IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

X.A., A MINOR, BY AND THROUGH P.A., HIS FATHER AND M.A., HIS MOTHER,

Plaintiff,

v.

MATANUSKA-SUSITNA BOROUGH SCHOOL DISTRICT,

Defendant.

3PA-24-01525CI

ORDER DENYING INJUNCTION AS TO MATANUSKA-SUSITNA BOROUGH SCHOOL DISTRICT BATHROOM AND LOCKER ROOM POLICY

This case concerns a challenge to the Matanuska-Susitna Borough School District's Board Policy 5134, which requires students to use restrooms and locker rooms corresponding to their sex assigned at birth, while allowing any student the option of using a single-occupancy restroom. The plaintiff, a transgender student, asserts that the policy violates the equal protection and privacy guarantees of the Alaska Constitution. The plaintiff seeks an injunction prohibiting the school district from enforcing Policy 5134, arguing that it treats transgender students differently from their peers and causes emotional and social harm. The school district responds that the policy serves the important governmental interest of protecting student privacy and has been implemented with care and sensitivity, offering reasonable accommodations without requiring disclosure of any student's gender identity. The court conducted a four-day bench trial between April 14, 2025 and April 17, 2025. Both parties submitted their written closing arguments on July 3, 2025.

No court order can fully satisfy all interests of all litigants, and any outcome may impose hardship on some individuals. Questions regarding policy are appropriately left to elected officials and the public. The court's duty is more limited: to interpret and apply Alaska's Constitution. For the reasons that follow, the court finds that the challenged policy does not violate the Constitution of the State of Alaska.

I. Factual Background

The Matanuska-Susitna Borough School District has just over 19,000 students spread across 48 schools. For seven years, before October 2022, MSBSD permitted transgender students to use the restroom that corresponded with their gender identity. PR1,[1] the principal of an MSBSD school for 11 years, testified that she was not aware of any problems while operating under the former policy. On October 19, 2022, after receiving public comments, the board voted to approve a new policy, number 5134, regarding restrooms and changing rooms.[2] That policy requires students to use a changing room or bathroom consistent with the sex of the student as designated at the time of the student's birth. It also requires "a reasonable accommodation" be made for any individual who does not wish to comply with this requirement.[3] A reasonable accommodation is defined as "access to a single-occupancy restroom or changing room."[4] The purpose of the policy is: "[t]o ensure privacy and safety in all Mat-Su Borough School District Buildings and facilities[.]"[5]

Katherine Gardner, the MSBSD deputy superintendent, testified that Policy 5134 was proposed in response to an MSBSD student who expressed concerns about disrobing in a locker room in the presence of someone who is of the opposite biological sex.[6] Ms. Gardner further stated that the student's parents were also concerned by this incident, which brought attention to MSBSD's prior bathroom policy.

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[1] In order to preserve the anonymity of X.A., the court refers to some school officials, and X.A.'s parents, by pseudonyms.
[2] Plaintiff Ex. 3.
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] Transcript pp. 493-494.

X.A. is a nine-year-old child who resides with his parents, M.A. and P.A., and attends elementary school in the Matanuska-Susitna School District. Although assigned female at birth, X.A. has exhibited gender nonconforming behavior from an early age. P.A., X.A.'s father, testified that X.A. consistently preferred trucks and construction equipment and expressed a dislike for pink and other traditionally feminine colors.

In the summer of 2023, X.A. informed his parents that he felt like a boy "on the inside." After this disclosure, he began using he/him pronouns and adopted a male-identified name. Testimony indicated that these changes were initiated by X.A. himself. M.A., X.A.'s mother, testified that following this transition, X.A. appeared significantly happier, with a noticeably uplifted and enthusiastic demeanor. X.A. expressed that he wants to grow up to be a man and continues to identify as a boy. He wears boys' clothing, keeps his hair short, and presents as male. He enjoys Star Wars and karate, is described as popular and well-liked at school, and particularly enjoys reading and science. His teacher described him as "extremely high achieving academically."

