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Reply to: Florida

March 16, 2017

VIA EMAIL ONLY

Bret A. Walther
C.W. Moore Plaza
250 S. Fifth Street, Suite 700
Boise, ID 83707-7426
ajh@ajhlaw.com

Re: Legal violations at Forrest M. Bird Charter School GSA Club

Dear Mr. Walther:

I have received your response of February 22, 2017, on behalf of Forrest M. Bird Charter Schools (“School”), and shared it with our clients. By means of this letter, Mr. & Mrs. Doe hereby withdraw their child from the School. Neither our clients nor Liberty Counsel expect the School to violate the First Amendment rights of any party, but the School must respect parental rights. The School has violated a position of trust in secretly recruiting students for the Gay-Straight Alliance (“GSA”), and in intentionally seeking to prevent parents from knowing. It has now doubled down in its denial.

In addition to the facts set forth in Liberty Counsel’s letter of February 3, 2017, regarding parental rights violations and other legal violations, Liberty Counsel requested that the School 1) refrain from further violations of parents’ rights to control the association of their minor children; 2) direct teacher sponsors of non-school-sponsored student clubs like the GSA to be present only in a supervisory, not activist, capacity; 3) ban non-school persons from directing or regularly attending the club; and 4) require written parental permission for all student clubs.

The School now claims no violation of parental rights, despite staff intentionally recruiting students without their parents’ knowledge, and intentionally keeping parents ignorant that their children are being recruited by outside adults for a politically-activist club which promotes homosexuality and gender confusion. The School “will not comply with [the] demand” for its teachers to be present in a supervisory, rather than activist, capacity. The School will “allow” and may “encourage” non-school persons to be present at the GSA meetings at the ostensible “invitation of students.” The School, belatedly, claims that it will not recruit or actively encourage students to join the GSA, but it still refuses to inform parents of children whom it already recruited.

Principal Jensen verified¹ that the GSA “student led club” was wholly created by adult staff and outside persons over “months” and that staff then hand-picked and recruited students they believed should be in the GSA. She admitted that school staff decided not to inform parents about the GSA. Permission slips are a reasonable means of informing parents about their children’s activities. While they may not typically be necessary for the “chess club” or the local “chess master,” as you put it, they are most certainly necessary for a politically activist club like the GSA, which seeks to normalize harmful sexual activity between members of the same sex, and gender confusion under the guise of “anti-bullying” and “support.” It is not discriminatory to require parental permission slips for all clubs.

The School’s intentional refusal to notify parents and seek their permission for GSA attendance is disturbing and hypocritical. The High School Parent/Student handbook² states that a “**permission slip must be signed and returned to the school** in order for the student to attend” field trips. “When anyone other than a **parent/guardian** is picking up a child, they must have a note from a **parent/guardian.**” The School claims that “**Parent involvement is critical** to Forrest Bird Charter School’s overall effectiveness.” “**Parents**” are asked to provide input on appropriate student attire. “**Parents**” must provide “written” permission for medication. “A note should be sent **from the parent** ...if... activities should be restricted.” “**Parents or Guardians must send a note**, email or call the high school office before a student will be permitted to sign out and leave campus.” Thus, the School requires “parental permission” for everything else, but will not require permission from (or even inform) parents of the students it recruited for a politically-activist GSA, where outside, non-background-checked adults may attend at any time “at the invitation of students,” to influence decisions by students that will affect them for life. These are precisely the kind of activities over which parents must have oversight.

Moreover, you misapprehend the extent of the Equal Access Act, and its clear requirements. The Act applies to “non-curricular” student clubs. *See Board of Educ. v. Mergens*, 496 U.S. 226, 237-38 (1990). A club is “curricular” only “if the subject matter of the group is actually taught, or will soon be taught, in a regularly offered course; if the subject matter of the group concerns the body of courses as a whole; if participation in the group is required for a particular course; or if participation in the group results in academic credit.” *Id.* at 240. Schools may not play games with what is “curricular/non-curricular.” *Id.* at 244. Whatever arguments the School may raise about “combating bullying” and “support,” these are insufficient to bring the GSA into “curricular” status.

