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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

Case No. 8:26-cv-01574-FWS-AYP

DEFENDING EDUCATION,

Plaintiff,

v.

MARIA ANGUIANO, in her official
capacity as Regents, et al.,

Defendants.

**PLAINTIFF'S REPLY IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: August 27, 2026

Time: 10:00AM

Judge: Hon. Fred W. Slaughter

Courtroom: 10D

Action Filed: June 18, 2026

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INTRODUCTION

Defendants have enacted a Sexual Violence and Sexual Harassment Policy that punishes students at the University of California if they use the wrong pronouns or names or if they express disfavored views about gender identity by, for example, protesting when biological men use the women’s restroom. Now, faced with a lawsuit, Defendants try to rewrite and reinterpret their policy to avoid what they have been saying all along. Defendants ask the Court to ignore their *own* statements—in FAQ #14 and the SHAPE Training—detailing the type of speech the policy punishes. Then, they say the policy bans non-transgender-affirming speech only when it is “objectively” or “unreasonably” offensive. But, on their view, *all* so-called misgendering and deadnaming is offensive. And although Defendants claim they are going to rewrite the policy, they haven’t done so yet, and their proposed revisions wouldn’t fix the problem anyway.

The Court shouldn’t allow Defendants to play games with students’ First Amendment rights. The next academic year is just weeks away. This Court should grant a preliminary injunction to protect the speech rights of DE’s members.

ARGUMENT

DE likely has standing, it is likely to prevail on the merits, and the remaining factors weigh in its favor.

I. DE likely has standing.

As an association, DE has standing when “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt v. Washington State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977). Defendants

1 challenge only the first requirement, arguing that DE lacks standing because its stu-
2 dent members “face no injury under the Policy.” Opp. (Dkt.20) 7, 15-17.¹

3 In First Amendment cases, plaintiffs have an injury-in-fact when their speech
4 is chilled by a “well-founded fear that the challenged [policy] will be enforced.”
5 *Porter v. Martinez*, 68 F.4th 429, 437 (9th Cir. 2023). DE satisfies that test if its
6 members intend to engage in speech “arguably affected with a constitutional inter-
7 est,” their speech is “arguably proscribed” by the policy, and the “threat of future
8 enforcement” is “substantial.” *Peace Ranch v. Bonta*, 93 F.4th 482, 487 (9th Cir.
9 2024) (cleaned up). This is an easy test because, ““when the threatened enforcement
10 effort implicates First Amendment rights, the inquiry tilts dramatically toward a
11 finding of standing.”” *Arizona Right to Life v. Bayless*, 320 F.3d 1002, 1006 (9th
12 Cir. 2003). Especially so at “the preliminary injunction stage,” where DE need only
13 show that it is ““likely”” to have standing. *L.A. Press Club v. Noem*, 171 F.4th 1179,
14 1187 (9th Cir. 2026).

15 Here, DE has standing because its members want to engage in protected
16 speech concerning gender identity, including by “repeatedly” using biologically ac-
17 curate language to refer to transgender individuals, *see* Student.A.Decl. (Dkt.8-4)
18 ¶¶5-6, 9-12; the SVSH Policy arguably proscribes that speech; and there is a credi-
19 ble threat that Defendants will enforce the policy against DE’s members.

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24 ¹ DE satisfies the other *Hunt* requirements too. The speech claims here are in
25 the heartland of DE’s mission, *see* Perry.Decl. (Dkt.8-2) ¶¶3-4, 10, and this suit
26 doesn’t require individual member participation because DE seeks only prospective
27 relief, *see United Food & Com. Workers Union v. Brown Grp.*, 517 U.S. 544, 546
28 (1996). Additionally, Defendants do not dispute traceability or redressability be-
cause Defendants enforce the policy and any injury is redressable by an injunction
against them. *See* Stipulation (Dkt.21) ¶4.

A. The SVSH Policy arguably proscribes the students' speech.

Defendants don't dispute that the students' speech is constitutionally protected. Nor could they. Speech about "sexual orientation and gender identity ... occupies the highest rung of the hierarchy of First Amendment values." *Janus v. AF-SCME*, 585 U.S. 878, 913-14 (2018) (cleaned up); *see* DE.Memo. (Dkt.8-1) 9-10, 22-23. The speech is also arguably proscribed by the SVSH Policy. Most clearly, FAQ #14 makes it "[p]rohibited [c]onduct" for a student to "intentionally" or "repeatedly" refer to a person with "a name or pronoun inconsistent with [their] gender identity." Ex.A.033.² In addition, according to the University's own training materials, the students' desire to "complai[n] when [biological men] use the women's restroom" would violate the SVSH Policy. Ex.B.048. And the hostile-environment provision bans *all* "verbal" "acts" that "unreasonably" "limi[t]" or "interfer[e]" with a person's educational experience and create what a "reasonable person" would deem an "offensive" environment. Ex.A.010. That prohibition is so broad that it reaches all of the speech that DE's members want to use. *See* DE.Memo.20-21.

The examples of prohibited conduct in FAQ #14 remove any doubt that the policy proscribes the students' speech. For example, the FAQ states that it is "[p]rohibited [c]onduct ... when a transgender man is intentionally and repeatedly called by" the "name that [the] transgender person was given at birth but that they no longer use." Ex.A.033. Doubling down, Defendants' proposed revision to FAQ #14 retains that *same example* word for word. *See* Spear.Decl. (Dkt.20-1) ¶17. That is "pure speech." 303 *Creative v. Elenis*, 600 U.S. 570, 587 (2023). And it is *exactly* what DE's members want to say. *E.g.*, Student.A.Decl.¶10.

Defendants argue that the SVSH Policy does not proscribe the students' speech. Opp.15-16. They say the hostile-environment provision applies only when

² "Ex." citations refer to exhibits to the Sayer Declaration (Dkt.8-3).

1 a student uses speech that a “*reasonable* person would find ... offensive,” and
2 suggest that the students’ speech would not rise to that level because the students
3 bear no ill will towards their transgender peers. Opp.16; *see* Student.A.Decl.¶6. The
4 problem, however, is that many transgender people—and even some courts—con-
5 sider *all* misgendering and deadnaming “deeply offensive, disrespectful, and per-
6 haps discriminatory.” *Gays Against Groomers v. Garcia*, 169 F.4th 981, 986 (10th
7 Cir. 2026); *e.g.*, *Barry v. Thomas Jefferson Univ. Hosps.*, 2026 WL 935837, *10
8 (E.D. Pa. Apr. 7) (“intentional ... deadnaming and misgendering” at work “sug-
9 gest[s] that someone is unwelcome or perhaps even unsafe”).