In late 2023, M.A. sought a referral for X.A. to an endocrinologist, who recommended a mental health evaluation. A mental health provider evaluated X.A. but did not diagnose him with gender dysphoria. M.A. testified that X.A. is no longer enthusiastic about being transgender and has expressed disinterest in transgender-themed literature. P.A. observed a change as well, which he attributes to broader social acceptance, leading to less frequent discussion of gender. M.A., however, believes the change is a response to the district's bathroom policy. Neither parent believes that X.A.'s current behavior or emotional state warrants professional counseling.

In August 2023, after X.A. began identifying as a boy, his parents transferred him to a new school to provide what X.A.'s mother described as a "fresh start." At an initial meeting with school officials, the family was informed that, under Policy 5134, X.A. would not be permitted to use the boys' communal restroom. Instead, he was given the option of using either the girls' communal restroom or the nurse's bathroom. The nurse's bathroom is located at the front of the school, requiring X.A. to pass two communal restrooms to reach it from his classroom.

At X.A.'s school, students who need to use the restroom during class do not need permission but are required to write their name and the time in and out on a shared board. The board does not indicate the sex of the student or specify which restroom is used. T.E., X.A.'s teacher, testified that when students use the board, other students are not aware which restroom is being used.

Since summer 2023, outside of school, X.A. has used men's public restrooms without incident, always using a stall. P.A. testified that this has not caused confusion or concern from others. X.A. confirmed that he feels most comfortable using the boys' or men's restroom and has never encountered any problems doing so.

M.A. testified that the school's restroom policy led X.A. to begin limiting his water intake during the school day to avoid needing to use the bathroom, resulting in physical discomfort by the time he arrived home. M.A. encouraged him to stay hydrated, which somewhat improved the situation, though concern persists.

On one occasion, X.A. attempted to use the girls' bathroom, prompting an older boy to say, "Dude, that's the wrong bathroom." X.A. reportedly replied, "I know." He subsequently informed his mother that he was no longer comfortable using the girls' restroom. PR1, the principal of the school at the time, talked to X.A. about this incident. PR1 testified that she was simply trying to find out what occurred, but she did not intend to make the situation feel punitive to X.A. She did not intend to communicate to X.A. that the female bathroom was closed. To her knowledge, X.A. never used the girls' bathroom again. Following this incident, the school contacted M.A., stating that X.A. had "tested the boundaries" of the restroom policy. This led to a second meeting with school officials, attended by M.A., P.A., and X.A. During this meeting, M.A. testified that the principal stated X.A. was welcome to use the girls' bathroom. However, P.A. recalled the principal communicating the opposite, that he was not welcome to use it. Given that PR1's testimony is consistent with M.A. on this point, the court finds P.A. is mistaken in his recollection of what PR1 communicated to M.A. and P.A.

To accommodate X.A.'s needs, the school offered a third option: the preschool bathroom. This restroom was initially available only on certain days. The school

arranged for X.A. to serve as a "preschool helper" to justify his presence in the room and coordinated scheduled use. As his bathroom needs exceeded the scheduled times, the school made the preschool bathroom available on all days except Mondays, when he would use the nurse's bathroom.

Subsequently, the preschool room was converted into a space for students with intensive support needs. The associated bathroom remains available to X.A. except when the room must be closed due to another student's behavioral challenges. X.A. testified that this only caused the bathroom to be unavailable one time. In the current school year, this bathroom is closer to his classroom than either communal restroom. However, next year he will have to travel down a flight of stairs to reach either the nurse's bathroom or the intensive support bathroom.

X.A. testified that he believes he is not allowed to use the girls' bathroom but also stated that he does not want to use it. He described the current arrangement as "kinda weird" but not uncomfortable. He stated it makes him feel "kinda like I'm different" and that he wants to be treated the same as other boys. He testified that using the boys' bathroom would feel "normal" and would make him happier. He also testified that the current arrangement causes him stress at school, though he emphasized that he still enjoys school because "everyone is nice" and school is "fun."

