

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

DEFENDING EDUCATION,

Plaintiff,

v.

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

Defendants.

} Case No. 8:26-cv-01574-FWS-AYP
}
} ORDER GRANTING IN PART
} PLAINTIFF'S MOTION FOR
} PRELIMINARY INJUNCTION [8]

I.

INTRODUCTION

Plaintiff Defending Education (“DE”) alleges that Defendants, various University of California executives,¹ are violating the First and Fourteenth Amendments to the United States Constitution by way of a “a speech code that punishes students for engaging in protected speech[.]” (Dkt. 1 (“Complaint” or “Compl.”) ¶ 2.) Before the court is DE’s motion for a preliminary injunction prohibiting UC from enforcing the contested policy against DE’s members. (Dkt. 8 (“Motion” or “Mot.”).) UC opposes the Motion. (Dkt. 20 (“Opposition” or “Opp.”).) DE filed a reply in support of the Motion. (Dkt. 23 (“Reply”).) The court held a hearing on this matter on August 27, 2026. (Dkt. 26.) Based on the state of the record, as applied to the relevant law, the court **GRANTS IN PART** the Motion.

The policy Plaintiffs challenge is a portion of the University of California’s policy against harassment. Part of that policy prohibits the “intentional or repeated use of a name or pronoun inconsistent with [an]

¹ The active Defendants in this case are: James B. Milliken, in his official capacity as President of the University of California; Catherine Criswell Spear, in her official capacity as the Executive Director of the Systemwide Office of Civil Rights; Nicoli Richardson, in her official capacity as the Systemwide Title IX Director; Julio Frenk, in his official capacity as Chancellor of UCLA; Mohammed Cato, in his official capacity as UCLA’s Director of the Title IX Office; Howard Gillman, in his official capacity as Chancellor of UCI; Tierney Anderson, in her official capacity as UCI’S Assistant Vice Chancellor for Equal Opportunity and Title IX; Pradeep K. Khosla, in his official capacity as Chancellor of UCSD; and Michael Diaz, in his official capacity as UCSD’s Director of the Office for the Prevention of Harassment and Discrimination and UCSD’s Title IX Officer. For ease of reading, the court refers to the Defendants and the broader University of California system collectively as “UC”.

1 individual’s gender identity.” (Dkt. 8-3 Ex. A (“Policy”) at 033.)² Although
2 this case implicates sensitive matters, the fundamental dispute between the
3 parties is a straightforward question about how to interpret UC’s policy: DE
4 contends that the policy prohibits the commonplace or isolated use of birth
5 names and biological pronouns; while UC argues that the policy would not
6 punish that behavior without something more. The court finds that DE’s
7 interpretation of the policy is the correct one because it tracks UC’s own
8 materials about the policy.

9 With that understanding of the policy in mind, two recent cases
10 establish that UC’s policy goes too far in restricting protected speech. First,
11 in *Bates v. Pakseresht*, 146 F.4th 772 (9th Cir. 2025), the Ninth Circuit held
12 that requiring prospective adoptive parents to commit to “affirming” a child’s
13 sexual orientation and gender identity, in part by using preferred pronouns,
14 “quite clearly restrict[ed] and compel[led] speech based on both content and
15 viewpoint.” *Id.* at 778, 784-85. Second, in *Defending Educ. v. Olentangy*,
16 158 F.4th 732 (6th Cir. 2025), the *en banc* Sixth Circuit enjoined a school
17 district—which has more leeway to regulate speech than a university—from
18 enforcing a similar policy against DE’s members. *Id.* at 738.

19 Although the court therefore concludes an injunction is appropriate,
20 the court finds that DE’s proposed injunction is broader than necessary
21 because DE seeks a wholesale injunction of UC’s ability to enforce its hostile-
22 environment provision against DE’s members. The court finds that a
23 narrower injunction is sufficient to provide total relief and therefore tailors
24 the injunction to the facts of this case.

25
26 ² The court follows the parties’ briefing in using the term “biological
27 pronouns” to refer to pronouns that correspond with a person’s gender
28 assigned at birth and using the term “preferred pronouns” to refer to
pronouns that correspond with a person’s gender identity.

II. BACKGROUND

UC is a public university system composed of ten campuses across the state of California. (Compl. ¶ 12.) UC issues policies and standards that govern all ten campuses. (*Id.*) One such policy is UC’s “Sexual Violence and Harassment Policy” which is over forty pages long and covers varied prohibited behaviors such as sexual battery and stalking. This case concerns the hostile-environment provision, which prohibits “unwelcome sexual or other sex-based conduct [that] is sufficiently severe, persistent or pervasive that it unreasonably denies, adversely limits, or interferes with a person’s participation in or benefit from the education, employment or other programs or activities of the University and creates an environment that a reasonable person would find to be intimidating or offensive.” (*Id.* at 010.) The Policy further defines “sex-based conduct” as “acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation.” (*Id.*)

The Policy also included a “Frequently Asked Questions” section, which read in part:

What are some examples of harassment based on gender identity covered by this Policy?

