No. 25-

IN THE

Supreme Court of the United States

AMBER LAVIGNE,

Petitioner,

v.

GREAT SALT BAY COMMUNITY SCHOOL BOARD,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In December 2022, Petitioner discovered a chest binder in her 13-year-old child's room. After speaking with her child, she learned that a social worker at her child's public school had given her child the binder and that others had "socially transitioned" the child by using a different name and pronouns. No one from the school informed Petitioner of these decisions, and despite a written policy requiring parental involvement in such decisions, school officials have repeatedly said that school staff violated no policy by withholding this information. Petitioner sued the School Board, alleging the existence of an unwritten policy allowing employees to make these decisions without informing parents, which violated Petitioner's fundamental right to control and direct the education and upbringing of her child. The First Circuit dismissed Petitioner's claims, however, determining that there was a more probable "alternative explanation" than the existence of an unwritten policy. In doing so, the court widened an entrenched circuit split over the application of the *Twombly/Iqbal* "plausibility" requirement.

The questions presented are:

1. Whether a court can rely on a probable alternative explanation at the 12(b)(6) stage to dismiss a claim, as five circuits hold, or whether a complaint can only be dismissed if the plaintiff's explanation is itself implausible, as three circuits hold.

2. Whether a parent's fundamental constitutional rights include the right to be notified when public schools affirmatively recognize and facilitate a child's gender-transition.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioner Amber Lavigne was the plaintiff in the Maine District Court and appellant in the First Circuit.

Respondent Great Salt Bay Community School District, a governmental entity organized and existing under the laws of the State of Maine, was the defendant and appellee below.

Because no Petitioner is a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

RELATED PROCEEDINGS

The case arises from the following proceedings:

Lavigne v. Great Salt Bay Cmty. School Board, No. 24-1509, 1st Cir. (July 28, 2025) (affirming dismissal of Petitioner's claim for failure to state a claim).

Lavigne v. Great Salt Bay Cmty. School Board, No. 2:23-cv-00158-JDL, D. Me. (May 3, 2024) (granting defendant's motion to dismiss for failure to state a claim).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, related to this case under Supreme Court Rule 14.1(b)(iii).

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JURISDICTION

The decision of the Court of Appeals was entered on July 28, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The District Court had jurisdiction pursuant to 28 U.S.C. § 1331.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Reproduced at App. 110a-111a.

INTRODUCTION AND SUMMARY OF REASONS FOR GRANTING THE PETITION

The Constitution protects the fundamental right of parents to control and direct the education and upbringing of their children. This right, recognized for over a century, is the oldest right to be recognized as "fundamental" by this Court. *See Troxel v. Granville*, 530 U.S. 57, 65 (2000). Yet, its exact contours are being tested today in ways that warrant this Court's attention.

Many cases, including this one, require the consideration of whether public schools taking affirmative steps to recognize and facilitate the expression of a gender identity that differs from a child's biological sex—including by (1) providing a minor with chest binders (undergarments that compress breasts so the wearer appears more masculine); and (2) calling that child by a different name and pronouns at school—while withholding that information about those actions and decisions from the child's parent violates a parent's fundamental right to direct her child's education.

This case presents this Court with the opportunity to address that question, over which lower courts are divided, as well as to resolve another circuit split, involving a pressing antecedent procedural question.

First the procedural issue, which involves the application of the pleading standard established in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009): Petitioner contends that the school operates under an unwritten (and unconstitutional) policy of withholding information

from parents, despite the existence of a written policy that requires informing parents. To prove the existence of this unwritten *de facto* policy, Petitioner asserts that despite its written policy—which supposedly requires not only informing parents of matters of this sort but including them in the decision-making process—(a) the school Superintendent concluded that no policy had been violated by school officials who withheld from the Petitioner the fact that a school social worker gave her child chest binders and that other school officials socially transitioned the child by calling the child by a different name and pronouns at school; (b) Respondent School Board released multiple statements defending the actions of its employees; (c) Respondent did not discipline any employee for withholding this information; and (d) Respondent unanimously renewed the contract of the social worker who gave Petitioner's child the chest binders, instructed the child how to use it, and encouraged the child to not inform Petitioner. These facts lead to the conclusion that either there was an unwritten *de facto* policy that school employees followed or that Respondent has *now* made the withholding of information the *de facto* policy by its ratification of its employees' actions.

Yet the First Circuit determined that there were probably "obvious alternative explanations" for these facts, drawn from its own "judicial experience and common sense." App. 18a-20a. These explanations were consistent with lawful conduct, and consequently the court dismissed Petitioner's complaint essentially holding that a probable alternative explanation necessarily defeated plausibility without actually determining whether Petitioner's claim was implausible.

The First Circuit did not determine whether Petitioner's factual assertions, when considered together, and taking all reasonable inferences in her favor, actually set forth a plausible cause of action. Instead, it determined that the mere *existence* of an "alternative explanation" for the facts necessarily foreclosed any other plausible explanation, including Petitioner's. In other words, the court went beyond the limits of 12(b)(6) and made a *probability* determination, instead of a *plausibility* determination: it concluded that Respondents' narrative of the facts was more likely than Petitioner's. And that has no place in the 12(b)(6) analysis.

Twombly and *Iqbal* require a plaintiff to set forth allegations that plausibly show entitlement to relief. A court isn't supposed to weigh the evidence or theories at the pleading stage. *Twombly*, 550 U.S. at 556. In fact, a complaint survives a 12(b)(6) motion "even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" *Id.* (citation omitted). Unfortunately, the court below joined the Third, Fourth, Fifth, and Eleventh Circuits in holding that if a judge believes that an "obvious" lawful "alternative explanation" is a probable accounting for the facts alleged in the complaint, the judge can dismiss the plaintiff's complaint without independently determining whether a plaintiff's contentions are nevertheless *plausible*.

This approach to the 12(b)(6) analysis amounts to a *probability* standard, because it permits a court to credit an alternative explanation prior to discovery—due to the court thinking that this alternative explanation is more likely—and to deny the plaintiff any chance to prove that her account of the facts is actually the correct one. Yet

that's just what *Twombly* forbids, 550 U.S. at 556, and it conflicts with the approach of the Second, Sixth, and Seventh Circuits, which have held that an "alternative explanation" for the allegations does *not* defeat a complaint that makes out a plausible case.

Ultimately, the problem with the approach used below is that it essentially requires a plaintiff to *prove* her claim at the motion to dismiss stage. Indeed, the First Circuit faulted Petitioner for "not plead[ing] sufficient [facts] to *establish the existence* of a permanent and well-settled policy or custom of withholding or concealing information." App. 17a. (emphasis added). But plaintiffs aren't required to "establish the existence" of anything in a complaint—only to set forth facts that, *if proven*, would establish an entitlement to relief.

Second, this Court should grant certiorari to resolve the contentious constitutional question that at least four circuits have now actively avoided. The First Circuit joined the Fourth, Tenth, and Seventh Circuits in sidestepping the important constitutional questions of whether a school district violates a parent's fundamental rights to control the upbringing and education of her child when it conceals information about its decision to recognize a gender identity that differs from a child's biological sex. *See Lee v. Poudre Sch. Dist. R-1*, 135 F.4th 924 (10th Cir. 2025), *cert. denied*, No. 25-89, 2025 WL 2906469 (U.S. Oct. 14, 2025); *see also Parents Protecting Our Child., UA v. Eau Claire Area Sch. Dist.*, 95 F.4th 501 (7th Cir. 2024), *cert. denied*, 145 S. Ct. 14 (2024); *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 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).

As Justices Alito, Thomas, and Gorsuch have noted, these circuit court decisions represent a disturbing tendency to exploit jurisdictional doctrines "as a way of avoiding [these] particularly contentious constitutional questions" about parents' rights. *Parents Protecting Our Child.*, 145 S. Ct. at 14-15 (2024) (Alito and Thomas, JJ., respecting denial of cert.); *Lee*, No. 25-89, 2025 WL 2906469 at *1 (2025) (Alito, Thomas, and Gorsuch, JJ., respecting denial of cert.).[1]

This Court recently reaffirmed not only the fundamental nature of parental rights, but the fact that these rights do not stop at the schoolyard gate. *Mahmoud v. Taylor*, 606 U.S. 522, 545 (2025). These rights include the authority to make critical decisions regarding a child's education, including deciding between public and private school options. But parents cannot exercise their right—or discharge their "duty," *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925)—to oversee the education and upbringing of their children if school officials conceal information from them about what goes on in the public schools. A policy whereby school officials keep information from parents about actions and decisions that school officials

1. Just days before the filing of this petition, the Ninth Circuit also relied on standing doctrine to refuse to consider the constitutionality of a Washington State law that forbids shelters from informing parents of the locations of their runaway children in cases where children cite gender dysphoria. *Int'l Partners for Ethical Care Inc. v. Ferguson*, 146 F.4th 841 (9th Cir. 2025). Judges VanDyke and Bumatay objected, noting that "our court now joins a growing crowd of lower courts that appear to have made every effort to avoid addressing a constitutional confrontation occurring all across our Nation." *Int'l Partners for Ethical Care Inc. v. Ferguson*, No. 24-3661, 2025 WL 3493893, at *2 (9th Cir. Dec. 5, 2025) (dissenting from denial of rehearing en banc).

take with respect to a child's mental health and physical well-being inhibits parents' ability to make meaningful and responsible choices.

That's exactly what Petitioner alleges happened here. Because Respondents withheld this information from her, she was unable to determine whether the school's actions with respect to her child were appropriate, and that hindered her ability to decide how to educate her child. That is, she could not continuously evaluate whether the local public school was the best educational environment for her child. That is unacceptable. And it's unconstitutional.

As this Court recently made clear in *Mahmoud*, even a school's decision about what and how to teach children can impinge on parental rights. 606 U.S. at 559. Even more so then, a school's decision to conceal crucial information places it in a position to "strip away the critical right of parents to guide" their children's upbringing. *Id.*

The First Circuit's decision cabining parental rights is not an isolated one. Courts across the country are rejecting or limiting the constitutional right of parents to make decisions about their children's education and upbringing by holding—for example—that "nondisclosure as to a student's at-school gender expression without the student's consent does not restrict parental rights." *Foote v. Ludlow Sch. Comm.*, 128 F.4th 336, 357 (1st. Cir. 2025), *petition for certiorari filed*, No. 25-77 (U.S. July 22, 2025). *See also Littlejohn v. Sch. Bd. of Leon Cnty.*, 132 F.4th 1232, 1235 (11th Cir. 2025), *petition for certiorari filed*, No. 25-259 (U.S. Sept. 5, 2025) (holding that a school did not violate parents' constitutional rights in creating a

gender identity "student support plan" without involving the parents); *Hartzell v. Marana Unified Sch. Dist.*, 130 F.4th 722, 744 (9th Cir. 2025), *cert. denied*, No. 25-143, 2025 WL 2906524 (2025) (holding that a parent's right to direct the education and upbringing of children is "substantially diminished" once a parent chooses to send their child to a public school).

Only this Court can rectify this problem and halt the trend of circuit courts evading constitutional protections for parental rights.

STATEMENT OF THE CASE

A. Factual History

Petitioner Amber Lavigne's 13-year-old child was attending the Great Salt Bay Community School District. In December 2022, Lavigne discovered a chest binder—an undergarment used to flatten a female's chest so the wearer can appear masculine—in her child's room. App. 63a. Upon further conversation with her child about the undergarment, Lavigne discovered that Samuel Roy, a social worker employed by Respondent School Board, had provided the binder to the child in his office, instructed the child on its use, and affirmatively told the child the he was not going to inform Lavigne, and that the child need not inform Lavigne either. App. 3a-4a.[2]

Lavigne also then learned for the first time that school officials, including Mr. Roy, made the decision to

2. Lavigne later learned that Mr. Roy provided the child with two chest binders. App. 63a.

consistently refer to her child using a name and pronouns that matched the child's asserted gender identity rather than the child's biological sex, essentially socially transitioning her child App. 4a. No one from the school ever informed Lavigne of these decisions and actions. *Id.*

These actions directly contravened Respondent's written Guidelines, which require parental involvement in the creation of a plan for transgender students. App. 38a, 96a-104a. But when Lavigne brought the situation to the attention of Superintendent Lynsey Johnston, the Superintendent concluded (after two days of investigation) that no school policy had been violated. App. 4a-5a. As a consequence of that determination, Lavigne removed her child from school. She could no longer trust that a partnership existed between her and the school. App. 5a-6a.

The Superintendent's claim that no school policy had been violated was subsequently affirmed by the School Board in two official public statements. The first asserted that all of the school's policies complied with Maine law relating to a student's right to privacy "regardless of age." App. 88a-89a. The second statement referred to Lavigne's account as a "grossly inaccurate one-sided story," and—citing a Maine statute[3] that, the Board said, allows students regardless of age "to establish their own confidential counseling relationship with a school-based mental health services provider"—concluded that the

3. Specifically, it cited Title 20-A, § 4008 of the Maine Statutes, which says 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."

Board was "[not] aware of any violation of policy or law which requires further action at this time." App. 91a.

Neither before these statements nor since has the School Board taken any public action that would lead a reasonable observer to think the employees transgressed school policy in any way. On the contrary, its behavior is entirely consistent with it *approving* of the actions employees took in withholding this information from Lavigne. Even after this lawsuit was filed, Respondent unanimously approved a second-year contract for Mr. Roy, the social worker who provided the chest binders to Lavigne's child. App. 9a. This action constituted Respondent's ultimate approval and ratification of his conduct.

B. Procedural History

Petitioner Amber Lavigne sued the Great Salt Bay Community School District and multiple officials in their official capacity in April 2023. App. 9a.