M.A. recounted an incident during a school dance in which both the nurse's and the single-occupancy bathrooms were inaccessible, leaving only the girls' restroom available. The night custodian was contacted and opened a gender-neutral bathroom. According to T.E., the school is now on notice to make sure a gender-neutral bathroom is open during evening events.

The court now turns to the differences between the various bathroom options. PR1 testified that a range of students occasionally used the nurse's bathroom. She explained that it was general practice for any student who needed or preferred to use the nurse's bathroom to do so, and that it was used by a variety of students. PR1 also testified that she believed the preschool bathroom was a reasonable additional option alongside the nurse's bathroom.

PR2, the current principal, testified that students do not need prior approval to use the nurse's bathroom. She stated that students may be present near the entrance to the nurse's bathroom at times, though the number varies depending on the time of day. PR2 also testified that it is not typical for students to question why someone uses the nurse's bathroom, nor is such questioning part of the school culture she aims to foster.

Turning to the special resources room, it is a classroom for students with "lower cognitive functioning," some of whom are non-verbal. To PR2's knowledge, X.A. and the students in the special resource room are the only individuals that use the special resource bathroom, but sometimes other students help in the special resource room and are also welcome to use the bathroom.

M.A. testified that school staff have generally treated X.A. with dignity and respect and that she believes they are doing their best under the circumstances. She also stated her belief that, because X.A. has not yet entered puberty and his future development remains uncertain, he may eventually desist from a male presentation.

Michael Evans Jr. testified that he is employed by the school district and, in a former position, was responsible for investigating complaints made against the district. His role involved determining whether such complaints were substantiated or unsubstantiated. Mr. Evans conducted an investigation into Policy 5134. A draft of one of his investigations included a conclusion that Policy 5134 conflicted with the district's non-discrimination policy. Ms. Gardner instructed Mr. Evans to remove that conclusion, stating that such a determination was beyond the scope of his role.

Dr. Randi Ettner also testified. Dr. Ettner is a clinical psychologist, who diagnosed X.A. with gender dysphoria. Dr. Ettner did not conduct a direct evaluation of X.A., instead relying on medical records, behavioral descriptions, and academic literature. She testified that gender identity is established early in life and is not a matter of choice, advocating that social transition, including use of facilities aligned with gender identity, is a low-risk, high-benefit intervention. She emphasized the importance of affirmation from major institutions like schools and warned that

exclusionary policies can lead to depression, anxiety, and academic struggles. Dr. Ettner relied on World Professional Association for Transgender Health (WPATH) standards and recent large-scale studies, testifying that the overwhelming majority of socially transitioned children persist in their identities and that requiring use of separate restrooms may cause stigma, shame, and emotional harm.

Dr. Stephen Levine, a clinical professor of psychiatry, testified that any diagnosis of gender dysphoria requires a comprehensive, in-person evaluation involving the child and parents. He criticized Dr. Ettner's certainty as premature and unsupported by neuroscience or rigorous psychiatric practice. He believes gender identity in youth is not necessarily fixed, citing research suggesting many children who transition subsequently desist and return to the gender assigned at birth. He expressed concern that premature social transition can cause long-term psychological and developmental issues, potentially increasing the likelihood of medical interventions and internal conflict during puberty. Dr. Levine challenged the scientific foundation of WPATH's guidelines and recommended a cautious, family-centered approach emphasizing psychotherapy and preserving the child's flexibility. While he acknowledged social transition is reversible, he characterized it as potentially psychologically invasive and warned against overreliance on child-led identity decisions.

II. Discussion

The plaintiff claims Policy 5134 violates the Alaska constitutional guaranty of equal protection. The plaintiff's complaint asks this court to issue an injunction prohibiting the defendant from enforcing Policy 5134 entirely, including its application to bathrooms, locker rooms and changing facilities across the entire school district.

