal identity that a parent might be interested in.

In short, there is no constitutional obligation for schools to out transgender students against their will. Whether or not they receive notice from their children's schools, parents remain free to talk to their children about gender identity and offer whatever direction they like about how their children explore and express their gender, in school and elsewhere. Likewise, students remain free to talk to their parents about these issues and even to seek their schools' help in broaching the subject at home.

In that light, the requirement of student consent prior to disclosing gender identity to parents under New Jersey's Transgender Student Guidance ("Guidance") and Policy 5756 adopted by the Delaware Valley Regional High School Board of Education ("Policy 5756") is not coercive and does not implicate parental rights under the Due Process Clause. Nor does acknowledgment of a

student’s requested name and pronouns somehow constitute “psychosocial” medical treatment. On the contrary, the Guidance and Policy 5756 serve important goals of ensuring students can attend school free of discrimination and harassment. The Constitution is no bar to the adoption of such a policy.

ARGUMENT

I. The state’s Transgender Student Guidance and Policy 5756 serve the all-important goal of ensuring transgender students can enjoy safe and nondiscriminatory school environments.

“Just like being cisgender, being transgender is natural and is not a choice.”

Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 594 (4th Cir. 2020). As this Court has previously held, policies that affirm transgender students’ identities are simply codifying the basic civil decency owed to everyone. These policies foster “an environment of inclusivity, acceptance, and tolerance,” benefiting not only transgender students but “all students by promoting acceptance.” *Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 529 (3d Cir. 2018). These are also the goals animating the Guidance and Policy 5756, which seek to protect transgender and gender diverse students who face extraordinary obstacles to the enjoyment of safe and nondiscriminatory educational environments.

A. Transgender and gender diverse youth face incredible challenges to their well-being, particularly in schools.

Transgender youth face “extraordinary social, psychological, and medical risks,” *Boyertown Area Sch. Dist.*, 897 F.3d at 528, in schools through

“discrimination, harassment, and violence because of their gender identity,” *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017), leading to consequences that have been acknowledged by this Court to be at times even “life threatening.” *Boyertown Area Sch. Dist.*, 897 F.3d at 529. Across the board, transgender students are more likely than cisgender students to report violence, victimization, substance use, and suicide risk. Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017*, 68 *Morbidity & Mortality Wkly. Rep.* 67, 67 (2019). The consequences of this harassment can be dire—within a one-year period, as many as 35% of transgender students attempt suicide. *Id.* at 70.

In 2021, the National School Climate Survey found that 76% of LGBTQ+ students reported being verbally harassed, 31% were physically harassed (e.g., shoving or pushing), and 12.5% were physically assaulted (e.g., punched, kicked, or injured with a weapon) for their gender identity and expression. Joseph G. Kosciw, Caitlin M. Clark & Leesh Menard, GLSEN, *The 2021 National School Climate Survey: The Experiences of LGBTQ+ Youth in Our Nation’s Schools* 19 (2022), <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf>. And that bullying does not end at the conclusion of the school day or

within the confines of the school building, as half of transgender students further experienced cyberbullying from classmates. *Id.* at 23.

The experience of LGBTQ+ students in New Jersey mirrors the national statistics above. In New Jersey, 44% of transgender and nonbinary youth report having “seriously considered suicide in the past year.” The Trevor Project, *2022 National Survey on LGBTQ Youth Mental Health by State: New Jersey 2* (2022), <https://www.thetrevorproject.org/wp-content/uploads/2022/12/The-Trevor-Project-2022-National-Survey-on-LGBTQ-Youth-Mental-Health-by-State-New-Jersey.pdf>. 73% report symptoms of anxiety, and 63% report symptoms of depression. *Id.* About half of LGBTQ+ students in New Jersey experienced verbal harassment based on gender expression. GLSEN, *School Climate for LGBTQ+ Students in New Jersey 2* (2023), https://maps.glsen.org/wp-content/uploads/2023/02/GLSEN_2021_NSCS_State_Snapshots_NJ.pdf.

