

Thomas More SOCIETY
LIFE · FAMILY · FREEDOM

March 25, 2026

Via E-Mail: garcia.jason@wwrsd.org

Mr. Jason Garcia, President
Westwood Regional School Board
701 Ridgewood Road
Township of Washington, NJ 07676

RE: Westwood Regional School District's Policy 5756

Dear Mr. Garcia:

I am Senior Counsel to the Thomas More Society, a national public interest law firm dedicated to the defense of family, faith, and religious freedom. We represent a parent with a child in the Westwood Regional Middle School who has requested our assistance in this matter.

I write to you in regard to the impact of the Supreme Court's decision in *Mirabelli v. Bonta*, 146 S. Ct. 797 (2026) on the Westwood Regional School District's Policy 5756 concerning "Transgender Students." You may be aware from press accounts that, in California, Thomas More Society attorneys were successful in obtaining an injunction in federal court against enforcement of similar policies at the state level. Upon an emergency application to the Supreme Court, the Court affirmed the injunction and vacated the Ninth Circuit's stay of the injunction as to the parent-plaintiffs. Society attorneys are now seeking over \$4 million in attorney's fees and costs from the District Court for their success in winning a permanent injunction against the State of California.

The Supreme Court's decision in *Mirabelli* is directly applicable to Westwood Regional School District's Policy 5756, and indeed all such "transgender student" policies throughout the nation to the extent they do not provide—or even forbid—parental notification and otherwise bypass parental control, as does Policy 5756, in situations where a child in K-12 purportedly "identifies" as a gender other than his or her own biological sex. Here, as with the California policies at issue in *Mirabelli*, your District school personnel unhesitatingly accept a child's assertion of his or her "gender identity" and begin a "social transition" in secret and even over parental objection.

In view of the flagrant illegality of Policy 5756 in view of *Mirabelli*, if within 20 days of the date of this letter the Westwood Regional Board of Education fails to rescind Policy 5756 in its entirety—or suspend it immediately to make the extensive and significant revisions required by *Mirabelli* to protect parents' and teachers' rights—we will commence federal court litigation on behalf of our client.

Public reporting indicates that Westwood has already faced controversy surrounding Policy 5756, including its repeal in December 2023 and subsequent action in February 2024 to restore it. The Board therefore cannot plausibly claim surprise about the constitutional and parental-rights issues raised by this policy.

The Supreme Court held in *Mirabelli* that the parent-plaintiffs were likely to succeed on the merits of their claim for injunctive relief under the Free Exercise Clause of the First Amendment because the secret transition policies at issue there “substantially interfere with the ‘right of parents to guide the religious development of their children,’” and the state likely could not overcome strict scrutiny. *Id.* at 802 (quoting *Mahmoud v. Taylor*, 606 U.S. 522, 559 (2025)).

In *Mahmoud*, also on Free Exercise grounds, the Supreme Court struck down a public school board’s policy of refusing to provide parental notice and an opt-out when “LGBT+ inclusive” story books would be taught.

In *Mirabelli*, the Court rejected the Ninth Circuit’s contention that *Mahmoud* was limited in its application to “uniquely coercive curricular elements”. Rather, the Court recognized that California’s “intrusion on parents’ free exercise rights here—unconsented facilitation of a child’s gender transition—is *greater* than the introduction of LGBTQ storybooks we considered sufficient to trigger strict scrutiny in *Mahmoud*.” *Mirabelli*, 146 S. Ct. at 802 (emphasis added).

