

WI Supreme Court Takes Case Concerning Communication with Parents About Their Child's Gender Identity, Names, and Pronouns at School.

The Wisconsin Supreme Court recently granted a petition for review of an injunction against the Madison Metropolitan School District relating to enforcement of its policies on gender identity.

The original complaint was filed on February 18, 2020, by the Wisconsin Institute for Law & Liberty (WILL) in the Dane County Circuit Court. The complaint was filed on behalf of parents in the Madison School District who oppose the District's policies in support of transgender, non-binary and gender-expansive students.

In the complaint, WILL alleges, among other things, that the policies:

- Allow students of any age to transition to a different gender identity at school by choosing new names and pronouns, without parental notice or permission;
- Prohibit school staff from notifying parents of their child's gender identity and the name/pronouns adopted by the child at school, unless the student gives permission;
- Instruct staff to deceive parents by using a student's preferred name and pronouns at school, while using the student's legal name and pronouns when communicating with the parents.

WILL argued before the Circuit Court that the District's policies violated parents' rights to make healthcare decisions and pursue treatment options for their children. WILL also argued that the policies violated the state requirement that parents must consent to medical treatment for their children and interfered with parents' ability to provide proper support for their children.

On September 28, 2020, the Circuit Court issued a preliminary, temporary injunction against the District, preventing the District from applying or enforcing its policies "in any manner that allows or requires District staff to conceal information or to answer untruthfully in response to any question that parents ask about their child at school, including information about the name and pronouns being used to address their child at school." The court clarified, "This injunction does not create an affirmative obligation to disclose information if that obligation does not already exist at law and shall not require or allow District staff to disclose any information that they are otherwise prohibited from disclosing to parents by any state or federal law or regulation."

WILL appealed the injunction in an attempt to broaden its scope, and eventually filed two petitions for review with the Wisconsin Supreme Court, the first of which was denied. In response to the second petition for review, the District argued that review by the Supreme Court at this stage would be inappropriate, given that there had not been fact-finding or a final decision from the lower courts. Nonetheless, the Supreme Court granted the petition and will be reviewing the injunction. We will advise you of any key developments in the case, including the Court's decision and any recommended revisions to policies or procedures in light of the decision.

If you have any questions about this Legal Update or would like assistance in responding to a particular student or policy issue, please contact Attorney Alana Leffler at aleffler@buelowvetter.com or 262-364-0267, or your Buelow Vetter attorney. Assistance in drafting this update was provided by Aleah Loll, law clerk and Juris Doctorate Candidate, May 2022.