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# LIBERTY COUNSEL

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Reply to: Virginia

November 20, 2015

**Via Email Only**

Mary Seidl, President, Board of Education  
Mt. Horeb Area School District  
1304 E Lincoln Street,  
Mount Horeb, WI 53572  
seidmary@mhasd.k12.wi.us

Re: Inappropriate discussion of gender confusion and sexuality with primary school students

Dear Board President Seidl:

By way of brief introduction, Liberty Counsel is a non-profit litigation, education, and policy organization with an emphasis on religious liberty issues. We have offices in Florida, Virginia, and Washington, D.C., and hundreds of affiliate attorneys around the nation.

I write on behalf of concerned parents regarding the attached “Dear Parent” letter that was sent November 19, 2015, to parents of primary school students within the Mount Horeb Area School District (“MHASD” or “the District”).

The letter notifies parents that Principal Rachel Johnson, School Psychologist Nicole Tepe, and School Counselor Emily McKee plan to subject Primary School students to a discussion of gender confusion and sexuality, under the guise of “anti-bullying,” “diversity,” and building a “safe and nurturing environment,” by means of reading to First Graders this coming Monday, November 23, “transgender” activist book “I AM JAZZ”. The letter was sent with one business days’ notice and appears designed to catch parents off-guard, to prevent them from opting their children out of this reading and subsequent discussion.

**I hereby request the cancellation of this Monday’s planned reading and discussion, to prevent parental rights violations.**

The November 19 letter requests, disingenuously, given the lack of notice, that parents “please let us know if you have concerns about your child participating in this discussion; we respect the beliefs and convictions of all families.”

Please allow this letter to set forth some of those “concerns,” and serve as an official objection to this decision as a violation of fundamental parental constitutional rights. The decision ignores the District’s obligation to support the vast majority of students who are not gender-confused, and creates the potential of gender confusion and resulting harms in these other students, who are currently happily living as normal, well-adjusted First, Second, and Third Graders.

First, as you may know, “Jazz” Jennings is a male child “transgender” activist, who has been permitted to undergo harmful gender reassignment drug therapy and hormone blockers, resulting in permanent physical changes to his body. The book is a false and misleading book, and the subsequent teaching and discussion will result in the following harms:

1. Promoting non-factual, radical, and controversial assumptions about "gender"--which is neither the right nor business of government schools to do;
2. substituting the beliefs of the principal, school psychologist, and school counselor for those of parents;
3. necessitating many parents teaching their children about a psychological and moral disorder about which they believe their children are too young to learn;
4. making other children uncomfortable;
5. confusing many children;
6. disturbing children who will now falsely believe that one can choose one's gender; and
7. undermining modesty and privacy rights of students;
8. undermining the religious free exercise and free speech rights of teachers and students in relation to incorrect pronouns.

This decision and these harms violate parental constitutional rights to direct the upbringing of their children. “The fundamental theory of liberty upon which all governments in this Union repose excluded any general power of the state to standardize its children...”; the “child is not the mere creature of the state...” *Pierce v. Society of Sisters*, 268 U.S. 510 at 535 (1925). In *Troxel v. Granville*, 530 U.S. 57 (2000) the Supreme Court recounted its recognition this bedrock principle:

In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children *Wisconsin v. Yoder*, 406 U.S. 205, 232, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972) (“The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the

upbringing of their children is now established beyond debate as an enduring American tradition"); *Quilloin v. Walcott*, 434 U.S. 246, 255, 54 L. Ed. 2d 511, 98 S. Ct. 549 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Parham v. J. R.*, 442 U.S. 584, 602, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); *Santosky v. Kramer*, 455 U.S. 745, 753, 71 L. Ed. 2d 599, 102 S. Ct. 1388 (1982) (discussing "the fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Glucksberg, supra*, at 720 ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the right ... to direct the education and upbringing of one's children" (citing *Meyer* and *Pierce*)). In light of this extensive precedent, **it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents** to make decisions concerning the care, custody, and control of their children. [emphasis supplied]

There is no credible medical authority establishing the proposition that biological sex can be changed, or that "mind over matter" is controlling, in areas of identity. The former Chief Psychiatrist for Johns Hopkins Hospital, Dr. Paul McHugh, wrote in a [June 12, 2014 Wall Street Journal op-ed](#) that "policy makers and the media are doing no favors either to the public or the transgendered" by not treating **transgender "confusions ... as a mental disorder that deserves understanding, treatment and prevention."** While students suffering from gender confusion should be treated with kindness and respect, schools should not by their policies or practices attempt to coerce other students and teachers into participating into what amounts to a harmful delusion.