10 That’s why multiple courts have found that promises to punish misgendering
11 and deadnaming only when it is “objectively harassing” do not insulate such poli-
12 cies from First Amendment scrutiny. *Contra* Opp.16. In *Defending Education v.*
13 *Olentangy*, for example, the en banc Sixth Circuit deemed a pronoun policy uncon-
14 constitutional even though it was limited to speech that “rises to the level of bullying
15 or harassment.” 158 F.4th 732, 743 (6th Cir. 2025). School authorities, the court
16 observed, “could perceive that speech as creating an ‘offensive’ educational envi-
17 ronment” even if a student spoke in “good faith.” *Id.*; *see also Tennessee v. Car-*
18 *dona*, 737 F. Supp. 3d 510, 549 (E.D. Ky. 2024) (“Considering [misgendering] is a
19 hotly debated topic of public interest, how can there be an ‘objective’ standard?”).
20 Indeed, the supposed “objective protections” that Defendants identify, Opp.16, are
21 “inherently not objective at all because” the University’s policy “imposes a view-
22 point consistent with the affirmation of gender identity,” *Tennessee*, 737 F. Supp.
23 3d at 549.

24 Regardless, the University has already said, in FAQ #14, that intentional mis-
25 gendering and deadnaming are prohibited by the policy. Ex.A.033. Recognizing as
26 much, Defendants ask this Court to simply ignore the FAQ, claiming it is not an
27 operative part of the policy. Opp.12, 16, 23-24. Not so. The SVSH Policy itself
28 repeatedly directs readers to its FAQs “for more information” about how it will be

1 applied. Ex.A.007, 013. At a minimum, FAQ #14 “provide[s] interpretations of the”
2 policy and explains how it will “be applied in specific circumstances.”
3 Draper.Decl.Ex.B.051 (UC Policy Owner Guidebook). Courts regularly enjoin the
4 implementation of such “FAQs” because ““we must consider the [government’s]
5 authoritative constructions of”” a challenged policy. *Santa Cruz Lesbian & Gay*
6 *Cnty. Ctr. v. Trump*, 508 F. Supp. 3d 521, 544-45 (N.D. Cal. 2020); e.g., *NEA v.*
7 *U.S. Dep’t of Educ.*, 779 F. Supp. 3d 149, 193, 196, 203 (D.N.H. 2025).

8 *Olentangy* is again on point. There the school district, like the University
9 here, maintained a generic “anti-harassment policy.” 158 F.4th at 739-40. In re-
10 sponse to a parent’s question, the school stated in an email that “purposefully refer-
11 ring to another student by using gendered language they know is contrary to the
12 other student’s identity would be an example of discrimination under” the policy.
13 *Id.* at 739. The Sixth Circuit held that the school’s statement about how it “inter-
14 preted its policies” created an injury sufficient for standing. *Id.* at 742. And on re-
15 mand, the district court enjoined that application. *PDE v. Olentangy*, 2026 WL
16 205616, *2 (S.D. Ohio Jan. 27). If an *email* was enough to establish standing in
17 *Olentangy*, then an FAQ in the University’s official policy is enough here.

18 More important, a defendant cannot defeat pre-enforcement standing with a
19 made-for-litigation interpretation designed to narrow a challenged policy. Such ar-
20 guments “are all too easy to make and all too hard to enforce, which probably ex-
21 plains why” federal courts regularly reject them. *West Alabama Women’s Ctr. v.*
22 *Williamson*, 900 F.3d 1310, 1328 (11th Cir. 2018); e.g., *FEC v. Cruz*, 596 U.S. 289,
23 299-300 (2022). Plus, as the Ninth Circuit has explained, allowing a government
24 defendant to “defeat standing by conceding that the law does *not* apply” would “un-
25 avoidably tangle standing with the merits.” *Peace Ranch*, 93 F.4th at 489. For stand-
26 ing purposes, then, courts do not “defer” to a defendant’s “construction” of the chal-
27 lenged policy, even if the defendant “insist[s] that” the plaintiff’s speech will not be
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1 punished. *Citizens for Responsible Gov't v. Davidson*, 236 F.3d 1174, 1192-93
2 (10th Cir. 2000).

3 Instead, when standing in pre-enforcement cases turns on competing inter-
4 pretations of a challenged policy, plaintiffs have standing as long as their reading of
5 the policy is plausible, even if it is not “the *best* interpretation.” *Turtle Island Foods,*
6 *S.P.C. v. Strain*, 65 F.4th 211, 218 (5th Cir. 2023). That is especially true here be-
7 cause this case concerns the First Amendment, which “does not leave [students] at
8 the mercy of” the government’s “*noblesse oblige*.” *United States v. Stevens*, 559
9 U.S. 460, 480 (2010). Thus, even if Defendants’ “narrower reading” of the SVSH
10 Policy were more persuasive, that would not matter. *San Francisco v. Trump*, 783
11 F. Supp. 3d 1148, 1181 (N.D. Cal. 2025). At this stage, the test is different (and
12 easier): “[F]or the purposes of standing,” this Court must “accept [DE’s] interpre-
13 tation of [the policy] so long as it is an arguable interpretation.” *Am. Encore v. Fon-*
14 *tes*, 152 F.4th 1097, 1116 (9th Cir. 2025). And we know DE’s reading is at least
15 arguable because it is the *same reading* adopted by the University in FAQ #14 and
16 the SHAPE Training.

17 Finally, DE doesn’t seek only to enjoin enforcement of FAQ #14; it also seeks
18 an injunction prohibiting Defendants from “compelling [DE’s] members ... to af-
19 firm another person’s gender identity” or “punishing them for” misgendering or
20 otherwise “refusing to affirm another person’s gender identity.” DE.Mot. (Dkt.8) 1.
21 Regardless of how Defendants contort FAQ #14, the Court can enter that injunction
22 because Defendants have manifested an intent to use the SVSH Policy to pursue
23 students who “us[e] the incorrect pronoun” or “intentionally cal[l] someone their
24 name used prior to transition.” Ex.B.049 (SHAPE Training); *see, e.g., Olentangy*,
25 2026 WL 205616 at *2 (injunction broadly prohibiting “any action ... against
26 [DE’s] members ... for referring to another student, in a commonplace way, using
27 pronouns that are consistent with the other student's birth sex but inconsistent with
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1 that student’s gender identity”). Unsurprisingly, Defendants say nothing about this
2 aspect of the requested injunction.

