

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

<p>AMBER LAVIGNE,</p> <p style="text-align: center;">Plaintiff,</p> <p>GREAT SALT BAY COMMUNITY SCHOOL BOARD; SAMUEL ROY, in his official capacity as a social worker for the Great Salt Bay Community School; JESSICA BERK, in her official capacity as a social worker at the Great Salt Bay Community School; KIM SCHAFF, in her official capacity as the principal at the Great Salt Bay Community School; LYNSEY JOHNSTON, in her official capacity as the Superintendent of Schools for Central Lincoln County School System,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.</p> <p>COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND DAMAGES</p>
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INTRODUCTION

1. This is a federal civil rights action to vindicate Plaintiff Amber Lavigne’s fundamental constitutional right to direct the upbringing of her child.

2. The U.S. Supreme Court has consistently held over the past century that one of the rights protected by the Fourteenth Amendment is the right of parents to control and direct the care, custody, education, upbringing, and healthcare decisions, etc., of their children—a right the Court has characterized as fundamental.

3. Defendants violated that right by giving Plaintiff’s 13-year-old daughter, referred to herein as A.B., a chest binder—a garment to compress breasts to appear male—and by using gender-pronouns and a name not associated with A.B.’s biological sex, without informing Plaintiff

of these facts, or providing any process through which Plaintiff could express her opinion respecting these practices.

4. Pursuant to its official policy, pattern, and practice Defendants intentionally concealed this information—information that any conscientious parent would rightly want to know about her child—from her, thereby purposely depriving her of the capacity to meaningfully make decisions regarding the care and upbringing of A.B. This policy, pattern, and practice also deprived Plaintiff of the capacity to exercise meaningful choice respecting A.B.’s education, because such concealment deprived Plaintiff of information necessary to make an informed decision respecting which school is best suited to her family’s needs.

PARTIES, JURISDICTION, AND VENUE

5. Plaintiff Amber Lavigne resides in Newcastle, Maine. She is the mother of A.B, a minor who at the time of the injuries recounted herein was 13 years old and a student at the Great Salt Bay Community School.

6. Defendant Samuel Roy is, and at all relevant times was, a social worker employed by the Great Salt Bay Community School and provided counseling to A.B. Plaintiff is informed and believes, and on that basis alleges, that Mr. Roy, in his official capacity, is bound by, and is authorized to implement, the policies of the Great Salt Bay Community School and the Great Salt Bay School Board, including those requiring concealment of information from Plaintiff. In all of his actions and omissions alleged herein, Mr. Roy was acting under color of state law and is being sued in this action in his official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

7. Defendant Jessica Berk is, and at all relevant times was, a social worker employed by the Great Salt Bay Community School and had interactions with A.B. Plaintiff is informed and

believes, and on that basis alleges, that Ms. Berk, in her official capacity, is bound by, and is authorized to implement, the policies of the Great Salt Bay Community School and the Great Salt Bay School Board, including those requiring concealment of information from Plaintiff. In all of her actions and omissions alleged herein, Ms. Berk was acting under color of state law and is being sued in this action in her official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

8. Defendant Kim Schaff is, and at all relevant times was, the principal of the Great Salt Bay Community School. Plaintiff is informed and believes, and on that basis alleges, that Ms. Schaff, in her official capacity, is bound by, and is authorized to implement, the policies of the Great Salt Bay Community School and the Great Salt Bay School Board, including those policies requiring concealment of information from Plaintiff. In all of her actions and omissions alleged herein, Ms. Schaff was acting under color of state law and is being sued in this action in her official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

9. Defendant Lynsey Johnston is, and at all relevant times was, the Superintendent of Schools for Central Lincoln County School System which is governed through an Alternative Organizational Structure [hereinafter AOS 93]. Plaintiff is informed and believes, and on that basis alleges, that Ms. Johnston, in her official capacity, is authorized and required to ensure that the Great Salt Bay Community School complied with the policies and rules adopted by the Great Salt Bay School Board and with state laws and rules, including those policies requiring concealment of information from Plaintiff. In all of her actions and omissions alleged herein, Ms. Johnston was acting under color of state law and is being sued in this action in her official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

10. Defendant Great Salt Bay Community School District Board is the governing body for the Great Salt Bay Community School, which serves families in Damariscotta, Newcastle, and Bremen. The School Board is authorized to make all reasonable rules, regulations, and policies, consistent with law, for the management of the Great Salt Bay Community School. It is a jural entity with the capacity to sue and be sued.

11. Plaintiff's action, filed pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201(a) and 2202, seeks a declaration that the Great Salt Bay Community School Transgender Student Guidelines are unconstitutional insofar as they provide for the concealment of, or do not mandate informing parents of, a decision to provide "gender-affirming" care to a student which includes, but is not limited to, the calling of the child by a different name, the referring to the child with pronouns not typically associated with the child's biological sex, and the giving of garments, including chest binders to flatten breasts, along with instructions for use. This concealment of information is an injury to the Plaintiff caused by Defendants acting under color of state law.

12. This Court possesses jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343(a)(3), and 42 U.S.C. § 1988.

13. This Court is authorized to grant declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

14. Pursuant to 28 U.S.C. § 1391(b)(1) and (2), venue is proper in this judicial district because Defendants reside within it and the events giving rise to Plaintiff's claims occurred within it.

STATEMENT OF FACTS

15. Maine law requires every school-age child to “be provided an opportunity to receive the benefits of a free public education.” Me. Rev. Stat. Ann., Tit. 20-A, § 2(1). All children over 6 years of age and under 17 years of age must attend a *public* school, subject to certain approved alternatives. Me. Rev. Stat. tit. 20-A, § 5001-A(1).

16. Beginning in September 2019 Plaintiff sent her minor child, A.B., to the Great Salt Bay Community School in Damariscotta, Maine.