She alleged that they violated her fundamental constitutional right to control and direct the education and upbringing of her child by: (1) providing her child with chest binders without informing her; and (2) deciding to recognize a gender identity that differed from the child's biological sex by calling the child by a different name and different pronouns at school, again without informing her of these decisions. *Id.*

Lavigne alleged that these were not the actions of rogue school employees, but either (1) were consistent with an unwritten *de facto* policy of withholding information or (2) reflect what is *now* the unwritten *de facto* policy of

withholding such information from parents. Respondent's defense and ratification of its employees' conduct, in short, makes clear to all current and future employees that they are permitted, if not encouraged, to keep such information from parents. App. 10a.[4]

Lavigne sued the Respondent School Board, alleging a municipal liability claim under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).[5] To establish liability under *Monell*, a plaintiff must prove that the government violated her rights pursuant to a policy or custom. *Id.* at 690-91. Respondent moved to dismiss, arguing primarily that there was no *de facto* policy of withholding information. Specifically, it claimed that Lavigne failed to allege facts that would permit a reasonable inference that Respondent was liable either through an unwritten policy or by ratifying its employees' conduct. In response, Lavigne contended: (1) that her allegations were sufficient to support a plausible inference that the school employees' actions were pursuant to a *de facto* policy or custom of withholding information, or that their actions were ratified by the Board and thus established a new *de facto* policy, either of which was sufficient for liability under *Monell*; and (2) that she had sufficiently alleged that this policy violates her fundamental parental rights. App. 10a.

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4. Lavigne also brought a claim alleging a procedural due process violation because she was not afforded an opportunity to comment on school officials' decisions to give A.B. chest binders or to use A.B.'s self-identified name and pronouns at school. App. 33a. This procedural due process claim is not raised in this petition.

5. She also sued the individual defendants in their official capacities. The individual defendants were dismissed by the district court, however, and Petitioner did not dispute that dismissal on appeal. App. 10a.

The district court granted Respondent's motion to dismiss, *id.*, but refused to address the constitutional question Lavigne raised. App. 35a. Instead, it said that because Lavigne had failed to plead the existence of a *de facto* policy of withholding information from parents, and consequently that the court did not have to address the adequacy of the allegations regarding the Respondents' unconstitutional actions. *Id.* In other words, the court addressed only the second element of a *Monell* claim—whether there were sufficient facts to lead to an inference of municipal liability—and refused to address the separate question of whether the alleged constitutional violations were adequately pleaded. *Id.*

On appeal, the First Circuit affirmed dismissal of Lavigne's complaint and also declined to address the constitutional question, explicitly invoking the doctrine of constitutional avoidance. App. 15a.

The First Circuit concluded that Lavigne had "not pleaded facts sufficient to establish the existence of a permanent and well-settled policy or custom of withholding and concealing information." App. 17a. It also rejected Petitioner's argument that the School Board ratified the conduct of the employees—thereby proving the existence of an unwritten *de facto* policy of withholding information—because the Board's statements were "too vague" to count as "active approval" of the employees' actions. App. 23a.

Lavigne argued that the school's unwritten *de facto* policy could be proven by (a) the Superintendent's statement that "no policies had been violated," (b) the Board's statements defending the employees' actions,

and (c) the Board's choice to not discipline, but actually to unanimously approve an additional contract for Mr. Roy, the social worker who gave Lavigne's child chest binders. App. 18a-22a. But the Court of Appeals said that these facts had "obvious alternative explanation[s]," and therefore that Lavigne could not have adequately pleaded a cause of action to survive Rule 12(b)(6). App. 20a.

For example, the court said that the allegations "suggest that [Respondents] interpreted [Maine] law to . . . support the [employees'] alleged decision to withhold information from Lavigne," and that this proved that there was "no basis to infer the existence of an unwritten withholding policy." App. 19a-20a. This, it concluded, meant Plaintiff's allegations could not be plausible without actually separately evaluating the plausibility of the contentions given that there can logically be multiple plausible explanations for conduct.[6]

What that means is that the court—relying on "common sense" and "judicial experience"—effectively accepted the Respondent's version of events as the *probable* explanation for the conduct, thereby foreclosing Petitioner's explanation of the facts. App. 18a-22a. But that's not an assessment of the plausibility of the

6. The court never explained why, even assuming Respondent was relying on their understanding of state law, this somehow disproved the existence of an unwritten policy of withholding information. On the contrary, since Respondent is presumed to always act in accordance with their understanding of the law anyway, *United Thacker Coal Co. v. Comm'r of Internal Revenue*, 46 F.2d 231, 233 (1st Cir. 1931), and since Respondent interprets the law to require withholding information, such reliance tends to prove that there *is* such a withholding policy.

complaint—it's "impos[ing] a probability requirement at the pleading stage," which District Courts aren't supposed to do. *Twombly*, 550 U.S. at 556.

REASONS FOR GRANTING THE PETITION

I. Under *Twombly* and *Iqbal*, an "obvious alternative explanation" for a defendant's conduct can defeat a plaintiff's explanation only if it makes the plaintiff's explanation for defendant's conduct implausible.

The decision below misapplied this Court's pleading standard, by accepting the Respondent's "alternative explanation" for the challenged conduct as probable and implicitly determining that it defeated the allegations in the complaint—without independently evaluating the plausibility of Petitioner's contentions. In so doing, the court deepened an entrenched circuit split over the proper role of "obvious alternative explanations" in federal pleading.

A. The Court of Appeals departed from the *Twombly* and *Iqbal* standard by effectively adopting a "probability" standard instead of a "plausibility" standard.

Twombly and *Iqbal* made clear that plausibility, rather than mere possibility, is the standard a District Court should apply when determining whether a plaintiff has sufficiently pleaded a claim for relief for Rule 12(b)(6) purposes. But those cases also made clear that *probability* is *not* required. *Twombly*, 550 U.S. at 556.

In short, a "complaint must contain sufficient factual matter" to enable the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 570, 556). Under this standard, "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" *Twombly*, 550 U.S. at 556 (citation omitted).

The *Twombly* Court did say that where there is an "obvious alternative explanation" for the facts alleged in a complaint, a court might find that the plaintiff has failed to move from mere possibility to plausibility. *Id.* at 567. But two years later, *Iqbal* emphasized that the "obvious alternative explanation" rule is not an excuse for dismissing a complaint that makes out a plausible case, *even if* the court suspects that the defendant's explanation for the facts is more likely than the plaintiff's explanation. As this Court further explained, a trial judge should not dismiss a complaint because she thinks the allegations "unrealistic," or "too chimerical to be maintained." 556 U.S. at 681. Instead, a complaint fails the plausibility standard only if its allegations go no further than setting forth a "mere possibility of misconduct." *Id.* at 679.

That means a court cannot dismiss a complaint just because it thinks some alternative explanation is more probable than the plaintiff's explanation. That makes eminent sense, given that at the 12(b)(6) stage, a plaintiff is entitled to the presumption that the allegations are true and the drawing of all reasonable inferences in her favor. As *Twombly* said: "[a]sking for plausible grounds" only requires a plaintiff to allege "enough fact to raise a

reasonable expectation that discovery will reveal evidence of illegal [activity].” 550 U.S. at 556.

Here, however, the Court of Appeals rejected Lavigne’s *Monell* claim—that the School Board operates under a *de facto* policy of withholding information from parents—because it believed that the “alternative explanation” of the facts as alleged was more probable than the Plaintiff’s contention.

Lavigne alleged that a school social worker gave her child a chest binder; that school officials used a name and pronouns that matched the child’s gender identity rather than the child’s biological sex; that school employees not only didn’t inform her of these facts—and that, when Lavigne complained about this to school officials, the Superintendent informed her that no policy had been violated, and the School Board released two statements that defended the actions of its employees, did not discipline any employee, and then unanimously gave the social worker a second year-long contract. App. 17a-18a. These facts, when considered together, can be plausibly explained by the existence of an unwritten *de facto* policy permitting the withholding of information. App. 38a. Yet because the Court of Appeals saw an “alternative explanation” for these facts, it did not independently determine whether Lavigne’s explanation was plausible or implausible.

This adoption of what amounts to a probability requirement explains the First Circuit’s assertion that Lavigne failed “to establish the existence of a permanent and well-settled policy or custom of withholding or concealing information.” App. 17a. But a Plaintiff isn’t

required to "establish the existence" of a fact at the 12(b)(6) stage—only to plausibly allege it. The First Circuit was thus focused on probability not plausibility.

B. The First Circuit's application of the "alternative explanations" theory deepens a split between the Third, Fourth, Fifth, and Eleventh Circuits on one side and the Second, Sixth, and Seventh Circuits on the other.

The First Circuit's decision deepens a persistent and disruptive split on the appropriate weight to be accorded "obvious alternative explanations" at the motion to dismiss stage. *See generally* Matthew Cook et al., *The Real World:* Iqbal/Twombly *the Plausibility Pleading Standard's Effect on Federal Court Civil Practice*, 75 Mercer L. Rev. 861, 891 (2024) (describing the "inconsistent and incoherent results flowing from the malleable plausibility standard" in the circuits).

One side, the First, Third, Fifth, Fourth, and Eleventh Circuits hold that an "alternative explanation" is, in and of itself, sufficient to grant a motion to dismiss, because such an explanation necessarily forecloses a plaintiff's and forecloses the requirement to independently determine the plausibility of a plaintiff's explanations. On the other side of the split, the Second, Sixth, and Seventh Circuits hold that an "obvious alternative explanation" does *not* necessarily doom a plaintiff's claim, because the existence of an alternative does not by itself render the plaintiff's allegations implausible.

For example, in *Frith v. Whole Foods Market, Inc.*, 38 F.4th 263 (1st. Cir. 2022), the First Circuit dismissed

a racial discrimination claim against Whole Foods Market brought by employees who claimed that the store retaliated against them for wearing "Black Lives Matter" face masks during the COVID-19 pandemic. They claimed Whole Foods only began enforcing a rule against slogans or messages on clothing after they began wearing the masks, and that this proved Whole Foods was engaging in racial discrimination. *Id.* at 268-69. The District Court dismissed, and the First Circuit affirmed. It admitted that "a reasonable inference can be drawn from appellants' factual allegations that Whole Foods started enforcing its previously unenforced dress code policy so that it could prohibit employees from wearing Black Lives Matter masks in its stores." *Id.* at 275. But it said that "[c]ommon sense . . . suggest[ed] that Whole Foods would have had non-race-based reasons" for prohibiting the masks, *id.*, and that the plaintiffs had "not pleaded any factual allegations pointing . . . away from the 'obvious alternative explanation' we have identified." *Id.* at 276. Therefore, the court concluded that the complaint "*[did] not support a plausible inference* that Whole Foods' prohibition . . . was a pretext for racially discriminating." *Id.* (emphasis added).

In other words, the court did not determine that the plaintiffs' claims lacked plausibility, but instead found that the "common sense" alternative explanation for the allegations necessarily defeated the plaintiffs' allegations—i.e., was *more likely* than the claims in the complaint—and thus that the complaint failed to set forth a plausible claim. In other words, where there are two plausible explanations—one pointing toward liability and the other pointing away from liability—the plaintiff must *affirmatively disprove* the latter in order to survive a motion to dismiss.

This is plainly wrong. For one thing, it's fallacious to conclude that because an alternative explanation for the facts can be found, that the complaint lacks plausibility. There can be multiple plausible explanations for facts at the 12(b)(6) stage—that's why there are subsequent factfinding stages of litigation. "The reality of litigation is also that sometimes it is impossible for a plaintiff to allege anything more than indicia of wrongdoing at the outset of an action." Cook et al., *supra*, at 908. Unfortunately, "[t]he current pleading standard allows a judge to . . . rely on any alternate explanation he or she wishes to justify a dismissal" which necessarily forecloses reconsideration of "the issue even if later discovery reveals evidence supporting the dismissed claim." *Id.*

This is a misapplication of *Twombly* and *Iqbal*, which only require a plaintiff to plead a plausible claim, not to *prove* her claim, or *disprove* alternative possibilities. *Twombly* could not have been clearer that the rules "*[do] not impose a probability requirement at the pleading stage*," but "simply call[] for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal[ity]." 550 U.S. at 556 (emphasis added). By ignoring this latter rule, the First Circuit's approach places a burden on plaintiffs that they likely cannot discharge prior to discovery, which is the tool necessary to prove up the facts.

Nevertheless, the Third, Fourth, Fifth and Eleventh Circuits have all imposed the same hurdle on plaintiffs.

For example, in *United States ex rel. Integra Med Analytics, L.L.C. v. Baylor Scott & White Health*, 816 Fed. App'x 892, 897 (5th Cir.), *cert. denied*, 141 S. Ct.

905 (2020), the Court of Appeals affirmed dismissal of a lawsuit alleging that the defendant had used inflated codes to overbill Medicare. The complaint used sophisticated statistical data to demonstrate that the defendant claimed amounts "significantly above the national average for other hospitals," *id.* at 895, and the court acknowledged that this data was "consistent with both [the defendant] having submitted fraudulent Medicare reimbursement claims to the government and with Baylor being ahead of most healthcare providers in following new guidelines from CMS." *Id.* at 897. Nevertheless, the court said that a complaint is subject to dismissal if its allegations are "also consistent with a legal and obvious alternative explanation." *Id.* at 898.

In other words, the court simply thought it more likely that the defendant "was simply ahead of the healthcare industry at implementing the Medicare reimbursement guidelines." *Id.* But that's a merits determination, not a determination of 12(b)(6) plausibility. And it's logically fallacious, as the plaintiffs in the case pointed out in their petition for certiorari to this Court: "the panel's hypothesis does not necessarily exclude [plaintiff's] allegations: [defendant] could be better at obtaining lawful Medicare reimbursement than its peers *and* be fraudulently upcoding."[7]

Similarly, in *Mator v. Wesco Distrib., Inc.*, 102 F.4th 172, 184 (3d Cir. 2024), the Third Circuit held that dismissal is warranted when a defendant offers an alternative

7. Pet. for Cert., *United States, ex rel. Integra MED Analytics, L.L.C. v. Baylor Scott & White Health, et al.*, No. 20-581, 2020 WL 6469468, at *25 (Oct. 26, 2020).

explanation that is "simply 'more likely' than the plaintiff's theory of misconduct"—in direct contradiction to *Twombly*'s statement that "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" 550 U.S. at 556 (citation omitted). *See also McCleary-Evans v. Maryland Dep't of Transp.*, 780 F.3d 582, 588 (4th Cir. 2015) (dismissing because the plaintiff's complaint left "open to speculation the cause for the defendant's" conduct, meaning that her explanation was necessarily implausible); *Pickett v. Texas Tech Univ. Health Sci. Ctr.*, 37 F.4th 1013, 1034 (5th Cir. 2022) (explaining that plausibility "requires that there is no 'obvious alternative explanation' for the decision," thereby making an obvious alternative explanation itself sufficient to grant a motion to dismiss); *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 998 (9th Cir. 2014) (requiring plaintiff to plead facts that "tend to exclude" an innocent explanation); *Doe v. Emory Univ.*, 110 F.4th 1254, 1258 (11th Cir. 2024) (affirming dismissal of a Title IX claim because "allegations are legally insufficient when there is an 'obvious alternative explanation' for the challenged practice 'that suggest[s] lawful conduct.'" (citation omitted).