Prohibited Conduct under this Policy includes intentional or repeated use of a name or pronoun inconsistent with the individual’s gender identity (i.e., misgendering). For example, when a transgender man is intentionally and repeatedly called by his dead name (i.e., refers to a name that a transgender

1 person was given at birth but that they no longer use) or
2 intentionally and repeatedly referred to by “Miss” or “Ms.” by
3 a professor in an intentionally mocking manner.

4
5 (*Id.* at 033 (“FAQ 14”).) At the hearing on this matter, UC informed the court
6 that it had amended FAQ 14 to read:

7
8 **What are some examples of harassment based on**
9 **gender identity that may be covered by this Policy?**

10
11 Prohibited Conduct under this Policy may include intentional
12 and repeated use of a name or pronoun inconsistent with the
13 individual’s gender identity (i.e., misgendering) in
14 circumstances where the conduct is unwelcome, a reasonable
15 person would find it intimidating or harassing, and the
16 conduct otherwise meet the Policy’s hostile environment
17 harassment definition. For example, when a transgender man
18 is intentionally and repeatedly called by his dead name (i.e.,
19 refers to a name that a transgender person was given at birth
20 but that they no longer use) or intentionally and repeatedly
21 referred to [as] “Miss” or “Ms.” by a professor in an
22 intentionally mocking manner.

23
24 (Dkt. 20-1 (“Spear Decl.”) ¶ 17.)

25 Students or faculty who violate the Policy are subject to discipline up
26 to and including dismissal. (Policy at 026.)

27 Apart from the Policy, UC students must also complete Sexual Violence
28 and Harassment, Anti-Discrimination, Prevention and Education

1 (“SHAPE”) training. (Spear Decl. ¶ 18.) For some time, the SHAPE training
2 included the following scenario as an example of conduct that creates a
3 hostile environment:

4
5 My name is Mona, and I am transgender. My classmate Jane
6 continues to call me James, which was my name before I
7 transitioned. Jane refers to me as a man and complains when
8 I use the restroom. I asked her to stop, but she does not. I
9 feel very disrespected and want this to stop.

10
11 (*Id.* ¶ 22.) UC declares that this example is no longer included in the SHAPE
12 training. (*Id.* ¶ 23.)

13 Defending Education is an advocacy organization with members across
14 UC. Four of DE’s members, Students A, B, C and D (the “Students”), believe
15 “that people are either male or female” and that gender identity is not “a
16 coherent category separate from biological sex.” (Dkts. 8-4; 8-5; 8-6; 8-7³.)
17 Were the Students to “refer to a biological male as ‘she’ instead of ‘he,’” they
18 “would be communicating an idea and belief that” they “firmly disagree[]
19 with.” (*Id.* ¶ 7.) The Students wish “to use pronouns and given names that
20 are consistent with a classmate’s biological sex . . . repeatedly and at all times,
21 including inside and outside the classroom, in the classmates’ presence, and
22 when referring to the classmates outside their presence” but refrain from
23 doing so out of fear that they would be punished under the Policy. (*Id.* ¶¶ 10,
24 13.) Student A studies at University of California, Los Angeles; Student B
25 studies at the University of California, San Diego; Students C, and D study at

26
27 ³ Each student provides the quoted information at paragraph five of their
28 respective declarations.

1 the University of California, Irvine. (*Id.* ¶ 3.)

2 DE moves for a preliminary injunction enjoining the University from:

3
4 (1) enforcing the Hostile-Environment Provision and FAQ #14
5 and any materially similar policy, provision, or law that applies
6 at UC System schools against Plaintiff's members, including
7 Students A, B, C, and D. and

8
9 (2) compelling Plaintiff's members, including Students A, B, C,
10 and D, to affirm another person's gender identity; punishing
11 them for referring to another person using pronouns that are
12 consistent with the other person's birth sex but inconsistent
13 with that person's gender identity; or otherwise punishing
14 them for refusing to affirm another person's gender identity.

15
16 (Dkt. 8-8 ("Proposed Order").)

17
18 **II.**

19 **LEGAL STANDARD**

20 A preliminary injunction "is an extraordinary remedy that may be
21 awarded only if the plaintiff clearly shows entitlement to such relief." *See*
22 *Am. Beverage Ass'n v. City & Cnty. of San Francisco*, 916 F.3d 749, 754 (9th
23 Cir. 2019) (en banc) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7,
24 22 (2008)).