The equal protection guarantee of the Alaska Constitution requires "equal treatment of those similarly situated."[7] It is, at its core, a requirement that all persons similarly situated should be treated alike. This promise must be balanced with the practical reality that laws frequently differentiate between groups of people, inherently

[7] *Planned Parenthood of The Great Nw. v. State*, 375 P.3d 1122, 1135 (Alaska 2016) (quoting *State, Dep't of Health & Soc. Servs. v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, 909 (Alaska 2001)).

benefiting some while disadvantaging others. This principle is more robustly protected under the Alaska Constitution than under the federal equal protection clause. Alaska courts have "long recognized that the Alaska Constitution's equal protection clause affords greater protection to individual rights than the United States Constitution's Fourteenth Amendment."[8]

A person asserting an equal protection violation must demonstrate that the challenged law treats similarly situated persons differently.[9] Without disparate treatment of similarly situated persons, the law as applied to the plaintiff does not violate the plaintiff's right of equal protection.[10] If a plaintiff passes this threshold, the court next determines what level of scrutiny to apply, using Alaska's "sliding scale" standard:

> First, it must be determined at the outset what weight should be afforded the constitutional interest impaired by the challenged enactment.... Depending upon the primacy of the interest involved, the state will have a greater or lesser burden in justifying its legislation.
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> Second, an examination must be undertaken of the purposes served by a challenged statute. Depending on the level of review determined, the state may be required to show only that its objectives were legitimate, at the low end of the continuum, or, at the high end of the scale, that the legislation was motivated by a compelling state interest.
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> Third, an evaluation of the state's interest in the particular means employed to further its goals must be undertaken. Once again, the state's burden will differ in accordance with the determination of the level of scrutiny under the first stage of analysis. At the low end of the sliding scale, we have held that a substantial relationship between means and ends is constitutionally adequate. At the higher end of the scale, the fit between means and ends must be much closer. If the purpose can be accomplished by a less restrictive alternative, the classification will be invalidated.[11]

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[8] *Malabed v. North Slope Borough*, 70 P.3d 416, 420 (Alaska 2003); see also *Stanek v. Kenai Peninsula Borough*, 81 P.3d 268, 272 & n. 15 (Alaska 2003).
[9] *Alaska Inter-Tribal Council v. State*, 110 P.3d 947, 966 (Alaska 2005).
[10] *Brandon v. Corr. Corp. of Am.*, 28 P.3d 269, 275–76 (Alaska 2001).
[11] *Planned Parenthood of The Great Nw. v. State*, 375 P.3d 1122, 1137 (Alaska 2016).

The court first addresses whether Policy 5134 treats similarly situated people differently. The plaintiff asserts that the challenged policy treats people differently because it "classifies people for different treatment depending on whether the person's gender identity is consistent or inconsistent with the person's sex assigned at birth."[12] The defendant disagrees, asserting that the court should find that biological boys and transgender boys, meaning students who were designated female at their birth but identify as male, are not similarly situated.[13] The court finds Policy 5134 does treat individuals who need to use the bathroom differently depending on whether their gender identity does or does not coincide with the sex written on their birth certificate.

The court next addresses what level of scrutiny to apply. The plaintiff asserts that the highest level of the sliding scale should apply, strict scrutiny.[14] The defendant asserts that a rational basis test should apply.[15] For the reasons that follow, the court finds that an intermediate level of scrutiny should apply.

Article I, Section 22 of the Alaska Constitution explicitly recognizes and protects the right to privacy, stating: "The right of the people to privacy is recognized and shall not be infringed." If the government burdens an individual's fundamental right to privacy, the regulation is subjected to strict scrutiny, meaning it can only survive review if it advances a compelling state interest using the least restrictive means of achieving that interest.[16] The constitutional right to privacy generally protects two types of interests. One is an individual's interest in protecting "sensitive personal information" which, if disclosed, could cause embarrassment, anxiety, humiliation, harassment, or economic and physical reprisals.[17] The other is an individual's interest in

