WISCONSIN INSTITUTE FOR
LAW & LIBERTY, INC.
330 East Kilbourn Avenue, Suite 725,
Milwaukee, WI 53202-3141
414-727-WILL (9455)
www.will-law.org

ALLIANCE DEFENDING FREEDOM
15100 N. 90th Street
Scottsdale, AZ 85260
800-444-5233
www.adflegal.org

May 18, 2021

Gary Vose, School Board President
Stephen Plum, Superintendent
Kettle Moraine School District
563 A.J. Allen Circle
Wales, WI 53183

Re: Demand Letter / Notice of Claim / Records Request

Dear Mr. Vose and Mr. Plum,

Wisconsin Institute for Law & Liberty (WILL) is a public policy legal center that seeks to protect constitutional rights and advance the rule of law. Alliance Defending Freedom (ADF) is the nation's largest public interest law firm devoted to freedom of religion, free speech, and parental rights. WILL and ADF represent [redacted] and [redacted], parents of current or former students in the Kettle Moraine School District. The District has a policy allowing minor students to change their gender identity at school without parental consent, and even over their parents' objection. This policy violates parents' constitutional rights to raise their children.

As you know, in mid-December, the [redacted]' 12-year-old daughter began to experience rapid onset gender dysphoria, along with significant anxiety and depression. The [redacted] temporarily withdrew her from the Kettle Moraine Middle School to allow her to attend a mental health center where she could process what she was experiencing. But instead of helping her work through her questions about her gender, the center quickly "affirmed" that she was really a transgender boy and encouraged her to transition to a male identity. In early January, she expressed to her parents and school staff that she wanted to adopt a male name and pronouns when she returned to school.

The [redacted] however, decided that immediately transitioning would not be in their daughter's best interest, based on their knowledge of her and extensive research into this issue. They wanted their daughter to take time to explore the cause of her feelings before allowing such a significant change to her identity. They communicated this to her and to her school and requested that staff refer to their daughter using her legal name and female pronouns when she returned to school. But the District refused to honor their request. The [redacted] were told that, pursuant to District policy, school staff would be required to address their daughter using a male name and pronouns if that's what she wanted. Concerned that daily affirmation of a male identity could harm their daughter, the [redacted] had no choice but to withdraw her from the District, and they began searching for a private school that would respect their role as parents. They also cut ties with the mental health center and looked for a therapist who would not rush to "affirm" an alternate gender identity.

The [redacted] concerns were soon validated. After leaving the center and withdrawing from school, their daughter's demeanor began to change. A few weeks later, she expressed to her mother that "affirmative care really messed me up." She explained that the therapists at the center did not question or help her process her feelings, but told her that, now that she knew she was really a boy, the sooner she transitioned the better because it's easier when you're young. They also told her she was right to be angry at her mother for not immediately allowing her to "be who she was." She now realizes this was wrong and actually fueled anger towards her mother. She has reverted to identifying by her birth name and female pronouns and enrolled in a different school district.

The District's policy allowing students to change gender identity at school without parental consent, as exemplified by the [redacted] experience, violates parents' constitutional rights.

One of the most fundamental and longest recognized "inherent rights" protected by the Wisconsin (and United States) Constitution is the right of parents to "direct the upbringing and education of children under their control." *See, e.g.*, *Matter of Visitation of A. A. L.*, 2019 WI 57, ¶ 15; *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.). Case law establishes three important principles with respect to parents' rights. First, parents are the primary decision-makers with respect to their minor children—not their school, or even the children themselves. *Parham v. J. R.*, 442 U.S. 584, 602 (1979) ("Our jurisprudence historically has reflected … broad parental authority over minor children.").

Second, the fact that "the decision of a parent is not agreeable to a child or … involves risks" "does not diminish the parents' authority to decide what is best for the child," nor does it "automatically transfer the power to make that decision from the parents to some agency or officer of the state." *Parham*, 442 U.S. at 603–04. Rather, courts recognize that "parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions," *id*., and that parents, not government officials, "hav[e] the most effective motives and inclinations and [are] in the best position and under the strongest obligations" to decide what is best for their children. *Jackson v. Benson*, 218 Wis. 2d 835, 879 (1998).

Finally, parents' constitutional rights reach their peak on "matters of the greatest importance." *See C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 184 (3d Cir. 2005); *Wisconsin v. Yoder*, 406 U.S. 205, 233–34 (1972). Medical and health-related decisions, for example, are generally reserved for parents: "Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments." *Parham*, 442 U.S. at 603; *In re Sheila W.*, 2013 WI 63, ¶¶ 16–24 (Prosser, J., concurring) (noting that the "general rule" in Wisconsin "requir[es] parents to give consent to medical treatment for their children."). Likewise, minors cannot legally change their name, or change their name in school records, without parental consent. *Jocius v. Jocius*, 218 Wis. 2d 103, 119 (Ct. App. 1998); Wis. Stat. § 786.36; 34 CFR §§ 99.3; 99.4; 99.20(a).

In accordance with these principles, courts have recognized that a school violates parents' constitutional rights if it usurps their role in significant decisions. In *Gruenke v. Seip*, 225 F.3d 290 (3d Cir. 2000), a high school swim coach suspected that a team member was pregnant, and, rather than involving her parents, pressured her into taking a pregnancy test. *Id*. at 295–97, 306. The

mother sued the coach for a violation of parental rights, arguing that the coach had "obstruct[ed] the parental right to choose the proper method of resolution." *Id.* at 306. The court found that the mother had "sufficiently alleged a constitutional violation" and condemned the "arrogation of the parental role": "It is not educators, but parents who have primary rights in the upbringing of children. School officials have only a secondary responsibility and must respect these rights." *Id.* at 306–07.