3 **B. The students face a credible threat of enforcement.**

4 DE’s students also face a “credible” threat that Defendants will enforce the
5 SVSH Policy against them. *SBA List v. Driehaus*, 573 U.S. 149, 161 (2014). “Su-
6 preme Court precedent tells us that this is not supposed to be a difficult bar for
7 plaintiffs to clear in the First Amendment pre-enforcement context.” *Peck v.*
8 *McCann*, 43 F.4th 1116, 1133 (10th Cir. 2022) (collecting cases). ““All that is re-
9 quired is a mere scintilla of enforcement.”” *Matsumoto v. Labrador*, 122 F.4th 787,
10 803 (9th Cir. 2024).

11 **1.** DE’s members face a substantial threat because the challenged provisions
12 “explicitly prohibi[t]” their speech. *Parsons v. U.S. Dep’t of Justice*, 801 F.3d 701,
13 711 (6th Cir. 2015); *see Tingley v. Ferguson*, 557 F. Supp. 3d 1131, 1138 (W.D.
14 Wash. 2021) (plaintiff “claims that he engages in activity” that is “prohibited under
15 the” law). The students want to use “biological” pronouns and “given names” rather
16 than the “pronouns and name [a] classmate has decided reflect the classmate’s gen-
17 der identity.” *E.g.*, Student.A.Decl.¶10. They want to do so “repeatedly and at all
18 times.” *Id.* But according to the University, “intentional or repeated use of a name
19 or pronoun inconsistent with the individual’s gender identity” is “harassment” and
20 “[p]rohibited conduct” under the SVSH Policy. Ex.A.033.

21 More important, Defendants have not disavowed authority to enforce the pol-
22 icy against DE’s members based on their desired speech, including their desire to
23 use biologically accurate pronouns “repeatedly and at all times.” *E.g.*, Stu-
24 dent.A.Decl.¶10. That failure to disavow is dispositive in finding a credible threat
25 of enforcement. *Peace Ranch*, 93 F.4th at 489-90. To be sure, Defendants have
26 “taken the position” in their opposition that some of the students’ speech (*e.g.*, a
27 one-off accidental use of the wrong pronoun) may not violate the policy, but they
28 have “carefully avoided saying that” they “will not” enforce the policy against the

1 students if their speech *does* run afoul of the policy. *Little Woods Mobile Villa v.*
2 *City of Petaluma*, 736 F. Supp. 3d 757, 771 (N.D. Cal. 2024). And Defendants’
3 “position that the [policy] is not unconstitutional as applied to [the students] at least
4 indicates the government has not ruled out enforcement.” *Thorpe v. United States*,
5 2026 WL 865817, *5 (W.D. Wash. Mar. 30).

6 **2.** Defendants claim that, based on a limited review of “a third party vendor
7 platform” that manages harassment complaints for the University, they have not yet
8 disciplined any students for misgendering, deadnaming, or other non-gender-af-
9 firming speech, “without more.” Spear.Decl.¶25. So, they argue, there is no credible
10 threat of enforcement. Opp.15-16. That argument fails.

11 First, Defendants conspicuously do not claim that they have never punished
12 anyone for non-gender-affirming speech; only that they have never punished such
13 speech “without more.” Spear.Decl.¶25. But they never say what “more” is re-
14 quired. *Id.* If anything, Defendants’ cryptic statement is an assertion that, depending
15 on the circumstances, they will (and possibly have) enforced the policy against the
16 “type” of speech that DE’s members want to use. *IRI v. Walker*, 450 F.3d 1082,
17 1089 (10th Cir. 2006); *see also Institute for Free Speech v. Johnson*, 148 F.4th 318,
18 329 (5th Cir. 2025) (assertion that “enforcement would depend on the facts of the
19 case” created a threat of enforcement (cleaned up)). Again, though Defendants ar-
20 gue that “intentionally misgendering another person once, without more,” is not
21 punishable, they reserve the right to punish “repeated” misgendering, Opp.8, which
22 DE’s members also want to do, *e.g.*, Student.A.Decl.¶10.

23 Second, any “lack of past prosecution does not preclude [a plaintiff’s] stand-
24 ing.” *Isaacson v. Mayes*, 84 F.4th 1089, 1101 (9th Cir. 2023). If anything, the lack
25 of enforcement data cuts in *favor* of standing here. Defendants “offe[r] no evidence”
26 that they have “previously permitted [this] speech” by, for example, declining to
27 punish a student who was reported for misgendering or deadnaming. *Olentangy*,
28

1 158 F.4th at 742.³ And the “lack of discipline against students could just as well
2 indicate that speech has *already* been chilled.” *Speech First v. Schlissel*, 939 F.3d
3 756, 766 (6th Cir. 2019) (emphasis added). That would not be a surprise, given that
4 the University has required all students to complete the SHAPE Training, which
5 tells them in unambiguous terms that “us[ing] the incorrect pronoun” or “calling
6 someone their name used prior to transition ... may be a form of sexual harassment.”
7 Ex.B.049.

8 In addition, a ““specific threat”” is not ““necessary to demonstrate standing.””
9 *Isaacson*, 84 F.4th at 1100. Where, as here, the challenged policy squarely prohibits
10 the intended speech, the threat of enforcement ““is latent in the existence of the””
11 policy itself. *Humanitarian Law Project v. U.S. Dep’t of Treasury*, 463 F. Supp. 2d
12 1049, 1068 (C.D. Cal. 2006). DE’s members, moreover, regularly interact with
13 transgender individuals on campus, and the University’s reporting apparatus—
14 which allows for anonymous reports, online or in person, from anyone, with no time
15 limit—makes it “far from imaginary or speculative” that someone might report their
16 speech. *SBA List*, 573 U.S. at 165; *see* DE.Memo.6-7, 9. Courts have found a cred-
17 ible threat of enforcement based on similar reporting systems. *E.g.*, *Fischer v.*
18 *Thomas*, 52 F.4th 303, 308 (6th Cir. 2022); *SBA List*, 573 at 164.