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[12] Plaintiff Proposed Findings of Fact and Conclusions ("Plaintiff FFCL"), p. 42.
[13] Defendant Post Trial Brief, p. 22.
[14] Plaintiff FFCL, p. 47.
[15] Defendant Post Trial Brief, pp. 26-27.
[16] *State v. Planned Parenthood of Alaska*, 171 P.3d 577, 582 (Alaska 2007).
[17] *Doe v. Dep't of Pub. Safety v. State*, 444 P.3d 116, 127 (Alaska 2019) (internal citations omitted).

personal autonomy and independence in decision making.[18] The plaintiff makes his claim under both standards.[19] The plaintiff cites *Breese v. Smith*, where the Supreme Court of Alaska held students have the right to wear their hair as they choose, including a male student wearing long hair.[20] The plaintiff argues that Policy 5134 similarly violates X.A.'s privacy and autonomy by requiring X.A. to disclose his transgender status to other individuals.

When analyzing claims of personal information being disclosed, courts apply a specific test to determine whether the disclosure violates the constitutional right to privacy. This test involves three steps: (1) determining if the party seeking protection has a legitimate expectation that the materials or information will not be disclosed, (2) assessing whether disclosure is required to serve a compelling state interest, and (3) ensuring that any necessary disclosure occurs in the least intrusive manner with respect to the right to privacy.[21] A legitimate expectation of privacy is one that society is prepared to recognize as reasonable.[22]

The court first addresses whether X.A. has a legitimate interest in his status as a transgender individual being disclosed. The plaintiff cited a 2012 Alaska trial court opinion, K.L. *v. State of Alaska* DMV, which considered whether the absence of any procedure for changing the sex designation on an individual's driver's license impermissibly infringes on the privacy rights of transgender license holders.[23] The trial court in K.L. found that transgender status is constitutionally protected information under the State Constitution. This court agrees. As noted by the K.L. court: "[t]he excruciatingly private and intimate nature of transsexualism, for persons who wish to preserve privacy in the matter, is really beyond debate."[24] The record before the court

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[18] See, e.g., *Huffman v. State*, 204 P.3d 339, 346 (Alaska 2009) ("[T]he right to make decisions about medical treatments for oneself or one's children is a fundamental liberty and privacy right in Alaska.").
[19] Plaintiff FFCL, pp. 53-54.
[20] 501 P.2d 159, 172 (Alaska 1972).
[21] *Int'l Ass'n of Fire Fighters, Local 1264 v. Mun. of Anchorage*, 973 P.2d 1132 (Alaska 1999).
[22] *Id.* at 1134.
[23] 2011 WL 923224, 3AN-11-05431-CI (Alaska Super. Ct. Mar. 12, 2012).
[24] *Id.* (citing *Powell v. Schriver*, 175 f.3d 107 (2nd. Cir 1999)).

is that X.A., after consulting with his parents, decided to transition to a male presentation, name, and identity. The court does not question the sincerity of this transition. The court finds that X.A. does have a legitimate expectation that his transgender status will not be disclosed.

The court next turns to whether Policy 5134 requires disclosure of X.A.'s transgender status. The text of Policy 5134 does not require disclosure of transgender status. The plaintiff asserts, however, that it indirectly requires disclosure by (1) requiring transgender students to use bathrooms and changing rooms inconsistent with their appearance or (2) requiring the use of a gender-neutral bathroom. But the policy allows any student, for any reason, to use a gender-neutral bathroom. The policy does not require disclosure of why a student wishes to use the gender-neutral bathrooms, nor does the school require such a disclosure. The court recognizes that a moment of genuine discomfort occurred when X.A. attempted to use the girls' communal restroom, prompting another student to tell him he was entering the wrong restroom. However, this incident could have been avoided had X.A. chosen to use a gender-neutral restroom. Given the availability of gender-neutral bathrooms, which X.A. testified he prefers over the girls' communal restroom, the court finds that any incidental disclosure of X.A.'s transgender status occurs in the least intrusive manner possible. The court therefore does not find that Policy 5134 explicitly, implicitly, or in application requires disclosure of transgender status.