These circuits (notwithstanding their occasional claims to the contrary) have essentially created a new rational basis test at the pleading stage. If the defendant or the court can think of some lawful reason for the defendant's conduct, the plaintiff's claim fails, on the theory that a competing explanation of the facts—one pointing toward liability and the other pointing away from liability—renders the plaintiff's allegations implausible. But that's contrary to this Court's clear precedents, *see*,

e.g., *Twombly*, 550 U.S. at 556 (dismissal improper "even if it strikes a savvy judge that actual proof of those facts is improbable"), and to logic itself, which holds that multiple potential explanations of facts might be available, and that only after discovery can a definitive account be provided. In these circuits, "a trial-like scrutiny of the merits is being shifted to an extremely early point in the pretrial phase." Arthur R. Miller, *From* Conley *to* Twombly *to* Iqbal*: A Double Play on the Federal Rules of Civil Procedure*, 60 Duke L.J. 1, 30 (2010). Indeed, Professor Miller warned that this application of the "alternative explanations" test makes 12(b)(6) motions subject to influence "by differences in background and pre-judicial life experiences or . . . individual ideology regarding the claim being advanced or personal attitudes toward the private enforcement of federal statutes and other public policies." *Id.* It was this judicial experience and common sense that the First Circuit employed in determining that alternative explanations were more probable that Petitioner's explanations. App. 20a.

Just last year, in *NRA v. Vullo*, this Court refused to follow that fallacious road, when it declined to "simply credit [the defendant]'s assertion that 'pursuing conceded violations of the law' is an 'obvious alternative explanation' for her actions that defeats the plausibility of any coercive threat raising First Amendment concerns." 602 U.S. 175, 195 (2024) (Citation omitted). The reason it declined to do this was because while "discovery in this case *might* show that the allegations of coercion are false, or that certain actions should be understood differently in light of newly disclosed evidence," a court "must assume the well-pleaded factual allegations in the complaint are true." *Id.* (emphasis added).

Other circuits, in line with *Vullo*—and in conflict with the First, Third, Fourth, Fifth and Eleventh Circuits—hold that an "alternative explanation" of the facts is *not* sufficient by itself to defeat plausibility. They hold that as long as a complaint raises a plausible claim, the determination of which explanation of the facts is correct is a merits question that should be postponed until after discovery.

For example, in *Palin v. New York Times Co.*, 264 F. Supp.3d 527, 537 (S.D.N.Y. 2017), the District Court dismissed a libel case because it thought the writer's behavior was "more plausibly consistent with making an unintended mistake and then correcting it than with acting with actual malice." The Second Circuit reversed. 940 F.3d 804, 808 (2d Cir. 2019). It explained that "it is not the district court's province to dismiss a plausible complaint because it is not as plausible as the defendant's theory." *Id.* at 815. Instead, "[t]he test is whether the complaint is plausible, not whether it is less plausible than an alternative explanation." *Id. See also Anderson News, L.L.C. v. Am. Media, Inc.*, 680 F.3d 162, 185 (2d Cir. 2012) (holding that a court "may not properly dismiss a complaint that states a plausible version of the events merely because the court finds a different version more plausible.").

The Sixth and Seventh Circuits have come to similar conclusions. In *HDC, LLC v. City of Ann Arbor*, 675 F.3d 608 (6th Cir. 2012), the Sixth Circuit—in upholding the dismissal of a complaint—held "that the mere existence of an 'eminently plausible' alternative, lawful explanation for a defendant's allegedly unlawful conduct is *not* enough to dismiss an adequately pled complaint because pleadings

need only be 'plausible, not probable.'" *Id.* at 613 (emphasis added; citation omitted). And in *Watson Carpet & Floor Covering, Inc. v. Mohawk Indus., Inc.*, 648 F.3d 452 (6th Cir. 2011), the plaintiff sued the defendant for libel and antitrust violations regarding refusal to deal. The District Court dismissed on the grounds that there were alternative explanations for the refusal to deal. But the Court of Appeals reversed because "*Twombly* insists that pleadings be plausible, not probable. Often, defendants' conduct has several plausible explanations. Ferreting out the most likely reason for the defendants' actions is not appropriate at the pleadings stage." *Id.* at 458 (citations omitted).

The Seventh Circuit agrees: "[w]here alternative inferences are in equipoise—that is, where they are all reasonable based on the facts—the plaintiff is to prevail on a motion to dismiss," because while "courts must give due regard to alternative explanations" for a defendant's conduct, a plaintiff need not conclusively overcome those alternative explanations to survive a motion to dismiss. *Hughes v. Nw. Univ.*, 63 F.4th 615, 629-30 (7th Cir. 2023).

Complicating this matter further is that the Ninth Circuit, as well as the D.C. Circuit, has equivocated. In *In re Century Aluminum Co. Securities Litigation*, 729 F.3d 1104, 1108 (9th Cir. 2013), it placed the burden on the plaintiff to plead "facts tending to exclude the possibility that the alternative explanation is true," but in *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011), it said dismissal was appropriate if the "defendant's plausible alternative explanation is so convincing that plaintiff's explanation is implausible"). Likewise, in *Ho v. Garland*, 106 F.4th 47, 54 (D.C. Cir. 2024), the D.C. Circuit held that a plaintiff must

dispel any obvious alternative explanations to overcome a motion to dismiss, whereas in *VoteVets Action Fund v. United States Department of Veterans Affairs*, 992 F.3d 1097 (D.C. Cir. 2021), it held that plausible alternative explanation is *not* sufficient to dismiss a complaint, because while "[d]iscovery may show that one of the [defendant's] alternate explanations is in fact correct," discovery "may also vindicate [the plaintiff's] theory, and 'our role is not to speculate about which factual allegations are likely to be proved after discovery.'" (quoting *Harris v. D.C. Water & Sewer Auth.*, 791 F.3d 65, 70 (D.C. Cir. 2015)).

This circuit split is not a matter of semantics. It's a fundamental disagreement over the plaintiff's obligations with respect to Rule 12(b)(6)—that is, it concerns perhaps the most essential question in litigation: what exactly will open or close the courthouse door?

II. A parent's fundamental right to control and direct the education and upbringing of her children must include a right to notice about a public school's actions directly affecting her child's mental health and physical well-being.

This case presents the Court with an urgent constitutional question: whether a parent's right to control and direct the education of their children includes the right to be notified when public school employees take affirmative steps to recognize and foster a child's gender transition.

A. The First Circuit explicitly avoided answering the important constitutional question presented in this case.

The First Circuit, in affirming the dismissal of Petitioner's claim, addressed only the second element of a *Monell* claim—whether the government was responsible for any constitutional violation—and refused to address the first element of a *Monell* claim: whether there actually was a constitutional violation. App. 13a-14a. The court did this explicitly for reasons of constitutional avoidance. App. 15a. The court reasoned that if there was no policy that would have made Respondent liable for a constitutional violation there was no reason to determine whether there was actually a constitutional violation. App. 13a-14a. In doing so, the First Circuit did precisely what several justices of this Court have already expressed concern about: it "avoid[ed] confronting" the "'particularly contentious constitutional questio[n]'" of "whether a school district violates parents' fundamental rights 'when, without parental knowledge or consent, it encourages a student to transition to a new gender or assists in that process.'" *Lee*, 2025 WL 2906469, at *1 (Alito, Thomas, Gorsuch, JJ., respecting denial of cert.) (citation omitted). In that respect, it resembles *John & Jane Parents 1, supra*, in which the Fourth Circuit said parents lacked standing to challenge a public school policy of withholding information from parents about their children's gender-transition, on the theory that the parents had not "show[n] a substantial risk that they will be injured by the school's policy of nondisclosure." *Id.* 78 F.4th at 633.

The First Circuit's avoidance, following its previous decision in *Foote, supra*, that a similar policy did not violate

parental rights, indicates an inadequate appreciation of parental rights within the circuit and, of course, nationally. There is now a clear circuit split over whether a parent's fundamental right to control and direct their child's education includes more than just choosing between public and private options. That division, discussed in Subsection B below, requires this Court's intervention, as the circuits will continue to find procedural ways to avoid the question.

B. There is an entrenched circuit split over whether a parent's right to control and direct her child's education ends at the schoolhouse gate or whether the right extends beyond just picking between public and private educational options.

This Court has held for over a century that parents have a fundamental right to control and direct their children's education. *Troxel*, 530 U.S. at 65; *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923); *Pierce*, 268 U.S. at 534-35. Important as this right is, however, its contours are still little appreciated by lower courts. While it's clear that a state cannot ban private schools outright, or forbid the teaching of foreign languages, without running afoul of the Fourteenth Amendment's protections of parental rights, lower courts have failed to develop a consistent theory regarding the broader implications of this right. This has led to a circuit split about the general role of parental rights and public education. In particular, it has led several courts to conclude that a parent's right to direct her child's upbringing effectively ends with the selection of a public school.

On one side of this split are the First, Second, Fifth, Ninth, and Tenth Circuits, which have held that while a parent has a fundamental right to choose whether to send her child to a public or private school, her rights are "substantially diminished" or "[do] not apply" after that choice is made. *Hartzell v. Marana Unified Sch. Dist.*, 130 F.4th 722, 744 (9th Cir. 2025), *cert. denied*, No. 25-143, 2025 WL 2906524 (2025) (quoting *Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197, 1206 (9th Cir. 2005)). *See also Parker v. Hurley*, 514 F.3d 87, 102 (1st Cir. 2008) (holding that the *Meyer/Pierce* right protects only the right to decide which school a child will attend—and that once this choice is made, a parent has no right to "direct how a public school teaches their child"); *Leebaert v. Harrington*, 332 F.3d 134, 141 (2d Cir. 2003) (same); *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 291 (5th Cir. 2001) (same); *Swanson ex rel. Swanson v. Guthrie Indep. Sch. Dist.*, 135 F.3d 694, 699 (10th Cir. 1998) (same).

Under this theory, parents have little or no say in the operations of public schools—not just with respect to curricula, but also with respect to policies regarding children's mental health and physical well-being. Applied here, this theory means that a school's decision to assist a student with gender transition without informing the parent falls within the school's discretion and does not infringe on the parental rights. *See Foote*, 128 F.4th at 357. *Cf. Doe No.1 v. Bethel Loc. Sch. Dist. Bd. of Educ.*, No. 23-3740, 2025 WL 2453836, at *10 (6th Cir. Aug. 26, 2025) (parents have no constitutional right to be informed of school policies regarding their children because "schools have the power to direct their operations," and "[a] school district's expedient responsiveness to parental concerns . . . is not required by the Due Process Clause.").

The Third Circuit has a different view of parental rights. Under its "parent-primacy" approach, school officials have only a secondary responsibility, and must respect the primary rights of parents, in the upbringing of their children. *Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir. 2000). The court reaffirmed this approach in *C.N. v. Ridgewood Board of Education*, 430 F.3d 159, 185 n.26 (3d Cir. 2005), when it expressly rejected the Ninth Circuit's position. Under the parent-primacy theory, public school officials can run afoul of the parent's rights based on a sliding scale that "var[ies] depending on the significance of the subject at issue, and the threshold for finding a conflict will not be as high when the school district's actions 'strike at the heart of parental decision-making authority on matters of the greatest importance.'" *J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 934 (3d Cir. 2011) (quoting *C.N.*, 430 F.3d at 184).

This "parent-primacy" view is also consistent with this Court's recent decision in *Mahmoud, supra*, which said that "[g]overnment schools, like all government institutions, may not place unconstitutional burdens on religious exercise," and that "the right of parents 'to direct the religious upbringing of their' children would be an *empty promise* if it did not follow those children into the public school classroom." 606 U.S. at 545-47 (emphasis added). Parents, it said, have the right to send their children to a public school if they choose, and also the right not to be "interfer[ed] with" in their efforts to oversee their children's upbringing and education "in a public-school setting." *Id.* at 547.

Mahmoud expressly rejected the idea that parental rights cease with the selection of a school, in part because

many parents have no real choice in the matter, "[d]ue to financial and other constraints." *Id.* For these parents, the fundamental right to direct the education of their children would be rendered hollow if the government were free to ignore their rights once the public school bell rings.

The underlying conduct here—affirming a gender identity that differs from a child's biological sex, coupled with its concealment of those actions from a responsible parent—directly tests the limits of parental rights. Resolving this fundamental split over the scope of the *Pierce/Meyer* right is a prerequisite to providing uniform guidance on the legality of school gender-identity policies across the nation—a question that will continue to be raised before this Court and the federal courts of appeals.

C. Schools are increasingly concealing vital information from parents about what goes on in public schools.

As Justices Alito, Thomas, and Gorsuch recently noted, some 6,000 public schools now have policies in place that intentionally block parents from learning information about their children's gender-identity choices, and the ways in which public school personnel influence and are involved with those choices. *Lee*, 2025 WL 2906469, at *1. This has led to a large number of cases involving parental rights, and particularly involving the constitutionality of school policies of withholding such crucial information from parents. *See*, *e.g.*, *Jane Parents 1, supra; Littlejohn, supra*; *Huntington Beach v. Newsom*, 790 F. Supp.3d 812 (C.D. Cal. 2025), *appeal filed*, No. 25-3826 (9th Cir. June 18, 2025).