As the Act mandates, schools cannot discriminate against “political, philosophical, or other content” of speech, in addition to religious speech. While schools cannot endorse religious speech, at the same time, schools may not endorse partisan political or otherwise controversial positions of non-curricular clubs like GSA. It is as inappropriate for school employees to lead and recruit for the GSA in their official capacities, as it is for school employees to lead another partisan club, like the Young Democrats or Young Republicans. Indeed, the Idaho Department of Education states that it is “unethical” for teachers to use “institutional privileges for the promotion of political candidates or for political activities.”³

The Act makes no distinction between “non-curricular” clubs, whether religious, or non-religious. Non-curricular clubs must be treated “uniformly.” The Act states that “Schools

¹ Idaho Code Ann. § 18-6702(2)(d)

² <http://forrestbirdcharterschool.org/wp-content/uploads/2016/09/fbcs-high-school-handbook.pdf>

³ <https://sde.idaho.gov/cert-psc/shared/ethics/Code-of-Ethics-for-Professional-Educators.pdf>

shall be deemed to offer a fair opportunity to **students** who wish to conduct a meeting within its limited open forum if such school **uniformly** provides” a number of criteria, including that the meeting must 1) be “**voluntary and student-initiated;**” and 2) have “**no sponsorship of the meeting by the school, the government, or its agents or employees.**” See *Equal Access Act*, 20 U.S.C.A. § 4071(c)(1) and (c)(2). Thereafter, the Act sets forth an independent requirement specific to “religious” clubs and the presence of teachers at such in a “nonparticipatory” capacity. See 20 U.S.C.A. § 4071(c)(3). The requirement of “no sponsorship of the meeting by the school” or its employees remains applicable to GSA.

As to your position on “outside individuals,” even the national GSA Network itself takes the same position as Liberty Counsel on the application of the Equal Access Act:

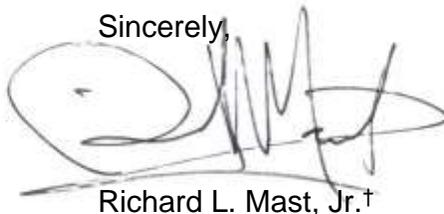
Keep in mind that **in order for the Equal Access Act to apply, the group must be student-led, and cannot be founded or led by anyone from outside the school.** (Emphasis added).⁴

Finally, subsection (d)(5) of the Act prevents the Act from being used to “sanction meetings that are otherwise unlawful,” and subsection (d)(7) prevents the Act from abridging “the constitutional rights of any person.” Parents of minor children are “persons” within the contemplation of the Act. As set forth in previous correspondence, parents have a fundamental constitutional right to direct the associations of their minor children, superior to any “associational right” a minor child has toward anyone else with whom that child wishes to associate. Schools act *in loco parentis*, and are obligated to give effect to known parental wishes.

School staff and outside persons have recruited for the GSA, and staff have willfully permitted Student Doe to attend the club after being made aware that such attendance was not allowed by the student’s parents. The School has confirmed its intention to continue encouraging other children in avoiding parental permission for the GSA, and that it will not assist Mr. & Mrs. Doe in their desires for their child’s associations while in the School’s care.

In doing so, Forrest M. Bird Schools has confirmed that it does not respect parental rights. Liberty Counsel will take further action to prevent irreparable harm to the rights of our clients, as well as the parents of other children whom the School is recruiting in the absence of their parents’ knowledge and permission.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Mast, Jr.", written over a horizontal line.

Richard L. Mast, Jr.[†]

⁴ <https://gsanetwork.org/files/resources/GSA%20Advisor%20Handbook%20Frequent%20Issues.pdf>

[†] Licensed in Virginia