



VIA email to:

Rochester Public School Board
schoolboardmembers@rochesterschools.org

Re: Rochester's New Gender Identity Policy

We recently became aware of the Rochester Public School District's new [gender identity policy](#) that the Board adopted on July 16, 2024. The policy gives minor students in the District—with no age limit—the “right” to change their names, pronouns, and bathroom use, all without parental consent. Indeed, the policy states explicitly that “parent/guardian consent is not required” for students to socially transition to a different gender identity at school, nor will the District even notify parents.

We write to put the Board on notice that this policy is unconstitutional, violating parents' right to make decisions with respect to their own minor children. We urge the District to reconsider and revise its policy to defer to parents about gender-identity transitions at school.

If the District ever applies this policy to transition a minor child without parental notice or consent, we can and will file a federal lawsuit against the District. If any parents or teachers discover that this is occurring, we encourage them to reach out to us.

The Harm From Secret Gender Identity Transitions at School

As you may be aware, social transitions during childhood and adolescence are a complex and controversial issue. Many experts believe that facilitating a transition and addressing a child as if he or she is the opposite sex can do long-term harm to the child by reinforcing a false belief, causing that belief to set in and reducing the likelihood that the child will find comfort with his or her body. To give just one example, a recent comprehensive review of the evidence by the UK's National Health Service concluded that “social transition in childhood may change the trajectory of gender identity development for children with early gender incongruence.”¹ Moreover, the review found that “those who had socially transitioned at an earlier age and/or prior to being seen in clinic were more likely to proceed to a medical

¹ The Cass Review, Independent review of gender identity services for children and young people, at 31–32 (April 2024), <https://cass.independent-review.uk/home/publications/final-report/>.

pathway,” with all of the associated risk and complications. The report concludes that, in light of the long-term implications, “parents should be actively involved in decision making” about a social transition.² Consistent with this review of the evidence, the UK’s Department for Education has also issued guidance for schools that “[p]arents should not be excluded from decisions taken by a school ... relating to requests for a child to ‘socially transition.’”³

Gender dysphoria can also be a very serious mental-health issue. Parents must be involved so they can obtain professional support for their children, which they may urgently need. Indeed, there are multiple cases around the country where school districts withheld from parents that their child was struggling with their gender and the student later attempted suicide—which may have been prevented had the parents been notified and able to obtain mental-health support for their child.⁴ To this last point, it is undisputed that children who identify as a different gender have a higher risk of suicide and self-harm. It is unconscionable that parents would not be notified if their children are within that category and therefore more likely to harm themselves.⁵

The Violation of Parents’ Constitutional Rights

As the United States Supreme Court has long recognized, parents have a “fundamental constitutional right to make decisions concerning the rearing of [their] own [children],” *Troxel v. Granville*, 530 U.S. 57, 70 (2000) (plurality op.). Parental rights are “perhaps the oldest of the fundamental liberty interests recognized by this Court,” *id.* at 65, having long been “established beyond debate,” *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). And the Court has made clear that any attempt by a government body to “supersede parental authority” is both unconstitutional and “repugnant to American tradition.” *Parham v. J. R.*, 442 U.S. 584, 603 (1979).

² *Id.* at 163.

³ UK Department for Education, *Gender Questioning Children: Non-statutory guidance for schools and colleges in England, Draft for consultation* (December 2023), <https://bit.ly/3zPhlGw>.

⁴ Second Amended Complaint ¶¶54–63, *Perez v. Clay Cnty. Sch. Bd.*, No. 3:22-cv-83 (M.D. Fla., filed May 31, 2023), available at <https://bit.ly/3SaH0Qn>; Second Amended Complaint ¶¶7–20, *Kaltenbach v. Hilliard City Schs.*, No. 2:23-cv-187 (S.D. Ohio, filed April 1, 2024), available at <https://bit.ly/3WaeCyU>; Complaint ¶¶112–20, *Lee v. Poudre Sch. Dist. R-1*, No. 1:23-cv-1117 (D. Co., filed May 3, 2023), available at <https://bit.ly/3zLJwpH>.

⁵ See, e.g., Hannah K. Mitchell, et al., *Prevalence of gender dysphoria and suicidality and self-harm in a national database of paediatric inpatients in the USA: a population-based, serial cross-sectional study*, 6 *Lancet Child & Adolescent Health* 876 (Dec. 2022) (concluding that “transgender and non-binary young people with gender dysphoria-related diagnoses were frequently admitted to hospital for suicidality or self-harm”), <https://bit.ly/3y9S2hU>; Mila Kingsbury, et al., *Suicidality among sexual minority and transgender adolescents: a nationally representative population-based study of youth in Canada*, 194 *Canadian Med. Ass’n J.* E767 (June 2022) (“Youth questioning their sexual orientation had twice the risk of having attempted suicide in their lifetime . . .”), <https://bit.ly/4bYCBXA>.