The Court held that California’s “policies cut out the primary protectors of children’s best interests: their parents.” *Id.* Therefore, the Court concluded, “California’s policies will likely not survive the strict scrutiny that *Mahmoud* demands.” *Id.*

The Supreme Court further held that, whether religious or non-religious, all parents’ rights are violated by these policies, “on due process grounds.” *Id.* at 803. The Court’s citation to its past precedents is instructive:

Under long-established precedent, parents—not the State—have primary authority with respect to “the upbringing and education of children.” *Pierce v. Society of Sisters*, 268 U.S. 510, 534–535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); accord, *Meyer v. Nebraska*, 262 U.S. 390, 399–400, 43 S.Ct. 625, 67 L.Ed. 1042 (1923). The right protected by these precedents includes the right not to be shut out of participation in decisions regarding their children’s mental health. *Parham v. J. R.*, 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979). Gender dysphoria is a condition that has an important bearing on a child’s mental health, *but when a child exhibits symptoms of gender dysphoria at school, California’s policies conceal that information from parents and facilitate a degree of gender transitioning during school hours. These policies likely violate parents’ rights to direct the upbringing and education of their children.*

Mirabelli, 146 S. Ct. at 803 (emphasis added).

Also notably, while Justices Kagan and Jackson disagreed with the Court issuing such a landmark ruling on an emergency basis, even they acknowledged that California’s policy deprives parents “of information *critical* to their [children’s] health and well-being” and thus might very well “have crossed the constitutional line.” *Id.* at 809 (Kagan, J., dissenting) (emphasis added).

Policy 5756 is unconstitutional not merely because it omits parental notice, but because it affirmatively establishes a district-wide framework for (1) parental exclusion, (2) secret social transition at school, (3) concealment and alteration of school records and communications, and (4) school-facilitated counseling and accommodations designed to entrench the transition while marginalizing parental authority. Among other things, Policy 5756 provides that:

- The school district shall accept a student's asserted gender identity; *parental consent is not required*. A student need not meet any threshold diagnosis or treatment requirements to have his or her gender identity recognized and respected by the school district, school, or school staff members. In addition, a legal or court-ordered name change is not required. *There is no affirmative duty for any school district staff member to notify a student's parent of the student's gender identity or expression.*
- The Principal or designee should have an open, but confidential discussion with the student to ascertain *the student's preference* on matters such as chosen name, chosen pronoun to use, and *parental communications*. *A transgender student shall be addressed at school by the name and pronoun chosen by the student*, regardless of whether a legal name change or change in official school records has occurred. *The school shall issue school documentation for a transgender student, such as student identification cards, in the name chosen by the student. A transgender student shall be allowed to dress in accordance with the student's gender identity.*
- The school district *may seek a variety of professionals, including counselors and school psychologists, to provide emotional supports for all students who demonstrate a need*. The Superintendent or designee shall ensure school counselors are knowledgeable regarding issues and concerns relevant to transgender students, students facing other gender identity issues, *or students who may be transitioning*.
- Student dress codes should not be enforced more strictly for transgender and gender nonconforming students than for other students.
- The school district *shall honor and recognize a student's asserted gender identity, and shall not require any documentation or evidence in any form, including diagnosis, treatment, or legal name change.*
- A school's obligation to ensure nondiscrimination on the basis of gender identity requires schools to provide transgender students equal access to educational programs and activities, *even in circumstances in which other students, parents, or community members raise objections or concerns.*
- School staff members may not disclose information that may reveal a student's transgender status except as allowed by law. The Principal or designee is advised to work with the student to create *an appropriate confidentiality plan* regarding the student's transgender or transitioning status.

- The school district *shall keep confidential a current, new, or prospective student's transgender status*. Schools should address the student using a chosen name and *the student's birth name should be kept confidential* by school and school staff members.
- Due to a specific and compelling need, such as the health and safety of a student or an incident of bias-related crime, the school district may be obligated to disclose a student's status. In this event, the Principal or designee should inform the student the school or school district intends to disclose the student's transgender status for the student's protection and well-being. Prior to disclosure, the student should be given the opportunity to personally disclose that information. The school district should make every effort to ensure any disclosure is made in a way that reduces or eliminates the risk of re-disclosure and protects the transgender student from further harassment. *Those measures may include the facilitation of counseling for the student and the student's family **to facilitate the family's acceptance and support of the student's transgender status.***
- If a student has expressed a preference to be called by a name other than their birth name, *permanent student records containing the student's birth name should be kept in a separate, confidential file*. This file should *only be shared with appropriate school staff members after consultation with a student*. A separate file containing records bearing the student's chosen name may also be kept. If the student has previously been known at school or in school records by a birth name, *the Principal or designee should direct school staff members to use the student's chosen name and not the student's birth name*.
- To ensure consistency among teachers, school administrators, substitute teachers, and other school staff members, *every effort should be made to immediately update student education records* (for example, attendance records, transcripts, Individualized Education Programs (IEP), etc.) *with the student's chosen name and gender pronouns, consistent with the student's gender identity and expression, and not circulate records with the student's birth name, unless directed by the student*.
- *The school district shall report to the New Jersey Department of Education (NJDOE) through NJ SMART a student's name or gender based upon that student's chosen name and corresponding gender identity*. Changing the name or gender identity from what was reported in previous years will not affect the reliability of the data reported.
- **If the school district changes a student's name or gender identity**, it must also maintain locally a separate record reflecting the student's legal name and sex assigned at birth until receipt of documentation of a legal change of name or gender.