19 **C. The requested injunction is appropriately tailored.**

20 Defendants briefly argue that DE “does not have standing to enjoin applica-
21 tion of the Policy systemwide.” Opp.17. But DE seeks only “a preliminary
22

23 ³ Defendants note that Student D was not punished when she “slipped up” by
24 referring to transgender classmates with biological pronouns. Student.D.Decl.
25 (Dkt.8-7) ¶16; *see* Opp.13, 15. But Defendants do not claim that they were aware
26 of Student D’s speech (or received any other similar complaints) and chose *not* to
27 take action. More important, Defendants make clear that they would punish Student
28 D for “repeatedly” using biologically accurate language with her transgender class-
mates, which is what she wants to do. Student.D.Decl.¶¶9-11; *see* Opp.8; Ex.A.033;
Spear.Decl.¶17.

1 injunction to protect the speech rights *of its members*.” DE.Memo.2 (emphasis
2 added). And “preliminary injunctive relief” for “the members” of an association is
3 the “traditional approach” in cases with associational plaintiffs. *Kansas v. DOE*, 739
4 F. Supp. 3d 902, 934 (D. Kan. 2024). When “one member of the association would
5 have ... standing,” that is “sufficient” for all members to secure relief. *Utah Ass’n*
6 *of Counties v. Bush*, 455 F.3d 1094, 1099 (10th Cir. 2006). In fact, DE recently
7 secured a preliminary injunction granting precisely the relief it requests here: an
8 injunction protecting only, and all of, the association’s members. *See Olentangy*,
9 2026 WL 205616 at *2 (enjoining the defendants “from taking any action to enforce
10 the policies ... against Plaintiff’s members”).

11 **II. DE is likely to prevail on the merits**

12 DE is likely to prevail on the merits of its claims because the SVSH Policy
13 unconstitutionally compels speech, regulates speech based on viewpoint and con-
14 tent, is overbroad, and is unconstitutionally vague. Defendants have the burden
15 (even at the preliminary-injunction stage) of proving the constitutionality of their
16 speech restrictions. *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004). They have not
17 carried that burden.

18 **A. The challenged provisions regulate speech.**

19 Hoping to dodge the First Amendment altogether, Defendants argue that the
20 policy prohibits only “harassing or discriminatory *conduct*,” not speech. Opp.18
21 (emphasis added). But Supreme Court and Ninth Circuit caselaw “foreclose exactly
22 this move.” *Chiles v. Salazar*, 146 S. Ct. 1010, 1025 (2026). The government cannot
23 “regulate speech under the guise of regulating conduct.” *Acosta v. City of Costa*
24 *Mesa*, 718 F.3d 800, 812 n.6 (9th Cir. 2013). When the “only ‘conduct’ which the
25 State [seeks] to punish is the fact of communication,” the regulation is necessarily
26 speech-based. *Cohen v. California*, 403 U.S. 15, 18 (1971).

27 **1.** Here, the policy targets speech directly. FAQ #14, for example, makes it
28 “[p]rohibited [c]onduct” to “use” a “name or pronoun inconsistent with the

1 individual’s gender identity.” Ex.A.033. And the hostile-environment provision
2 reaches “verbal” conduct (*i.e.*, speech), including “jokes,” “derogatory names,” and
3 other “offensive” speech. Ex.A.010, 033-34; *see Doe v. University of Michigan*, 721
4 F. Supp. 852, 853 (E.D. Mich. 1989) (harassment code that regulated “verbal con-
5 duct” and “verbal behavior” reached speech). The mandatory SHAPE Training con-
6 firms that the hostile-environment provision, like FAQ #14, prohibits “[i]ntention-
7 ally” deadnaming or misgendering someone or stating that biological males should
8 not “use the women’s restroom.” Ex.B.048-49. This is speech, plain and simple.

9 Indeed, “[t]he only way to discern which” speech is “prohibited is to find out
10 whether the speaker disagrees with” the University’s view that individuals can
11 change their gender and that others ought to affirm that decision. *Honeyfund.com v.*
12 *Governor*, 94 F.4th 1272, 1277 (11th Cir. 2024); *see also Meriwether v. Hartop*,
13 992 F.3d 492, 507 (6th Cir. 2021) (pronouns are protected “speech” because they
14 communicate a message about whether “[p]eople can have a gender identity incon-
15 sistent with their sex at birth”). These are “classic—and disallowed—regulation[s]
16 of speech.” *Honeyfund.com*, 94 F.4th at 1277.

17 **2.** Defendants argue that universities can prohibit “conduct” even if that con-
18 duct is ““carried out”” through speech. Opp.18. But the cases they cite for that prop-
19 osition do not support their far-reaching claim. *See, e.g., Wisconsin v. Mitchell*, 508
20 U.S. 476, 487 (1993) (discussing sentencing enhancements based on “motive”);
21 *Widmar v. Vincent*, 454 U.S. 263, 276-77 (1981) (discussing “time, place, and man-
22 ner regulations”). And even if a university can regulate speech that is ““incidental””
23 to conduct, it cannot *target* speech based on its “communicative impact.” *United*
24 *States v. Cassel*, 408 F.3d 622, 626 (9th Cir. 2005).

25 The Ninth Circuit’s decision in *Bates v. Pakseresht*, 146 F.4th 772 (9th Cir.
26 2025), is directly on point. There, Oregon argued that its policy requiring adoptive
27 parents to use language affirming a child’s gender identity merely sought “to regu-
28 late [a parent’s] conduct as a caregiver, and that any speech-related requirements

1 are incidental to this end.” *Id.* at 787. The Ninth Circuit rejected that characteriza-
2 tion because Oregon’s policy treated “what a parent says to a child about sexual
3 orientation and gender identity,” including “through designated pronouns,” as reg-
4 ulatable conduct and thus “affirmatively require[d]” parents to “utter what is not in
5 [their] mind about a question of political and religious significance.” *Id.* at 788
6 (cleaned up). Like the policy here, that requirement could not “be minimized as an
7 incidental burden on speech.” *Id.*

8 Next, Defendants argue that the hostile-environment provision does not reg-
9 ulate speech because it includes a “‘reasonableness standard.’” Opp.19. But courts
10 regularly treat university harassment policies with similar language as speech-based
11 regulations. *E.g.*, *Speech First v. Cartwright*, 32 F.4th 1110, 1114-15, 1121-22,
12 1125-27 (11th Cir. 2022); *Speech First v. Fenves*, 979 F.3d 319, 323, 332-34 (5th
13 Cir. 2020). That is especially true for bans on misgendering and deadnaming. For
14 such regulations, a reasonableness component offers little solace because many—
15 including the University here, in FAQ #14—take the position that *all* misgendering
16 and deadnaming is unreasonable. *See supra* 3-4; *Gays Against Groomers*, 169 F.4th
17 at 986; *Olentangy*, 158 F.4th at 743; *Tennessee*, 737 F. Supp. 3d at 549.

