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Wisconsin Judge Tells School Not to Call Kids by Other Names and Pronouns Without Parental Consent

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A Wisconsin judge ordered a school district Tuesday to stop referring to students by "a name or pronouns at odds with the student's biological sex … without parental consent" because doing so violates parents' constitutional rights.

"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 can not [*sic*] change the pronoun of a student without parental consent without impinging on a fundamental liberty interest of the parents," declared Waukesha County Circuit Court Judge Michael Maxwell.

Maxwell handed down summary judgment in favor of the plaintiffs in a lawsuit filed against the Kettle Moraine School District in 2021. The plaintiffs, who were represented by attorneys from the Wisconsin Institute for Law and Liberty (WILL) and the Alliance Defending Freedom (ADF), are two sets of parents with children who are attending, or had attended, Kettle Moraine schools.

One set of parents, known as T.F and B.F., had a daughter attending Kettle Moraine Middle School who decided she wanted to be a boy. Although initially the parents were somewhat supportive, they ultimately changed their minds and told the school to refer to their daughter by her legal name and female pronouns. The school refused to do so, saying they would adhere to the daughter's wishes rather than her parents'. The parents withdrew her from the school, after which she decided she no longer wanted to "transition" to male.

The other plaintiffs, P.W. and S.W., sued the district for fear that the schools would likewise disregard their wishes should their children decide to switch genders.

The plaintiffs argued primarily that the school's policy violated parents' right to make medical decisions for their children.

In support of the notion that social transitioning — nonmedical interventions such as using pronouns or wearing clothes associated with the opposite sex — is indeed a medical issue, they introduced affidavits from two experts, a clinical psychiatrist and a transgender clinical psychologist.

The affidavits, which Maxwell repeatedly noted went uncontested by the district, claimed that social transitioning is a "powerful psychotherapeutic intervention" that often leads children to desire medical transitioning. "Thus," wrote the judge, "informed consent from the parents must be obtained before socially transitioning a child."

Indeed, to do otherwise risks "driv[ing] a wedge between a parent and their child," he penned. Moreover, secretly socially transitioning a child "can result in the child living a double life which can be 'psychologically harmful.'"

The district, which claimed its policy was required under Title IX's prohibition on sex discrimination in education, "seemingly ignore[d]" the plaintiffs' actual argument, "instead focusing on arguing against a position that the plaintiffs never took up — which is the right to control how a school educates one's child," observed Maxwell.

That, of course, is because claiming the state has a right to direct a child's upbringing, including his medical care, so flies in the face of legal precedent that the district couldn't possibly hope to prevail by making such a case. As Maxwell pointed out, the state only has an interest in violating parental rights when a child's physical or mental health is in danger, and then on a very "narrowly tailored" basis.

"Further," he added, quoting a 1979 Supreme Court decision, "'[s]imply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state.'"

Maxwell dispensed with the district's argument that catering to students' gender choices is mandated by Title IX, noting that the district relied on a guidance letter from the Obama administration that has since been rescinded and enjoined by a federal court.

He also took the district to task for "seek[ing] to avoid the serious issues in this case by claiming that Kettle Moraine does not have a policy on how to handle transgender issues such as are raised in this case." The policy applied to the daughter of T.F. and B.F. was invented by the superintendent after a discussion with the school board. It was never formally promulgated, let alone publicly debated, and it may or may not be applied to future students who wish to socially transition without their parents' consent.

Because of this, the district argued that P.W. and S.W. lacked standing to sue since their children had not yet expressed a desire to transition. Maxwell saw through this sophistry, stating, "Through its policy of disregarding parental wishes on a medical or health related decision and with how fast questioning ones gender can arise, P.W. and S.W. are at real risk of being harmed by the current school district policy."

Maxwell boiled the whole matter down to this: "This particular case is simply whether a school district can supplant a parent's right to control the healthcare and medical decisions for their children. The well established case law in that regard is clear — Kettle Moraine can not."

"This victory represents a major win for parental rights," WILL Deputy Counsel Luke Berg said in a press release. "The court confirmed that parents, not educators or school faculty, have the right to decide whether a social transition is in their own child's best interests. The decision should be a warning to the many districts across the country with similar policies to exclude parents from gender transitions at school."