25 Plaintiffs seeking a preliminary injunction must demonstrate (1) they
26 are "likely to succeed on the merits"; (2) they are "likely to suffer irreparable
27 harm in the absence of preliminary relief"; (3) that "the balance of equities
28 tips in [their] favor"; and (4) that "an injunction is in the public interest." *Id.*

(quoting *Winter*, 555 U.S. at 20). A party seeking preliminary injunctive relief must make a “certain threshold showing” on “each [*Winter*] factor.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011). “The most important among these factors is the likelihood of success on the merits.” *Junior Sports Mags. Inc. v. Bonta*, 80 F.4th 1109, 1115 (9th Cir. 2023). “When, like here, the nonmovant is the government, the last two *Winter* factors merge.” *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (cleaned up).

III. DISCUSSION

The court begins with DE’s standing to challenge the Policy on behalf of its members. Then, because the court finds that DE has standing, the court turns to DE’s showing on the preliminary injunction factors and finds that DE demonstrates that it is entitled to a preliminary injunction. Finally, the court turns to remedy and narrows DE’s proposed injunction so that it is no broader than necessary.

A. DE Demonstrates it has Standing to Seek an Injunction of the Policy as Applied to its Members

“Those who seek to invoke the power of federal courts must allege an actual case or controversy.” *O’Shea v. Littleton*, 414 U.S. 488, 493 (1974). To do so, plaintiffs must show: “(1) actual or threatened injury (2) suffered as a result of the allegedly illegal conduct of the defendant, which (3) fairly can be traced to the challenged action and (4) is likely to be redressed by a favorable decision.” *Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1353 (9th Cir. 1994) (citing *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464,

1 472 (1982)). Each “element must be supported in the same way as any other
2 matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner
3 and degree of evidence required at the successive stages of the litigation.”
4 *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). “Thus, at the preliminary
5 injunction stage, the plaintiff must make a clear showing that she is likely to
6 establish each element of standing.” *Am. Encore v. Fontes*, 152 F.4th 1097,
7 1110 (9th Cir. 2025) (cleaned up).

8 DE relies on the “associational standing” doctrine which allows an
9 association to sue on behalf of its members when “(a) its members would
10 otherwise have standing to sue in their own right; (b) the interests it seeks to
11 protect are germane to the organization’s purpose; and (c) neither the claim
12 asserted nor the relief requested requires the participation of individual
13 members in the lawsuit.” *Hunt v. Washington State Apple Advert. Comm’n*,
14 432 U.S. 333, 343 (1977).

15 UC argues that DE does not have standing because the Students face
16 no injury under the Policy and therefore have no standing to sue in their own
17 right. (Opp. at 15.) Generally, “[t]o establish injury in fact, a plaintiff must
18 show that he or she suffered ‘an invasion of a legally protected interest’ that
19 is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or
20 hypothetical.’ ” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016)
21 (quoting *Lujan*, 504 U.S. at 560). But when a plaintiff brings a pre-
22 enforcement challenge to a statute or other governmental rule infringing
23 upon a constitutional right, the “direct injury requirement is tempered in
24 that one does not have to await the consummation of threatened injury to
25 obtain preventive relief.” *Ariz. Right to Life Pol. Action Comm. v. Bayless*,
26 320 F.3d 1002, 1006 (9th Cir. 2003) (cleaned up). “Thus, in evaluating a
27 pre-enforcement challenge, [courts] look to whether the plaintiff has shown
28 [1] an intention to engage in a course of conduct arguably affected with a

1 constitutional interest, but [2] proscribed by a statute, and [3] there exists a
2 credible threat of prosecution thereunder.” *American Encore*, 152 F.4th at
3 1114 (cleaned up). A plaintiff’s interpretation of a challenged statute should
4 be accepted “so long as it is an arguable interpretation.” *See id.* at 1116.

5 In this case, the court finds that the Students’ planned conduct is
6 “arguably affected with a constitutional interest” and at least arguably
7 proscribed by the Policy such that there is a “credible threat” of punishment.
8 *See id.* The Policy, by way of FAQ 14, prohibits “intentional or repeated use
9 of a name or pronoun inconsistent with the individual’s gender identity (i.e.,
10 misgendering).” The Students “wish to use the pronouns and names that are
11 consistent with [their] classmates’ biological sex repeatedly and at all times,
12 including inside and outside the classroom, in the classmates’ presence, and
13 when referring to classmates outside their presence.” (Dkts. 8-4; 8-5; 8-6;
14 8-7 ¶ 10.) The court thus finds it clear that that the Students’ speech is
15 arguably proscribed the Policy.