17. Plaintiff has two other children, C.D., and E.F. who are four and almost two respectively and will fall under Maine’s compulsory attendance law in two and four years respectively.

18. Plaintiff was generally pleased with the education A.B. received at Great Salt Bay Community School and still would be sending A.B. to that school, if not for the unlawful actions herein alleged.

19. Plaintiff also plans and intends to send C.D. and E.F. to Great Salt Bay Community School if the unlawful acts and omissions as alleged herein are remedied.

20. On December 2, 2022, Plaintiff was assisting A.B. in cleaning A.B.’s room at home when she discovered a chest binder—a device used to flatten a female’s chest so as to appear male. Upon inquiry, A.B. explained that Defendant Samuel Roy gave it to A.B. at Great Salt Bay Community School and instructed A.B. on how to use it. *See* photos attached as Exhibit 1.

21. Plaintiff had never been informed before that A.B. had been given a chest binder at the school or instructed about its use. Plaintiff is informed and believes, and on that basis alleges,

that this was the result of the Great Salt Bay School's blanket policy, pattern, and practice of intentional withholding and concealment of such information from all parents.

22. Plaintiff is informed and believes, and on that basis alleges, that Defendant Roy gave A.B. the chest binder in his office and told A.B. that he was not going to tell A.B.' parents about the chest binder, and A.B. need not do so either.

23. Plaintiff is informed and believes, and on that basis alleges, that Defendant Roy gave A.B. a second chest binder at the same time. *See* Exhibit 1.

24. Chest binders are not medical devices, but there are potential health risks associated with the wearing of such binders, including difficulty breathing, back pain, and numbness in the extremities.

25. Sexual identity, gender identification, and body image, particularly with respect to such sexual characteristics as the female breast, are vitally important and intimate psychological matters, central to an individual's personality and self-image, and a crucial element in how people relate to the world. The significance of such matters is even greater with respect to young people, particularly teenagers going through puberty. Consequently, any conscientious parent has a legitimate interest in knowing information respecting his or her child's sexual and psychological maturation, including but not limited to, the fact that the child is using a chest-binder, and/or is being identified by names or pronouns not associated with that child's birth sex.

26. After Plaintiff learned of the chest binder(s) on December 2, 2022, Plaintiff also discovered that school officials had been calling A.B. by a name not on her birth certificate and were referring to A.B. with gender-pronouns not typically associated with A.B.'s biological sex. Plaintiff had never been informed of these facts.

27. Plaintiff is informed and believes, and on that basis alleges, that failure to inform Plaintiff regarding the school's use of certain pronouns when referring to A.B was the result of the Great Salt Bay School's blanket policy, pattern, and practice of intentional withholding and concealment of such information from all parents.

28. Specifically, Plaintiff is informed and believes, and on that basis alleges, that Defendants Roy and Berk chose, at A.B's request, to use a different name and pronouns when speaking to or about A.B., and that other officials at the school, including some teachers, did so afterwards. At no time, however, did any Defendant or any other school official inform Plaintiff of these facts.

29. Plaintiff is informed and believes, and on that basis alleges, that Defendants withheld and concealed this information from her pursuant to a blanket policy, pattern, and practice of withholding and concealing information respecting "gender-affirming" treatment of minor children from their parents.

30. Plaintiff has never given Defendants cause to believe that A.B. will be harmed in any way by Plaintiff's knowledge of such facts, nor is there any basis for such a belief. Consequently there is no rational basis for the Defendants' withholding and concealing such information.

31. Plaintiff is informed and believes, and on that basis alleges, that Defendants have no policy or procedure whereby Plaintiff can have input respecting Defendants' decision to implement a different name and pronouns respecting A.B., or providing A.B. with devices including, but not limited to, chest-binders.

32. After discovering the chest binder on December 2, 2022, Plaintiff met with the Defendant Principal Schaff and Defendant Superintendent Johnston respectively. That meeting took place on or about December 5, 2022.

33. Plaintiff alleges that Defendants Schaff and Johnston expressed sympathy with Plaintiff, and concern that this information had been withheld and concealed from her.

34. On December 7, 2022, however, Defendant Johnston in a subsequent meeting with Plaintiff explained that no policy had been violated by the giving of chest binders to A.B., or by school officials (specifically Defendants Roy and Berk) employing a different name and pronouns with respect to A.B., without informing Plaintiff.

35. As a consequence of Defendants' policy, pattern, and practice of withholding and concealing of crucially important and intimate psychosexual information about her minor child, as alleged herein, Plaintiff decided to withdraw A.B. from the Great Salt Bay Community School on December 8, 2022, and began to homeschool A.B.

36. Almost immediately afterwards, on December 12, 2022, Plaintiff was visited by agents of the Maine Office of Child and Family Services. These agents informed Plaintiff that they had received an anonymous report that Plaintiff was emotionally abusive towards A.B. The investigation was completed on January 13, 2023, with a finding that the information obtained by the investigation did not support a finding of neglect or abuse. *See* Jan. 13, 2013 Letter attached as Exhibit 2.

37. Plaintiff would have continued to send A.B. to the Great Salt Bay Community School but for the Defendants actions complained of herein.

Public communications regarding the incident

38. On December 14, 2022, Plaintiff spoke publicly about these incidents at the Great Salt Bay School Board Meeting. At that meeting, Plaintiff detailed the trust that had been broken by Defendants withholding and concealing vitally important information from her respecting her minor child's psychosexual development and stated that the "decisions made [by the school] drove a wedge between a child and her parents."

39. Defendant School Board provided no response to Plaintiff's comments at the School Board meeting. Since then, however, Defendant School Board has released two separate statements regarding this incident, and Defendant Principal Schaff has also released a statement regarding this incident.