In light of this authority, the District's letter contains a number of false claims and assumptions to support its course of action. Among these, the letter states that the District is committed to supporting students from a "wide range of...genders" when there are but two genders, male and female. The letter also states

[I]n order to adequately support students and families, we are **taking several steps** to support gender-variant students and their families. People express their gender in a variety of ways. Gender-variant children include children whose identities, appearances, behaviors or interests challenge the expectations associated with their **gender assigned at birth**. For example, a child may have been born male but insists she is a girl. Or a child may identify as a girl but wants to wear her hair short and change her name to a "boy" name. (Emphasis added).

The letter continues:

"We have been working with the family of a student on your child's floor who identifies as a girl, but has male anatomy. We refer to this as having a girl brain and a boy body.

Together **we have come up with a plan** to support this student in living as her [sic] **authentic self.**" (Emphasis added).

Among the letter's false analogies and claims are the following: 1) children are arbitrarily "assigned" a gender at birth, as if the presence of male or female genitalia as the basis for "male" and "female" is an arbitrary decision imposed upon a person; 2) that simply because a child is "born male" but "insists" that child is a girl makes it so; 3) that because a girl likes short hair and likes a "boy" name, she is now a boy; and among the most egregious, 4) that it is possible to have a "girl brain and a boy body." This claim is completely at odds with the rationale for equality between the sexes: there is no difference between male and female brains or mental abilities, and thus this idea fosters gender stereotypes.

At a minimum, the District's "plan to support this student in living as 'her' authentic self" subjects students to propaganda having no basis in science or reality, to present gender confusion as "normal." For the record, a mandatory requirement that other students call a boy "her" and "she" infringes upon the other students' rights to tell the truth, in accordance with their religious convictions, and reality.

**Finally, the letter leaves parents to wonder what exactly else is entailed within the "several steps" of the District's "plan."** Typically, such plans allow gender-confused students to live "authentically" by entering and using the restrooms of the opposite sex. Is it now the policy of the District that the subjective feelings of a child who wishes or thinks he is the opposite sex trumps objective biological and anatomical reality? Is it now district policy that parents and students must accept the unproven belief that "gender identity" is more objectively "real" and more important than is objective biological and anatomical reality?

The fact that boys or girls don't choose to experience gender confusion does not mean that such feelings are normal or good. It certainly does not mean that society must affirm their feelings or accommodate every behavior that such feelings impel. As you may know, in March 2015, a [Pennsylvania federal court ruled](#) that the University of Pittsburgh did not violate the U.S. Constitution or Title IX when it barred a female student, who identified as male, from using men's locker rooms and bathrooms. Similarly, in September 2015, a [federal court in Virginia dismissed](#) a discrimination claim by a female-to-male so-called "transgender" student who sought access to the male bathrooms at a public high school. The court ruled that "[n]ot only is bodily privacy a constitutional right, the need for privacy is even more pronounced in the state educational system. The students are almost all minors, and public school education is a protective environment."

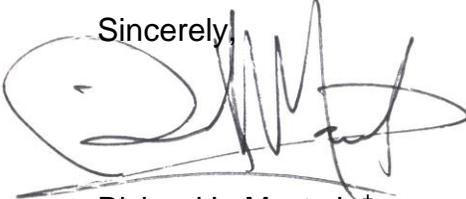
Boys should leave a bathroom if a girl enters, and girls should leave a bathroom if a boy enters. Boys and girls should not be compelled to use facilities intended for private acts in the presence of those of the opposite sex. Boys have no right to use girls'

restrooms, and girls have no right to use boys' restrooms. No one has a moral right to compel others to participate in a fiction (including compelling teachers and others to use pronouns that do not correspond to objective biological sex).

**The District must cancel this event, and the District must set forth its “plan” so that parents are not subjected to additional surprises like the November 23 propaganda session.** The District is not free to override parental rights and religious beliefs, by subjecting impressionable children to confusion about something as important as gender and sexuality. The reading of “I AM JAZZ” and following discussions about gender confusion and sexuality is the first step toward remaking the moral beliefs of District students, which the District may not do.

Liberty Counsel is deeply concerned about this impending violation of civil rights, and if this request is ignored, will be tracking in which classes this book is read, and who reads it. If harm results to children, including gender confusion, violations of restroom privacy, or other harms, all options will be explored, **including a federal lawsuit against teachers and staff in their official and individual capacities for violation of parental rights.**

Please govern yourselves accordingly.

Sincerely,  
  
Richard L. Mast, Jr.†

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CC/Attachments

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