16 UC argues that FAQ 14 does not “govern how the Policy is applied,” and
17 that the Students’ professed desire to use biological names and pronouns
18 would not violate the Policy without more. (Opp. at 15-16.) But the court
19 finds that the text of the Policy does not support that interpretation. The
20 Policy itself refers readers to the “Frequently Asked Questions” section for
21 information on how the Policy will be applied. (Policy at 007, 013.) And the
22 court finds it proper to “consider [UC’s] authoritative interpretation of” the
23 Policy. *Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump*, 508 F. Supp. 3d.
24 521, 544-45 (N.D. Cal. 2020) (“Thus, the Government’s authoritative
25 constructions of the Executive Order set forth in the FAQs published by the
26 OFCCP, the OMB Memoranda, and the RFIs published in the Federal
27 Register may be considered by the Court in evaluating Plaintiffs’ facial
28 challenge to the Executive Order.”); *see also Forsyth County v. Nationalist*

1 *Movement*, 505 U.S. 123, 131 (1992) (“In evaluating respondent’s facial
2 challenge, we must consider the county’s authoritative constructions of the
3 ordinance, including its own implementation and interpretation of it.”)
4 Indeed, in *Olentangy*, the Sixth Circuit held that an email sent by the school
5 district’s counsel which explained how the district “interpreted its policies”
6 created an injury sufficient for standing. 158 F.4th at 742. DE’s
7 interpretation of the Policy is also supported by the SHAPE training which
8 cautioned that the intentional and repeated use of biological names and
9 pronouns creates a hostile environment. (Spear Decl. ¶ 22.)

10 The court further finds that the Students have demonstrated a credible
11 threat of enforcement. “ ‘All that is required is a mere scintilla of
12 enforcement.’ ” *Matsumoto v. Labrador*, 122 F.4th 787, 803 (9th Cir. 2024)
13 (quoting *Jackson v. Wright*, 82 F.4th 362, 367 (5th Cir. 2023)). When, as
14 here, “ ‘the threatened enforcement effort implicates First Amendment
15 rights, the inquiry tilts dramatically toward a finding of standing.’ ” *Arizona*
16 *Right to Life*, 320 F.3d at 1006. UC notes that it “routinely” enforces the
17 Policy to “protect the UC community.” (Spear Decl. ¶ 24.) Although UC
18 declares that it has not “disciplined” any students “for misgendering,
19 deadnaming, or—without more—expressing an opinion about the nature of
20 biological sex[,]” UC does not expand on what “without more” means in this
21 context. (Spear Decl. ¶ 25.) In fact, an assertion that “enforcement would
22 depend on the facts of the case[,]” can create a threat of enforcement.
23 *Institute for Free Speech v. Johnson*, 148 F.4th 318, 329 (5th Cir. 2025)
24 (cleaned up). Moreover, “lack of past prosecution does not preclude [a
25 plaintiff’s] standing.” *Isaacson v. Mayes*, 84 F.4th 1089, 1101 (9th Cir.
26 2023). And the “lack of discipline against students could just as well indicate
27 that speech has already been chilled.” *Speech First v. Schlissel*, 939 F.3d 756,
28 766 (6th Cir. 2019).

1 The court thus finds that DE demonstrates that the Students would
2 have standing to sue in their own right. Further, UC does not dispute, (*see*
3 *generally* Opp.), and caselaw supports the conclusion that the interests DE
4 seeks to protect are germane to its purpose and that neither the claim
5 asserted nor the relief requested requires the participation of individual
6 members in the lawsuit. *Olentangy*, 158 F.4th at 741 (“[DE] seeks to protect
7 against efforts . . . to silence students who express opposing views. And it
8 advances this goal through litigation like this suit. Turning to the third
9 associational-standing requirement, the School District does not argue that
10 the nature of the claims or remedies requires Defending Education’s
11 members to join the suit.”). Accordingly, the court finds that DE satisfies the
12 elements of associational standing.

13 Finally, the court finds that UC’s argument that DE “does not have
14 standing to enjoin application of the Policy systemwide[,]” is misplaced.
15 (Opp. 17.) DE does not seek to enjoin the Policy as applied to all of UC’s
16 students. (*See* Proposed Order.) Rather, DE would have the Policy enjoined
17 only against its members. (*Id.*) Because the Students have standing, that is
18 sufficient for all of DE’s members to secure relief. *See Warth v. Seldin*, 422
19 U.S. 490, 511 (1975) (“The association must allege that its members, *or any*
20 *one of them*, are suffering immediate or threatened injury as a result of the
21 challenged action[.]”) (emphasis added). Illustrating this point: after
22 remand in *Olentangy* the district court awarded an injunction protecting
23 only and all of DE’s members. *Parents Defending Educ. v. Olentangy*, 2026
24 WL 205616, at *2 (S.D. Ohio Jan. 27, 2026) (enjoining the defendants “from
25 taking any action to enforce the policies ... against [DE’s] members”).