40. In its first statement, dated December 19, 2022, Defendant Great Salt Bay Community School Board asserted that all students at Great Salt Bay Community School—which serves kindergarten through eighth grade—have a "right to privacy regardless of age." The Statement did not explain what justification exists for a blanket policy, pattern, and practice of concealing and withholding vital information about children from their parents. *See* Dec. 19, 2022 Statement attached as Exhibit 3.

41. In its second statement, dated January 14, 2023, Defendant Great Salt Bay Community School Board asserted that the school had received bomb threats in the preceding days. The statement asserted that the threats were caused by "certain parties ... spreading a grossly inaccurate and one-sided story to which the Board cannot specifically respond, given our obligation to maintain the confidentiality of student and employee information." *See* Jan. 14, 2023 Statement attached as Exhibit 4.

42. The Second Statement specifically asserted, with respect to the giving of a chest binder, the using of a new name and different pronouns, and without informing Plaintiff of these decisions, that “neither the Board nor school administration are aware of any violation of policy or law which requires further action at this time.” *Id.*

43. This is a *post hoc* ratification of the actions of Defendants Roy, Berk, and Schaff by the Great Salt Bay Community School District Board.

44. The Third Statement was issued by Defendant Schaff on February 26, 2023. *See* Feb. 26, 2023 Letter attached as Exhibit 5.

45. The Third Statement alleged that “[a] misunderstanding of [state] laws pertaining to gender identity and privileged communication between school social workers and minor clients has resulted in the school and staff members becoming targets for hate speech and on-going threats.” *Id.*

46. Defendant Schaff also asserted that Defendants’ actions with respect to Plaintiff and A.B. were governed by Title 20-A, § 4008, which provides that “[a] school counselor or school social worker may not be required, except as provided by this section, to divulge or release information gathered during a counseling relation with a client or with the parent, guardian or a person or agency having legal custody of a minor client.” *Id.*

47. However, the Third Statement offered no explanation of how the giving of a chest compression device or the employment of alternate names and pronouns constitutes “information gathered.” *Id.*

School Policies

48. Plaintiff is informed and believes, and on that basis alleges, that Defendants contend that their actions with respect to all allegations herein were mandated by school board policies—specifically the School Transgender Student Guidelines, adopted on March 13, 2019 (“Transgender Guidelines”), and the Policy regarding Staff and Student Conduct, adopted February 13, 2013 (“Conduct Policy”). *See* Transgender Guidelines attached as Exhibit 6 and Conduct Policy attached as Exhibit 7.

49. Neither the Transgender Policy nor the Conduct Policy nor any other legal authority justify the withholding of vital information about a minor child’s psychosexual development, including their asserted gender identity, from the child’s parents, absent some evidence of actual and substantial risk to the child. On the other hand, if they do, they are unconstitutional.

50. The Transgender Guidelines state that they are intended to: “1. To foster a learning environment that is safe, and free from discrimination, harassment and bullying; and 2. To assist in the educational and social integration of transgender students in our school.” *See* Exhibit 6.

51. The Transgender Guidelines are silent with respect to the giving of chest binders or any other devices to students with or without the knowledge or consent of the student’s parent(s). The Guidelines also do not mandate the involvement of parents at any point in the process of deciding whether to use alternate names and pronouns.

52. The Conduct Policy is intended “to ensure that the interactions and relationships between staff members and students are based upon mutual respect and trust.”

53. The Conduct Policy includes a non-exhaustive list of unacceptable conduct. One action explicitly prohibited under this policy is asking the student to keep a secret. *See* Exhibit 7.

Injuries to Plaintiff

54. Plaintiff has a fundamental constitutional right to control and direct the care, custody, education, upbringing, and healthcare decisions of her children. By withholding and concealing vital information about her minor child's asserted gender identity—information any conscientious parent has a compelling interest in knowing—Defendants effectively rendered it impossible for Plaintiff to exercise that fundamental constitutional right.

55. For example, by withholding and concealing information from Plaintiff, Defendants left Plaintiff without the ability to choose how to advise A.B. with respect to the risks and benefits of wearing a chest binder, or the potential future consequences of employing an alternate name and pronouns. The Defendants' policy, pattern, and practice of concealment also left Plaintiff without the ability to seek additional or alternative educational, emotional, mental and physical health arrangements for A.B.

56. Defendants' acts and omissions alleged herein forced Plaintiff to remove A.B. from Great Salt Bay Community School because she could no longer trust that she would be informed of circumstances that are vitally important to the mental health and emotional and physical well-being of A.B. Plaintiff has also been forced not to send her children C.D. and E.F. to Great Salt Bay Community School as she had planned to do, because she cannot trust that school officials will be truthful toward her about their individual circumstances.

Declaratory and Injunctive Relief Allegations

57. An actual and substantial controversy exists between Plaintiff and Defendants as to their respective legal rights and duties. Plaintiff contends, pursuant to 42 U.S.C. § 1983, that the Great Salt Bay Community School Transgender Student Guidance violates her parental rights by

withholding and concealing information as alleged herein. Plaintiff is informed and believes, and on that basis alleges, that Defendants hold their actions to have been in all respects lawful.

58. Accordingly, declaratory relief is appropriate.

59. Due to Defendants' actions and policies, Plaintiff has been compelled to seek alternative education arrangements for A.B., C.D., and E.F. If not permanently enjoined by this Court, Defendants and their agents, representatives, and employees will continue to implement the policy, pattern, and practice of concealment alleged herein, which deprives Plaintiff of liberty without due process of law. Thus, the policy, pattern, and practice of concealment in which Defendants have engaged, are now engaged, and will continue to engage, are now causing and will continue to cause Plaintiff to suffer irreparable injury, including but not limited to, the cost and burden of homeschooling her children.