Some of these cases have upheld school policies of withholding information from parents. *See*, *e.g.*, *Short v. New Jersey Dep't of Educ.*, No. 23-cv-21105-ESK-EAP, 2025 WL 984730, at *15–19 (D.N.J. Mar. 28, 2025); *Doe v. Delaware Valley Reg'l High Sch. Bd. of Educ.*, No. CV 24-00107 (GC) (JBD), 2024 WL 5006711, at **10-17 (D.N.J. Nov. 27, 2024). Others have found them unconstitutional, *see*, *e.g.*, *Mirabelli v. Olson*, 691 F. Supp.3d 1197, 1215–16 (S.D. Cal. 2023), and even irrational. *See*, *e.g.*, *Ricard v. USD 475 Geary Cnty., KS Sch. Bd.*, No. 5:22-cv-04015-HLT-GEB, 2022 WL 1471372, at *8 (D. Kan. May 9, 2022). Lower courts are plainly in need of this Court's guidance.

III. This case is an ideal vehicle to resolve both questions presented.

This case presents a clean and compelling procedural posture for resolving both the entrenched circuit split over the *Twombly/Iqbal* standard and the application of the "alternative explanations" test, as well as the circuit split over the reach of fundamental parental rights.

This case comes to the Court as an appeal from a motion to dismiss, affirmed by the First Circuit. This offers two advantages. First, the case presents a pure question of law on the sufficiency of the pleadings and scope of a fundamental right. The facts alleged are accepted as true, allowing this Court to address the legal error on the pleading standard and the constitutional questions without factual disputes or pre-trial evidentiary complexities muddying the legal waters. Second, a petition challenging the application of the "alternative explanation" doctrine will *always and only* arise at the motion-to-dismiss stage. This case directly presents the conflict: did the First

Circuit correctly apply plausibility, or did it impermissibly impose a standard approaching probability for Lavigne to overcome what the court determined was an "obvious alternative explanation" for Respondent's conduct based on its common sense and judicial experience.

Given the deeply entrenched nature of the circuit splits on both the pleading standard (Question I) and the scope of parental rights (Question II), percolation will do nothing to resolve the conflicts or provide the lower courts with additional information. Uniform national guidance is needed, and this case is the ideal vehicle for this Court to provide that uniform guidance.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be *granted*.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, FILED JULY 28, 2025

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-1509

AMBER LAVIGNE,

Plaintiff, Appellant,

v.

GREAT SALT BAY COMMUNITY SCHOOL BOARD; SAMUEL ROY, IN HIS OFFICIAL CAPACITY AS A SOCIAL WORKER AT GREAT SALT BAY COMMUNITY SCHOOL; KIM SCHAFF, IN HER OFFICIAL CAPACITY AS THE PRINCIPAL OF THE GREAT SALT BAY COMMUNITY SCHOOL; LYNSEY JOHNSTON, IN HER OFFICIAL CAPACITY AS THE SUPERINTENDENT OF THE SCHOOLS OF CENTRAL LINCOLN COUNTY SCHOOL SYSTEM; AND JESSICA BERK, IN HER OFFICIAL CAPACITY AS A SOCIAL WORKER AT GREAT SALT BAY COMMUNITY SCHOOL,

Defendants, Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. Jon D. Levy, *U.S. District Judge*]

Appendix A

Before

Montecalvo, Howard, and Aframe,
Circuit Judges.

Filed July 28, 2025

MONTECALVO, ***Circuit Judge***. Plaintiff Amber Lavigne initiated this lawsuit against the Great Salt Bay Community School Board (the "Board") and various individual members of the school staff[1] (together, "defendants"), alleging that defendants infringed on her constitutional right to parent. Lavigne claims that defendants acted unconstitutionally by providing her child, A.B., a chest binder – "a device used to flatten a female's chest so as to appear male" – and referring to A.B. by a name and set of pronouns different from those given to A.B. at birth without telling Lavigne, adhering to what Lavigne alleges is a school-wide policy of withholding such information. We now consider whether the district

1. For reasons more fully explained later, *see infra* Part I.B., the district court dismissed the claims against defendants Samuel Roy, a social worker at the school; Jessica Berk, another social worker; Kim Schaff, the school principal; and Lynsey Johnston, the district superintendent. Lavigne's Notice of Appeal in this case lists that order of dismissal as one which she appeals, but she does not raise any argument relevant to that order in her briefing. Accordingly, to the extent she seeks to raise any error with respect to that decision, any such claim is waived. *See United States v. Mayendía-Blanco*, 905 F.3d 26, 32 (1st Cir. 2018) ("[I]t is a well-settled principle that arguments not raised by a party in its opening brief are waived." (citing *Landrau-Romero v. Banco Popular de P.R.*, 212 F.3d 607, 616 (1st Cir. 2000))).

court correctly determined that the Board could not be held liable for the alleged constitutional violations. For the reasons explained below, we agree with the district court that Lavigne has not plausibly alleged that the Board had a custom or policy in place of withholding this type of information and, accordingly, affirm the district court's decision granting the Board's motion to dismiss.

I. Background

A. Facts

We draw the relevant facts from Lavigne's complaint, "accept[ing] the well-pleaded facts . . . as true and draw[ing] all reasonable inferences in [Lavigne's] favor." *Torres-Estrada v. Cases*, 88 F.4th 14, 19 (1st Cir. 2023) (citing *Núñez Colón v. Toledo-Dávila*, 648 F.3d 15, 19 (1st Cir. 2011)).

1. Underlying Conduct

A.B. started at Great Salt Bay Community School ("Great Salt"), a kindergarten through eighth grade school, in 2019, and, initially, Lavigne was "generally pleased" with the education A.B. received. However, in December 2022, when A.B. was thirteen, Lavigne and A.B. were cleaning A.B.'s room when Lavigne discovered a chest binder, which the complaint defines as "a device used to flatten a female's chest so as to appear male." A.B. told Lavigne that defendant Samuel Roy, a school social worker, provided the chest binder and instructed A.B. on how to use it. Lavigne also alleges that, on the same

day, Roy gave A.B. a second chest binder and informed A.B. that "he was not going to tell A.B.'[s] parents . . . and A.B. need not do so either." Lavigne was never informed that A.B. would be or had been given a chest binder and taught how to use it.

Around the same time, Lavigne learned that, at school, A.B. was using a name and pronouns different from those given to A.B. at birth. But the school never told Lavigne that A.B. was using a different name and pronouns from those used at home. Lavigne alleges that defendants "withheld and concealed" the information about the chest binders and A.B.'s use of a different name and pronouns "pursuant to a blanket policy, pattern, and practice of withholding and concealing information respecting 'gender-affirming' treatment of minor children from their parents." She further alleges that there is no policy or procedure allowing parents to provide input regarding a student's decision to use "a different name and pronouns" at school.

2. Lavigne Brings Concerns to Great Salt's Attention

a. Meeting with Great Salt Principal and School Superintendent

Shortly after discovering the chest binder, Lavigne met with defendants Principal Kim Schaff and Superintendent Lynsey Johnston. Both "expressed sympathy . . . and concern that th[e] information had been withheld and concealed." Two days later, Superintendent Johnston

"explained that no policy had been violated by the giving of chest binders to A.B.[] or by school officials . . . employing a different name and pronouns." Soon after, Lavigne withdrew A.B. from Great Salt, citing its "policy, pattern, and practice of withholding and concealing of crucially important and intimate psychosexual information about her minor child."

b. Great Salt's Written Policies

According to Lavigne, the school pointed to several written policies as supporting defendants' actions, specifically Great Salt's Transgender Students Guidelines (the "Guidelines") and the Staff Conduct with Students Policy ("Staff Conduct Policy").

The Guidelines provide, in relevant part, that:

- Their purpose is "[t]o foster a learning environment that is safe[] and free from discrimination, harassment and bullying."

- They "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."

- In addressing needs raised by a transgender student, the school should, among other steps, develop a plan "in consultation with the student, parent(s)/guardian(s) and others as appropriate."

The Guidelines do not include any provision directing school staff to withhold information from transgender students' parents or guardians. Lavigne alleges in her complaint that the Guidelines are "silent with respect to the giving of chest binders or any other devices with or without the involvement or consent of parents" and "do not mandate the involvement of parents at any point in the process of deciding whether to use alternate names and pronouns."

The only relevant provision of the Staff Conduct Policy is an explicit prohibition on staff asking students to keep secrets.

c. Board Meeting

In late December 2022, Lavigne spoke at a Board meeting about these incidents. In her statement to the Board, Lavigne "detailed the trust that had been broken by [d]efendants withholding and concealing vitally important information from her respecting her minor child's psychosexual development and stated that the 'decisions made [by Great Salt] drove a wedge between'" A.B. and Lavigne.

d. Great Salt Statements

The Board did not respond to Lavigne during the Board meeting but later released two separate statements. Great Salt's principal also released a statement.

i. The Board's First Statement

In the first statement, issued shortly after the meeting, the Board explained that it was unable "to discuss confidential student and staff information" but emphasized that its "first priority is always to provide a safe, welcoming and inclusive educational environment for all students and staff" and that it "has specific policies and procedures in place that must be followed" when addressing student and parent concerns. It also emphasized that its "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 [Great Salt Bay area] schools, and the student's right to privacy regardless of age." The statement did not explicitly address Lavigne, A.B., or any member of Great Salt staff.

ii. The Board's Second Statement

In the second statement, issued in January 2023, the Board addressed recent bomb threats made to the school, explaining that a "grossly inaccurate and one-sided story" gave rise to the threats. The Board again emphasized its obligation to maintain confidentiality of students and staff but explained that "[t]hose promoting

th[e] false narrative are apparently disturbed by [Great Salt's] ongoing and steadfast commitment to providing all students with safe and equal access to educational opportunities without discrimination." The Board then cited several Maine laws as providing students the right to access mental health services without parental consent, *see* Me. Rev. Stat. Ann. tit. 22, § 1502 ("a minor may consent to treatment for substance use disorder or for emotional or psychological problems"), and the right to confidential counseling with school-based mental health service providers, *see id.* tit. 20-A, § 4008. Finally, the statement explained that "neither the Board nor school administration [was] aware of any violation of policy or law which requires further action."

iii. Principal's Statement

Great Salt Principal Schaff then issued a statement in February 2023, primarily addressing ongoing threats against Great Salt and its staff. Principal Schaff explained that, under Maine law, "a school counselor or school social worker may not be required, except as provided by [law], 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." As Lavigne alleges, the statement "offered no explanation of how the giving of a chest compression device or the employment of alternate names and pronouns constitutes 'information gathered.'" That statement did not mention A.B., Lavigne, or any facts relevant to A.B. and did not discuss or allude to Great Salt policies.

e. Post-Lawsuit Developments

Finally, following the filing of this lawsuit, the Board unanimously approved a second-year contract term for Roy, the school social worker who provided the chest binders to A.B.[2]

B. Procedural History

In April 2023, Lavigne filed suit against the defendants, pursuant to 42 U.S.C. § 1983, alleging that the defendants' actions to conceal the chest binders and A.B.'s alternative name and pronouns used at school violated Lavigne's substantive due process rights as a parent "to control and direct [A.B.'s] education and general upbringing." Lavigne also alleged the defendants violated her procedural due process rights by denying her the ability to participate in the decision-making process regarding A.B.'s gender-identity expression at school. She also advanced claims against the individual defendants and a municipal liability claim against the Board.

Defendants moved to dismiss, arguing that (1) the claims against the individual defendants in their official capacities were "redundant" because these claims were captured by Lavigne's municipal liability claim; (2) the

2. Lavigne did not include this fact in her original complaint and did not file an amended complaint to include it. Instead, she introduced this fact in her response to the motion to dismiss, asking the district court to take judicial notice of it. She asks the same of us. Given our ultimate disposition of this case, we assume without deciding that we may take judicial notice of this fact.

municipal liability claim failed because Lavigne had alleged no facts establishing the alleged unconstitutional acts were caused by an institutional policy or custom; and (3) even assuming Lavigne had alleged the existence of such a policy, the defendants' actions did not violate Lavigne's constitutional rights. In response, Lavigne contended that (1) retaining named individual defendants is permitted in municipal liability cases because it provides plaintiffs with "a better opportunity to prove [their] case"; (2) her allegations established that the defendants' acts were pursuant to a policy or custom of withholding information from parents and were ratified by the Board, either of which could establish municipal liability; and (3) she had alleged resulting constitutional violations.

After a short hearing on the motion to dismiss, the district court granted the motion as it related to the named individuals, the two social workers, the Great Salt principal, and the district superintendent, *supra* note 1, as Lavigne was not seeking any relief from them and obtaining their testimony "should not be a problem." The district court took the remainder of the motion under advisement.

Later, the district court issued a written decision granting the motion to dismiss with respect to the Board, determining that Lavigne had failed to plausibly show municipal liability. To begin, the district court explained that, because all of Lavigne's claims "center[ed] on" her right to not have information withheld pursuant to a withholding policy, the success of her suit hinged on

whether she had properly alleged the existence of such a withholding policy.[3]

In its decision, the district court focused on the second element of municipal liability – whether a municipality is itself responsible for the alleged constitutional violation – concluding that the complaint did not allege facts that could plausibly support liability. Specifically, the district court determined that Lavigne was required to show that the Board's "policy or custom [wa]s responsible for causing the constitutional violation," and so it concentrated its inquiry on whether Great Salt had a policy or custom of withholding information. (Quoting *Abdisamad v. City of Lewiston*, 960 F.3d 56, 60 (1st Cir. 2020)). The district court found that Lavigne had not plausibly alleged that the so-called "withholding policy" was a settled custom or practice at Great Salt because she relied on "conclusion[s] unsupported by factual allegations." The court also determined that Lavigne could not satisfy municipal liability by ratification because Great Salt's statements were too vague to constitute active approval of the individual defendants' withholding of information. Accordingly, the district court dismissed Lavigne's complaint, and she timely appealed.