26 In sum, the court concludes that DE has standing to pursue its
27 proposed injunction.
28

1 **B. DE Demonstrates that it is Entitled to a Preliminary**
2 **Injunction**

3 The court finds that DE is entitled to a preliminary injunction. On the
4 first and most salient factor—likelihood of success on the merits—the court
5 finds that DE demonstrates that the Policy compels speech and regulates
6 speech based on viewpoint. Because UC does not argue that the Policy
7 survives strict scrutiny, the court finds that DE demonstrates a likelihood of
8 success on the merits of its First Amendment claim. And because “plaintiffs
9 who are able to establish a likelihood that a policy violates the U.S.
10 Constitution have also established that both the public interest and the
11 balance of the equities favor a preliminary injunction[,]” the court finds that
12 DE has met its burden. *Baird*, 81 F.4th at 1042 (cleaned up).

13
14 **1. DE is likely to succeed on the merits of its First**
15 **Amendment Claim**

16 As an initial matter, the court finds that it should evaluate the Policy
17 with the original version of FAQ 14 in mind even though UC amended FAQ
18 14 after DE filed this case. UC has not shown that it is “absolutely clear” that
19 the challenged version of FAQ 14 “could not be reasonably expected to recur”
20 so DE’s challenge to the original version is not moot. *Friends of the Earth v.*
21 *Laidlaw Env’t Servs.*, 528 U.S. 167, 190 (2000); *see also Pub. Utilities*
22 *Comm’n of State of Cal. v. FERC*, 100 F.3d 1451, 1460 (9th Cir. 1996)
23 (“Courts have held that voluntary cessation of allegedly illegal conduct does
24 not deprive the tribunal of power to hear and determine the case, i.e., does
25 not make the case moot, unless there is no reasonable expectation that the
26 wrong will be repeated.”) (cleaned up). Moreover, the revised version of FAQ
27 14 continues to prohibit the intentional and repeated use of biological
28 pronouns, albeit with reference to an objective harassment standard. (Spear

Decl. ¶ 17.)

a. UC's Policy Regulates Speech

The First Amendment to the United States Constitution prohibits any law “abridging the freedom of speech.” U.S. Const. amend. I. The First Amendment applies to state and local governments through the Fourteenth Amendment. *New York Times Co. v. Sullivan*, 376 U.S. 254, 277 (1964). In this case, UC argues that the Policy does not offend the First Amendment because it prohibits only “harassing or discriminatory conduct,” rather than speech. (Opp. at 18.)

The “First Amendment does not prevent restrictions directed at commerce or conduct from imposing incidental burdens on speech.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011). The Supreme Court’s speech-incident-to-conduct precedents “focus on” two questions: “whether the law in question restricts speech only because it is integrally related to unlawful conduct—or whether the law restricts expressive conduct only for reasons unrelated to its content.” *Chiles v. Salazar*, 146 S. Ct. 1010, 1026 (2026). When the “only ‘conduct’ which the State [seeks] to punish is the fact of communication,” the regulation is speech-based. *Cohen v. California*, 403 U.S. 15, 18 (1971).

In *Bates*, the Ninth Circuit rejected the argument that the compelled use of “designated pronouns” regulates speech “incidental” to conduct. 146 F.4th at 788. As already mentioned, that case dealt with a state policy which required prospective parents applying for adoption to agree to “respect, accept, and support” a child’s sexual orientation, gender identity, and gender expression. *Id.* at 766. The state denied the plaintiff’s application to adopt under this policy after she objected to, among other things, using adopted children’s preferred pronouns. *Id.* at 766, 781-83. Because the plaintiff’s

1 freedom to express her views “on sexual orientation and gender identity”
2 were “severely circumscribed” and because the policy “force[d]” the plaintiff
3 “to ‘utter what was not in her mind’ about a question of political and religious
4 significance,” it could not be “minimized as an incidental burden on speech.”
5 *Id.* 788; *cf. id.* at 811 (“The closest example of speech infringement that [the
6 plaintiff] can offer in her as-applied challenge is the . . . recommended use of
7 a child’s preferred pronouns.”) (Clifton J., dissenting); *see also Meriwether*
8 *v. Hartop*, 992 F.3d 492, 507 (6th Cir. 2021) (pronouns are “a matter of
9 academic speech” because they communicate a message about whether
10 “[p]eople can have a gender identity inconsistent with their sex at birth”).
11 The court finds that *Bates* resolves the speech-incident-to-conduct issue
12 against UC.

