



# LIBERTY COUNSEL

Post Office Box 540774  
Orlando, FL 32854-0774  
Telephone: 407•875•1776  
Facsimile: 407•875•0770  
www.LC.org

122 C Street N.W., Suite 360  
Washington, DC 20001  
Telephone: 202•289•1776  
Facsimile: 202•737•1776

Post Office Box 11108  
Lynchburg, VA 24506-1108  
Telephone: 407•875•1776  
Facsimile: 407•875•0770  
liberty@LC.org

Reply to: Florida

February 3, 2017

**VIA FACSIMILE: (208) 263-9441**

Jim Zuberbuhler, Board Chair  
Forrest M. Bird Charter Schools  
614 S Madison Ave  
Sandpoint, ID 83864

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

Dear Mr. Zuberbuhler:

By way of brief introduction, Liberty Counsel is an international non-profit legal, media and policy organization specializing in constitutional law, with offices in Florida, Virginia, and Washington, D.C. As part of our work in the public interest, Liberty Counsel provides *pro bono* legal representation in matters within our mission of First Amendment advocacy.

I write on behalf of parents (“Mr. and Mrs. Doe”) of a high school student (“Student Doe”) at Forrest M. Bird Charter Schools (“Charter School”) who has been recruited by school staff to participate in the “Gay Straight Alliance” (“GSA”) Club. Mr. and Mrs. Doe’s confidence in school administration has been severely shaken by the events outlined below. Our clients hereby request assurances, as a condition of their child returning to school, that the School will respect their parental rights, and that the GSA will not be led by school staff or non-school persons. It is a violation of the Equal Access Act for school staff to recruit for the GSA, and to permit Student Doe to attend the club after being made aware that such attendance was not allowed by the student’s parents. It is also a parental rights violation to intentionally encourage and facilitate children to avoid seeking parental permission for the club.

**Facts:**

I understand the following facts to be true: Student Doe has been diagnosed with high-functioning autism, and has recently been identifying as the opposite sex. Student Doe has discomfort about the student’s biological sex (“gender dysphoria”) but is not “transgender.” This situation is frequently encountered among children on the autism spectrum. Mr. and Mrs. Doe love their child, and are committed to supporting Student Doe as the student works through issues of identity. Principal Mary Jensen is aware of this prevalence of gender dysphoria among this population of children. Nevertheless, Principal Jensen and teachers Michael Bigley and Becky Campbell recruited Student Doe to join the nascent GSA, which

they were starting at Forrest M. Bird High School.

After Mr. and Mrs. Doe first became aware of the GSA and school staff's invitation for Student Doe to join it, they explained to their child that the GSA club is actually an LGBTQ activist club guided by activist adults, and told Student Doe that based on the fact that the faculty themselves were choosing which kids to tell about the club meant that they were operating the group in secret, which was illegal. They explained that the GSA club has caused problems in communities across the United States, and they did not want Student Doe involved in a political agenda.

Two days later, just before the first GSA club meeting, Student Doe talked to Principal Jensen, and informed her that Mr. and Mrs. Doe did not want Student Doe in the club. On the day of the club, Student Doe forgot the lunch Mrs. Doe had prepared. Mrs. Doe stopped by school to bring lunch to her child, but could not find Student Doe in the cafeteria. The student's friends informed her that Student Doe was at the GSA club across the way at the middle school.

When our client walked over to the middle school, she observed two teachers, Mr. Bigley and Ms. Campbell, as well as her child and two other students, attending this lunchtime club in Ms. Campbell's room. The teachers looked surprised to see her. Mrs. Doe gave lunch to her child, and did not wish to upset Student Doe, and so she left to speak with Principal Jensen to reiterate that her child was and is not to participate with GSA in any fashion whatsoever.

Mrs. Doe queried Ms. Jensen about the club and Student Doe's attendance thereto. In that conversation, Principal Jensen confirmed that there had been no announcement to the school, nor to parents of affected students, that a GSA club was being started by school staff. She stated, "**we're keeping it kind of on the down low**" right now, because "this is North Idaho," and when the adults involved at the Charter School had also tried to start a GSA at Sandpoint Junior High, they couldn't get it off the ground, because parents would not sign permission slips. She stated that "**kids who wanted to participate in the club did not necessarily want their parents to know**," and therefore these adults facilitated them meeting off campus at a local library under the supervision of third parties. Ms. Jensen stated that the Charter School "wants to be a progressive school on that sort of thing, but we did not want to be 'in-your-face'," presumably with parents who objected or might object.