18 Finally, Defendants argue that the policy avoids regulating protected speech
19 because it states that it “will not be interpreted to prohibit expressive conduct that
20 is protected by ... free speech and academic freedom principles.” Ex.A.010; *see*
21 Opp.19. But a clause that “merely restates already-existing constitutional limits ...
22 ‘cannot substantively operate to save an otherwise invalid [policy].’” *UFCW Loc.*
23 *99 v. Bennett*, 934 F. Supp. 2d 1167, 1206-07 (D. Ariz. 2013); *see Fenves*, 979 F.3d
24 at 337; *Dambrot v. Central Michigan University*, 55 F.3d 1177, 1183 (6th Cir.
25 1995); *Cerame v. Slack*, 123 F.4th 72, 86-87 (2d Cir. 2024). If anything, the need
26 for a disclaimer *confirms* that the policy reaches protected speech. *See Fenves*, 979
27 F.3d at 337.

1 3. Ultimately, Defendants admit that “[t]he Policy encompasses ... misgen-
2 dering or other gender-identity-based conduct.” Opp.19. That should end the debate.
3 Pronouns and other sex-based speech are protected speech, *Janus*, 585 U.S. at 913-
4 14; *Meriwether*, 992 F.3d at 511-12, and the government cannot regulate that speech
5 no matter what label it applies to it, *Chiles*, 146 S. Ct. at 1025. The cases cited by
6 Defendants, *see* Opp.19-20, are not to the contrary. Two of them didn’t consider
7 First Amendment challenges at all, *see Copeland v. Ga. Dep’t of Corr.*, 97 F.4th
8 766, 774-76 (11th Cir. 2024); *Eller v. Prince George’s Cnty. Pub. Schs.*, 580 F.
9 Supp. 3d 154, 171 (D. Md. 2022), and they all involved workplace harassment
10 claims under Title VII or equivalent state law, *see id.*; *Taking Offense v. California*,
11 18 Cal. 5th 891, 929 (2025), where First Amendment protections are weaker than
12 they are for university students, *see Olentangy*, 158 F.4th at 744-45; *Garcia v.*
13 *S.U.N.Y. Health Sciences Ctr. of Brooklyn*, 280 F.3d 98, 106 (2d Cir. 2001).

14 **B. The policy likely violates the First and Fourteenth Amendments.**

15 **Compelled Speech.** The SVSH Policy straightforwardly compels students to
16 communicate the University’s preferred message that “[p]eople can have a gender
17 identity inconsistent with their sex at birth.” *Meriwether*, 992 F.3d at 507; *see*
18 Ex.A.033 (prohibiting the use of terms “inconsistent with the individual’s gender
19 identity”). The Ninth Circuit’s decision in *Bates* proves the point: There, the court
20 held that Oregon’s policy requiring adoptive parents to “support” children’s “gender
21 identity,” which the state interpreted to require the use of preferred pronouns, “quite
22 clearly ... compels speech.” 146 F.4th at 776-78, 785-86. Resisting this straightfor-
23 ward conclusion, Defendants simply reiterate their contention that the policy
24 doesn’t “regulate expressive speech at all.” Opp.21. That’s wrong as explained
25 above. *See supra* II.A. Alternatively, Defendants argue that the policy does not “re-
26 quir[e] Students to say anything” because it does not “affirmatively” compel the use
27 of particular terms. *Id.* But that argument has been rejected before: It is “‘impossi-
28 ble”” to speak without pronouns, *Olentangy*, 158 F.4th at 758; *e.g.*,

1 Student.D.Decl.¶16 (“Though I try to avoid pronoun use altogether, I have occa-
2 sionally slipped up.”), and even if DE’s members could avoid pronouns, compelled
3 silence *is* compelled speech, *Riley v. Nat’l Federation of the Blind*, 487 U.S. 781,
4 796-97 (1988).

5 **Content and Viewpoint Discrimination.** Defendants argue that their policy
6 is content- and viewpoint-neutral because it is, in their view, “justified” by a desire
7 to protect listeners from hearing non-transgender-affirming speech. Opp.21-22. But
8 that misunderstands content and viewpoint discrimination. A policy is content-
9 based if it applies to speech “based on its communicative content,” *Reed v. Town of*
10 *Gilbert*, 576 U.S. 155, 163 (2015), which includes the “communicative impact of
11 speech,” *Tschida v. Motl*, 924 F.3d 1297, 1303 (9th Cir. 2019). If the government
12 prohibits speech based on “the direct effect of that speech on listeners,” as De-
13 fendants do here, then the policy is not “content-neutral.” *Id.*; see *Forsyth County*
14 *v. Nationalist Movement*, 505 U.S. 123, 134 (1992) (“reaction to speech is not a
15 content-neutral basis for regulation”).

16 A policy is also “content based if it requires authorities to examine the con-
17 tents of the message to see if a violation has occurred.” *Tschida*, 924 F.3d at 1303.
18 And Defendants don’t disagree that a student who says “she” or “her” to refer to a
19 transgender man might violate the University’s policy, while a student who uses
20 “he” or “him” would not. See Ex.A.033. “The only way to discern” whether a stu-
21 dent’s speech is “prohibited” is to look at the content of the speech itself. *Honey-*
22 *fund.com*, 94 F.4th at 1277.