Further, only 21% of New Jersey’s LGBTQ+ students attended schools with comprehensive anti-bullying/harassment policies. *Id.* at 3. The lack of such policies has a significant cost for transgender students who experience bullying from fellow students and may unfortunately receive little to no support from their school. *See, e.g.,* Brianna Kudisch, *Transgender Girl Was Called a ‘Freak’ While N.J. School Did Nothing, Lawsuit Alleges*, NJ.com (Feb. 11, 2025), <https://www.nj.com/education/2025/02/transgender-girl-was-called-a-freak-while->

[nj-school-did-nothing-lawsuit-alleges.html](#) (reporting on the story of a transgender girl in Bergen County who had ice cream thrown at her, who was excluded from others' tables at lunchtime, and whose school counselor called child protective services on her parents after they sought assistance); Jay Dow, *Transgender Teen Viciously Beaten at High School in Newark*, PIX11 (Sep. 29, 2017), <https://pix11.com/news/transgender-teen-viciously-beaten-at-high-school-in-newark> (highlighting the story of a transgender student in Newark who was called slurs and "blindsided with a flurry of punches and kicks" by her classmates); Dave Hutchinson, *N.J. Transgender Teen Begins to Transition in a Complex World*, NJ.com (June 2, 2015), https://www.nj.com/morris/2015/06/for_nj_transgender_teen_support_from_parents_means.html (sharing the story of a transgender student from Morristown who had to transfer schools due to bullying from classmates and school administrators who threatened to suspend her if she chose to present in a way that aligned with her gender identity). Transgender students across New Jersey not only suffer harassment, intimidation, and bullying from their peers both inside and outside the classroom for choosing to affirm their gender identity, but also far too often fail to receive the necessary care and support from administrators.

B. The Guidance and Policy 5756 are geared towards protecting transgender students and are necessary to building safe, inclusive environments for the entire school community.

New Jersey responded to the pervasive problem of lack of safety and respect for transgender students within schools by enacting a law directing the State Department of Education to issue a state-wide guidance for school administrators concerning the treatment of transgender students. N.J. Stat. Ann. § 18A:36-41. The purpose of the law was clear: to ensure that schools are a learning environment “free from discrimination and harassment for transgender students, including students going through a gender transition.” N.J. Stat. Ann. § 18A:36-41(b)(2). *See also Vainieri Huttie & Caride Bill to Create Safe & Welcoming School Environment for Trans Students Now Law*, Insider NJ (July 23, 2017), <https://www.insidernj.com/press-release/vainieri-huttie-caride-bill-create-safe-welcoming-school-environment-trans-students-now-law> (“These guidelines send a clear message to transgender children that we support them, and that discrimination and harassment of any form will not be tolerated.”).

The state’s Transgender Student Guidance (“Guidance”), promulgated pursuant to a bipartisan legislative mandate signed by Governor Chris Christie, later informed the creation of Policy 5756 adopted by the Delaware Valley Regional High School Board of Education (“Policy 5756”). Policy 5756 is aimed at promoting a supportive and nondiscriminatory learning environment for

transgender students that respects their autonomy and promotes their well-being. Policy 5756 recognizes that the need for “safe, supporting, and inclusive learning environment[s]” is not just a matter of good policy, but of New Jersey law—New Jersey’s Law Against Discrimination (“NJLAD”), N.J. Stat. Ann. §§ 10:5-1 to -50, requires schools to give equal treatment to students on the basis of gender identity or expression.

Specifically, and at issue in this case, Policy 5756 allows students to request that school officials use a requested name and pronouns consistent with the student’s gender identity.

i. Benefits of Policy 5756 to student health

Not only do the Guidance and Policy 5756 affirm the basic autonomy and dignity of transgender students, but they also improve their health and educational outcomes. Studies have shown that transgender students addressed by their preferred name and pronouns have been shown to be healthier and perform better academically than those who cannot use their preferred name and pronouns. This is in part because using a chosen name reduces the discrepancy between a transgender youth’s identity and presentation. Amanda M. Pollitt et al., *Predictors and Mental Health Benefits of Chosen Name Use Among Transgender Youth*, 53 *Youth & Soc’y* 320, 335 (2019). Furthermore, the process of coming out can be stressful but rewarding because it leads to higher self-esteem. Michelle D. Vaughan

& Charles A. Waehler, *Coming Out Growth: Conceptualizing and Measuring Stress-Related Growth Associated with Coming Out to Others as a Sexual Minority*, 17 J. Adult Dev. 94, 95 (2010).