The court does not find that Policy 5134 violates X.A.'s autonomy or privacy. The policy does not restrict X.A.'s outward gender presentation. The policy does not require X.A. to disclose his gender identity to anyone. X.A. does not need to disclose the reason for requesting to use either of the gender-neutral bathrooms available to him. Nor does the policy effectively deter X.A. from presenting as a male by making the gender-neutral bathroom inconvenient. The gender-neutral bathrooms are available at all times to him and results in him being absent from class no more than any other student using a restroom. Because the court does not find a violation of X.A.'s right to privacy under the state Constitution, the court declines to apply strict scrutiny.

The court also declines to apply strict scrutiny because only classifications based on race, alienage, and national origin merit such review, and all of these classifications are immutable characteristics.[25] The two experts in this case agreed that X.A. may change his gender identity in the future, an opinion also held by X.A.'s mother. As noted above, the court has no doubt that X.A.'s identity as a boy is firmly held and sincere since he transitioned in the summer of 2023. But because there is no evidence that gender identity is an immutable characteristic, the court declines to apply strict scrutiny under existing Alaska constitutional precedent.

The court now turns to whether the policy discriminates on the basis of sex, as the plaintiff asserts. Neither the Supreme Court of the United States nor the Supreme Court of Alaska has defined sex to include gender identity. In *Bostock v. Clayton County, Georgia*,[26] a decision addressing employment discrimination against transgender individuals, the United States Supreme Court did not modify the plaintiff and defendant's agreed-upon definition that sex referred to the "biological distinctions between male and female" and that "homosexuality and transgender status are distinct concepts from sex."[27] The *Bostock* court did hold that under a Title VII analysis "discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex."[28] But the court was careful to limit the holding to employment claims, stating "we do not purport to address bathrooms, locker rooms, or anything else of the kind."[29]

Courts in other jurisdictions have addressed what level of scrutiny to apply to similar regulations. Many courts have found that, under the federal equal protection test, intermediate scrutiny applies to bathroom and changing room regulations similar

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[25] *State, Dep't of Revenue, Permanent Fund Dividend Div. v. Cosio*, 858 P.2d 621, 626 (Alaska 1993).
[26] 590 U.S. 644 (2020).
[27] *Id.* at 140 ("We agree that homosexuality and transgender status are distinct concepts from sex.").
[28] *Id.*
[29] *Id.* Recently, in *United States v. Skrmetti*, 145 S. Ct. 1816, 1820 (2025), the United States Supreme Court declined to address whether *Bostock*'s reasoning reaches beyond the title VII context.

to the one before the court.[30] On May 23, 2025, the Ninth Circuit upheld an Idaho ordinance regulating bathrooms and changing rooms, similar to the policy under review, by applying intermediate scrutiny.[31] The reason some courts apply intermediate scrutiny to sex-based claims is because sex-based classifications often reflect outdated stereotypes and assumptions about the capabilities of men and women, which are generally not relevant to the ability to perform or contribute to society. This heightened scrutiny ensures that any sex-based classification must serve important governmental objectives and be substantially related to achieving those objectives, preventing arbitrary or unjustified discrimination. The policy behind applying intermediate scrutiny to sex-based claims is to ensure that such classifications are not based on "outmoded notions of the relative capabilities of men and women" and that they reflect meaningful considerations.[32] The United States Supreme Court has established that gender classifications warrant heightened scrutiny because they "generally provide no sensible ground for differential treatment."[33] This reasoning supports an intermediate level of scrutiny applying to classifications based on transgender status under the Alaska Constitution. There is no doubt that "transgender individuals historically have been subjected to discrimination on the basis of their gender identity, including high rates of violence and discrimination in education, employment, housing, and healthcare access."[34] Like discrimination against women, discrimination against transgender individuals relies on stereotypes of gender that generally provide no sensible ground for differential treatment. The court therefore finds that, under Alaska's sliding scale analysis, an intermediate level of scrutiny is appropriate. The defendant must show that its objectives are significant and that the policy bears a substantial relationship to those objectives.

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[30] See, e.g., *J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 396 F. Supp. 3d 833, 843 (S.D. Ind. 2019); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 608 (4th Cir. 2020), as amended (Aug. 28, 2020); *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553, 573 (Minn. Ct. App. 2020).