Ms. Jensen also stated that a "community member for PFLAG is transgender," and that this individual and Morgan Garipey (the East Sandpoint Library Teen Coordinator) wanted the club to sponsor community events for the LGBTQ and "Allies." "Once they get the club going, the next step is to start community events – probably next year." "**The adults – me, the Bigley's, Allison, Leo Huntsinger, and then Morgan, we spent months trying to do this thing.**" (Emphasis added).

After this, when Mrs. Doe asked about club documents, Ms. Jensen said "we don't want the kids to be excluded" from "developing the mission statement, because it's *their* club." "**We decided not to do activism at first**, because that's a big step." "**One of the members of the adult crew wanted us to be the activists, doing the parades, you know, be-in-their-face kind of stuff.**" (Emphasis added). "I didn't want to do that...because this is North Idaho, and if we go that route, it creates an unsafe place."

Ms. Jensen stated that the adult employees and non-employees (with her approval) had contacted the organizations “Parents and Friends of Lesbians and Gays” (“PFLAG”) and [Odyssey Youth Movement of Spokane](http://www.odysseyyouth.org/about_us) (“OYM”). OYM is an ostensibly “youth led” “adult supported” homosexual organization,<sup>1</sup> but this claim cannot be taken seriously, if “youth led” in that context is the same sort of “youth led” organization seen here.

### **Legal Violations**

In so doing, the Charter School has engaged in serious legal violations.

First, Forest M. Bird Charter School under Idaho law is “a public school for all purposes.”<sup>2</sup> As such, it is bound to respect the fundamental rights of parents, as well as all laws applicable to public schools, including the Equal Access Act. Therefore, **all clubs in the District, whether student-led or not, should have parental permission forms whereby parents are informed of their children’s extracurricular activities and associations.** According to Principal Jensen, too many parents objected when previously informed, so the school is “keeping it quiet” to get the controversial GSA off the ground.

Second, the Equal Access Act prohibits non-school-sponsored student clubs, such as those involving religious or political issues, from being school sponsored. This means they may not be led or promoted by teachers in their individual capacity, during instructional time. 20 U.S.C. §§ 4071(c)-(d), 4072 (1984); *Bd. of Educ. of Westside Cmty. Sch. v. Mergens By & Through Mergens*, 496 U.S. 226, 236 (1990); *Culbertson v. Oakridge Sch. Dist. No. 76*, 258 F.3d 1061, 1065 (9th Cir. 2001). The planning, control, recruitment, and promotion by Principal Jensen, Mr. Bigley and Ms. Campbell here violate the “sponsorship” prong of the Act §§ 4071(c)(2): “there is **no sponsorship of the meeting by the school, the government, or its agents or employees.**” (Emphasis added). The planning and control by non-school persons Morgan Gariepy, Leo Huntsinger, and “Allison” violates the final prong of the Equal Access Act: “5) **nonschool persons may not direct, conduct, control, or regularly attend** activities of student groups.” 20 U.S.C § 4071(c)(5). (Emphasis added).

Just as teachers may not recruit students to join the Democrat Club, Republican Club, or a Bible club in their official capacities, during instructional time, teachers may not secretly recruit students to join a club like the Gay Straight Alliance, which seeks to confirm its minor members in homosexuality and transgenderism, under the guise of “anti-bullying.”

If GSA is allowed to exist at all, parents must give their permission for their children’s participation, and it must be **entirely** student-led and directed. Given the breach of trust herein by Mr. Bigley and Ms. Campbell, they should not be allowed to be club “sponsors.” Any teachers who are sponsors must be required to be present in a supervisory, not activist, capacity. In addition, Morgan Gariepy, Leo Huntsinger, and “Allison,” as non-school persons, may not “direct, control, or regularly attend” the GSA, and must be barred from school property during instructional time, and from having any direction or control in the club.