For these reasons, it is critical that transgender students have access to spaces that affirm their gender for their overall well-being; and it is essential that their school building offer such a haven. After adjusting for personal characteristics and social support, a sample of 129 transgender and gender nonconforming youth from three U.S. cities showed that the more contexts or settings (home, school, work, and friends) where transgender youth were able to use their preferred name, the better their mental health in the form of significantly lower suicidal ideation and suicidal behavior. Stephen T. Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 J. Adolescent Health 503, 505 (2018). Even just one context where a youth could use their chosen name correlated to a 29% reduction in suicidal ideation and a 56% reduction in suicidal behavior. *Id.*

ii. Benefits of Policy 5756 to educational outcomes

Beyond health and well-being, the importance of respecting transgender students' choices of name and pronouns is also reflected in their educational outcomes. Students who experience discrimination based on their gender expression perform less well academically than those who do not (2.76 v. 3.17

average GPA). Kosciw, Clark & Menard, *supra*, at 35-37. They are also twice as likely to report that they do not plan on pursuing post-secondary education and feel lower levels of belonging to their school community. *Id.* at 35-37, 41.

Approximately a third of LGBTQ+ youth reported missing school because they felt unsafe or uncomfortable. *Id.* at 12. Indeed, gender-nonconforming people are more likely to have lower rates of education attainment, lower rates of employment, lower household incomes, and higher rates of poverty. *See* Stephanie M.

Hernandez, et al., *Sexual Orientation, Gender Expression and Socioeconomic Status in the National Longitudinal Study of Adolescent to Adult Health*, 78 J.

Epidem. Cmty. Health 121, 127 (2023) (finding that gender-nonconforming individuals had lower educational attainment and higher household debt when compared to cisgender individuals). School districts that do not respect transgender students' autonomy and do not acknowledge their chosen name and pronouns create an environment that actively contributes to these negative effects. On the flipside, a school district policy as simple as respecting students' agency can be the difference between a student thriving or struggling in a school environment.

C. The confidentiality provision of the Guidance and Policy 5756 is not designed to mislead parents and is essential to ensuring the policy's effectiveness.

The benefits of the Guidance and Policy 5756 cannot be realized if students do not have the autonomy to decide when and with whom they wish to explore and express their gender identity.

The well-established evidence-based best practices demonstrate that there are significant benefits to protecting student confidentiality: namely, fostering a supportive school environment that promotes student development and success. In practice, protecting student confidentiality frequently enables students to communicate with their parents, whereas forcing disclosure has the opposite effect, encouraging students to avoid disclosure to any adult and to forego obtaining the adult support and guidance they need. Students could very well suppress their gender identity if they cannot share it on their own terms, live with the discrepancy between their identity and presentation, and suffer negative health and educational outcomes. For that reason, the Guidance and Policy 5756 institute a “student-centered approach” to foster trust and room for future open dialogue. Protecting student confidentiality provides school personnel with the flexibility to work with the student to disclose private information to their parents. Mandating disclosure, however, may put students at risk of serious harm, is more likely to undermine

rather than support students' relationship with their parents, and deters many students from seeking any adult support.

The possibility of family rejection is also very real for many transgender and gender diverse youth who deserve discretion in how they navigate their personal family dynamics. Family rejection comes with a host of severe consequences. One in ten transgender people reported that a member of their family had been physically violent toward them because they were transgender. Sandy E. James et al., Nat'l Ctr. for Transgender Equal., *The Report of the 2015 U.S. Transgender Survey* 65 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>. Transgender people whose families reject them are nearly twice as likely to have experienced homelessness (40%) as those who were not rejected (22%). *Id.* 15% of respondents either ran away from home or were kicked out of the house after coming out to their families. *Id.* Indeed, family conflict is the primary cause of homelessness for LGBTQ youth. Nat'l Network for Youth, *LGBTQ+ Youth Homelessness*, <https://nn4youth.org/lgbtq-homeless-youth> (last visited Sept. 4, 2025). *See, e.g.*, Hannah Gross, *Transgender Students: How Controversy Over NJ School Policy Is Taking a Toll*, NJ Spotlight News (Oct. 31, 2023), <https://www.njspotlightnews.org/special-report/nj-transgender-students-say-school-policy-controversy-changes-take-toll> (reporting on a transgender student from Neptune Township who was outed by the school to her family who

subsequently physically and emotionally abused her, leading to hospitalization and homelessness).