60. Plaintiff has no plain, speedy, and adequate remedy at law for these injuries.

61. Accordingly, injunctive relief is appropriate.

CAUSES OF ACTION

Count 1

Substantive Due Process – Fourteenth Amendment

62. Plaintiff incorporates and re-alleges each and every allegation contained in paragraphs 1–61 of this Complaint as if fully set forth herein.

63. One of the rights that the Supreme Court has repeatedly held to be a fundamental right protected under the Fourteenth Amendment (deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty) is the right of parents to control and direct the education and general upbringing of their own child. *See, e.g., Troxel v. Granville*, 530 U.S. 57 (2000).

64. The state may intercede in a parent-child relationship only when necessary to protect the health or safety of a child.

65. The Great Salt Bay Community School Board's official policy and widespread custom of making decisions for students without informing or consulting with their parents established an environment in which giving A.B. a chest binder and instructing A.B. on how to use a chest binder—without consulting Plaintiff, and afterwards withholding or concealing this information from Plaintiff—was not only allowed but considered standard practice for Defendant Roy.

66. By giving A.B. chest binders and instructing A.B. on how to use a chest binder—without consulting Plaintiff, and afterwards withholding or concealing this information from Plaintiff, Defendant Roy violated this right, causing such injuries as making it impossible for Plaintiff to advise A.B. with respect to the risks and benefits of using such devices.

67. By ratifying these decisions by Defendant Roy organizational Defendant Great Salt Bay Community School Board violated Plaintiff's parental rights for the same reason, causing the same injuries.

68. Defendants' actions alleged herein were undertaken pursuant to a blanket policy, pattern, practice, and custom and Defendants engaged in no process to determine whether any specific circumstances existed in A.B.'s case that might warrant the withholding or concealment of information from Plaintiff.

69. Defendants' actions indicate a deliberate indifference to Plaintiff's parental rights which shock the contemporary conscience because there is no sufficient government interest that would justify Defendants' actions.

70. Defendant Great Salt Bay Community School Board showed a deliberate indifference towards Plaintiff's parental rights as the evidence and post hoc ratification and rationalization make clear that Defendant's Roy, Berk, and Schaff were not properly trained on the relevance and requirements of parental rights with respect to giving of chest binders or other chest compression garments to students.

71. There is no compelling, substantial, important, or even rational reason for the concealment of information alleged herein, nor was such concealment necessary to achieve, narrowly tailored to, reasonably related to, or rationally related to any compelling, substantial, or legitimate government interest.

72. As a direct result of the Great Salt Bay Community School Board's widespread custom of making decisions about students with respect to issues that directly affect the mental health or physical well-being of a child without parental notice or consent which led to Defendant Roy giving a chest binder to A.B., Plaintiff has suffered an immediate and direct injury for which she is entitled to compensation.

73. The Great Salt Bay Community School Board will continue to engage in violations of parental Fourteenth Amendment rights if it is not enjoined from continuing to enforce this policy and widespread custom.

Count 2
Substantive Due Process – Fourteenth Amendment

74. Plaintiff incorporates and re-alleges each and every allegation contained in paragraphs 1–73 of this Complaint as if fully set forth herein.

75. The Great Salt Bay Community School Board's widespread custom of making decisions for students, even decisions that implicate the students' mental health, physical well-

being, and their psychosexual development without informing or consulting with their parents created an establishment and environment where Defendants Roy and Berk could began employing alternate names and pronouns for A.B. at school while withholding or concealing that information from Plaintiff.

76. The Great Salt Bay Community School Board's widespread custom of making decisions for students, even decisions that implicate the students' mental health, physical well-being, and their psychosexual development without informing or consulting with their parents created an establishment and environment where Defendant Principal Schaff could allow staff of Great Salt Bay School to refer to A.B. by alternate names and pronouns while withholding or concealing that fact from Plaintiff.

77. The actions of Defendants Schaff, Roy, and Berk were pursuant to a blanket policy, pattern, practice, and custom which withholds or conceals information from parents without regard to individual circumstances, and evidenced a deliberate indifference to Plaintiff's parental rights which shocks the contemporary conscience because there is no sufficient government interest in this situation that justifies their actions.

78. There is no compelling, substantial, important, or even rational reason for Defendants Schaff, Roy, or Berk to withhold or conceal this information from Plaintiff, nor was such action necessary to achieve, narrowly tailored to, reasonably related to, or rationally related to any compelling, substantial, or legitimate government interest.

79. Defendant Great Salt Bay Community School Board caused Plaintiff's constitutional injuries by failing to properly train school officials and staff about the meaning and relevance of parental rights in situations where a student asserts a gender identity different from

their biological sex and asks to be known by a name and pronouns that match their gender identity. The failure to adequately train officials about parental rights in the gender identity context after adopting the Great Salt Bay Community School Transgender Guidelines evinces a deliberate indifference towards the constitutional right of parents to control and direct the education, upbringing, and healthcare decisions of their children.

80. By ratifying and continuing to implement the decisions of Defendants Schaff, Roy, and Berk, the organizational Defendants violated and are continuing to violate Plaintiff's parental rights for the same reasons. Defendant Great Salt Bay Community School Board will continue to engage in violations of parental Fourteenth Amendment rights if it is not enjoined from continuing to allow this policy and widespread custom.

81. As a direct result of the Great Salt Bay Community School Board's official policy and widespread custom of making decisions about students with respect to issues that directly affect the mental health or physical well-being of a child without parental notice or consent which led to Defendants Roy and Berk calling A.B. a different name and referring to her with pronouns not typically associated with her biological sex, Plaintiff has suffered an immediate and direct injury for which she is entitled to compensation.