Third, yet most egregiously, Principal Jensen, Mr. Bigley and Ms. Campbell have intentionally violated the parental rights of not only Mr. and Mrs. Doe, but the rights of the parents of the other students they have secretly invited to the GSA. The law is clear: **parents,**

---

<sup>1</sup> [http://www.odysseyyouth.org/about\\_us](http://www.odysseyyouth.org/about_us)

<sup>2</sup> <http://forrestbirdcharterschool.org/wp-content/uploads/2015/08/FBCS-Charter-Doc-Revised-June-2014.pdf>

not agents of the state, **have the right to direct the upbringing and associations of their children.** The law presumes that **parents** possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions, not activist school employees.

The American legal system has historically recognized that natural bonds of affection lead parents to act in the best interests of their children. The Supreme Court's "decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through **the family** that we inculcate and pass down many of our most cherished values, moral and cultural." *Moore v. East Cleveland*, 431 U.S. 494 (1977). (Emphasis added). "The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children. . . **The child is not the mere creature of the State**; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). (Emphasis added). "It is cardinal with us that **the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. . .**" *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158 (1944). (Emphasis added). "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.**" *Wisconsin v. Yoder*, 406 U.S. 205 (1972). (Emphasis added).

Mr. and Mrs. Doe and all other parents have the fundamental right to determine the associations and activities of their minor children. School officials have no business in intentionally interfering with and directly opposing the instructions of Student Doe's parents in this instance, and going behind the backs of other parents.

Student Doe is an Autism Spectrum Disorder ("ASD") child, and as such, is very impressionable. Student Doe has been diagnosed with gender dysphoria, but this does not make the child "transgender" or gay. Student Doe's parents (who care more for her than school employees ever will) have sought professional treatment for Student Doe, and expect Student Doe to eventually become comfortable with the student's actual gender. This is consistent with the findings of the [National Institutes of Health: as many as 94% percent<sup>3</sup>](#) of students questioning their gender, or who have gender dysphoria, spontaneously resolve those feelings in favor of their biological gender by the age of eighteen.

The former Chief Psychiatrist for Johns Hopkins Hospital, Dr. Paul McHugh, has written in a [June 12, 2014 Wall Street Journal op-ed](#) <sup>4</sup> 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."

**Demand:**

**Forrest M. Bird Charter Schools is hereby on notice that any further violations of our client's parental rights in this fashion will be viewed by Liberty Counsel as**

---

<sup>3</sup> <https://www.ncbi.nlm.nih.gov/pubmed/25231780>

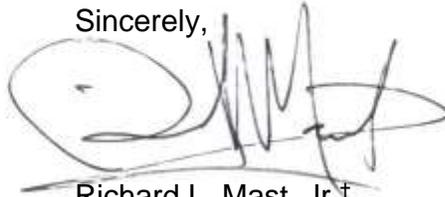
<sup>4</sup> <http://www.wsj.com/articles/paul-mchugh-transgender-surgery-isnt-the-solution-1402615120>

**sufficient to support a federal lawsuit for civil rights violations.**

As a condition of Student Doe returning to school, **please confirm in writing by February 10, 2017**, that the Forrest M. Bird Charter Schools will 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 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.

If I do not receive the requested response, Liberty Counsel will take further action to prevent irreparable harm to the rights of our clients. If a federal lawsuit for civil rights violations becomes necessary to vindicate the parental rights of Mr. and Mrs. Doe, it may include any appropriate parties in their individual, as well as official, capacities.

Sincerely,



Richard L. Mast, Jr.†

RLM/ajr  
CC

**Via Email**

Mary Jensen, Principal  
Michael Bigley  
Becky Campbell

maryjensen@forrestbirdcharterschool.org  
michaelbigley@forrestbirdcharterschool.org  
beckycampbell@forrestbirdcharterschool.org

**VIA FACSIMILE: (208) 263-9441**

Charter School Board of Trustees  
Kate McAlister, Vice Chair  
Robin Ruppert  
Chris Warren  
Bill Hertzberg

---

† Licensed in Virginia