For those reasons, the policy states that “[t]here is no affirmative duty for any school district staff member to notify a student’s parent of the student’s gender identity or expression.” This is not designed to mislead parents, nor does it insert the school in place of the parents when it comes to discussions of gender identity. Further, both the Guidance and Policy 5756 recognize that under specific circumstances, the school may deem it necessary to disclose a student’s status for the “health and safety” of the student or due to an independent legal obligation such as a school’s obligation to report harassment, intimidation, or bullying incidents. But even in those cases, the Guidance and Policy 5756 carefully balances the school’s need for disclosure with respect for student autonomy and sensitivity to family dynamics by allowing students the opportunity to disclose their gender identity to parents on their own terms. At all times, parents are free to discuss gender identity and expression with their children. And, importantly, neither the Guidance nor Policy 5756 requires schools to lie to parents.

II. The Constitution does not obligate schools to out transgender students against their will through proactive parental notice.

Plaintiff does not simply disagree with the Guidance and Policy 5756 but claims that a school’s respect for a high school student’s preferred name and pronouns without parental consent violates his rights under the Due Process

Clause. Even further, he claims that the Constitution requires the *opposite* policy: in his view, a parent is constitutionally entitled to affirmative notice from the school whenever their child expresses a desire to go by a new name or pronoun at school. The Constitution provides no such right.

A. The Guidance and Policy 5756 do not violate a parent’s substantive due process rights in the rearing of their child because they do not compel, coerce, or constrain conduct by students or their parents.

Substantive due process provides parents an important shield against affirmative government interference in the direction of the “upbringing and education of [their] children.” *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534-35 (1925). *See also Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000). That parental right is of critical importance, but it is “neither absolute nor unqualified,” particularly where a school’s internal management is concerned. *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 182 (3d Cir. 2005). In this case, the Guidance and Policy 5756 do not violate Plaintiff’s parental rights.

At base, a parent’s substantive due process right protects the parent-child relationship from “manipulative, coercive, or restraining conduct by the State.” *J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 933-34 (3d Cir. 2011) (quoting *Anspach ex rel. Anspach v. City of Philadelphia*, 503 F.3d 256, 266 (3d Cir. 2007)). This covers only situations where a school (a) imposes its own will on

students on a “matter[] of the greatest importance” and (b) forces or forecloses parental direction on that matter. *C.N.*, 430 F.3d at 184. For that reason, a conflict between state action and parental liberty “will not be lightly found.” *J.S.*, 650 F.3d at 933-34.

This Court’s decisions in *Anspach ex rel. Anspach* and *Gruenke v. Seip* draw out the preconditions for finding a violation of parental rights.

In *Anspach ex rel. Anspach v. City of Philadelphia*, this Court found no violation of parental rights where a public health center provided a teenager with emergency contraception on request and without parental knowledge or consent. 503 F.3d at 260. Critically, the minor approached the public health center and requested a morning after pill voluntarily; no one at the center compelled the minor to take the medicine or prevented or discouraged her from contacting her parents. *Id.* at 272. While the use of emergency contraceptives may have been offensive to the family’s moral and religious sensibilities, the Court determined that the state actors were under no affirmative obligation to anticipate those sensibilities and contravene the minor’s will. *Id.* at 268. (“The Constitution does not protect parental sensibilities, nor guarantee that a child will follow their parents’ . . . directives.”).