- The school district shall: ... Permit a transgender student to participate in gender-segregated school activities in accordance with the student's gender identity; ... Permit and support the formation of student clubs or programs regarding issues related to lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ) youth; and ... Offer support in the creation of peer led educational groups.
- All students are entitled to have access to restrooms, locker rooms, and changing facilities *in accordance with their gender identity* to allow for involvement in various school programs and activities.
- In all cases, the Principal or designee must work with the student and school staff members so all parties are aware of facility policies and understand *the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity*.
- The school district *shall allow a transgender student to use a restroom or locker room based on the student's gender identity*.
- Reasonable alternative arrangements shall be made if needed to ensure a student's safety and comfort. This direction for accommodations *should come from the student*.

Policy 5756 cites a "guidance" document from the New Jersey Department of Education issued in October of 2018 ("Transgender Student Guidance for School Districts"), the New Jersey Law Against Discrimination, (NJLAD), N.J.S.A. 10:5-12(11)(f), and other legislation respecting "guidance" on "transgender students," student "equity" and anti-bullying protections. (N.J.S.A. 18A:36-41; 18A:37-15; N.J.A.C. 6A:7-1.1 et seq.; N.J.A.C. 6A:16-7.7) But neither the District nor the NJDOE may enforce state law, guidance, or local policy in a manner that violates the federal Constitution.

To the extent Policy 5756 and the NJDOE guidance are construed to authorize or require school personnel to conceal a student's social transition from parents, to use a different name or pronoun for the child at school while withholding that fact from parents, to alter school records in furtherance of that concealed transition, or otherwise to exclude parents from decisions bearing directly on their child's mental health and upbringing, they are unconstitutional under *Mirabelli* and *Mahmoud* and must yield under the Supremacy Clause.

In that regard, the injunction entered by the District Court in *Mirabelli* identifies just a few of the forms of conduct that federal law forbids in this context (a copy is attached for your reference):

1. Defendants [Secretary of State Bonta and various state-level education officials] and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, are enjoined from implementing or enforcing [enumerated state "guidance" and statutes] in such

a manner as to:

(a): permit or require any employee in the California state-wide education system from misleading the parent or guardian of a minor child in the education system about their child's gender presentation at school, whether by: (i) directly lying to the parent; (ii) preventing the parent from accessing educational records of the child; or (iii) *using a different set of preferred pronouns/names when speaking with the parents than is being used at school*;

(b): permit or require any employee in the California state-wide education system *to use a name or pronoun to refer to that child that do not match the child's legal name and natal pronouns*, where a child's parent or legal guardian has communicated their objection to such use;

(c): *require any employee in the California state-wide education system to use a name or pronoun to refer to a child that do not match the child's legal name and natal pronouns while concealing that social gender transition from the child's parents*, over the employee's conscientious or religious objection;

(d): or in any way interfere with a teacher or other school administrator, counselor or staff *from communicating to parents* that his, her, or their child has manifested a form of gender incongruity such as changing preferred names or pronouns.