23 As for viewpoint discrimination: Defendants don’t seriously dispute that the
24 policy allows transgender-affirming speech (*e.g.*, preferred pronouns and chosen
25 names) while punishing non-transgender-affirming speech (*e.g.*, biological pro-
26 nouns and birth names). See Opp.22. Defendants say that’s permissible because, on
27 their reading of the policy, the name and pronoun rules apply only “in circumstances
28 that otherwise trigger the Hostile-Environment Provision.” *Id.* But that argument

1 accomplishes nothing. As explained above, FAQ #14 makes clear that all intentional
2 misgendering and deadnaming triggers the hostile-environment provision. *See su-*
3 *pra* 3-4. And even if it were true that only repeated and intentional misgendering
4 and deadnaming invites university discipline, that would still be viewpoint discrim-
5 ination. When the government “selectively enforces a neutral policy or law” against
6 “one view” (repeated *non*-transgender-affirming speech) while “choosing not to ap-
7 ply the policy to” the opposing view (repeated gender-affirming speech), that is
8 “quintessential viewpoint discrimination.” *Fellowship of Christian Athletes v. San*
9 *Jose Unified Sch. Dist. BOE*, 82 F.4th 664, 711 n.8 (9th Cir. 2023) (Forrest, J., con-
10 curring).

11 Defendants don’t even try to argue that the policy survives strict scrutiny
12 (which applies to content-based regulations) or the categorical ban on viewpoint
13 discrimination. *See* DE.Memo.19. Because the policy is both content- and view-
14 point-discriminatory, it violates the First Amendment.

15 **Overbreadth.** Defendants appear to argue that a policy prohibiting “‘harass-
16 ing and intimidating conduct’” is *per se* not overbroad. Opp.23. But as noted above,
17 the challenged provisions don’t just proscribe conduct; they “‘specifically’” target
18 “‘speech.’” *United States v. Osinger*, 753 F.3d 939, 944 (9th Cir. 2014). The hostile-
19 environment provision covers “verbal” conduct, and prohibiting misgendering and
20 deadnaming is FAQ #14’s *sole* function. Ex.A.010, 033-34. Defendants cannot
21 avoid an overbreadth challenge to those provisions by slapping the “harassment”
22 label on otherwise protected speech. The many cases deeming university harass-
23 ment policies overbroad make that clear. *E.g.*, *Fenves*, 979 F.3d at 339 n.17 (col-
24 lecting cases); *Reges v. Cauce*, 175 F.4th 1014, 1040-41 (9th Cir. 2026); *Saxe v.*
25 *State College Area School District*, 240 F.3d 200, 214-17 (3d Cir. 2001); *Cart-*
26 *wright*, 32 F.4th at 1125.

27 Defendants’ remaining arguments on overbreadth, which boil down to a
28 promise that they will apply the policy’s broad prohibitions narrowly, fare no better.

1 Defendants say they will punish misgendering and deadnaming only when it is “ob-
2 jectively unreasonable” or offensive. Opp.23-24. And they ask the Court to ignore
3 the language of FAQ #14, which undercuts their promise because it makes clear that
4 the University considers *all* “intentional or repeated” misgendering and deadnaming
5 objectively offensive. Ex.A.033; *see* Opp.23-24. But Defendants cannot run away
6 from their own ““authoritative constructio[n] of”” their policy. *Santa Cruz Lesbian*
7 *& Gay Community Center*, 508 F. Supp. 3d at 544-45. And in any event, “govern-
8 mental officials” are not well-positioned to “make principled distinctions” about
9 what speech is “offensive.” *Cohen*, 403 U.S. at 25.

10 Forced to grapple with FAQ #14, Defendants ask the Court to give it a “nar-
11 rowing construction” to “avoi[d] constitutional concerns.” Opp.24. But courts can-
12 not impose a narrowing construction when ““the words in a [policy] are clear and
13 unequivocal.”” *Reges*, 175 F.4th at 1040. And the FAQ states clearly that “inten-
14 tional or repeated use of a name or pronoun inconsistent with the individual’s gen-
15 der identity (i.e., misgendering)” or “intentionally and repeatedly” calling someone
16 “by his dead name,” without more, is “[p]rohibited [c]onduct under this Policy.”
17 Ex.A.033. Nor can the Court rewrite FAQ #14 based on Defendants’ claim that it
18 “has been, and will be, enforced” in a narrower manner. *Legend Night Club v. Mil-*
19 *ler*, 637 F.3d 291, 301 (4th Cir. 2011); *contra* Opp.24 (claiming the University “al-
20 ready construes” FAQ #14 narrowly). The First Amendment does not leave students
21 “at the mercy” of the university’s speech police. *Stevens*, 559 U.S. at 480.

22 To defend the hostile-environment provision’s deviation from the standard
23 for harassment laid out in *Davis v. Monroe County Board of Education*, 526 U.S.
24 629, 652 (1999), Defendants point to other cases that supposedly upheld policies
25 that fell short of *Davis*, Opp.24-25. But federal courts have enjoined harassment
26 policies because they “d[o] not comport with the standard adopted” in *Davis*. *Speech*
27 *First v. Khator*, 603 F. Supp. 3d 480, 482 (S.D. Tex. 2022); *see* DE.Memo.22. And
28 the cases cited by Defendants don’t show otherwise. Many of those cases, for one,

involved employees in the workplace, where speech rights are more circumscribed than they are for university students. *See Harris v. Forklift Systems*, 510 U.S. 17, 18-19 (1993); *Quilala v. Securitas Sec. Servs. USA*, 117 Cal. App. 5th 75, 85-87 (2025); *Olentangy*, 158 F.4th at 744-45. And in almost all of Defendants’ cases, the court never addressed *Davis*. In fact, in the only case where the plaintiff raised a *Davis* argument, the court declined to resolve the question for lack of standing. *See Abbott v. Pastides*, 900 F.3d 160, 175 (4th Cir. 2018).

Finally, Defendants barely defend the SVSH Policy’s application to off-campus conduct. *See* Opp.25-26. As the Supreme Court explained in *Mahanoy Area School District v. Levy*, a case about high school students, “courts must be more skeptical of a school’s efforts to regulate off-campus speech.” 594 U.S. 180, 189-90 (2021). If anything, the University’s policy here is worse than in *Mahanoy* because university students have *more* speech rights than high school students. *McCauley v. Univ. of the Virgin Islands*, 618 F.3d 232, 242 (3d Cir. 2010).

