CALIFORNIA POLICY CENTER

June 17, 2024

Assemblyman Chris Ward
1021 O Street, Suite 6350
Sacramento, CA 95814

SUBJECT – ASSEMBLY BILL 1955, STRONG OPPOSITION

We at the California Policy Center continue to write in strong opposition to Assembly Bill 1955 which claims to affirm current law — a law that doesn't exist. It is difficult to believe that you, as the author — and some number of your colleagues — believe that this so-called SAFETY Act is anything but lipstick on a pig. We're old enough to remember the sage warnings of our youth about avoiding those who would tell us to keep secrets from our parents. As such, we can't think of a single reason why you would want the official policy of the State of California to be for school administrators to actively lie to parents.

Here's the bottom line: Public schools are meant to support parents in their efforts to educate their children, not to subvert parents as this bill would codify.

There are so many problems with this bill that a simple opposition letter cannot adequately cover every one of them. It's hard for skeptics to see this fast-tracked, gut-and-amend bill as anything but an effort to hide those problems from public scrutiny, let alone adequate constitutional review.

Unfortunately, this bill is the very definition of a red herring. In every committee hearing and legislative debate, supporters of AB 1955 frame this as an "anti-outing" bill to protect lesbian, gay or bisexual kids from parental notifications policies at the school district level, policies that simply don't exist.

To repeat – there is not a single school district policy in California that requires a teacher or administrator to tell a single parent if their child exhibits any signs or behaviors of same-sex attraction, dresses as another gender or tells a teacher or administrator that they are same-sex attracted. Every parental notification policy that has been adopted – and affirmed by Superior Courts in Riverside and San Bernardino Counties – only require parental notification if a child affirmatively asks a teacher or administrator to change their name or pronouns in class, at school or on official or unofficial records. That's it.

What you've created here with this bill is a very dangerous boogeyman that will lead confused teenagers – which is a preponderance of teenagers in California – to withhold critical

information from their parents that could otherwise improve the conditions at home, if parents were informed.

We can expand upon the following key points should the committee be serious about its interest in sincere debate when AB 1955 is scheduled to be heard on June 26th in the Assembly Education Committee.

First, this bill is unconstitutional. It violates parents' established authority over their children and would constitute – as a federal judge has already found – a trifecta of harms. It would harm the child who needs parental guidance and possibly mental health intervention to determine if gender incongruence is organic or whether it is the result of bullying, peer pressure, or a fleeting impulse. It would harm parents by depriving them of the long-recognized Fourteenth Amendment right to care, guide, and make healthcare decisions for their children. And it would harm teachers, compelling them to violate parents' rights by forcing teachers to conceal information they believe is critical to the welfare of their students. *See Mirabelli v. Olson EUSD* (2023), Case No. 3:23-cv-00768-BEN-WVG, September 14, 2023.

Second, this bill would also violate the federal Family Educational Rights and Privacy Act (FERPA). FERPA is clear on the right of the parents to have universal access to information about their child from their public school. Indeed, it's strange not to see any reference to FERPA in the legislative findings and declarations. It's almost as if you know that FERPA would be implicated by the bill and you're acting as if ignoring well-established federal law means that it will go away.

Districts that create dummy files or "unofficial records" to "support" a new identity for kids who may believe they were born in the wrong body stand to lose federal funding under FERPA, which says: "No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children." 20 U.S.C.A. § 1232g(a)(1)(A).

Third, in assuming that parents are dangerous and not to be trusted, the measure presumes that the state or self-interested strangers are better positioned to deal with the difficulties of adolescence than parents. Hundreds of millions of dollars in settlements with victims of sex assault by public school employees is evidence that the opposite is too often true. And the throw-away sentiment you've used on multiple occasions – "Well, if parents tried to have a better relationship with their children, there would be no need to lie to them" – shows how naïve and ignorant you are of the challenges parents are navigating in modern teenagedom.

Fourth, while it is certainly prudent to protect the privacy of a child from the public – consistent with federal and state law – children do not have a right to privacy that transcends their parents' well-established rights.

There's a grim poetry in the fact that his bill has been gutted-and-amended in the second house. That reflects a deceptive practice, the kind which this bill would encourage. Shortcutting the house of origin committee hearings means that the public missed out on a robust discussion in the Assembly before the previous contents of an unrelated measure were replaced by some of the most controversial language this legislature has seen in years.

The Attorney General and State Superintendent of Public Instruction continue to harass local school districts for their adoption of policies affirmed by judges across the state. So, it's noteworthy – curious, even – that this body would be legislating issues before the appellate process is complete. The legislature is generally hesitant to step in until the highest courts rule on controversial issues. This bill would break that norm.

What's even stranger is the Department of Justice's comment in the Senate Appropriation Committee's May 22nd analysis the following:

> *"The Department of Justice (DOJ) indicates that the bill may have an unquantifiable but potentially significant impact on its Civil Rights Enforcement Section (CRES). First, the bill is likely to be challenged and potentially enjoined. If it survives the challenge, it is likely that most school districts would comply but there are likely to be numerous holdouts and districts that, for political reasons, refuse to comply and instead invite an enforcement action. The CRES would likely be tasked with carrying out those enforcement actions."*

The DOJ's analysis suggests that they already know that the proposed measure is unconstitutional and the financial and reputational costs to defend it will be high.

Further, this bill does not (as you suggest) restate current law. It attempts, in fact, to codify the California Department of Education's illegal guidance on AB 1266 (Ammiano, Chapter 85, Statutes of 2013). Even the Attorney General has told a federal judge that the practice envisioned in this bill is currently "unenforceable" or illegal.

And we can't help but notice the irony in your other bill, AB 1858. That bill would require parental notification and the option for an opt-out when executing school shooter drills. You recognize the need for "age-appropriate and developmentally appropriate drill content" and are careful about terminology used with impressionable minds, understanding that parents have the best perspective on their children's behavior, mental capacity, emotional state and reaction to intense and adverse situations. That you can't transpose that same awareness to this proposal is concerning and suggests that this is a politically motivated stunt meant to divide concerned Californians rather than genuinely protect our children.

Finally, it's unclear that this bill, if made law, would have any substantive effect on the local school board parental notification policies it clearly targets for elimination. This bill will only further inflame rancorous debate and erode any modicum of confidence parents had with their school officials after the state's fumbling of Covid protocols around education.

Again, any attempt to hide information from parents, to subvert parental authority or to order school employees, including teachers, to lie to parents, is an abuse of authority. More than being illegal, it's unethical. We believe it is important to restore trust between school districts and parents and guardians of pupils rather than send our vulnerable youth into the arms of strangers as they navigate their formative years. Parents are ultimately responsible for their children and should be aware of all information associated with their public education process.

There is no amendment in the world that can cure the fatal flaws with this measure. Thus, our strong opposition to AB 1955. If it passes out of the legislature, we will ask the Governor to veto your bill.

Sincerely,

Lance Christensen
Vice President of Education Policy & Government Affairs