* * *

3. Defendants shall include in a prominent place in PRISM training materials, and in any other state-created or approved instruction on the gender-related rights of student and faculty, the following statement:

“Parents and guardians have a federal constitutional right to be informed if their public school student child expresses gender incongruence. Teachers and school staff have a federal constitutional right to accurately inform the parent or guardian of their student when the student expresses gender incongruence. *These federal constitutional rights are superior to any state or local laws, state or local regulations, or state or local policies to the contrary.*”

As you can see, Policy 5756 mandates quite explicitly what the State of California and local school districts, following the State's "guidance," have been enjoined from doing in *Mirabelli*. Policy 5756 explicitly imposes on District staff, *even over parental objections*, various duties to facilitate and institutionalize a social transition at school—including names, pronouns, records, counseling, and access to facilities—even where parents have not been notified, have not consented, or affirmatively object. That is precisely the constitutional injury *Mirabelli* identifies.

Lest there be any doubt that Policy 5756 cannot withstand judicial review, be advised that the summary opinion in *Mirabelli*, while issued upon an application for interim emergency relief, is binding on all the lower federal courts—and of course, on all state courts and administrative agencies under the Supremacy Clause. The Supreme Court’s summary opinions, like the one in *Mirabelli*, are meant to provide “extensive guidance” that all lower courts are expected to follow. *S. Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716, 719 (2021) (Statement of Gorsuch, J., joined by Thomas and Alito, JJ.)

Indeed, many of the Supreme Court’s binding precedents deal with preliminary determinations. *See, e.g., Mahmoud*, 606 U.S. at 546 (“we hold that the parents are likely to succeed”); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020) (holding, on emergency application, that governments must treat churches and secular compactors equally).

You are no doubt aware that following the Supreme Court’s preliminary decision in *Mahmoud*, the New Jersey Department of Education sent a memorandum to all New Jersey school districts outlining their new *constitutional obligations* to provide parental notice and opt-out opportunities from state-required LGBTQ+ curriculum for middle and high school students, given that it was “unlikely the decision will change” and it would be “highly surpris[ing] if . . . there’s any different result” on remand. Maria Wood, New Jersey State Bar Foundation, “Opting Out of Lessons with LGBTQ+ Themed Books” (Feb. 18, 2026), <https://njsbf.org/2026/02/18/opting-out-of-lessons-with-lgbtq-themed-books/>. And the *Mahmoud* case indeed quickly settled—at significant expense to the school district. Naaz Modan, “District must pay \$1.5M in Maryland opt-out case,” K-12 Dive, Feb. 26, 2026, <https://www.k12dive.com/news/district-must-pay-1.5m-in-maryland-opt-out-case/813316/>.

The same is true here following the Supreme Court’s crystal clear ruling in *Mirabelli*. *See Mirabelli*, 146 S. Ct. at 807 (Kagan, J., dissenting) (stating “lower court[s]” will naturally read the Court’s ruling as “a conclusive merits judgment”).

Accordingly, we respectfully request that Westwood Regional School District, within twenty (20) days of the date of this letter:

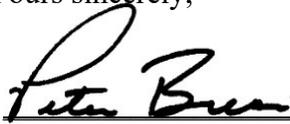
- (1) rescind Policy 5756 in its entirety, or at minimum suspend its enforcement pending lawful revision;
- (2) confirm in writing that District personnel will provide parents advance notice and opportunity to opt out of a student’s asserted gender transition and any and all social-transition-related accommodations at school;
- (3) confirm in writing that District personnel will not use a student’s asserted name or pronouns contrary to parental direction;
- (4) confirm that District records will not be altered or maintained in a manner that conceals from parents a child’s asserted social transition at school or conflicts with parents’ expressed wishes about their child’s gender; and

- (5) preserve all documents, communications, training materials, guidance, and electronically stored information relating to Policy 5756, student name/pronoun changes, confidentiality plans, counseling referrals, and communications with the New Jersey Department of Education concerning these matters.

If these reasonable steps are not taken within 20 days of the date of this letter, we will commence federal court litigation on behalf of our client. We will seek a preliminary and then permanent injunction, along with damages, reasonable attorney fees, and costs in the litigation.

Please have the Board or the Board attorney contact this office in order to discuss an amicable resolution of this matter.

Yours sincerely,



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