13 UC also argues that the hostile-environment provision does not
14 regulate speech because it includes a “reasonableness standard.” (Opp. 19.)
15 “There is no categorical ‘harassment exception’ to the First Amendment’s
16 free-speech clause.” *Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist.*, 605
17 F.3d 703, 708 (9th Cir. 2010) (cleaned up). Moreover, the original version
18 of FAQ 14 prohibited the “intentional or repeated” use of biological pronouns
19 without limitation to an objective harassment standard. But “a single
20 instance of ‘offensive’ speech rarely rises to Title IX’s harassment definition.”
21 *Perlot v. Green*, 609 F. Supp. 3d 1106, 1122–23 (D. Idaho 2022) (citing,
22 among other cases, *Hawkins v. Sarasota Cty. Sch. Bd.*, 322 F.3d 1279, 1289
23 (11th Cir. 2003) (holding that “gender discrimination must be more
24 widespread than a single instance of one-on-one peer harassment and [] the
25 effects of the harassment [must] touch the whole or entirety of an
26 educational program or activity”)). The original version of FAQ 14 is
27 therefore insufficiently tethered to “harassment that objectively denies a
28 student equal access to a school’s education resources” which universities

1 have more space to regulate. *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d
2 200, 210–11 (3d Cir. 2001).

3 Finally, UC argues that the policy avoids regulating protected speech
4 because it states that it “will not be interpreted to prohibit expressive conduct
5 that is protected by . . . free speech and academic freedom principles.” (Opp.
6 at 19.) But a savings clause that “merely restates already-existing
7 constitutional limits . . . ‘cannot substantively operate to save an otherwise
8 invalid [policy].’” *UFCW Loc. 99 v. Bennett*, 934 F. Supp. 2d 1167, 1206-07
9 (D. Ariz. 2013).

10 Following *Bates*, and recognizing that UC cannot “regulate speech
11 under the guise of regulating conduct[,]” *Acosta v. City of Costa Mesa*, 718
12 F.3d 800, 812 n.6 (9th Cir. 2013), the court finds that the Policy regulates
13 speech.

14
15 b. UC’s Policy Compels Speech and is Viewpoint-Based

16 Having decided that the Policy regulates speech, the court looks again
17 to *Bates* and *Olentangy* to find that the Policy compels speech and regulates
18 based on viewpoint.

19 “At the heart of the First Amendment lies the principle that each
20 person should decide for himself or herself the ideas and beliefs deserving of
21 expression, consideration, and adherence.” *Agency for Int’l Dev. v. All. for*
22 *Open Soc’y Int’l Inc.*, 570 U.S. 205, 213 (2013) (quoting *Turner Broad. Sys.,*
23 *Inc. v. FCC*, 512 U.S. 622, 641 (1994)). “It follows that any law that restricts
24 speech based on content or viewpoint warrants most careful evaluation, and
25 . . . strict scrutiny.” *Bates*, 146 F.4th at 784-85. “Strict scrutiny likewise
26 applies to a law that compels speech on these bases.” *Id.* at 785.

27 To review the Students’ planned speech in this case: the Students wish
28 to always use biological names and pronouns and to convey a message about

1 the nature of gender by doing so. (Dkts. 8-4; 8-5; 8-6; 8-7.) DE argues that
2 UC compels students to use preferred pronouns which, beyond compelling
3 speech, amounts to a viewpoint-based regulation. (Mot. at 13-16.) The court
4 finds that DE's position is supported by case law.

5 *Bates* held that a regulation which compelled adoptive parents to
6 "affirm a child's sexual or gender identity" and "use a child's preferred
7 pronouns" "quite clearly restrict[ed] and compel[ed] speech based on both
8 content and viewpoint." 146 F.4th at 784-85. And *Olentangy* found it no
9 less clear that a school district which forbade "using gendered language [that
10 the student knew was] contrary to the other student's identity" "qualifie[d]
11 as the type of 'viewpoint discrimination' that raises the most serious red flags
12 under the First Amendment." 158 F.4th at 739. The court follows those cases
13 and finds that the Policy compels speech and is viewpoint-based.

14 UC distinguishes these cases by relying on language from *Bates* that
15 the state's position would have been "much stronger" had it "simply outlawed
16 harassment or denigration of LGBTQ children." (Opp. at 21 (citing *Bates*,
17 146 F.4th at 787).) And language from *Olentangy* which noted that "schools
18 may bar abusive 'invective' that targets 'specific' students—whether
19 transgender students, religious students, female students, Hispanic
20 students, or any others." 158 F.4th at 757. As UC sees it, that "is exactly what
21 UC's Policy does." (Opp. at 21.) But the text of the Policy does not support
22 UC's position. Again, the original version of FAQ 14 prohibited "intentional
23 or repeated" misgendering without reference to an objective harassment
24 standard. The court is therefore not persuaded that UC's Policy is
25 meaningfully different from the regulation in *Bates* and the policy in
26 *Olentangy*.