And even in cases where the Court has found unlawful interference with parental rights under the Due Process Clause, it is not because of any affirmative

obligation on the school's part. In *Gruenke*, the Court found unlawful interference with parental rights when a high school swim coach pressured a student to take a pregnancy test and added credence to gossip surrounding the putative pregnancy by discussing the matter with other parents and teammates. *Gruenke v. Seip*, 225 F.3d 290, 306 (3d Cir. 2000). The coach's chief offense was that he breached his constitutional obligation to refrain from coercing the student towards a decision in a highly personal matter and against the *student's* "express wishes that he mind his own business," not that he failed to notify a mother that he suspected her daughter was pregnant. *Gruenke*, 225 F.3d at 307; *see also Arnold v. Bd. of Educ. of Escambia Cnty.*, 880 F.2d 305, 314 (11th Cir. 1989) ("[W]e are not . . . constitutionally mandating that counselors notify the parents of a minor who receives counseling regarding pregnancy.").

Just as in *Anspach*, the true nature of Plaintiff's complaint here is not that the school interfered with his parental rights, but that it did not comport itself in exactly the way he wanted by "assist[ing]" and "foster[ing]" his individual parenting goals. *Anspach*, 503 F.3d at 266. Plaintiff would rather the school adopt a policy whereby the school affirmatively denies the student's gender identity and informs the parents at a hint of a student's questioning of their own gender identity. But the Constitution does not give parents such power. As both *Anspach* and *Gruenke* hold, a school's conduct becomes constitutionally suspect only when it

imposes its will on a student. Absent such imposition, schools are under no affirmative constitutional obligation to notify parents of everything that might implicate or even interfere with their parenting goals.

Plaintiff is wrong to suggest that the lack of proactive notification represents “manipulation, coercion, or restraint” against the fundamental rights of parents on the school’s part. Pursuant to the Guidance and Policy 5756, it is a *student’s* decision where and with whom a school uses their chosen name and pronouns. So long as the school does not make that decision for the student or coerce the student into acting with secrecy, schools do not have a constitutional duty to out the student against their wishes by disclosing voluntarily provided information. *See Parents United for Better Schs., Inc. v. Sch. Dist. of Phila. Bd. of Educ.*, 148 F.3d 260, 276 (3d Cir. 1998) (finding “no deprivation of the liberty interest of parents in the practice of not notifying them of their children's voluntary decisions”) (quoting *Doe v. Irwin*, 615 F.2d 1162, 1168 (6th Cir. 1980)). While a parent might wish to know everything about a student’s interactions with their school, and a school may even find it wise to encourage parent/student communications on difficult matters, it is fair that “the decision whether to seek parental guidance, absent law to the contrary, should rest within the discretion of the minor.” *Arnold*, 880 F.2d at 314.

In line with this Court’s reasoning in *Anspach*, other courts have rejected parents’ challenges to school policies similar to Policy 5756 where there was no coercive action by the school. In *Foote v. Ludlow School Committee*, the First Circuit found no violation of parental rights where a student informed their teachers and counselors via email that they were genderqueer and requested to go by a different name and any gendered pronoun. 128 F.4th 336, 341 (1st Cir. 2025). The school and its teachers honored the student’s request when addressing them in the school environment. The court held that the parents had “no right to veto” the administrative decisions driving the school’s policy, since public schools were not obligated to “offer students an educational experience tailored to the preferences of their parents.” *Id.* at 352.

The same analysis has been adopted by other courts as well, including the New Jersey Appellate Division when enjoining schools from rescinding their own versions of Policy 5756 or implementing policies requiring forced outing of transgender students to parents. *See, e.g., Platkin v. Middletown Twp. Bd. of Educ.*, No. A-0037-23, 2025 WL 440132 (N.J. Super. Ct. App. Div. Feb. 10, 2025) (Unpublished); *Platkin v. Hanover Twp. Bd. Of Educ.*, No. A-0371-23, 2025 WL 439969 (N.J. Super. Ct. App. Div. Feb. 10, 2025) (Unpublished); *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 622 F. Supp. 3d 118 (D. Md. 2022),

vacated and remanded, 78 F.4th 622 (4th Cir. 2023), *cert. denied sub nom. Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 144 S. Ct. 2560 (2024)).