There have already been over 30 lawsuits around the country against school districts for policies similar to Rochester's. And while this litigation is still in its early stages, courts are beginning to recognize that these policies violate parents' constitutional rights. A Wisconsin court recently ruled against the Kettle Moraine School District's similar policy, concluding as follows: "The School District could not administer medicine to a student without parental consent. The School District could not require or allow a student to participate in a sport without parental consent. Likewise, the School District [cannot] change the pronoun of a student without parental consent without impinging on a fundamental liberty interest of the parents."⁶ A federal district court in southern California enjoined a similar policy: "[E]levating a child's gender-related choices to that of paramount importance, while excluding a parent from knowing of, or participating in, that kind of choice, is as foreign to federal constitutional and statutory law as it is medically unwise."⁷ So did another in Kansas: "It is difficult to envision why a school would even claim—much less how a school could establish—a generalized interest in withholding or concealing from the parents of minor children, information fundamental to a child's identity, personhood, and mental and emotional well-being such as their preferred name and pronouns. ... [W]hether the District likes it or not, [a parent's] constitutional right includes the right ... to have an opinion and to have a say in what a minor child is called and by what pronouns they are referred."⁸ Other cases have settled, one with a six-figure payment to the plaintiff.⁹

What Parents Can Do

Parents should be aware that Rochester's new policy allows them to ask staff if their child is being addressed as the opposite sex while at school and requires staff to answer that question truthfully. While we applaud the District for not adopting a policy to lie to parents—as some other districts have done—this is still insufficient to protect parents' rights. Children can begin to struggle with their gender identity at any time, unbeknownst to the parents, as has now happened many times around the country, and parents should not have to repeatedly and periodically check with school staff to ensure that the District has not secretly transitioned their child at school. That is why *prior* parental notice and consent is critical before school staff socially transition a child at school. Nevertheless, if parents are concerned about this with

⁶ Decision and Order, *T.F. v. Kettle Moraine Sch. Dist.*, No. 21-CV-1650 (Waukesha Cnty., Wis. Cir. Ct., Oct. 3, 2022), available at <https://will-law.org/wp-content/uploads/2023/10/94-2023-10-03-Decision-and-Order.pdf>.

⁷ *Mirabelli v. Olson*, 691 F. Supp. 3d 1197, 1212 (S.D. Cal. 2023), available at <https://bit.ly/4d9KNVY>.

⁸ *Ricard v. USD 475 Geary Cnty., KS Sch. Bd.*, No. 5:22-CV-4015 (D. Kan. May 9, 2022), available at <https://bit.ly/4d5I6ou>.

⁹ *E.g., Konen v. Caldeira*, No. 5:22-cv-5195 (N.D. Cal., removed to federal court on Sept. 12, 2022), available at <https://bit.ly/3Ytnra3>.

respect to their own child, they should ask school staff about this—repeatedly, if necessary.

Concerned parents should also request to opt out of the new policy and demand that the school district notify them and obtain their consent before it refers to their child using a different name or pronouns or permits their child to use opposite-sex facilities. It is unclear at this time whether the District will respect opt-out requests, but it is worth asking. There is no magic language to request an opt-out; an email is sufficient.

Finally, as noted above, if any parent or teacher learns that the District has transitioned a child without parental notice and consent, they can contact us below to discuss the possibility of a lawsuit against the District.

Other School Districts in Minnesota

Unfortunately, Rochester is not the only school district in Minnesota with a policy like this. Other school districts with similar policies that appear to allow transitions at school without parental notice or consent include [Bloomington](#), [North St. Paul/Maplewood/Oakdale](#), [Richfield](#), and [St. Paul](#). Other school districts in Minnesota have policies giving students the “right” to change their name/pronouns at school but are less clear about whether parents will be notified and deferred to. These school districts include [Burnsville/Eagan/Savage](#), [Hopkins](#), [Osseo](#), [Robbinsdale](#), [Rosemount/Apple Valley/Eagan](#), [St. Louis Park](#), and [White Bear Lake](#). Parents in these school districts should ask about their district’s policy and attempt to opt-out of it, if the District will honor that. And, if any parents or teachers learn that any of these Districts have transitioned a child without parental notice or consent, they should reach out to us.

Sincerely,



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