27 Because DE has demonstrated that the Policy compels speech and is
28 viewpoint-based, the burden "shifts to [UC] to show that its actions were

1 nonetheless justified and tailored under a strict scrutiny analysis.” *Bates*,
2 146 F.4th at 798 (internal quotation marks omitted). UC has not attempted
3 to demonstrate that the Policy withstands strict scrutiny, so the court finds
4 that it has not met its burden. (*See generally* Opp.) Accordingly, the court
5 finds that DE is likely to succeed on the merits of its First Amendment claim.

6 DE also argues that the hostile-environment provision, even without
7 reference to FAQ 14 or the SHAPE training, is unconstitutionally vague and
8 overbroad. (Mot. at 21-22.) UC replies that the hostile-environment
9 provision tracks the language endorsed by the Ninth Circuit in *O’Brien v.*
10 *Welty*, 818 F.3d 920, 930 (9th Cir. 2016), and therefore passes constitutional
11 muster. The court declines to reach those arguments at this stage of the case.
12 DE’s success on its other First Amendment theories is sufficient to
13 demonstrate that is entitled to an injunction protecting the Students’
14 planned speech. It is thus unnecessary to reach DE’s facial overbreadth and
15 vagueness challenges. And it is advisable to avoid doing so on this
16 preliminary record because facial vagueness and overbreadth challenges are
17 “manifestly strong medicine” to be used “sparingly and only as a last
18 resort[.]” *Broadrick v. Oklahoma*, 413 U.S. 601 (1973) (overbreadth); *see*
19 *also California Tchrs. Ass’n v. State Bd. of Educ.*, 271 F.3d 1141, 1155 (9th
20 Cir. 2001) (vagueness).

21 **2. DE Satisfies the Remaining Preliminary Injunction** 22 **Factors**

23 It “is well established that the deprivation of constitutional rights
24 ‘unquestionably constitutes irreparable injury.’” *Hernandez v. Sessions*, 872
25 F.3d 976, 994 (9th Cir. 2017). And DE’s “likelihood of success on the merits
26 of [its] constitutional claim also tips the merged third and fourth factors
27 decisively in [its] favor.” *Baird*, 81 F.4th at 1042. It is “always in the public
28

1 interest to prevent the violation of a party’s constitutional rights.” *Riley’s*
2 *Am. Heritage Farms v. Elsasser*, 32 F.4th 707, 731 (9th Cir. 2022). And UC
3 “cannot reasonably assert that it is harmed in any legally cognizable sense by
4 being enjoined from constitutional violations.” *Zepeda v. INS*, 753 F.2d 719,
5 727 (9th Cir. 1983). Accordingly, the court finds that DE is entitled to a
6 preliminary injunction.

7
8 **C. DE’s Proposed Injunction is Too Broad**

9 DE asks the court to enjoin, not just FAQ 14, but the hostile-
10 environment provision and “any materially similar policy, provision, or law
11 that applies at UC System schools against Plaintiff’s members, including
12 Students A, B, C, and D.” (Proposed Order.) The hostile-environment
13 provision, to review, prohibits “unwelcome sexual or other sex-based
14 conduct [that] is sufficiently severe, persistent or pervasive that it
15 unreasonably denies, adversely limits, or interferes with a person’s
16 participation in or benefit from the education, employment or other
17 programs or activities of the University, and creates an environment that a
18 reasonable person would find to be intimidating or offensive.” (Policy at
19 010.) The court finds DE’s request to enjoin the enforcement of this
20 provision is overbroad.

21 Although district courts have “ ‘considerable discretion in fashioning
22 suitable relief and defining the terms of an injunction,’ ” such relief “must be
23 tailored to remedy the specific harm alleged.” *Washington v. Trump*, 145
24 F.4th 1013, 1037-38 (9th Cir. 2025) (quoting *Lamb-Weston, Inc. v. McCain*
25 *Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991)). “The scope of a preliminary
26 injunction must be no broader than necessary to provide complete relief to
27 the named plaintiffs and members of organizational plaintiffs.” *Los Angeles*
28 *Press Club v. Noem*, 171 F.4th 1179, 1190 (9th Cir. 2026) (internal quotation

1 marks omitted). “It is an abuse of discretion to issue an overly broad
2 injunction.” *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98
3 F.4th 1180, 1188 (9th Cir. 2024).