Vagueness. The Ninth Circuit and other courts have repeatedly deemed university harassment policies that turn on terms like “hostile,” “aggressive,” and “intimidating” unconstitutionally vague. *See* DE.Memo.25; *Cohen v. San Bernardino Valley College*, 92 F.3d 968, 972 (9th Cir. 1996); *Fenves*, 979 F.3d at 332 (these terms “beg for clarification”); *Dambrot*, 55 F.3d at 1184 (they require “a subjective reference”).

Defendants rely on two cases to argue otherwise. *See* Opp.27 (discussing *O’Brien v. Welty*, 818 F.3d 920, 930 (9th Cir. 2016); *United States v. Osinger*, 753 F.3d 939, 944 (9th Cir. 2014)). But both *O’Brien* and *Osinger* involved policies with narrowing criteria absent from the University’s policy here. The policy in *O’Brien* punished “harassment,” “intimidation,” and “offensive” conduct only when it “threaten[ed] or endanger[ed] the health or safety’ of another.” 818 F.3d at 930. In *Osinger*, the statute punished “harassing and intimidating conduct” only when the harassing party acted with “malicious intent” and caused “substantial

1 harm.” 753 F.3d at 944-45. The prohibitions on intimidating and offensive conduct
2 in those cases did “not stand on their own.” *O’Brien*, 818 F.3d at 930. But the chal-
3 lenged provisions here lack such limiting criteria. *See* Ex.A.010, 033.

4 Nor does an “objectively offensive” requirement save the policy. “Though
5 some statements might be seen as universally offensive, different people find dif-
6 ferent things offensive.” *Dambrot*, 55 F.3d at 1184. This case proves the point. DE’s
7 members believe that so-called gender-affirming language is harmful because it
8 “encourages [someone] to believe a falsehood about” himself. Student.A.Decl.¶¶5-
9 6. But others believe the opposite: that *non*-gender-affirming speech is “deeply of-
10 fensive” and “discriminatory.” *Gays Against Groomers*, 169 F.4th 986. How are
11 students to know whose side the University will take?

12 Perhaps the best indication that the hostile-environment provision is vague is
13 that even Defendants aren’t sure what it means. Defendants’ own FAQ states that
14 “intentional and repeated use of a name or pronoun inconsistent with the individ-
15 ual’s gender identity” is a violation of the hostile-environment provision, Ex.A.033,
16 and the SHAPE Training (which Defendants require students to complete) says that
17 asking another student to use a different bathroom can create a hostile environment,
18 Ex.B.049. But now, Defendants are trying to “bac[k] away from that interpretation
19 in this very litigation,” *Freedom Path, Inc. v. IRS*, 805 F. Supp. 3d 329, 360 (D.D.C.
20 2025), and promising to issue new FAQs and training materials with different rules,
21 *see* Opp.12; *cf. Desertrain v. Los Angeles*, 754 F.3d 1147, 1157 (9th Cir. 2014)
22 (finding ordinance vague where the city’s “own documents” offered “different ways
23 [to] interpre[t]” it). If Defendants “cannot even agree with [themselves] on” the
24 scope of the challenged policy, then surely it is too vague to protect the speech rights
25 of the students it threatens to punish. *Freedom Path*, 805 F. Supp. 3d at 360.

26 **C. Defendants cannot hide behind antidiscrimination statutes.**

27 Defendants repeatedly suggest that the challenged provisions, even if speech-
28 regulating, are permitted or required by Title IX, Title VII, and California state law.

1 *E.g.*, Opp.9-12, 19, 24-26. Of course, even if Defendants were correctly interpreting
2 their obligations under federal and state antidiscrimination laws, the Constitution is
3 “the supreme Law of the Land.” U.S. Const. art. VI. In any event, Title VII is inap-
4 posite because it applies only to *employees*, not students. *See* 42 U.S.C. §2000e-2.
5 And Title IX covers only “biological sex,” not “gender identity.” *West Virginia v.*
6 *B.P.J.*, 146 S. Ct. 2356, 2371 (2026). Even if Title IX did cover gender identity, it
7 would prohibit only “conduct” (not speech) that is “so severe, pervasive, *and* objec-
8 tively offensive that it *denies* its victims” an equal education. *Davis*, 526 U.S. at 652
9 (emphasis added). The University’s policy goes far beyond that.

10 Ironically, Defendants rely on outdated U.S. Department of Education “guid-
11 ance” to boost their position. Opp.10-11 & n.2-3. But the Department’s current
12 guidance supports DE, not Defendants. *E.g.*, 85 Fed. Reg. 30026, 30155 n.680 (May
13 19, 2020) (directing covered entities to adopt the “*Davis* definition verbatim” be-
14 cause any lesser standard “weaken[s]” the “protection of free speech and academic
15 freedom”); *Letter to Representative Green*, U.S. Dep’t of Educ. (Mar. 9, 2020),
16 perma.cc/9AMD-DKBQ (“[R]efusing to use transgender students’ preferred pro-
17 nouns” does not violate antidiscrimination law.).

18 **III. DE satisfies the remaining preliminary-injunction criteria.**

19 Because DE likely has standing and is likely to prevail on the merits, it readily
20 satisfies the remaining preliminary-injunction criteria. *See* DE.Memo.27-28.

21 **Irreparable Harm.** Defendants hardly dispute irreparable harm and simply
22 reiterate their losing standing argument. *See* Opp.17. That is not surprising, because
23 it “is well established that the deprivation of constitutional rights ‘unquestionably
24 constitutes irreparable injury.’” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir.
25 2017). Here, DE’s members suffer an ongoing irreparable injury every day they are
26 forced to self-censor to avoid running afoul of the University’s ban on non-gender-
27 affirming speech. *See CuvIELLO v. City of Vallejo*, 944 F.3d 816, 833 (9th Cir. 2019).

1 **Balance of Harms & the Public Interest.** As with irreparable harm, Defend-
2 ants don't dispute that likely success on the merits "tips [these] merged third and
3 fourth factors decisively" in DE's favor. *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th
4 Cir. 2023). Instead, Defendants retry their argument that the SVSH Policy does not
5 "actually prohibi[t]" DE's member's speech, such that a preliminary injunction
6 would "not benefit" them. Opp.28. But DE's members' speech is objectively chilled
7 because the policy arguably—even if not conclusively—prohibits their speech. *See*
8 *supra* I.A. Enjoining enforcement against DE's members would remove that chill.