Transitioning to a different gender identity during childhood is a major and controversial decision. Multiple studies have found that the vast majority children (80–90%) who experience gender dysphoria ultimately "desist," finding comfort with their biological sex; that is, *unless* they transition. Because messages from others help to form a child's identity, many psychiatric professionals believe that transitioning can become self-reinforcing, setting children down a path with life-long consequences. Dr. Stephen Levine, for example, a prominent expert in this area,[1] has written that childhood transitions are "an experimental procedure that has a high likelihood of changing the life path of the child, with highly unpredictable effects on mental and physical health, suicidality, and life expectancy."[2] Another expert, Dr. Kenneth Zucker, who for over three decades ran one of the leading clinics in the world for children with gender dysphoria, has publicly written that "parents who support, implement, or encourage a gender social transition (and clinicians who recommend one) are implementing a psychosocial treatment that will increase the odds of long-term persistence."[3] The debate has also been covered extensively in the media,[4] and multiple recent books make similar arguments.[5]

Even the World Professional Association for Transgender Health ("WPATH")—an advocacy organization that generally supports an "affirming" approach—acknowledges that "[s]ocial transitions in early childhood" are "controversial" and that there is insufficient evidence at this point "to predict the long-term outcomes of completing a gender role transition during early childhood."[6] WPATH therefore encourages health professionals to *defer to parents* "as they work through the options and implications," even "[i]f parents do not allow their young child to make a gender-role transition." *Id.*

The Kettle Moraine School District's policy disregards these professionals and instead takes this life-altering decision out of parents' hands and places it with educators, who have no expertise

---

[1] Dr. Levine was the *court-appointed* expert in a major case in this area. *See Kosilek v. Spencer*, 774 F.3d 63, 77 (1st Cir. 2014).

[2] Affidavit of Dr. Stephen Levine at 27, Dkt. 31, *Doe v. Madison Metropolitan Sch. Dist.*, No. 20-CV-454 (Dane Cty. Cir. Ct., Feb. 19, 2020), *available at* https://will-law.org/wp-content/uploads/2021/02/affidavit-stephen-levine-with-exhibit.pdf.

[3] Kenneth J. Zucker, *The Myth of Persistence: Response to "A Critical Commentary on Follow-Up Studies & 'Desistance' Theories about Transgender & Gender Non-Conforming Children" by Temple Newhook et al.*, 19:2 Int'l J. of Transgenderism 231 (2018), *available at* https://www.researchgate.net/publication/325443416.

[4] *See, e.g.*, Jesse Singal, *How the Fight Over Transgender Kids Got a Leading Sex Researcher Fired*, The Cut, (Feb. 7, 2016), https://www.thecut.com/2016/02/fight-over-trans-kids-got-a-researcher-fired.html.

[5] *See* Heather Brunskell-Evans and Michele Moore, *Inventing Transgender Children and Young People* (2019) (essays from clinicians, psychologists, sociologists, educators, parents, and de-transitioners); Abigail Shrier, *Irreversible Damage: The Transgender Craze Seducing Our Daughters* (2020).

[6] *See* World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* at 11 (version 7, 2012), available at https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?_t=1613669341

whatsoever in these matters, and with minors, who lack the "maturity, experience, and capacity for judgment required for making life's difficult decisions," *Parham*, 442 U.S. at 602. By enabling minor students to transition at school over their parents' objection, the District is effectively making a treatment decision without the legal authority to do so and without informed consent from the parents. *See Sheila W.*, 2013 WI 63, ¶¶ 16–24 (Prosser, J., concurring). And of course, it is directly at odds with state and federal law regarding name changes, as noted above. Given the significance of changing gender identity, especially at a young age, parents "can and must" make this decision. *Parham*, 442 U.S. at 603.

No parent should have to go through what the [redacted] went through. No parent should be forced to withdraw their child from public school to preserve their parental role and protect their child. The District's policy not only directly interferes with parents' right to make the critical decision about whether transitioning will be best for their child, it also does significant damage to the parent-child relationship. The District's actions with respect to the [redacted] for example, communicated to their daughter that their decision was wrong and should not be respected. The other parents we represent are rightfully concerned that, if their children go through something similar, the District will disregard their decisions and undermine their parental authority.

Our goal is to ensure that what happened to the [redacted] never happens again. Accordingly, we ask the District to do three things: (1) to change the District's policy to require parental consent before a student may change their gender identity at school, and to commit to retraining its staff accordingly; (2) to acknowledge, in writing, that the District's treatment of the [redacted] violated their constitutional rights as parents; and (3) to pay the [redacted] nominal damages of $1 as a symbolic vindication of the constitutional violation.

We are hopeful that the District will accede to these demands. To the extent such a resolution is not possible, however, we are prepared to file a complaint in court. Please let us know **within 120 days, by September 15,** whether the District is willing to change this policy and acknowledge the constitutional violation. For purposes of this claim, please direct any response to undersigned counsel via email or to the following address: 330 East Kilbourn Avenue, Suite 725, Milwaukee, WI 53202.

As a final matter, the District's policy on this issue appears to be unwritten. [redacted] previously submitted an open-records request for any written policy, and the District did not produce anything. Undersigned counsel likewise was unable to find any written policy on this topic on the District's website. If, however, the District does have any written policy or policies on this issue, or if any part of this policy is in writing, or if this policy is discussed in any writing exchanged between employees of the District, this letter also serves as an open-records request for those records pursuant to Wis. Stat. § 19.35.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY

Luke N. Berg

ALLIANCE DEFENDING FREEDOM

Roger G. Brooks