Count 3
Substantive Due Process – Fourteenth Amendment

82. Plaintiff incorporates and re-alleges each and every allegation contained in paragraphs 1–81 of this Complaint as if fully set forth herein.

83. Defendants Great Salt Bay Community School and Great Salt Bay Community School Board adopted the “Transgender Guidelines” which according to Defendants permit school officials to adopt procedures for the treatment of transgender students without consultation of, and

while withholding or concealing information from, parents, even absent evidence of risk to the child.

84. Plaintiff is informed and believes, and on that basis alleges, that Defendants contend that the Transgender Guidelines allowed Defendant Roy to give A.B. chest binders and instruct them on their use while withholding and concealing that information from Plaintiff and encouraging A.B. to withhold and conceal that information from Plaintiff.

85. Plaintiff is informed and believes, and on that basis alleges, that Defendants contend that the Transgender Guidelines allowed Defendants Roy and Berk to employ alternate names and pronouns to refer to A.B. while withholding or concealing that information from Plaintiff.

86. There is no compelling, substantial, important, or even rational reason for Defendant's policy, pattern, and practice of hiding from parents, vital information about a child's psychosexual development, mental health, and emotional or physical well-being of their children, nor is this policy necessary to achieve, narrowly tailored to, reasonably related to, or rationally related to any compelling, substantial, or legitimate government interest.

87. As a direct result of the Great Salt Bay Community School Board's official policy of allowing school officials to make decisions about students relating to their psychosexual development, including their gender identity, Plaintiff has suffered an immediate and direct injury for which she is entitled to compensation.

88. The Great Salt Bay Community School Board will continue to violate parents' longstanding Fourteenth Amendment rights if it is not enjoined from continuing to enforce its Transgender Guidelines in the future.

Count 4
Procedural Due Process – Fourteenth Amendment

89. Plaintiff incorporates and re-alleges each and every allegation contained in paragraphs 1–88 of this Complaint as if fully set forth herein.

90. The Due Process Clause of the Fourteenth Amendment protects against government action that impairs constitutional rights without adequate procedural safeguards. Procedural due process forbids the government from depriving Plaintiff of her constitutional rights except through some individualized process and requires the government to consider the significance of her private interest, the risk that the government’s procedures might erroneously deprive Plaintiff of that interest, the extent to which different procedures might reduce that risk, and the government’s reason, if any, for employing alternative methods of protecting Plaintiff’s rights.

91. The policy, pattern, and practice of the Great Salt Bay Community School with respect to transgender students, or those students who wish to assert a gender identity different from their biological sex, includes *no* mechanism allowing a parent to participate in, or comment on, the school’s decision to provide that parent’s children with devices such as chest-binders, or to address his or her children by alternate names or pronouns. Instead, the Defendants follow an across-the-board, blanket policy, pattern, or practice that applies to all cases regardless of specific circumstances.

92. Consequently, Plaintiff was deprived of any opportunity to be a part of the decision-making process for the specific actions that Defendants took with respect to A.B.

93. The injury is the direct result of Defendant Great Salt Bay Community School Board’s failure to create a procedure through which Plaintiff could ensure the protection of her constitutional rights with respect to decisions made by school officials in response to A.B.’s

psychosexual development, including her gender identity, and decisions that will directly affect the mental health or physical well-being of A.B. Plaintiff has suffered an immediate and direct injury from this lack of procedure and is entitled to compensation.

94. As Plaintiff has additional children and has no plans to move in the near future, the lack of adequate procedural protections continues to harm Plaintiff, because attendance at school is mandatory under state law for any child over the age of 6 years old, and under Maine law the presumed school is a public school unless alternative arrangements are made and will continue to harm Plaintiff unless enjoined. Me. Rev. Stat. tit. 20-A, § 5001-A.

REQUESTS FOR RELIEF

Plaintiff respectfully requests the following relief:

A. A declaratory judgment by the Court that Great Salt Bay Community School's policy, pattern, and practice of withholding or concealing from parents, information about the child's psychosexual development, including their asserted gender identity, absent some specific showing of risk to the child, violates the Due Process Clause of the Fourteenth Amendment;

B. An injunction preventing the school from calling Plaintiff's children by a different name or pronouns without Plaintiff's express consent.

C. An award of nominal damages in the amount of \$1.00 for the violations of Plaintiff's constitutional rights;

D. An award of actual damages in the amount incurred by the Plaintiff as a result of removing A.B. from Great Salt Bay Community School;

E. An award of attorney fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

F. Such other legal and equitable relief the Court may deem appropriate and just.

Respectfully submitted on April 4, 2023, 2022.

/s/ Brett D. Baber

Brett D. Baber (Maine Bar No. 3143)

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Adam C. Shelton

(Pro Hac Vice Application pending)

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litigation@goldwaterinstitute.org

Attorneys for Plaintiff



Exhibit 1





Janet T. Mills
Governor



Jeanne M. Lambrew, Ph.D.
Commissioner

Maine Department of Health and Human Services
Child and Family Services
11 State House Station
2 Anthony Avenue
Augusta, Maine 04333-0011
Tel.: (207) 624-7900; Toll Free: (877) 680-5866
TTY: Dial 711 (Maine Relay); Fax: (207) 287-5282

1/13/2023

Name: AMBER M LAVIGNE

Address: Redacted

UNITED STATES

Investigation Number: C-0000524744

Dear AMBER M LAVIGNE

The Department recently completed a Child Protection Investigation involving your family. This letter is to inform you that after completing the investigation, a decision was made that the information obtained does not support findings of abuse and/or neglect by you to ^{1/13/2023}.

Alleged Victim

Redacted

Allegation

Emotional Abuse – Low/Moderate Severity

Thank you for your participation in the investigation process.

I wish you and your family all the best.

Sincerely,

A handwritten signature in black ink, appearing to read "Erin Garey".