9 As a fallback, Defendants claim a vague public interest in allowing schools
10 "flexibility in administering their programs." Opp.28. But the "government has
11 no discretion to violate the federal constitution; its dictates are absolute and imper-
12 ative." *Loumiet v. United States*, 828 F.3d 935, 944 (D.C. Cir. 2016). And it is
13 "always in the public interest to prevent the violation of a [student's] constitutional
14 rights." *Riley's Am. Heritage Farms v. Elsasser*, 32 F.4th 707, 731 (9th Cir. 2022).

15 Finally, Defendants fret that an injunction would leave them unable to protect
16 "hundreds of thousands of students and employees" from "sexual harassment."
17 Opp.28. Of course, "where a violation of the First Amendment is concerned, the
18 government's benign, even noble, intentions are no cure." *Am. Freedom Def. Initi-*
19 *ative v. Metro. Transp. Authority*, 880 F. Supp. 2d 456, 477 (S.D.N.Y. 2012). In any
20 event, Defendants again misunderstand the scope of the requested preliminary in-
21 junction, which would prohibit Defendants from enforcing the SVSH Policy only
22 "against [DE's] members." DE.Mot.1. The University would also remain free to
23 draft *new* policies that are "consistent with" the First and Fourteenth Amendments.
24 *Doe v. Pittsylvania County*, 842 F. Supp. 2d 927, 935-36 (W.D. Va. 2012).

25 **IV. Defendants cannot escape liability with yet-to-be-enacted mid-litigation**
26 **changes to the policy.**

27 In a last-ditch effort to avoid liability, Defendants try to simply abandon
28 FAQ #14's clear ban on disfavored pronouns and names. Because the FAQ in its

1 current form is unconstitutional, Defendants promise to “amend” it, thus removing
2 (they hope) this Court’s ability to pass judgment. Opp.8, 12, 24; Spear.Decl.¶17.
3 This gambit fails.

4 **A.** To start, because Defendants don’t defend the version of FAQ #14 chal-
5 lenged by DE, there is no harm in enjoining them from enforcing it. If Defendants
6 say their “altered” policy will be meaningfully different from the existing FAQ’s
7 blanket ban on misgendering and deadnaming, then this Court should “enjoin a re-
8 turn to [the] original policy.” *Walker v. City of Calhoun*, 901 F.3d 1245, 1272 (11th
9 Cir. 2018). Defendants “will not be harmed by having to comply with what they
10 have effectively agreed to do,” and an injunction would protect DE’s members from
11 the risk that the original FAQ will be “reinstated.” *Jones v. Coleman*, 2017 WL
12 1397212, *6 (M.D. Tenn. Apr. 19); *see also Speech First v. Cartwright*, 2021 WL
13 3399829, *3 n.4, *7 (M.D. Fla. July 29) (preliminarily enjoining a policy after the
14 university modified it and did not defend the constitutionality of the original ver-
15 sion). The Court should also enjoin Defendants from enforcing the *new* FAQ “to
16 the extent it covers” the same protected speech as the original. *John Doe v. Reed*,
17 561 U.S. 186, 194 (2010).

18 **B.** In any case, Defendants’ proposed revisions don’t meaningfully change
19 the scope of FAQ #14. In fact, the revised version retains largely the same operative
20 language as the original, stating that “[p]rohibited [c]onduct ... may include inten-
21 tional and repeated use of a name or pronoun inconsistent with the individual’s gen-
22 der identity.” Spear.Decl.¶17. The revised version copies-and-pastes “unwelcome,”
23 “reasonable,” and other language from the hostile-environment provision, *id.*, but
24 that is no real change because, according to Defendants, those caveats were *always*
25 part of the FAQ, *see* Opp.23-24. And it does not cure the chill on the students’
26 speech because many of their peers and university administrators believe that all
27 misgendering and deadnaming is unreasonable. *See supra* 3-4. Proving the point,
28 the revised FAQ retains some of the *same* examples of prohibited conduct, including

1 “intentionally and repeatedly call[ing]” someone “by his dead name.”
2 Spear.Decl.¶17.

3 The revised FAQ, then, is ““substantially similar”” and does ““not remove the
4 harm or threatened harm”” posed by the original version. *Cam I, Inc. v. Louis-*
5 *ville/Jefferson Cnty. Metro Gov’t*, 460 F.3d 717, 720 (6th Cir. 2006). Nor, for that
6 matter, do Defendants offer any changes to the hostile-environment provision itself,
7 which chills the students’ speech separately from the FAQ.

8 C. Even if the proposed revisions could cure the FAQ’s constitutional de-
9 fects, DE’s challenge to the original version would remain live. Defendants who
10 wish to show mootness by voluntary cessation must show that it is “absolutely clear
11 the allegedly wrongful behavior could not reasonably be expected to recur,” and
12 Defendants cannot meet that “formidable burden.” *Friends of the Earth v. Laidlaw*
13 *Env’t Servs.*, 528 U.S. 167, 190 (2000). Defendants have not actually changed the
14 FAQ or explained how that change will occur; the version challenged by DE re-
15 mains on the books and the ““threatened harm”” to DE’s members remains. *Cam I*,
16 460 F.3d at 720.⁴ The “timing of the University’s policy amendment,” after DE filed
17 this lawsuit, is “suspicious.” *Fenves*, 979 F.3d at 329. And there is nothing stopping
18 Defendants from reinstating the policy’s original version. *Id.* at 329-29.

19 CONCLUSION

20 The Court should grant the preliminary injunction.
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27 ⁴ The SVSH Policy currently on the University’s website still contains the
28 original FAQ #14 challenged by DE. *See Draper.Decl.Ex.A.030.*

1 Dated: August 13, 2026

Respectfully submitted,

2
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1 **CERTIFICATE OF COMPLIANCE**

2 The undersigned counsel of record for Defending Education certifies that this
3 brief contains 6,990 words, which complies with the word limit of Local Rule 11-
4 6.1.

5
6 **CERTIFICATE OF SERVICE**

7 I certify that on August 13, 2026, I electronically filed the foregoing memo-
8 randum with the Clerk of the Court using the Court’s ECF system, which will auto-
9 matically email notification to all counsel of record.

10
11
12 Dated: August 13, 2026

/s/ J. Michael Connolly
Counsel for Plaintiff