Finally, Plaintiff’s and several amici’s reliance on the recently decided *Mahmoud v. Taylor* is misplaced. First, and most importantly, *Mahmoud* was based wholly on the Free Exercise Clause of the First Amendment, a claim not asserted here. *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2342 (2025). Thus, *Mahmoud* does not apply at all to Plaintiff’s claim, which is brought under the Due Process Clause of the Fourteenth Amendment. Moreover, the *Mahmoud* Court held that a school’s inclusion of LGBTQ+-inclusive storybooks in its K-5 curriculum “substantially interfere[d]” and burdened the religious exercise of parents by subjecting their children to potentially coercive instruction that contradicted the religious beliefs and practices parents were attempting to instill in their children. *Id.* at 2353. Here, school officials’ recognition and acceptance of students’ *voluntary* requests that school officials address them by the name and pronouns consistent with their gender identity is not coercive. As *Mahmoud* does not involve a Due Process Fourteenth Amendment claim, it likewise does not change the fact that individual parents have never had the power through the Fourteenth Amendment to second-guess or micromanage internal school administration.

Ultimately, the Fourteenth Amendment does not preclude schools from enacting internal policies like Policy 5756 to determine how to address students on

a basic, respectful level on a day-to-day basis and create a safe, inclusive, and functional school environment. A parent does not have “a right to participate in the school’s management—a right inconsistent with preserving the autonomy of educational institutions, which is itself, as we have noted, an interest of constitutional dignity.” *Crowley v. McKinney*, 400 F.3d 965, 971 (7th Cir. 2005). The right claimed by Plaintiff here would be a sea-change in how individual parents can orchestrate the daily interactions of students and their educators. Because Policy 5756 and the Guidance do not impose their will on students when it comes to the student’s gender identity and do not constrain parents in directing their children’s upbringing, Plaintiff’s claim fails.

B. The Guidance and Policy 5756 protect the interests of public schools and transgender students.

Contrary to Plaintiff’s assertion, there is no need to subject the Guidance or Policy 5756 to strict scrutiny because no fundamental parental right is implicated. *See, e.g., Gruenke*, 225 F.3d at 298 (“[A] court must initially determine whether the plaintiff has even alleged the deprivation of a right that either federal law or the Constitution protects.”). Therefore, no balancing between the parent’s, student’s, and school’s interests is necessary. Nonetheless, it is plain that Policy 5756 and the Guidance would survive strict scrutiny because they are narrowly tailored to serve a compelling interest, for both schools and the students themselves.

Public schools carry a heavy responsibility in deciding how to treat their students. Public schooling is arguably “the most important function of state and local governments.” *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 493 (1954); *see also id.* (“[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”). Public schools not only have the potential to create an empowering environment where transgender students can be respected as their authentic selves, but in fact have a compelling interest in providing a safe, welcoming educational environment that allows all students to realize their full potential. *See Boyertown Area Sch. Dist.*, 897 F.3d at 528-29 (holding that a school district had a compelling interest in protecting the physical and mental well-being of their students, including transgender children).

The students themselves also have an interest—a constitutionally recognized interest rooted in the Fourteenth Amendment “in avoiding disclosure of personal matters.” *C.N.*, 430 F.3d at 178. Specifically, this involves the right “not to have intimate facts concerning one’s life disclosed without one’s consent.” *Id.* at 179 (quoting *Bartnicki v. Vopper*, 200 F.3d 109, 122 (3d Cir. 1999)). Courts have found several categories of information that may be protected, including a minor’s pregnancy status, *Gruenke*, 225 F.3d at 302-03, and an individual’s sexual

orientation, *Sterling v. Borough of Minersville*, 232 F.3d 190, 190 (3d Cir. 2000). The Second Circuit has long held that the United States Constitution protects the right to maintain the confidentiality of one’s transgender status, holding that “individuals who have chosen to abandon one gender in favor of another” understandably might desire to conduct their affairs as if such a transition was never necessary. *Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999). Gender identity was entitled to such a high level of privacy because it was considered to be an uncommon condition that “is likely to provoke both an intense desire to preserve one’s medical confidentiality, as well as hostility and intolerance from others.” *Id.* And as discussed above, such hostility and intolerance, both from peers and family, can have devastating consequences for students.