Erin Garey
Caseworker
Rockland Office
91 Camden Street, Suite 103
Rockland, ME 04841

A handwritten signature in black ink, appearing to read "Keisha Evans".

Keisha Evans
Supervisor

Great Salt Bay Consolidated School District

Bremen / Damariscotta / Newcastle
767 Main St
Damariscotta, Maine 04543
Telephone: (207) 563-3044



Lynsey Johnston, Superintendent of School

Samuel Belknap III, GSB Board Chair

December 19, 2022

The Great Salt Bay CSD School Board would like to take a moment to address recent concerns that have been brought to the attention of the administration and Board. While the Board is not able to discuss confidential student and staff information in public, the Board's first priority is always to provide a safe, welcoming and inclusive educational environment for all students and staff. When administrators receive concerns from parents and/or students about potential issues in school, the Board has specific policies and procedures in place that must be followed when addressing those concerns. Those policies comply with Maine law, which protects the right of all students and staff, regardless of gender/gender identity, to have equal access to education, the supports and services available in our public schools, and the student's right to privacy regardless of age.

The Board is aware that rumors and allegations have been published and republished on various social media platforms relating to this issue. While it is unfortunate that some individuals have sought to use this issue to try and divide our community, as a Board, we are committed not only to following Maine law but also honoring our school's core values, and focusing on treating each other with dignity and respect. The Board and administrators remain committed to working in partnership with parents, staff, and local law enforcement to ensure that all students and staff continue to have access to a safe educational and working environment.

Handwritten signature of Samuel Belknap III.

Samuel Belknap III, GSB Board Chair

Exhibit 3

Great Salt Bay Consolidated School District

Bremen / Damariscotta / Newcastle

767 Main St

Damariscotta, Maine 04543

Telephone: (207) 563-3044



Lynsey Johnston, Superintendent of School

Samuel Belknap III, GSB Board Chair

January 14, 2023

Dear Members of the GSB Community,

As you are aware, Great Salt Bay was the target of another bomb threat on Friday January 13, as were specific administrators and staff. Fortunately, no children were yet at school, and we were able to safely evacuate all staff members and immediately redirect buses to bring those students already en route safely back home. This was once again expertly handled by Damariscotta Police Department, Damariscotta Fire Department, Lincoln County Sheriff's Office, and Maine State Police. We thank them all, as well as the YMCA, for their continued efforts to assess safety and to support our community. Based on law enforcement's investigation, this was not a credible threat, and it appears to be a clone of the threat we received on December 21, 2022. Local, state, and federal law enforcement agencies continue to investigate the origins of the threat(s), and are working diligently to find and hold accountable all responsible individuals.

As you may or may not be aware, certain parties are spreading a grossly inaccurate and one-sided story to which the Board cannot specifically respond, given our obligation to maintain the confidentiality of student and employee information, as required by Maine law. Unfortunately, that false narrative has directly given rise to the bomb threats that have disrupted our students' education over the past several weeks. Those promoting this false narrative are apparently disturbed by our school's ongoing and steadfast commitment to providing all students with safe and equal access to educational opportunities without discrimination because of, among other things, sex, sexual orientation or gender identity, as the Maine Human Rights Act requires.

Federal and state law both provide certain rights for parents and students with respect to education. While parents generally have a right to access the educational records of their children, the Board must balance this right with the right of students in Maine who, regardless of age, have the right to access mental health services without parental consent (*22 MRSA Section 1502- Consent of Minors for Health Services*), and the right to establish their own confidential counseling relationship with a school based mental health services provider (*20-A MRSA §4008- Privileged Communications*). All of the Board's policies comply with Maine law, and neither the Board nor school administration are aware of any violation of policy or law which requires further action at this time.

Our Board is united in our support of students, families, staff, and administration and remains committed to upholding the laws of the State of Maine.

Samuel Belknap, III - Chair
August Avantaggio - Treasurer
Amy Krawiec
Meridith Verney

Jesse Butler - Vice Chair
Dennis Anderson
Christa Thorpe

Exhibit 4

Great Salt Bay Consolidated School District

Bremen / Damariscotta / Newcastle

February 26, 2023

Dear Members of the GSB School Community,

I know that many of you are seeking more information to better understand the events of the past three months and have questions pertaining to the safety of our school community. It is my sincere hope that in this letter I can provide some of the information sought after and more importantly, reassure our school community that GSB can continue to safely educate our children with the security measures we have put in place.

To begin, one of the crucial pieces of information that needs to be highlighted is that school employees are required to follow the Federal and Maine laws pertaining to Civil and Human Rights. These laws provide specific protections against discrimination. For example, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin, Section 504 and Title II of the Americans with Disabilities Act of prohibits discrimination on the basis of disability, and Title IX prohibits discrimination on the basis of sex, sexual orientation, and gender identity. In addition to these Federal laws, Maine's Civil Rights Act prohibits bias based on race, color, religion, ancestry, national origin, gender, physical or mental disability or sexual orientation. These laws provide rights to all individuals, including our students, that must be protected and upheld and these laws guide the actions of school employees. Another Maine law to highlight is Title 20-A, §4008. This educational law states that "a school counselor or school social worker may not be required, except as provided by this section, to divulge or release information gathered during a counseling relation with a client or with the parent, guardian or a person or agency having legal custody of a minor client."

A misunderstanding of these laws pertaining to gender identity and privileged communication between school social workers and minor clients has resulted in the school and staff members becoming targets for hate speech and on-going threats. As noted in the Superintendent's letter on January 14th, "should these threats continue, our intention is to make necessary changes to our emergency and security plans." With the continuation of these threats, the school has taken a number of steps to increase security which has included hiring a security company to monitor the building, limiting access to the building during school hours and access to our back parking lot and bus loop during off-hours, reviewing protocols for lock-outs and other safety procedures, and increasing the presence of Damariscotta Police Department. Also with the continuation of these threats, the involvement of the Federal Bureau of Investigation and State Law Enforcement Agencies has continued. Knowing the changes to our security plans and the involvement of law enforcement has given me greater confidence in the safety of our building and school grounds.