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3. In their briefing on the motion to dismiss, the parties treated Lavigne's substantive due process claim as a § 1983 municipal liability claim but treated her procedural due process claim as a standalone claim not tethered to any liability framework. On appeal, Lavigne appears to have abandoned her procedural due process claim, only addressing her substantive due process argument. We therefore deem any due process claim waived. *See Mayendía-Blanco*, 905 F.3d at 32.

II. Standard of Review

"We review the district court's grant of [the] motion to dismiss de novo." *Wadsworth v. Nguyen*, 129 F.4th 38, 61 (1st Cir. 2025) (cleaned up) (quoting *Torres-Estrada*, 88 F.4th at 23). To assess whether a complaint can withstand a Rule 12(b)(6) motion, we "must accept as true all well-pleaded facts 'indulging all reasonable inferences in [appellant's] favor.'" *Fantini v. Salem State Coll.*, 557 F.3d 22, 26 (1st Cir. 2009) (quoting *Nisselson v. Lernout,* 469 F.3d 143, 150 (1st Cir. 2006)). Our federal pleading standard "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). And, importantly, "assertions nominally cast in factual terms but so general and conclusory as to amount merely to an assertion that unspecified facts exist to conform to the legal blueprint" are insufficient to state a cognizable claim. *Menard v. CSX Transp., Inc.*, 698 F.3d 40, 45 (1st Cir. 2012).

Accordingly, "we will not accept a complainant's unsupported conclusions or interpretations of law." *Wash. Legal Found. v. Mass. Bar Found.*, 993 F.2d 962, 971 (1st Cir. 1993) (citing *United States v. AVX Corp.*, 962 F.2d 108, 115 (1st Cir. 1992)). But "[b]ecause a dismissal terminates an action at the earliest stages of litigation without a developed factual basis for decision, we must carefully balance the rule of simplified civil pleading against our need for more than conclusory allegations." *Id.*

III. Discussion

Municipalities cannot be held liable for the conduct of their employees unless the municipality itself is also responsible in some way for that conduct. *See Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 691, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978) ("[A] municipality cannot be held liable *solely* because it employs a tortfeasor – or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory."). As the Supreme Court has explained, "[a] municipality or other local government may be liable under [§ 1983] if the governmental body itself 'subjects' a person to a deprivation of rights or 'causes' a person 'to be subjected' to such deprivation." *Connick v. Thompson*, 563 U.S. 51, 60, 131 S. Ct. 1350, 179 L. Ed. 2d 417 (2011) (citing Monell, 436 U.S. at 692). Indeed, "it is only when the governmental employees' 'execution of a government's policy or custom . . . inflicts the injury' and is the 'moving force' behind the constitutional violation that a municipality can be liable." *Young v. City of Providence ex rel. Napolitano*, 404 F.3d 4, 25 (1st Cir. 2005) (omission in original) (quoting *Monell*, 436 U.S. at 694). Thus, the "two basic elements" of the inquiry are whether Lavigne's "harm was caused by a constitutional violation" and whether the municipal entity, in this case the Board, can be held "responsible for that violation." *Id.* at 25–26. We address only the second element because if Lavigne has failed to allege facts sufficient to show that Great Salt is in some way responsible for any constitutional violation, there can be no municipal liability. Under that element, as relevant here, a plaintiff must show either the existence of a municipal policy or custom directing or requiring the

allegedly unconstitutional actions or that the municipality ratified the alleged actions of a subordinate after the fact. *See Welch v. Ciampa*, 542 F.3d 927, 941–42 (1st Cir. 2008).

On appeal, Lavigne argues that the district court erred in dismissing her claim because (1) her allegations sufficiently establish the existence of a policy or custom of withholding; (2) the district court erred in declining to address the first element of municipal liability; and (3) her allegations established that the Board violated her right to direct the education of her child. Like the district court, we resolve this case by addressing only the second element of municipal liability, concluding that Lavigne's allegations fail to plausibly show that either the Board had a policy of withholding or that the Board later ratified the individual defendants' decisions to withhold information from Lavigne.[4]

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4. During the pendency of this appeal, this court released our decision in *Foote v. Ludlow Sch. Comm.*, 128 F.4th 336 (1st Cir. 2025) (per curiam). In that case, we addressed a similar claim involving parental rights protected by the Due Process Clause, concluding that a school's admitted policy of withholding from parents a student's decision to "go by a different name and to use different pronouns than those given to them at birth" did not "restrict any fundamental parental right protected by the Due Process Clause." *Id.* at 340, 355–56. Following that decision, we ordered supplemental briefing from the parties in this case to address *Foote*'s impact on their arguments. Lavigne contended that *Foote* was not controlling despite the similarities. For its part, the Board maintained that *Foote* need not be considered because, unlike in *Foote*, there was no policy of withholding alleged here. The Board also contended that if we were to disagree and conclude that Lavigne's complaint satisfied the second element of municipal

A. Structure of *Monell* Liability Analysis

We begin by addressing Lavigne's contention that the district court erred in beginning – and ending – its analysis with the second element of municipal liability. Lavigne has not directed our attention to a single case requiring a district court to begin its municipal liability analysis with the constitutional question, nor are we aware of any such cases. Indeed, our case law indicates that the opposite is true. *See Freeman v. Town of Hudson*, 714 F.3d 29, 38 (1st Cir. 2013) (affirming dismissal of complaint against city solely because "[t]he complaint . . . references no state or local laws establishing the policymaking authority of any individual or group of individuals" and "gives no guidance about which acts are properly attributable to the municipal authority"); *Collins v. City of Harker Heights*, 503 U.S. 115, 123, 112 S. Ct. 1061, 117 L. Ed. 2d 261 (1992) (in municipal liability case, assuming constitutional violation and addressing second element); *see also Sony BMG Music Ent. v. Tenenbaum*, 660 F.3d 487, 511 (1st Cir. 2011) ("It is bedrock that the 'long-standing principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.'" (quoting *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445, 108 S. Ct. 1319, 99 L. Ed. 2d 534 (1988))). Accordingly, we see no error in the district court's decision to address only the second element, and we do the same ourselves.

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liability, *Foote* would be controlling as to the question of whether defendants violated Lavigne's constitutional rights. Because we agree with the Board that Lavigne's complaint does not satisfy the second element of municipal liability, we need not consider *Foote*'s applicability to this case.

Thus, we turn to whether Lavigne's allegations demonstrate either: (1) the existence of an unwritten policy of withholding information about students' gender identity and gender expression from parents or (2) that the Board later ratified the individual defendants' decisions to withhold such information from Lavigne.[5]

B. *Monell*'s Second Element: Policy or Custom of Withholding

At this stage of litigation, with respect to the second element of municipal liability, a plaintiff must plausibly allege that the "municipal action at issue . . . constitute[s] a 'policy or custom' attributable to" the municipality, that "the municipal policy or custom actually . . . caused the plaintiff's injury," and "the municipality possessed the requisite level of fault." *Young*, 404 F.3d at 26. Here, we begin – and end – our inquiry with the question of whether Lavigne has plausibly alleged the existence of any policy or custom at all.

An official municipal policy can take the form of either an "officially adopted" policy statement or regulation,

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5. Before the district court, in addition to arguing the existence of an unwritten policy or custom and liability via ratification, Lavigne argued that defendants' acts stemmed from a persistent practice of failing to properly train staff on the rights of parents. But the district court rejected this argument, concluding that the allegations only suggested an insufficient training program, which was not enough to establish liability. Lavigne has not advanced this theory in her opening brief, so, to the extent she seeks to raise that argument on appeal, it is waived. *See Mayendía-Blanco*, 905 F.3d at 32.

Monell, 436 U.S. at 690, or an informal custom amounting to a widespread practice that, although "not authorized by written law," is "so permanent and well settled as to constitute a 'custom or usage' with the force of law," *Abdisamad*, 960 F.3d at 60 (quoting *Monell*, 436 U.S. at 691). The Supreme Court has also held that if "authorized policymakers approve a subordinate's decision and the basis for it," that ratification is chargeable to the municipality as an official policy or custom "because their decision is final." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127, 108 S. Ct. 915, 99 L. Ed. 2d 107 (1988) (plurality opinion); *see Connick*, 563 U.S. at 61 ("Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law.").

Lavigne argues that she has satisfied *Monell*'s policy or custom requirement by alleging facts that compel the inference that (1) an unwritten but official policy or custom of withholding existed or (2) the Board ratified the individual defendants' choices to withhold information from her. We reject these contentions and thus conclude that Lavigne has not pleaded facts sufficient to establish the existence of a permanent and well-settled policy or custom of withholding and concealing information.

1. Unwritten Policy or Custom

In support of the first theory, Lavigne directs our attention to various statements from the Board and school officials defending the legality of defendants' conduct,

arguing that each denial of wrongdoing compels the inference that the Board did indeed maintain a policy of withholding information from parents. Specifically, Lavigne argues that because Superintendent Johnston told Lavigne that "no policy was violated" by the defendants' actions, "the logical conclusion is that the[] actions were the policy." Lavigne cites the Board's January 14, 2023 statement that "[n]either the Board nor school administration are aware of any violation of policy or law [that] requires further action at this time" as supporting the same inference. She also points to Principal Schaff's February 26, 2023 statement attributing recent threats against the school to "[a] misunderstanding of [the] laws pertaining to gender identity and privileged communication between school social workers and minor clients," which Lavigne says amounts to a statement that defendants' conduct was consistent with school policies. Finally, she alleges that social worker Roy's conduct violated written school policies and yet the Board decided to renew his contract, arguing that the "obvious explanation" for this decision is that Roy's conduct complied with an unwritten policy of withholding.

However, none of these allegations support the inference that the Board maintained an unwritten custom or policy of withholding information from parents. As Lavigne herself emphasizes, the Board's written policies encourage the opposite: the Guidelines state that "[a] plan should be developed by the school, in consultation with the student, parent(s)/guardian(s) and others as appropriate, to address the [transgender] student's particular needs," and the Staff Conduct Policy prohibits "[a]sking a student

to keep a secret." But Lavigne argues that defendants' alleged misconduct "should amount to violations" of these policies. In other words, Lavigne concedes that the Board maintained written policies that apply to the conduct in question. Common sense thus dictates that it was these written policies to which the Board and school officials were referring in the statements cited by Lavigne.

Contrary to Lavigne's contentions on appeal, there need not have been some superseding unwritten custom of active concealment for the Board and school officials to conclude that the alleged misconduct did not run afoul of the Board's existing written policies. While the Guidelines state that school personnel "should" consult with parents "as appropriate" in addressing the needs of transgender students, they also expressly note that they are to be "interpreted in light of applicable federal and state laws and regulations." This would include the Maine state law protecting the confidentiality of communications between students and school social workers, Me. Rev. Stat. Ann. tit. 20-A, § 4008, which both the Board and Principal Schaff cite in their statements alluding to the issues raised by Lavigne. Defendants' repeated references to the protections provided to student and counselor relationships under state law suggest that they interpreted state law to either support the individual defendants' alleged decision to withhold information from Lavigne or believed there was enough ambiguity to make it unclear whether that decision violated Board policy. Indeed, Lavigne acknowledged that it is not entirely clear whether the actions of the individual defendants would violate the Board's express policies when she correctly

alleged that the Guidelines do not explicitly address "the giving of chest binders or any other devices to students," nor do they affirmatively "mandate the involvement of parents at any point in the process of deciding whether to use alternate names and pronouns."

"We have explained that assessing plausibility is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Frith v. Whole Foods Mkt., Inc.*, 38 F.4th 263, 270 (1st Cir. 2022) (quoting *Rodríguez-Reyes v. Molina-Rodríguez*, 711 F.3d 49, 53 (1st Cir. 2013)). Here, there are "obvious alternative explanation[s]," *id.* (quoting *Twombly*, 550 U.S. at 567)), for Superintendent Johnston's statement to Lavigne that "no policies had been violated" and the similar sentiments expressed in the Board's January 14, 2023 statement that belie the suggestion of an unwritten policy of withholding. The same is true for the school's decision to renew Roy's contract. We likewise see no basis to infer the existence of an unwritten withholding policy from the statement Principal Schaff addressed to the wider school community in response to threats to the school, which provides only a general summation of relevant "laws pertaining to gender identity and privileged communication between school social workers and minor clients" and makes no reference to any policies and practices of the school. Finally, nothing about the staff's conduct itself allows for the inference that they were acting pursuant to a known and well-settled policy.[6]

6. In addition to the actions of social worker Roy, Lavigne also alleges that other "school officials had been calling A.B. by a name not on A.B.'s birth certificate and were referring to A.B. with

Without this factual support, Lavigne's contention that the school acted pursuant to an unwritten "blanket policy, pattern, and practice of intentional withholding and concealment of such information from all parents" is based solely on her "information and belief." But the phrase "information and belief" does not excuse "pure speculation," *Menard*, 698 F.3d at 45, and a "legal conclusion couched as a factual allegation" is not entitled to a presumption of truth, *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Twombly*, 550 U.S. at 555).[7]

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gender-pronouns not typically associated with A.B.'s biological sex" and did not inform Lavigne of these facts. At times, where there is other evidence of a custom or policy, concerted actions by municipal employees may provide "some proof of the existence of the underlying policy or custom." *See Bordanaro v. McLeod*, 871 F.2d 1151, 1157 (1st Cir. 1989). However, Lavigne has not pled any facts to suggest that these officials intentionally withheld information from her, encouraged A.B. to do so, or were even aware of Lavigne's lack of involvement in the school's treatment of her child. And given the lack of any other indicia of a custom or policy as explained above, these meager pleadings, which ultimately suggest only the isolated actions of one employee, do not allege a "well settled and widespread" practice of withholding information from parents. *Cf. id.* at 1156 (noting that all involved "acted in concert" in determining that plaintiff had established existence of a policy); *see also Thomas v. Neenah Joint Sch. Dist.*, 74 F.4th 521, 524–25 (7th Cir. 2023) (affirming dismissal of *Monell* claim where "allegations of two isolated incidents fail[ed] to plausibly allege that the [school district] ha[d] a widespread practice of using excessive force to punish students with behavioral disabilities").