[31] *Roe v. Critchfield*, 137 F.4th 912, 922 (9th Cir. 2025).

[32] *Eknes-Tucker v. Governor of Alabama*, 80 F.4th 1205, 1233 (11th Cir. 2023).

[33] *Hecox v. Little*, 104 F.4th 1061, 1074 (9th Cir. 2024), as amended (June 14, 2024).

[34] *Grimm*, 302 F. Supp. 3d at 749.

The court next addresses the purpose of the policy. The court finds that the best evidence of the intent of the policy are (1) the text of the policy and (2) the reason the board reconsidered its former bathroom policy. The policy states its purpose is "[t]o ensure privacy and safety in all Mat-Su Borough School District Buildings and facilities[.]"[35] There was no evidence at trial that the policy promoted safety. But the court finds, as discussed below, that the purpose of the policy is privacy, and this purpose is legitimate and significant.

The plaintiff asks this court to find that the policy was motivated by animus. The court finds Ms. Gardner persuasive when she testified that the board began reconsideration of its prior bathroom policy because a student expressed discomfort disrobing in front of individuals of a different biological sex, and this led to a greater awareness of the prior bathroom policy among students and parents. The court finds that this testimony indicates that the policy was not motivated by animus towards transgender individuals, but rather was motivated by legitimate privacy concerns.

As the court found at the preliminary injunction stage, the court declines to attribute animus to the board because some members of the public harbor such views. During public hearings on Policy 5134, the members of the public made comments from a variety of perspectives. Some of these comments addressed privacy concerns and some of the comments displayed animus towards transgender individuals. The court declines to find that a subset of public comments demonstrate the intent of the board. The court again finds the public comments are akin to letters to an elected representative; the court is unaware of, nor has the plaintiff provided, any authority holding that a select set of these letters are probative of subsequent legislative intent.

The court does not find Mr. Evans's report or proposed conclusions are probative of whether the intent of Policy 5134 was discriminatory. Mr. Evans conducted a limited investigation into the implementation of the policy as part of an internal complaint resolution process, not a legal determination of intent. His role was administrative and fact-finding in nature, not evaluative of the school board's

[35] *Id.*

motivations at the time of policy adoption. The court also does not place weight on Mr. Evans's initial investigatory conclusion, later removed at the direction of Ms. Gardner, that the policy violated the district's nondiscrimination policy. The instruction to remove that conclusion occurred after the adoption of Policy 5134 and, standing alone, is not probative of the school board's intent when it enacted the policy. There is no evidence that the board was aware of Mr. Evans's views or acted based on his investigation. The court further notes that Mr. Evans did not testify to having any firsthand knowledge of the board's deliberations or reasoning. Accordingly, his conclusions do not assist the court in determining whether the policy was enacted with discriminatory intent.

The defendant asserts that it has an important interest in protecting students' privacy in restrooms and changing rooms. The court agrees. Sex-based classifications are not entirely proscribed because of the physical differences between the sexes.[36] Safeguarding students' privacy by using restrooms and changing rooms separate from the opposite sex, and preserving their bodily privacy, is a significant governmental interest. The Ninth Circuit has recognized that the "desire to shield one's unclothed figure from [the] view of strangers, and particularly strangers of the opposite sex, is impelled by elementary self-respect and personal dignity."[37] The universally accepted principle that protecting individual privacy may sometimes necessitate separation by sex is indisputable, especially for school age children who "are still developing, both emotionally and physically."[38] The Supreme Court has recognized the need for privacy between members of each sex in intimate settings.[39] And as the Eleventh Circuit noted, "the privacy afforded by sex-separated bathrooms has been widely recognized

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[36] *United States v. Virginia*, 518 U.S. 515, 550 n. 19 (1996) (recognizing that admitting women to Virginia Military Institute, which was at the time an all-male school "would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements").

[37] *Byrd v. Maricopa Cnty. Sheriff's Dep't*, 629 F.3d 1135, 1141 (9th Cir. 2011) (internal citations omitted).