Since we can not predict if and when these threats will end, it is important for me to stress that the school and law enforcement will continue to take all threats seriously, and we will continue to communicate with members of the school community information about threats. If a threat is deemed not-credible and the decision is made to hold school, parents, guardians, and staff will be informed of the threat and parents/guardians will be able to have their child's absence excused if they are not comfortable with sending them to school.

Given that three student days have been lost to these threats, the Superintendent will be seeking a waiver from the Governor to excuse these days from the mandatory 175 school days. In addition, she will be meeting with members of the PTO and school's associations to solicit feedback on whether to have remote instruction if school needs to be canceled again due to threats and to listen to the concerns and needs of these groups.

I truly hope the information I have shared has been informative and helpful. I am also hoping that if you have additional questions and/or concerns, you will reach out to me.

Sincerely,

Kim Schaff

Exhibit 5

**EDUCATIONAL POLICY OF
GREAT SALT BAY CSD**

**POLICY CODE: JB
ADOPTED: March 13, 2019**

**Great Salt Bay Community School
TRANSGENDER STUDENTS GUIDELINES**

A. Purpose

The purposes of these guidelines are:

1. To foster a learning environment that is safe, and free from discrimination, harassment and bullying; and
2. To assist in the educational and social integration of transgender students in our school.

These guidelines are intended to be interpreted in light of applicable federal and state laws and regulations, as well as Board policies, procedures and school rules.

These guidelines are not intended to anticipate every possible situation that may occur, since the needs of particular students and families differ depending on the student's age and other factors. In addition, the programs, facilities and resources of each school also differ. Administrators and school staff are expected to consider the needs of students on a case-by-case basis, and to utilize these guidelines and other available resources as appropriate.

B. Definitions

The following definitions are not intended to provide rigid labels for students, but to assist in discussing and addressing the needs of students. The terminology in this area is constantly evolving, and preferences for particular terminology vary widely. Administrators, school staff, volunteers, students and others who interact with students are expected to be sensitive to the ways in which particular transgender students may wish to be identified. However, for the sake of brevity, these guidelines refer to "transgender students."

1. *Sexual orientation* – Sexual orientation is defined in the Maine Human Rights Act as an individual's "actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression." This is the only term related to these guidelines which is defined in Maine law.
2. *Gender identity* – A person's deeply held sense or psychological knowledge of their own gender. One's gender identity can be the same or different than the gender assigned at birth.
3. *Gender expression* – The manner in which a person represents or

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expresses gender to others, often through behavior, clothing, hairstyles, activities, voice or mannerisms.

4. *Transgender* – An adjective describing a person whose gender identity or expression is different from that traditionally associated with an assigned sex at birth.
5. *Transition* – The process by which a person goes from living and identifying as one gender to living and identifying as another. For most elementary and secondary students, this involves no or minimal medical interventions. In most cases, transgender students under the age of 18 are in a process of social transition from one gender to another.

C. Addressing the Needs of Transgender Students

For the purposes of these guidelines, a student will be considered transgender if, at school, he/she consistently asserts a gender identity or expression different from the gender assigned at birth. This involves more than a casual declaration of gender identity or expression, but it does not necessarily require a medical diagnosis.

The following procedure will be used to address needs raised by transgender students and/or their parent(s)/guardian(s).

1. A transgender student and/or his/her parent(s)/guardian(s) should contact the building administrator or the student's guidance counselor. In the case of a student who has not yet enrolled in school, the appropriate building administrator should be contacted.
2. A meeting should be scheduled to discuss the student's particular circumstances and needs. In addition to the student, parent(s)/guardian(s) and building administrator, other participants may include the guidance counselor or social worker, school nurse, teachers and/or other school staff, and possibly outside providers who can assist in developing a plan for that student.
3. A plan should be developed by the school, in consultation with the student, parent(s)/guardian(s) and others as appropriate, to address the student's particular needs. If the student has an IEP and/or a 504 Plan, the provisions of these plans should be taken into consideration in developing the plan for addressing transgender issues.
4. The school may request documentation from medical providers or other

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service providers as necessary to assist staff in developing a plan appropriate for the student.

5. If the parties cannot reach an agreement about the elements to be included in the plan, the building administrator and/or Superintendent shall be consulted as appropriate.

C. Guidance on Specific Issues

1. Privacy: The student plan should address how to deal with disclosures that the student is transgender. In some cases, a student may want school staff and students to know, and in other cases the student may not want this information to be widely known. School staff should take care to follow the student's plan and not to inadvertently disclose information that is intended to be kept private or that is protected from disclosure (such as confidential medical information).

School staff should keep in mind that under FERPA, student records may only be accessed and disclosed to staff with a legitimate educational interest in the information. Disclosures to others should only be made with appropriate authorization from the administration and/or parents/guardians.

2. Official Records: Schools are required to maintain a permanent record for each student which includes legal name and gender. This information is also required for standardized tests and official school unit reports. This official information will only be changed upon receipt of documentation that a student's name or gender has been changed in accordance with any applicable laws. Any requests to change a student's legal name or gender in official records should be referred to the Superintendent.

To the extent that the school is not required to use a student's legal name or gender on school records or other documents, the school should use the name and gender identified in the student's plan.

