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POLITICS

# Federal judge halts California school’s rule against outing transgender students, teeing up conflict



Bob Egelko

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A federal judge ruled that a school that follows California policy by letting students decide whether to tell their parents that they identify as transgender is violating parents’ rights.  
Allison Dinner/TNS

A federal judge says a school that follows California state policy by letting students decide whether to tell their parents that they identify as transgender is violating parents’ right to raise their children.

The ruling conflicts with another federal judge’s earlier decision that the policy protects youths’ right to privacy, and the issue is headed for higher courts.

“A parent’s right to make decisions concerning the care, custody, control and medical care of their children is one of the oldest of the fundamental liberty interests that Americans enjoy,” U.S. District Judge Roger Benitez of San Diego said in a ruling Sept. 14. That means, he said, that when a school learns that a student has questioned his or her birth gender, or identified as transgender, it must notify the parents, even if the student objects.

It's no different, Benitez wrote, than a school's obligation to inform parents if a child suffers a life-threatening concussion during soccer practice, is the victim of a sexual assault or has suicidal thoughts — the parents must be informed, even if the student objects.

And in this case, he said, the Escondido Union School District in San Diego County, and the state whose regulations the district is enforcing, are also violating the rights of teachers to speak to their students, parents and the religious freedom of two teachers who said the policy conflicts with their faith. The district has 16,000 students in kindergarten through eighth grade.

Another federal judge reached a different conclusion earlier this year. [In a July 10 ruling](#) dismissing a conservative group's lawsuit against the Chico Unified School District in Butte County for enforcing the state policy, U.S. District Judge John Mendez of Sacramento said California has a legitimate interest in “creating a zone of protection for transgender students and those questioning their gender identity from adverse hostile reactions, including, but not limited to, domestic abuse and bullying.”

Mendez, who, like Benitez, was appointed by President George W. Bush, said the school district was not interfering with parents' right to direct their children's upbringing, but instead was refraining from “interfering with the established parent-child relationship by allowing students to disclose their gender identity to their parents on their own terms.”

Benitez, in his ruling, dismissed claims that transgender students' privacy rights were at risk.

“A student who announces the desire to be publicly known in school by a new name, gender, or pronoun and is referred to by teachers and students and others by said new name, gender, or pronoun, can hardly be said to have a reasonable expectation of privacy or expect non-disclosure,” he wrote.

The conservative group that filed the Chico suit, the Center for American Liberty, is appealing Mendez's ruling to the Ninth U.S. Circuit Court of Appeals. Lawyers for the Escondido district and the state are likely to appeal Benitez's ruling to the same court, which would consider the two cases together.

Benitez is also the judge who has overturned a number of California gun-control laws, and the Ninth Circuit has reversed several of his rulings. Gov. Gavin Newsom has [described Benitez](#) as a “stone-cold ideologue ... a wholly owned subsidiary of the gun lobby.”

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In the school cases, a 2015 state law, sponsored by then-Assembly Member Tom Ammiano, D-San Francisco, required public schools to allow transgender students to take part in all programs and to use restrooms and other facilities that are consistent with their gender identity. Accompanying regulations by the state Department of Education told schools to consult with transgender students on who, if anyone, should be informed of their gender identity.

Several school districts in conservative areas have refused to follow the state regulations and have instead required their teachers to notify parents when a student identifies as transgender.

After the Chino Unified School District in San Bernardino County ordered its teachers to tell parents that their child has come out as transgender, unless there was evidence that the notification would endanger the student, Attorney General Rob Bonta said his office would [conduct a civil rights investigation](#), which can lead to a lawsuit.

The school board in the 26,000-student district voted for parental notification in July after a [raucous four-hour meeting](#) in which state Superintendent of Public Instruction Tony Thurmond, California's top education official, was allowed to speak briefly in opposition to the district's plan and then was escorted out of the room by security officers.

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Bob Egelko has been a reporter since June 1970. He spent 30 years with the Associated Press, covering news, politics and occasionally sports in Los Angeles, San Diego and Sacramento, and legal affairs in San Francisco from 1984 onward. He worked for the San Francisco Examiner for five months in 2000, then joined The Chronicle in November 2000.

His beat includes state and federal courts in California, the Supreme Court and the State Bar. He has a law degree from McGeorge School of Law in Sacramento and is a member of the bar. Coverage has included the passage of Proposition 13 in 1978, the appointment of Rose Bird to the state Supreme Court and her removal by the voters, the death penalty in California and the battles over gay rights and same-sex marriage.

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BY GERRY DÍAZ

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