7. To the extent Lavigne suggests that discovery will reveal the necessary facts, we note that, given the complaint's

2. Board Ratification

Lavigne also contends that regardless of whether the Board maintained a policy of withholding, it is liable based on its later ratification of the individual defendants' choices to withhold information from Lavigne. We disagree.

"[I]t is plain that municipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances." *Welch*, 542 F.3d at 942 (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986)). Where "authorized policymakers approve a subordinate's decision and the basis for it, their ratification [is] chargeable to the municipality because their decision is final." *Praprotnik*, 485 U.S. at 127. Although this court has yet to fully delineate the "precise contours of this ratification doctrine," we have explained the requirement that municipal approval must be active, not passive. *Saunders v. Town of Hull*, 874 F.3d 324, 330 (1st Cir. 2017). We have also explained that the active approval must be with respect to both the "subordinate's decision and the basis for it." *Id.* (emphasis omitted) (quoting *Praprotnik*, 485 U.S. at 126). And, as the Supreme Court set out in *Praprotnik*,

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shortcomings, discovery would be nothing more than "a fishing expedition." *DM Rsch., Inc. v. Coll. of Am. Pathologists*, 170 F.3d 53, 55 (1st Cir. 1999) ("Conclusory allegations in a complaint, if they stand alone, are a danger sign that the plaintiff is engaged in a fishing expedition."). Further, Lavigne's suggestion underscores that her allegations of the existence of a policy are unsupported by facts and thus are based on "pure speculation." *Menard v. CSX Transp., Inc.*, 698 F.3d 40, 44 (1st Cir. 2012).

"[s]imply going along with [a subordinate's] discretionary decisions" or "mere[ly] fail[ing] to investigate the basis of a subordinate's discretionary decisions" does not equal ratification. 485 U.S. at 130.

Lavigne relies primarily on the Board's January 14 statement that it was unaware of any policy violation requiring further action, arguing that from this statement one can "reasonabl[y] infer[] that the Board ratified the challenged conduct." She also points to the Board's decision to approve a second contract for Roy, arguing that by doing so the Board ratified Roy's conduct.

We agree with the district court that the Board's "vague expression" does not "identify[] any particular decision or decisions of a subordinate" and thus does not plausibly show that the Board ratified the individual decisions to not tell certain information about A.B. to Lavigne. Nothing in the Board's statement expressed approval for any of the alleged conduct or any reasoning behind it. The statement only explained that no policy was violated. This is nothing like the type of actively approving statement that the *Praprotnik* Court considered as the basis for ratification. And, moreover, Lavigne has not pointed us to any cases, nor are we aware of any, that extended *Praprotnik*'s holding to vague statements like the one made by the Board here. Nothing about the Board's decision to grant Roy another contract, without more, expresses *active* approval of Roy's alleged conduct with respect to A.B. and Lavigne. Accordingly, we agree with the district court that Lavigne has failed to plausibly allege that the Board's "'execution of a [municipal] policy

or custom . . . inflict[ed] the [alleged] injury' and [was] the 'moving force' behind the constitutional violation." *Young*, 404 F.3d at 25 (omission in original) (quoting *Monell*, 436 U.S. at 694).

IV. Conclusion

For these reasons, we ***affirm*** the dismissal.

APPENDIX B — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, FILED JULY 28, 2025

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-1509

AMBER LAVIGNE,

Plaintiff, Appellant,

v.

GREAT SALT BAY COMMUNITY SCHOOL BOARD; SAMUEL ROY, IN HIS OFFICIAL CAPACITY AS A SOCIAL WORKER AT GREAT SALT BAY COMMUNITY SCHOOL; KIM SCHAFF, IN HER OFFICIAL CAPACITY AS THE PRINCIPAL OF THE GREAT SALT BAY COMMUNITY SCHOOL; LYNSEY JOHNSTON, IN HER OFFICIAL CAPACITY AS THE SUPERINTENDENT OF THE SCHOOLS OF CENTRAL LINCOLN COUNTY SCHOOL SYSTEM; AND JESSICA BERK, IN HER OFFICIAL CAPACITY AS A SOCIAL WORKER AT GREAT SALT BAY COMMUNITY SCHOOL,

Defendants, Appellees.

Entered: July 28, 2025

This cause came on to be heard on appeal from the United States District Court for the District of Maine and was argued by counsel.

Appendix B

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The district court's decision granting the Great Salt Bay Community School Board's motion to dismiss is affirmed.

By the Court:

Anastasia Dubrovsky, Clerk

cc:
Brett Dwight Baber, Adam Shelton, John Nicholas Thorpe, Melissa A. Hewey, Susan M. Weidner, Joseph David Spate, Mary Elizabeth McAlister, Vernadette Ramirez Broyles, David Andrew Cortman

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT, DISTRICT OF MAINE, FILED MAY 3, 2024

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

2:23-cv-00158-JDL

AMBER LAVIGNE,

Plaintiff,

v.

GREAT SALT BAY COMMUNITY SCHOOL BOARD,

Defendant.

Filed May 3, 2024

ORDER ON MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Plaintiff Amber Lavigne brings this action against Defendant Great Salt Bay Community School Board.[1] Lavigne's claims center on events that occurred in late 2022 and early 2023 concerning her child, A.B., who was a student at Great Salt Bay Community School in

1. The Complaint also named as Defendants four individuals associated with the School and the Central Lincoln County School System. The individual defendants have been dismissed from the case (ECF No. 23).

Damariscotta from September 2019 until December 8, 2022. Lavigne's Complaint (ECF No. 1) asserts four constitutional violations: three based on substantive due process rights (Counts I, II, and III) and the fourth based on procedural due process rights (Count IV). The School Board moves to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim (ECF No. 12). A hearing was held on the motion on November 1, 2023, and the parties subsequently submitted additional case citations for the Court to consider (ECF Nos. 24, 25). For reasons I will explain, I grant the School Board's motion and order the Complaint dismissed.

I. BACKGROUND

A. Factual Allegations

I treat the following facts derived from the Complaint and its attachments as true for the purpose of evaluating the School Board's motion to dismiss. *See Grajales v. P.R. Ports Auth.*, 682 F.3d 40, 44 (1st Cir. 2012) ("[W]e accept the truth of all well-pleaded facts and draw all reasonable inferences therefrom in the pleader's favor.").

Amber Lavigne ("Lavigne") lives in Newcastle, Maine, and is the mother of three children, one of whom, A.B., was a thirteen-year-old student at Great Salt Bay Community School ("School") at the time of the relevant events. Defendant Great Salt Bay Community School Board ("School Board") is the governing body for the School, which serves children from three Maine communities: Newcastle, Damariscotta, and Bremen.

Appendix C

In early December 2022, Lavigne came across a chest binder—"a device used to flatten a female's chest so as to appear male"—in A.B.'s bedroom. ECF No. 1 at 5, ¶ 20. A.B. told Lavigne that a social worker at the School had both provided A.B. with the chest binder and explained how to use it. Lavigne "is informed and believes, and on that basis alleges," that the social worker simultaneously gave A.B. a second chest binder, explained that he would not tell A.B.'s parents about the chest binders, and said that "A.B. need not do so either." ECF No. 1 at 6, ¶¶ 22-23. The School had not informed Lavigne about the chest binders before she found one in A.B.'s bedroom.

Around the same time, Lavigne learned that A.B. had previously adopted and was using a different name and different pronouns at school. At A.B.'s request, two social workers used A.B.'s self-identified name and pronouns when addressing A.B. at school; other school officials followed suit. The School had not informed Lavigne about A.B.'s request or the actions of the school staff in response.

Lavigne met with the School's principal and the Central Lincoln County School System's superintendent on or around December 5, 2022. They expressed sympathy and concern that information about A.B. had been withheld and concealed from Lavigne. Two days later, however, the superintendent met with Lavigne and told her that no policy had been violated by giving the chest binders to A.B., or by school officials using A.B.'s self-identified name and pronouns, without first informing Lavigne. Lavigne withdrew A.B. from the School on December 8, 2022, and began homeschooling A.B.

Appendix C

On December 12, 2022, agents from the Maine Office of Child and Family Services visited or met with Lavigne in response to an anonymous report that Lavigne was emotionally abusive toward A.B. The agency conducted an investigation, which it closed on January 13, 2023, having concluded "that the information obtained by the investigation did not support a finding of neglect or abuse." ECF No. 1 at 8, ¶ 36; *see* ECF No. 1-2 at 1.

At the School Board's meeting on December 14, 2022, Lavigne spoke publicly about what had happened regarding A.B., describing "the trust that had been broken by Defendants withholding and concealing vitally important information from her respecting her minor child's psychosexual development." ECF No. 1 at 9, ¶ 38. The School Board and its members did not respond to Lavigne's comments at the meeting.

Thereafter, the School Board and the School's principal issued a total of three written public statements relevant to Lavigne's claims.[2] First, on December 19, 2022, the School Board Chair issued a written statement addressing, among other things, "recent concerns that have been brought to the attention of the administration and Board," and stating that the School Board's policies comply with Maine law, "which protects the right of all

2. The statements are attached as exhibits to the Complaint (ECF Nos. 1-3, 1-4, 1-5). *See Trans-Spec Truck Serv., Inc. v. Caterpillar Inc.*, 524 F.3d 315, 321 (1st Cir. 2008) ("Exhibits attached to the complaint are properly considered part of the pleading 'for all purposes,' including Rule 12(b)(6)." (quoting Fed. R. Civ. P. 10(c))).

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." ECF No. 1-3 at 1.

Second, several weeks later on January 14, 2023, the School Board issued a written statement responding to bomb threats and recent controversy affecting the School. The statement addressed "another bomb threat on Friday[,] January 13"; referred to a "false narrative" that had been spread by "certain parties" that had "given rise to the bomb threats"; and affirmed that "[a]ll 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." ECF No. 1-4 at 1.

Finally, on February 26, 2023, the School's principal issued a written statement addressing questions related to school safety. In it she noted that there had been a "misunderstanding of [federal and state] laws pertaining to gender identity and privileged communication between school social workers and minor clients [resulting] in the school and staff members becoming targets for hate speech and on-going threats." ECF No. 1-5 at 1. The letter noted further that state law protects school social workers from being required to share certain "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." ECF No. 1-5 at 1 (quoting 20-A M.R.S.A. § 4008(2) (West 2024)).

B. Lavigne's Legal Claims

Lavigne asserts that the School Board and school officials violated her fundamental right as a parent "to control and direct the care, custody, education, upbringing, and healthcare decisions, etc., of [her] children" by providing A.B. with chest binders and using A.B.'s self-identified name and pronouns without prior notice or providing a process through which Lavigne could "express her opinion respecting these practices." ECF No. 1 at 1-2, ¶¶ 2-3. The Complaint contends that the School Board withheld and concealed information from Lavigne regarding the chest binders and A.B.'s use of a different name and pronouns "pursuant to a blanket policy, pattern, and practice of withholding and concealing information respecting 'gender-affirming' treatment of minor children from parents." ECF No. 1 at 7, ¶ 29. The Complaint also asserts that the School Board's actions deprived Lavigne of the opportunity to meaningfully make decisions about A.B.'s care, upbringing, and education.

The Complaint's four counts all assert violations of Lavigne's constitutional rights, actionable under 42 U.S.C.A. § 1983 (West 2024). Three counts allege the School Board and school officials committed substantive due process violations under the Fourteenth Amendment to the United States Constitution by (1) providing chest binders to A.B. and instructing A.B. on their use without first informing Lavigne (Count I); (2) using A.B.'s self-identified name and pronouns and withholding that information from Lavigne (Count II); and (3) adopting Transgender Students Guidelines that enable staff

members to withhold information from parents (Count III). For the fourth count, Lavigne alleges that she was deprived of procedural due process in violation of the Fourteenth Amendment because she was not afforded an opportunity to comment on school officials' decisions to give A.B. chest binders or to use A.B.'s self-identified name and pronouns at school (Count IV).

In her Opposition to the Motion to Dismiss (ECF No. 16), however, Lavigne makes it clear that all counts in her Complaint center on her "right not to have information about decisions actively withheld by Defendants pursuant to the Withholding Policy." *See* ECF No. 16 at 8 (discussing procedural due process claim); ECF No. 16 at 10 (arguing in context of substantive due process claims that "Defendants violated Plaintiff's rights by withholding and even concealing" information from Lavigne). Lavigne's opposition clarifies further that the "Withholding Policy" underlying her claims, though "unwritten," is established by the Defendants' "policy, practice, and custom." ECF No. 16 at 3. Although the Complaint never uses the phrase "Withholding Policy,"[3] it conveys a similar theory, seeking "[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[ir] 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." ECF No. 1 at 20, ¶ A. Lavigne

3. The phrase "Withholding Policy" appears for the first time in Lavigne's Opposition to the Motion to Dismiss. *See* ECF No. 16 at 3.

also seeks an injunction, nominal and actual damages, and attorney's fees and costs.

II. LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, a complaint "must contain sufficient factual matter to state a claim to relief that is plausible on its face."[4] *Rodríguez-Reyes v. Molina-Rodríguez*, 711 F.3d 49, 53 (1st Cir. 2013) (quoting *Grajales*, 682 F.3d at 44). Courts use a two-step approach to evaluate whether a complaint meets that standard. "First, the court must distinguish 'the complaint's factual allegations (which must be accepted as true) from its conclusory legal allegations (which need not be credited).' Second, the court must determine whether

4. The School Board's motion is properly evaluated as a Rule 12(b) motion to dismiss, and not a Rule 12(c) motion for judgment on the pleadings, even though the School Board filed its motion to dismiss and Answer (ECF No. 13) on the same day. A post-answer motion to dismiss should be treated as a motion for judgment on the pleadings, *see Patrick v. Rivera-Lopez*, 708 F.3d 15, 18 (1st Cir. 2013), but the School Board here filed the motion to dismiss slightly before the answer. Even if the motion to dismiss is treated as having been filed "simultaneously with the answer, the district court will view the motion as having preceded the answer and thus as having been interposed in timely fashion." 5C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1361 (3d ed.). In any event, the First Circuit has noted that "[c]onverting the grounds for a motion from Rule 12(b)(6) to Rule 12(c) 'does not affect our analysis inasmuch as the two motions are ordinarily accorded much the same treatment.'" *Rivera-Lopez*, 708 F.3d at 18 (quoting *Aponte-Torres v. Univ. of P.R.*, 445 F.3d 50, 54 (1st Cir. 2006)).

the factual allegations are sufficient to support 'the reasonable inference that the defendant is liable for the misconduct alleged.'" *García-Catalán v. United States*, 734 F.3d 100, 103 (1st Cir. 2013) (citation omitted) (first quoting *Morales-Cruz v. Univ. of P.R.*, 676 F.3d 220, 224 (1st Cir. 2012); and then quoting *Haley v. City of Bos.*, 657 F.3d 39, 46 (1st Cir. 2011)). A complaint is subject to dismissal if its factual allegations "are too meager, vague, or conclusory to remove the possibility of relief from the realm of mere conjecture." *S.E.C. v. Tambone*, 597 F.3d 436, 442 (1st Cir. 2010).

To establish that a municipality is liable under section 1983 for a deprivation of constitutional rights, a plaintiff must show both "that [the] plaintiff's harm was caused by a constitutional violation," and "that the [municipality is] responsible for that violation, an element which has its own components." *Young v. City of Providence ex rel. Napolitano*, 404 F.3d 4, 25-26 (1st Cir. 2005). I first consider the second issue: whether the Complaint adequately pleads facts that could plausibly support municipal liability under section 1983. Concluding that it does not, I need not, and therefore do not, address the separate question of whether any of the alleged constitutional violations are adequately pleaded.

III. ANALYSIS

A. Municipal Liability for Alleged Constitutional Violations Under *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)

Section 1983 permits a lawsuit against a person who, while acting under color of law, "subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C.A. § 1983. The Supreme Court held in *Monell v. Department of Social Services of the City of New York* that municipalities can be proper defendants under section 1983. 436 U.S. 658, 690, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978) ("Congress *did* intend municipalities and other local government units to be included among those persons to whom [section] 1983 applies."). Section 1983 municipal liability principles apply to school boards and public education units in Maine, including a community school district such as the Great Salt Bay Community School District. *See, e.g., Doe v. Reg'l Sch. Unit No. 21*, No. 2:19-[cv]-00341-NT, 2020 U.S. Dist. LEXIS 94295, 2020 WL 2820197 (D. Me. May 29, 2020) (applying municipal liability concepts to RSU 21); *Raymond v. Me. Sch. Admin. Dist. 6*, No. 2:18-cv-00379-JAW, 2019 U.S. Dist. LEXIS 80868, 2019 WL 2110498 (D. Me. May 14, 2019) (applying municipal liability concepts to MSAD 6).

Although section 1983 claims can be brought against municipalities, a local government entity such as, in this

instance, the Great Salt Bay Community School Board, may be held liable "only where that [entity]'s policy or custom is responsible for causing the constitutional violation or injury." *Abdisamad v. City of Lewiston*, 960 F.3d 56, 60 (1st Cir. 2020) (quoting *Kelley v. LaForce*, 288 F.3d 1, 9 (1st Cir. 2002)); *see Monell*, 436 U.S. at 694. In other words, "a [section] 1983 action brought against a municipality pursuant to [*Monell*] is proper only where the plaintiff pleads sufficient facts to indicate the existence of an official municipal policy or custom condoning the alleged constitutional violation." *Ouellette v. Beaupre*, 977 F.3d 127, 140 (1st Cir. 2020). The "policy or custom" requirement applies even where a plaintiff seeks declaratory or injunctive relief, as Lavigne does in part here. *Los Angeles Cnty. v. Humphries*, 562 U.S. 29, 31, 131 S. Ct. 447, 178 L. Ed. 2d 460 (2010). Municipal bodies cannot be held liable under section 1983 for the acts of their employees on a *respondeat superior* theory. *Monell*, 436 U.S. at 691. Rather, "a plaintiff who brings a section 1983 action against a municipality bears the burden of showing that, 'through its *deliberate* conduct, the municipality was the "moving force" behind the injury alleged.'" *Haley*, 657 F.3d at 51 (quoting *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 404, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997)).

B. The Challenged "Policy or Custom"

The purported municipal "policy or custom" that Lavigne challenges is somewhat nebulous. The School's written "Transgender Students Guidelines" ("Guidelines") are attached as an exhibit to the Complaint (ECF No.

1-6).[5] The stated purposes of the Guidelines are (1) "[t]o foster a learning environment that is safe, and free from discrimination, harassment and bullying; and [(2) t]o assist in the educational and social integration of transgender students in our school." ECF No. 1-6 at 1. The School Board emphasizes, and Lavigne does not dispute, that the Guidelines establish a procedure which calls for the participation of a transgender student's parent(s) or guardian(s).[6] *See* ECF No. 1-6 at 2 ("A plan should be developed by the school, in consultation with the student, parent(s)/guardian(s) and others as appropriate, to

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5. Also attached as an exhibit to the Complaint is the Great Salt Bay Community School District's policy on "Staff Conduct with Students" (the "Conduct Policy"). ECF No. 1-7 at 1. Part of the Conduct Policy's intent is to ensure that staff members and students have interactions "based upon mutual respect and trust." ECF No. 1-7 at 1. Examples of "expressly prohibited" conduct by staff members include: "[a]sking a student to keep a secret" and, 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." ECF No. 1-7 at 1. The Complaint does not allege that the School Board or school officials violated the Conduct Policy.

6. The Guidelines also acknowledge the role of parent(s)/guardian(s) in connection with the disclosure of information from a students' records: "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." ECF No. 1-6 at 3.

address the student's particular needs."). The Complaint does not allege that the School Board or school officials violated the Guidelines.

Lavigne expressly confirms in her Opposition to the Motion to Dismiss that "the Guidelines are not the policy Plaintiff challenges."[7] ECF No. 16 at 8. Instead, Lavigne asserts that her alleged injuries have been caused by an unwritten "Withholding Policy," which she describes

7. Lavigne's concession that she does not challenge the Guidelines appears to be at odds with several statements in the Complaint, an inconsistency which suggests that Lavigne's theory of the basis for municipal liability has shifted. For example, the Complaint "seeks a declaration that the [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." ECF No. 1 at 4, ¶ 11. Lavigne also alleges in the Complaint that (1) the "Defendants contend that their actions with respect to all allegations herein were mandated by school board policies—specifically the [Guidelines] and the [Conduct Policy]," ECF No. 1 at 11, ¶ 48, and (2) the "School Board will continue to violate parents' longstanding Fourteenth Amendment rights if it is not enjoined from continuing to enforce [the] Guidelines in the future," ECF No. 1 at 18, ¶ 88. To the extent that the Complaint includes allegations about the Guidelines that are contradicted by the attached exhibit, it is proper to rely on the text of the attachment. *Yacubian v. United States*, 750 F.3d 100, 108 (1st Cir. 2014) ("[I]t is a well-settled rule that when a written instrument contradicts allegations in the complaint to which it is attached, the exhibit trumps the allegations." (quoting *Young v. Wells Fargo Bank, N.A.*, 717 F.3d 224, 229 n.1 (1st Cir. 2013))). In any event, Lavigne concedes that "the Guidelines are not the policy [she] challenges." ECF No. 16 at 8. Thus, I do not consider the written policy as a possible basis for municipal liability.

as "a systematic across-the-board practice which is not specified, but is hinted at, in the written 'Guidelines.'" ECF No. 16 at 8. She contends that the Guidelines "are supplements to the Withholding Policy, and in fact, permit the policy and practice of withholding/concealment." ECF No. 16 at 12 (emphasis omitted). Lavigne does not otherwise address or explain how the Withholding Policy is hinted at in the Guidelines.

In her Opposition to the Motion to Dismiss, Lavigne argues that the School Board's unwritten Withholding Policy consists of "withholding and even concealing from parents information about actions the Defendants take with respect to children's mental and physical wellbeing—information crucial to a child's development, and which . . . any conscientious parent would desire to know." ECF No. 16 at 1. She asserts that the "Withholding Policy consists of a regular pattern, custom, and practice of withholding information from parents in situations where the Defendants believe a child may be transgender—without any consideration of specific circumstances, or whether such withholding/concealment is warranted by particular facts about a child or parent." ECF No. 16 at 8-9. The Withholding Policy, she contends, "consists of actively keeping information from parents—and even encouraging children to conceal information—about affirmative steps the school is taking with respect to a child's psychosexual development." ECF No. 16 at 7. Lavigne argues that the Withholding Policy, although unwritten, constitutes "a general rule governing all cases" and "an across-the-board practice of always withholding information of this sort from parents." ECF No. 16 at 10-11. The School Board

disagrees, arguing that Lavigne cannot point to any written policy to substantiate her claims, and that the Complaint—although it alludes in a conclusory fashion to an unwritten policy of concealing information—fails to adequately plead that such a policy actually exists.

The Complaint repeatedly alleges that the School has a "policy, pattern, and practice" of intentionally withholding and concealing certain information from parents. *See, e.g.*, ECF No. 1 at 2, 6-7, ¶¶ 4, 21, 27, 29. But I do not credit these conclusory statements as adequately pleading that such a "policy or custom" exists. *See Manning v. Bos. Med. Ctr. Corp.*, 725 F.3d 34, 43 (1st Cir. 2013) ("[C]onclusory allegations that merely parrot the relevant legal standard are disregarded, as they are not entitled to the presumption of truth."); *see also Massó-Torrellas v. Mun. of Toa Alta*, 845 F.3d 461, 469 (1st Cir. 2017) (affirming dismissal of a section 1983 claim despite complaint's assertion that the "[m]unicipality implemented 'customs and policies' which caused the plaintiffs' injuries"). Instead, I read the Complaint as a whole, attachments included, and consider whether Lavigne has alleged sufficient non-conclusory facts to support a reasonable inference that the municipality is liable for the conduct that Lavigne challenges. *See García-Catalán*, 734 F.3d at 103.

C. Applying Theories of Municipal Liability to Assess the Sufficiency of Lavigne's Complaint

Lavigne's Complaint implicates three possible theories of municipal liability: (1) unwritten policy or custom; (2)

ratification by a final policymaker; and (3) failure to train. I consider each theory in turn.

1. Municipal Liability Based on Unwritten Policy or Custom

Unwritten policies can give rise to municipal liability only where those policies are "so permanent and well settled as to constitute a custom or usage with the force of law." *Abdisamad*, 960 F.3d at 60 (internal quotation marks omitted) (quoting *Monell*, 436 U.S. at 691). "Put another way, a municipality can be held liable if an unlawful 'custom or practice' is 'so well settled and widespread that the policymaking officials of the municipality can be said to have either actual or constructive knowledge of it yet did nothing to end the practice.'" *Baez v. Town of Brookline*, 44 F.4th 79, 82 (internal quotation marks omitted) (quoting *Whitfield v. Melendez-Rivera*, 431 F.3d 1, 13 (1st Cir. 2005)).

Here the Complaint, read as a whole and viewed in the light most favorable to the Plaintiff, does not plausibly establish that the alleged Withholding Policy is a settled custom or practice of the School or the School Board. Paragraphs 20-28 of the Complaint[8] set out the central

8. Paragraphs 20-28 state:

> 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 [a social worker] 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 [the social worker] gave A.B. the chest binder in his office and told A.B. that he was not going to tell A.B.'[s] 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 [the social worker] 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

facts concerning (1) Lavigne's discovery of the chest binders and that the chest binders were provided to A.B. by a social worker who "told A.B. that he was not going to tell A.B.'[s] parents about the chest binder[s], and A.B. need not do so either"; and (2) "that school officials had been calling A.B. by a name not on [A.B.'s] birth certificate and were referring to A.B. with gender-pronouns not

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> 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 [A.B.'s] 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 [two social workers] 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.

ECF No. 1 at 5-7, ¶¶ 20-28.

typically associated with A.B.'s biological sex." ECF No. 1 at 6, ¶¶ 22, 26. These allegations culminate with the following conclusion:

> 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.

ECF No. 1 at 7, ¶ 29.

Assertions in a complaint "nominally cast in factual terms but so general and conclusory as to amount merely to an assertion that unspecified facts exist to conform to the legal blueprint" are insufficient to state a cognizable claim. *Menard v. CSX Transp., Inc.*, 698 F.3d 40, 45 (1st Cir. 2012). Here, as I will explain, the Complaint's assertion that there is a "blanket policy, pattern, and practice of withholding and concealing information respecting 'gender-affirming' treatment of minor children from their parents," ECF No. 1 at 7, ¶ 29, states a conclusion unsupported by factual allegations that would plausibly establish the existence of a permanent and well-settled custom.

At most, the Complaint identifies one occasion where a School employee "actively withheld" information from a parent, ECF No. 16 at 8: when the social worker "told A.B. that he was not going to tell A.B.'[s] parents about

the chest binder, and A.B. need not do so either," ECF No. 1 at 6, ¶ 22. The Complaint also alleges that school officials failed to alert Lavigne that some staff members had been using a different name and different pronouns at A.B.'s request. Despite those allegations, there is no fact or set of facts alleged in the Complaint which support a reasonable inference that the challenged conduct related to A.B. was in keeping with a custom or practice of withholding information "so well settled and widespread that the policymaking officials of the municipality can be said to have either actual or constructive knowledge of it yet did nothing to end the practice." *Baez*, 44 F.4th at 82 (quoting *Whitfield*, 431 F.3d at 13). Indeed, the Complaint alleges that the principal and superintendent "expressed sympathy . . . and concern that this information had been withheld and concealed from [Lavigne]," ECF No. 1 at 8, ¶ 33, undercutting the conclusion, required to sustain Lavigne's claim under this theory, that withholding information from parents was a custom so widespread as to have the force of law.