4 The Students’ planned speech—the use of biological names and
5 pronouns without any subjective “ill-will,” (Dkt. 8-4 ¶¶ 6, 7)—can be
6 protected without a wholesale injunction of the hostile environment
7 provision. *Olentangy* was careful to reinforce that “nothing” in the opinion
8 “foreclose[d] the district from enforcing its anti-harassment policies against
9 the abuse of transgender students just as it enforces those policies against
10 the abuse of all other students.” 158 F.4th at 738; *see also id.* at 775 n.4
11 (Thapar J., concurring) (“That’s not to say the School District can’t enforce
12 its anti-harassment pronoun policies at all. If a bully calls a boy ‘little
13 princess’ or ‘baby girl,’ that isn’t protected speech. It’s not speech on a
14 political or social matter. Rather, it’s a taunt that schools are free to
15 regulate.”). The court is concerned that under DE’s approach UC would be
16 overly constrained from preventing harassment that goes beyond the
17 Students’ planned speech. Although the court notes that “severe
18 harassment” is “not easy to define with the precision required for a
19 regulation of speech[,]” the court finds that DE’s proposed injunction is not
20 properly tailored. *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 209 (2021)
21 (Alito J., concurring).

22 Illustrating this concern, and consistent with the Sixth Circuit’s
23 opinion, the district court in *Olentangy* was careful to avoid hampering the
24 school district’s ability to prevent harassment. After remand, the district
25 court’s injunction read:

26 Defendants are hereby **ENJOINED**, during the pendency of
27 this action, from taking any action to enforce the policies
28

1 challenged by Plaintiff in this action (*i.e.*, Policy 5517, Policy
2 5136, and the Code of Conduct) against Plaintiff's members or
3 their children for referring to another student, in a
4 commonplace way, using pronouns that are consistent with
5 the other student's birth sex but inconsistent with that
6 student's gender identity. If any Defendant takes any action
7 against one or more of Plaintiff's members or one or more of
8 their children in violation of this Order, any member or
9 member's child subject to such action may disclose the
10 membership to the Defendant (including by making such
11 disclosure through counsel), whereupon that Defendant must
12 cease and/or reverse the violating action.

13
14 It shall not be a violation of this Order for Defendants to
15 enforce the anti-harassment policies challenged by Plaintiff in
16 this action (*i.e.*, Policy 5517, Policy 5136, and the Code of
17 Conduct) to prevent the abuse of transgender students, just as
18 they enforce those policies to prevent the abuse of all other
19 students.

20
21 *Olentangy*, 2026 WL 205616, at *2.

22 The court will therefore narrow DE's requested injunction to read as
23 follows:

24
25 Defendants are hereby **ENJOINED**, during the pendency of
26 this action, from taking any action to enforce the policies
27 challenged by Plaintiff in this action (*i.e.*, the Sexual Violence
28 and Sexual Harassment Policy and FAQ #14) against Plaintiff's

1 members for referring to another person, in a commonplace
2 way, using pronouns or birth names, that are consistent with
3 the other person's birth sex but inconsistent with that person's
4 gender identity. If any Defendant takes any action against one
5 or more of Plaintiff's members in violation of this Order, any
6 member subject to such action may disclose the membership
7 to the Defendant (including by making such disclosure
8 through counsel), whereupon that Defendant must cease
9 and/or reverse the violating action.

10
11 It shall not be a violation of this Order for Defendants to
12 enforce the Sexual Violence and Sexual Harassment Policy to
13 prevent the abuse of transgender students, just as they enforce
14 the policy to prevent the abuse of all other students.

15
16 The court finds that the injunction language stated above is sufficient
17 to provide complete relief to the Students and DE and follows the Supreme
18 Court's caution that, "[g]enerally speaking, when confronting a
19 constitutional flaw in a statute, we try to limit the solution to the problem."
20 *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328
21 (2006). It is preferable "to enjoin only the unconstitutional applications of
22 a statute while leaving other applications in force[.]" *Id.*

23 Finally, the court addresses the issue of bond. When a district court
24 grants a motion for a preliminary injunction, the plaintiff is generally
25 required to post security "in an amount that the court considers proper to
26 pay the costs and damages sustained by any party found to have been
27 wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). "Courts routinely
28 impose either no bond or a minimal bond in cases involving public interests

1 . . . That is particularly true when, as here, a plaintiff seeks to vindicate a
2 constitutional right.” *Anchor Stone Christian Church v. City of Santa Ana*,
3 777 F. Supp. 3d 1126, 1155 (C.D. Cal. 2025) (cleaned up). Because DE seeks
4 to vindicate a constitutional right and considering that UC did not request
5 that DE be required to post bond, the court will exercise its discretion to forgo
6 bond in this case.

7
8 **IV.**

9 **DISPOSITION**

10 The Motion is **GRANTED IN PART**. The court will issue an
11 injunction consistent with this order. Further, the court **ORDERS** UC to
12 respond to the Complaint on or before **October 8, 2026**.

13
14
15 **IT IS SO ORDERED.**

16
17 Dated: September 15, 2026



18 Hon. Fred W. Slaughter
19 UNITED STATES DISTRICT JUDGE
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