A policy that simply allows students to express their name preference and decide whether it should be used outside of school imposes virtually no burden on any other party, yet can mean much for a student’s health and safety. This is a prime example of a policy that is narrowly tailored to serve a compelling state interest.

III. Policy 5756 does not constitute the practice of medicine or the provision of “psychosocial treatment.”

Contrary to the Plaintiff’s framing, how we address others is *not* the practice of medicine. Addressing someone in a way that they request—by using their

correct name, pronouncing it correctly, or using their chosen pronouns—is simply an act of decency and courtesy.

Of course, calling someone by their appropriate name and pronouns, as well as other aspects of social transition, may be a part of a medical provider’s package of recommendations for addressing gender dysphoria in youth. The same could be said of any number of things, such as the wearing of masculine or feminine clothing consistent with one’s gender identity. This does not transform the use of such names and pronouns or sartorial choices into medicine. Calling people by the name they prefer is not an issue inherently limited to transgender students; indeed, it is “something people routinely do with one another, and which requires no special training, skill, medication, or technology.” *Foote*, 128 F.4th at 350. Likewise, students may request to use different pronouns for numerous reasons, including generalized concerns about sex-stereotyping, solidarity with other students, or a desire not to conform.

“Treatment, as commonly understood, occurs when a *health care provider* takes steps to remedy or improve a malady that caused the patient to seek [the provider’s] help.” *Shanks v. Blue Cross & Blue Shield United of Wis.*, 979 F.2d 1232, 1233 (7th Cir. 1992). Teachers and counselors who solicit names or nicknames from their students are not health care providers, nor are students their patients. *See Parents United for Better Schs.*, 148 F.3d at 269 (quoting with

approval trial court holding that, while condom distribution is a “health service,” “[i]mpact upon health . . . does not transform a health service into a medical treatment”). Holding otherwise would have the absurd result of subjecting teachers, counselors, and others to criminal penalties. *See* N.J. Stat. Ann. § 2C:21-20 (imposing criminal penalties on unauthorized practice of medicine).

Being transgender is not a mental health condition. While it is true that many transgender individuals experience diagnosable gender dysphoria, it is not the sine qua non of transgender identity. As the Guidance and Policy 5756 recognize, there is no “threshold diagnosis or treatment requirements” that are prerequisite to being treated as a student requests. For people without gender dysphoria, the decision to use a preferred name or pronouns has no link to any medical treatment—it is simply an expression of a core sense of self, separate from any notion that it is clinically-indicated “medicine.”

In any event, school personnel perform any number of tasks during the school day that may relate to a medical condition—for example, reminding a child to use their reading glasses, or providing noise-cancelling headphones or a fidget device to a student requiring sensory accommodations—but that is not the same as providing medical treatment. Using a student’s name and pronouns protects the learning environment for students: learning by transgender and gender

nonconforming students can be interrupted if they are persistently addressed using a name and pronouns that undermine their sense of self.

Schools are charged with helping students focus and thrive, and the Guidance and Policy 5756 do precisely that: they create opportunity for transgender and gender diverse students to meaningfully participate in school by eliminating the distress and distraction of persistent misgendering. That is not medicine, but rather the basic respect and responsibility owed by a school to its students.

CONCLUSION

For the foregoing reasons, and those stated by Defendants-Appellees, the judgement below should be affirmed.

Dated: September 9, 2025

Respectfully submitted,

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COMBINED CERTIFICATIONS

In accordance with applicable Federal and Local Rules, I certify as follows:

1. I am a member in good standing of the Bar of this Court.
2. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because this brief contains 5,930 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). In making this certification, I have relied on the word count of the word-processing system used to prepare the brief.
3. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in 14-point Times New Roman, a proportionally spaced typeface, using Microsoft Word word-processing software.
4. The text of the electronic brief is identical to the text in the paper copies.
5. The electronic file containing the brief was scanned for viruses using Windows Security anti-virus (version 1.435.647.0), and no virus was detected.

Dated: September 9, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2025, I electronically filed the foregoing Brief of Amici Curiae with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

Dated: September 9, 2025

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