3. Names/Pronouns: A student who has been identified as transgender under these guidelines should be addressed by school staff and other students by the name and pronoun corresponding to their gender identity that is consistently asserted at school.
4. Restrooms: A student who has been identified as transgender under these guidelines should be permitted to use the restrooms assigned to the gender which the student consistently asserts at school. A transgender

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student who expresses a need for privacy will be provided with reasonable alternative facilities or accommodations such as using a separate stall or a staff facility. However, a student shall not be required to use a separate non-communal facility over his/her objection.

5. Locker Rooms: As a general rule, transgender students will be permitted to use the locker room assigned to the gender which the student consistently asserts at school. A transgender student will not be required to use a locker room that conflicts with the gender identity consistently asserted at school. A transgender student who expresses a need for privacy will be provided with reasonable alternative facilities or accommodations, such as using a separate stall, a staff facility or separate schedule.
6. Other Gender-Segregated Facilities or Activities: As a general rule, in any other facilities or activities when students may be separated by gender, transgender students may participate in accordance with the gender identity consistently asserted at school. Interscholastic athletic activities should be addressed through the Maine Principals Association Transgender Participation Policy.
7. Dress Code: Transgender students may dress in accordance with their consistently asserted gender identity, consistent with any applicable requirements in the dress code or school rules.
8. Safety and Support for Transgender and Transitioning Students: School staff are expected to comply with any plan developed for a transgender student and to notify the building administrator or other designated support person for the student if there are concerns about the plan, or about the student's safety or welfare.

School staff should be sensitive to the fact that transgender and transitioning students may be at higher risk for being bullied or harassed, and should immediately notify the appropriate administrator if he/she becomes aware of a problem.

E. Staff Training and Informational Materials

1. The Superintendent and/or building principal may institute in-service training and/or distribute educational materials about transgender issues to school staff as he/she deems appropriate.
2. Teachers and other staff who have responsibilities for a transgender

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student with a plan will receive support in implementing the plan.

Legal Reference: Maine Human Rights Act, 20-A MRSA § 4601

Cross Reference:

AC – Nondiscrimination – Equal Opportunity and Affirmative Action

ACAA – Harassment and Sexual Harassment of Students

ACAA-R – Student Discrimination and Harassment Complaint Procedure

JICK – Bullying and Cyberbullying in Schools

JRA – Student Records and Information

JRA-R – Student Education Records and Information - Administrative Procedures

JRA-E – Annual Notice of Student Education Records and Information Rights

Maine Principal's Association's Transgender Participation Policy

Adopted: March 13, 2019

GBEB
(2013)

Great Salt Bay CSD Policy
STAFF CONDUCT WITH STUDENTS

The Great Salt Bay Community School Board expects all staff members, including teachers, coaches, counselors, administrators and others, to maintain the highest professional, moral and ethical standards in their conduct with students. For the purposes of this policy, staff members also include school volunteers.

The intent of this policy is to ensure that the interactions and relationships between staff members and students are based upon mutual respect and trust; that staff members understand the importance of maintaining appropriate professional boundaries between adults and students in an educational setting; and that staff members conduct themselves in a manner consistent with the educational mission of the schools.

It is understood that staff members may interact with and have friendships with students' families outside of school. This policy is not intended to prohibit such interactions and friendships, provided that professional boundaries are maintained at all times.

A. Prohibited Conduct

Examples of unacceptable conduct by staff members that are expressly prohibited include but are not limited to the following:

- Any type of sexual or inappropriate physical contact with students or any other conduct that might be considered harassment under the Board's policy on Harassment and Sexual Harassment of Students;
- Singling out a particular student or students for personal attention and friendship beyond the normal teacher-student relationship;
- For non-guidance/counseling staff, encouraging students to confide their personal or family problems and/or relationships. If a student initiates such discussions, staff members are expected to be supportive but to refer the student to appropriate guidance/counseling staff for assistance.
- Sexual banter, allusions, jokes or innuendos with students;
- Asking a student to keep a secret;
- Disclosing personal, sexual, family, employment concerns, or other private matters to one or more students;
- Permitting students to address you in an overly familiar manner;
- "Friending" students on social networking sites (outside of any school-approved activity); and
- Communicating with students on non-school matters via computer, text message, phone calls, letters, notes or any other means.

B. Cautions

Before engaging in the following activities, staff members are expected to review the activity with their building principal or supervisor, as appropriate:

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(2013)

- Being alone with individual students out of public view;
- Driving students home or to other locations;
- Inviting or allowing students to visit the staff member's home (unless the student's parent approves of the activity, such as when a student babysits or performs chores for a staff member);
- Visiting a student at home or in another location, unless on official school business known to the parent;
- Exchanging personal gifts (beyond the customary student-teacher gifts); and/or
- Socializing or spending time with students (including but not limited to activities such as going out for meals or movies, shopping, traveling, and recreational activities) outside of school-sponsored events or organized community activities.

Staff members are expected to be sensitive to the appearance of impropriety in their conduct with students. Staff members are encouraged to discuss issues with their building administrator or supervisor whenever they are unsure whether particular conduct may constitute a violation of this policy.

C. Reporting Violations

Students and/or their parents/guardians are strongly encouraged to notify the Principal or Assistant Principal if they believe a teacher or other staff member may be engaging in conduct that violates this policy.

Staff members are required to promptly notify the Principal or Superintendent if they become aware of a situation that may constitute a violation of this policy.

D. Disciplinary Action

Staff violations of this policy shall result in disciplinary action up to and including dismissal. Violations involving sexual or other abuse will also result in referral to the Department of Health and Human Services, the District Attorney and/or law enforcement.

E. Policy to be Included in Handbooks

This policy shall be included in all employee, student and volunteer handbooks.

Cross Reference: ACAH-Harassment and Sexual Harassment of Students (A5)
JLF-Reporting Child Abuse and Neglect (J2)

First Reading: December 12, 2012

Second Reading and Adoption: February 13, 2013