[38] *Grimm*, 972 F.3d at 636 (Niemeyer, J., dissenting).

[39] *See United States v. Virginia*, 518 U.S. at 550 n. 19 (1996) ("Admitting women to VMI would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements ....").

throughout American history and jurisprudence."[40] The court therefore finds that the defendant has a strong and legitimate interest, for equal protection purposes, supporting Policy 5134. The court finds, consistent with the Ninth Circuit's recent decision upholding a similar bathroom policy in Idaho, that privacy interests are especially important for school-aged children, who are still developing mentally, physically, emotionally, and socially.[41] The court agrees with the Ninth Circuit that requiring children to expose their bodies to, or be exposed to the bodies of, students of the opposite biological sex infringe on their reasonable expectations of privacy.[42]

The court finds Policy 5134 also has a substantial relationship to those objectives. Restrooms and locker rooms are spaces where bodily exposure is more likely to occur. The policy restricts who will interact in these places based upon sex, which closely fits this goal of privacy. The court acknowledges that the use of restrooms, locker rooms and shower rooms do not present uniform risks of bodily exposure. But even in a bathroom, the record demonstrates a concern for privacy.[43] The court further finds that the fit between the policy and the objective of protecting privacy is a fairly tight nexus, and passes heightened intermediate scrutiny under the Alaska Constitution.

The plaintiff emphasizes that an open bathroom policy existed before Policy 5134, and there were no reported concerns from students. But the issue before the court is not whether transgender students pose a greater risk of harm than other students. There is no suggestion that they do. The issue, rather, is whether the board had a basis to decide that students should not disrobe and perform other private activities in the presence of someone who is a different biological sex. As discussed above, the court has found that sex segregated bathrooms and changing rooms are based on legitimate privacy concerns.

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[40] *Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 805 (11th Cir. 2022).
[41] *Roe v. Critchfield*, 137 F.4th at 924.
[42] *Id.*
[43] Transcript, pp 363-363 (discussing "younger students" looking under bathroom stalls).

Nor does the court find that the implementation of Policy 5134 results in an equal protection violation because the school district has applied the policy with consistent care, flexibility, and sensitivity toward the needs of X.A. School staff actively collaborated with X.A.'s family to identify accommodations that would maintain his dignity while complying with district policy. The district initially offered access to the nurse's bathroom and later arranged access to the preschool bathroom, coordinating his presence in that area by designating him as a "preschool helper." When that bathroom became less available, staff ensured continued access except for a single isolated instance when another student's behavioral needs temporarily restricted the space. The district also adjusted its procedures to ensure gender-neutral facilities would remain available during evening school events. Further, testimony established that students are not required to seek permission to use gender-neutral restrooms, and no disclosure of gender identity is necessary for access, which reduces any risk of stigma. Staff and administrators treated X.A. respectfully throughout, and both PR1 and PR2 confirmed that it is not typical for students to question peers' restroom use or for the school to tolerate such scrutiny. The district's actions, characterized by accommodations, individualized attention, and an inclusive environment, further demonstrates that the district's application of Policy 5134 is not motivated by animus and the application of the policy does not unconstitutionally single out or burden X.A.

VI. Conclusion

For the reasons stated, the court concludes that Policy 5134, while distinguishing between students based on sex assigned at birth, does not violate the equal protection or privacy provisions of the Alaska Constitution. The policy serves an important governmental interest in safeguarding student privacy in intimate settings, and the means selected, sex-based access to restrooms and locker rooms, with gender-neutral alternatives, bear a substantial relationship to that interest. Although the policy results in differential treatment of transgender students, the record does not support a finding that it is motivated by animus or that it imposes an unconstitutional burden. The policy does not compel disclosure of gender identity, restrict gender expression, or deny

access to restroom facilities. Accordingly, the plaintiff's request for injunctive relief is denied.

DATED this Wednesday, July 30, 2025, at Palmer, Alaska.

Tom V. Jamgochian
Superior Court Judge

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