The Complaint frequently references the School Board's "widespread custom" of making decisions without informing parents, including that "[t]he 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 [the

social worker who gave A.B. the chest binders]." ECF No. 1 at 14, ¶ 65; *see also* ECF No. 1 at 15-17, ¶¶ 72, 73, 75, 76, 80, 81. But these conclusory statements are not supported by additional allegations that, if proven, would demonstrate the existence of a custom that could form a basis for municipal liability under *Monell*. Because the Complaint fails to allege facts that, if proven, would plausibly demonstrate that the challenged actions resulted from an unconstitutional unwritten custom, Lavigne's municipal liability claims cannot proceed on that basis. *See Abdisamad*, 960 F.3d at 60 (concluding that the complaint's "factual allegations do not support a plausible inference that the City Defendants' actions resulted from an unconstitutional policy or custom").

2. Municipal Liability Based on Ratification by a Final Policymaker

Another means by which a plaintiff can satisfy *Monell*'s municipal "policy or custom" requirement is "by showing that 'a person with final policymaking authority' caused the alleged constitutional injury." *Fincher v. Town of Brookline*, 26 F.4th 479, 485 (1st Cir. 2022) (quoting *Rodríguez v. Mun. of San Juan*, 659 F.3d 168, 181 (1st Cir. 2011)). "[A] single decision by a final policymaker can result in municipal liability." *Welch v. Ciampa*, 542 F.3d 927, 942 (1st Cir. 2008). Whether a defendant is a municipal policymaker is a question of state law. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 124, 108 S. Ct. 915, 99 L. Ed. 2d 107 (1988); *Walden v. City of Providence*, 596 F.3d 38, 56 (1st Cir. 2010). One way to establish municipal liability is to show that a final municipal policymaker "approve[d]

a subordinate's decision and the basis for it." *Praprotnik*, 485 U.S. at 127. "Although *Praprotnik* does not define what constitutes 'ratification,' it draws a line between passive and active approval." *Saunders v. Town of Hull*, 874 F.3d 324, 330 (1st Cir. 2017).

Lavigne argues that the School Board ratified the actions of the two social workers and the principal[9] through the School Board's January statement that neither it "nor school administration are aware of any violation of policy or law which requires further action at this time." ECF No. 1 at 10, ¶ 42 (quoting ECF No. 1-4 at 1); *see* ECF No. 1 at 10, ¶ 43. In support of her ratification theory, Lavigne also points to the Complaint's assertion that "[the superintendent] 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 [the two social workers]) employing a different name and pronouns with respect to A.B., without informing Plaintiff."[10] ECF No. 1 at 8, ¶ 34. In response, the School

9. I note that, although Lavigne argues that the School Board's January statement constituted a "*post hoc* ratification of the actions" of the principal, ECF No. 1 at 10, ¶ 43, the Complaint's only allegation about the principal's actions prior to the January statement is that she met with Lavigne on or around December 5, 2022, after Lavigne discovered the chest binder, and "expressed sympathy with Plaintiff, and concern that this information had been withheld and concealed from her," ECF No. 1 at 8, ¶ 33.

10. Lavigne contends that ratification is also shown by the School Board's eventual approval of a second-year probationary contract for the social worker who provided the chest binders to A.B. That allegation is not contained in the Complaint; Lavigne

Board argues that because "there is no allegation that the Great Salt Bay School Board had any knowledge of a policy violation," no ratification occurred. ECF No. 17 at 7.

The superintendent's alleged statement that no policy had been violated does not itself constitute an actionable policy from which municipal liability might flow because there are no facts pleaded in the Complaint which suggest that the superintendent possessed final policy-making authority for the municipality.[11] "A single decision by a municipal policymaker constitutes official policy 'only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered.'" *Freeman v. Town of Hudson*, 714 F.3d 29, 38 (1st Cir. 2013) (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986)); *see also Craig v. Maine Sch. Admin. Dist. No. 5*, 350 F.Supp.2d 294, 297-98 & n.2 (D. Me. 2004) (granting motion to dismiss where complaint failed to plausibly allege that superintendent "had policymaking authority" or that the municipal entity "specifically delegated its policymaking functions to" the superintendent); *Praprotnik*, 485 U.S. at 126 ("If the mere exercise of discretion by an employee

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explains that the approval occurred after the initiation of this action. Even if that fact was alleged in the Complaint, it would not—in isolation or taken together with the other facts alleged—support a reasonable inference that the School Board affirmatively endorsed the particular conduct that Lavigne challenges in a manner that would support municipal liability.

11. Indeed, the Complaint describes the superintendent's role as ensuring that the School complies with School Board policies and state laws.

could give rise to a constitutional violation, the result would be indistinguishable from *respondeat superior* liability."). Further, the School Board's written statement that neither it nor school administrators were aware of a violation of policy or law—without identifying any particular decision or decisions of a subordinate—does not, without more, plausibly show that the School Board "active[ly] approv[ed]," *Saunders*, 874 F.3d at 330, of "a subordinate's decision and the basis for it" such that municipal liability could follow, *Praprotnik*, 485 U.S. at 127. The single alleged incident of a School staff member "actively with[olding]" information, together with the School Board's vague expression more than one month later[12] that it was not aware of any violation of law or policy, do not, either separately or in combination with other facts alleged in the Complaint, establish a de facto municipal policy from which *Monell* liability may arise.

3. Municipal Liability Based on Failure to Train

Lavigne finally argues that even if the School Board does not have a Withholding Policy, its failure to train the School's employees that the withholding of important information—such as a student's use of chest binders and adoption of a new name and gender pronouns—from the student's parents represents a failure to train on which *Monell* liability may be based.

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12. The School Board also issued the statement a full month after Lavigne spoke at the School Board meeting, and after issuing a separate written statement soon after Lavigne addressed the School Board.

Appendix C

Under some limited circumstances, a municipality may be liable under section 1983 for "constitutional violations resulting from its failure to train municipal employees." *City of Canton v. Harris*, 489 U.S. 378, 380, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989). However, the municipality is liable only if its failure to train constitutes "deliberate indifference to the constitutional rights of its inhabitants." *Id.* at 392; *see also Haley*, 657 F.3d at 52 ("Triggering municipal liability on a claim of failure to train requires a showing that municipal decisionmakers either knew or should have known that training was inadequate but nonetheless exhibited deliberate indifference to the unconstitutional effects of those inadequacies."). A plaintiff does not state a claim for municipal liability by pleading "mere insufficiency of a municipality's training program." *Marrero-Rodríguez v. Mun. of San Juan*, 677 F.3d 497, 503 (1st Cir. 2012).

"Deliberate indifference is a stringent standard of fault," and, to prevail on such a claim, a plaintiff must ultimately show "proof that a municipal actor disregarded a known or obvious consequence of his action." *Connick v. Thompson*, 563 U.S. 51, 61, 131 S. Ct. 1350, 179 L. Ed. 2d 417 (2011) (alteration and internal quotation marks omitted) (quoting *Brown*, 520 U.S. at 410). "[A] training program must be quite deficient in order for the deliberate indifference standard to be met: the fact that training is imperfect or not in the precise form a plaintiff would prefer is insufficient to make such a showing." *Young*, 404 F.3d at 27. "A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of

failure to train." *Connick*, 563 U.S. at 62 (quoting *Brown*, 520 U.S. at 409). However, a plaintiff may not be required to establish a pattern if the need to train municipal officers on constitutional limitations is "so obvious" as to support a finding of deliberate indifference. *Canton*, 489 U.S. at 390 & n.10.

Lavigne argues that the School Board did not properly train school officials "about parental rights in the gender identity context" after adopting the Transgender Students Guidelines, including in situations where a student requests to be called by a particular name or pronouns, or where staff members provide chest binders to students. ECF No. 1 at 17, ¶ 79. However, the Complaint does not assert any facts about the actual training that school officials did or did not receive. The Complaint is devoid of alleged facts which could plausibly show a pattern of constitutional violations by untrained staff members, or that the need to train staff members on "parental rights in the gender identity context" was so obvious as to support a finding of deliberate indifference. ECF No. 1 at 17, ¶ 79. Lavigne's conclusory assertions to the contrary are not sufficient to plead deliberate indifference and, therefore, her claims do not withstand the School Board's motion to dismiss.

D. Conclusion Regarding Municipal Liability

It is understandable that a parent, such as Lavigne, might expect school officials to keep her informed about how her child is navigating matters related to gender identity at school. Her Complaint, however, fails to plead facts which would, if proven, establish municipal liability under *Monell* and its progeny based on an unwritten custom, ratification by a final policymaker, or failure to

train. The School Board's Motion to Dismiss is, therefore, granted as to all counts, and I do not separately address the School Board's additional arguments that the Complaint fails to plead facts from which any violation of Lavigne's substantive or procedural due process rights could be found.[13]

IV. CONCLUSION

It is accordingly **ORDERED** that the Motion to Dismiss for Failure to State a Claim (ECF No. 12) is **GRANTED** and the Complaint (ECF No. 1) is **DISMISSED**.

SO ORDERED.

Dated: May 3, 2024

/s/ JON D. LEVY
U.S. DISTRICT JUDGE

13. My conclusion as to municipal liability applies to all four counts, which encompass both substantive due process and procedural due process claims premised on the same purported "Withholding Policy." *See, e.g., Abdisamad*, 960 F.3d at 60-61 (applying municipal liability concepts to conclude that plaintiff's substantive due process claim against city was properly dismissed); *Bernard v. Town of Lebanon*, No. 2:16-cv-00042-JAW, 2017 U.S. Dist. LEXIS 50152, 2017 WL 1232406, at *6 (D. Me. Apr. 3, 2017) (citing municipal liability concepts as one basis for concluding that plaintiff had failed to state a claim against town for violation of procedural due process rights); *accord Oden, LLC v. City of Rome*, 707 F. App'x 584, 586 (11th Cir. 2017) ("Procedural due process claims brought under [section] 1983 are subject to limitations on municipal liability.").

APPENDIX D — JUDGMENT OF THE UNITED STATES DISTRICT COURT, DISTRICT OF MAINE, FILED MAY 3, 2024

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CIVIL NO. 2:23-cv-00158-JDL

AMBER LAVIGNE,

Plaintiff,

v.

GREAT SALT BAY COMMUNITY SCHOOL BOARD, *et al.*,

Defendants.

Filed May 3, 2024

JUDGMENT OF DISMISSAL

In accordance with the Partial Order on Defendants' Motion to Dismiss entered on November 7, 2023 and the Order on Motion to Dismiss for Failure to State a Claim entered on May 3, 2024 by U.S. District Judge Jon D. Levy,

JUDGMENT of Dismissal is hereby entered.

CHRISTA K. BERRY
CLERK

By: /s/ Charity Pelletier
Deputy Clerk

Dated: May 3, 2024

APPENDIX E — PARTIAL ORDER OF THE UNITED STATES DISTRICT COURT, DISTRICT OF MAINE, FILED NOVEMBER 17, 2023

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CIVIL NO. 2:23-cv-00158-JDL

AMBER LAVIGNE,

Plaintiff,

v.

GREAT SALT BAY COMMUNITY SCHOOL BOARD, *et al.*,

Defendants.

Filed November 17, 2023

PARTIAL ORDER ON DEFENDANTS' MOTION TO DISMISS

Plaintiff Amber Lavigne filed a Complaint (ECF No. 1) initiating this action on April 4, 2023. The Complaint names as Defendants the Great Salt Bay Community School Board and four individuals in their official capacities: Samuel Roy, Jessica Berk, Kim Schaff, and Lynsey Johnston. The Defendants filed a Motion to Dismiss (ECF No. 12) on June 2, 2023.

Appendix E

For the reasons stated on the record at the hearing on November 1, 2023, it is **ORDERED** that the Motion to Dismiss (ECF No. 12) is **GRANTED IN PART** and the claims against individual Defendants Samuel Roy, Jessica Berk, Kim Schaff, and Lynsey Johnston are hereby **DISMISSED**. The Motion to Dismiss otherwise remains under advisement.

SO ORDERED.

Dated: November 7, 2023

/s/ JON D. LEVY
CHIEF U.S. DISTRICT JUDGE

APPENDIX F — COMPLAINT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE, FILED APRIL 4, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

No. 2:23-cv-00158-JDL

AMBER LAVIGNE,

Plaintiff,

v.

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,

Defendants.

Filed April 4, 2023

Appendix F

COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND DAMAGES

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 polices 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.

Appendix F

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 injures.

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 were 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

Appendix F

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)
LANHAM BLACKWEEL & BABER, PA
133 Broadway
Bangor, ME 04401
Telephone: (207) 942-2898
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Adam C. Shelton
(Pro Hac Vice Application pending)
Scharf-Norton Center for
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Attorneys for Plaintiff

Appendix F

EXHIBIT 1

Appendix F

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Appendix F

EXHIBIT 2

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:

Alleged Victim	Allegation
Redacted	Emotional Abuse - Low/ Moderate Severity

Appendix F

Thank you for your participation in the investigation process.

I wish you and your family all the best.

Sincerely,

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

/s/ Keisha Evans
Keisha Evans
Supervisor

Appendix F

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

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.

/s/ Samuel Belknap
Samuel Balknap III, GSB Board Chair

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EXHIBIT 4

Great Salt Bay Consolidated School District
Bremen / Damariscotta / Newcastle
767 Main St
Damariscotta, Maine 04543
Telephone: (207) 563-3044

Lynsey Johnston,	**Samuel Belknap III,**
Superintendent of School	**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.

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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 15002- 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.

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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	Jesse Butler – Vice Chair
August Avantaggio – Treasurer	Dennis Anderson
Amy Krawic	Christa Thorpe
Meridith Verney	

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EXHIBIT 5

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.

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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

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EXHIBIT 6

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 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).

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

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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

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EXHIBIT 7

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. <u>Prohibited Conduct</u>

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. <u>Cautions</u>

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

- 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.

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Cross Reference: ACAA-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

APPENDIX G — RELEVANT CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Fourteenth Amendment Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Appendix G

Section 3

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.