

Platkin v. Marlboro Township Board of Education

Parents have a fundamental right to control and direct the education, upbringing, and healthcare decisions of their children. But they cannot fully exercise that right if government officials hide important information from them about their children. Unfortunately, schools across the country are doing just that. Now the Goldwater Institute is stepping up to help a New Jersey mom by defending the Marlboro Township Board of Education’s new parental notification policy against an unprecedented assault from the New Jersey Attorney General. This policy requires school officials to inform a child’s parents/guardians if the school decides to recognize the child as transgender and grant accommodations based on that decision. It also prevents school officials from concealing information from parents about their own children.

Hiding vital information from parents about a child’s psychological and physical development is both wrong and unconstitutional. The United States Supreme Court has consistently held that parents have a fundamental right to control and direct the education and care of their children—a right that the New Jersey Supreme Court has also recognized under the state constitution. These parental rights are broad, and the government may only intrude on them when necessary to protect a child’s health and safety—for example, if there is evidence of abuse.

Unfortunately, the New Jersey Attorney General has decided that Marlboro’s parental notification policy violates the New Jersey Law Against Discrimination (LAD), a state anti-discrimination statute. The Attorney General bases his action on an interpretation of the LAD by the New Jersey Department of Education. He then filed an Administrative Complaint with the New Jersey Department of Law and Public Safety, Division on Civil Rights (“DCR”) against the school district and is seeking an injunction in state court to prevent Marlboro from implementing the parental notification policy.

Parental Rights Under Attack

The principle that parents have an inherent right to direct the upbringing of their children has been recognized as far back as Aristotle.¹ And the U.S. Supreme Court has repeatedly held that this right falls within the liberty interests protected by the Fourteenth Amendment.

But that right is now under systematic attack across the country, including by school districts that seek to conceal or withhold information from parents about what goes on in schools. In Fairfax County, Virginia, for example, when two

¹ Aristotle, *Nicomachean Ethics* Bk. 8 ch. 12.

mothers submitted requests for information about how their local school district was spending money, the school complied with their requests—and then sued them for telling other people about what they had learned.² When another parent sought information from her school district in Rhode Island, the National Education Association sued her, too.³ Education bureaucrats have opposed even modest efforts to require school districts to comply with basic transparency requirements that apply to other government agencies—such as a requirement that the school post on its website a list of the books being used in the classroom. And in Maine, the Goldwater Institute is representing a mom in her suit against the Great Salt Bay Community School seeking vindication of her parental rights after school officials gave her daughter a chest binder without notifying her parents.⁴

Now, Goldwater is stepping up to defend another attack on parental rights. Schools across the country are keeping parents in the dark regarding issues involving a child’s gender identity. Courts in California, Wisconsin, Massachusetts, Maine, and Florida are also currently examining the extent to which school officials may actively conceal critical information about a child’s wellbeing from the child’s parents. This phenomenon has even caught the attention of the New York Times, which recently observed that “how schools should address gender identity cuts through the liberal and conservative divide. Parents of all political persuasions have found themselves unsettled by what schools know and don’t reveal.”⁵

The Marlboro Township Board of Education—a Pre-K-8 school district—recently adopted a new policy laying to foster increased parental involvement in important decisions involving minors, such as the decision to be known by a different name or pronouns, or to use a different bathroom. This newly amended policy requires school officials to “notify a student’s parent/guardian of the student’s change in gender identity or expression except where there is reason to believe that doing so would pose a danger to the health and safety of the pupil.”⁶ In other words, it complies with constitutional requirements.

The Policy does not require immediate parental notification, however. Instead, a school counselor must first meet with and collaborate with the student. Their conversation will center around how the student’s parents/guardians will be notified and will address what concerns the student may have regarding parental

² <https://www.goldwaterinstitute.org/case/protecting-parents-right-to-knowfairfax-county-school-board-v-tisler-and-oettinger/>.

³ <https://www.goldwaterinstitute.org/nea-sues-mom-for-asking-questions-about-curriculum/>

⁴ <https://www.goldwaterinstitute.org/case/defending-a-maine-moms-constitutionally-protected-parental-rights/>.

⁵ Katie J. M. Baker, “When Students Change Gender Identity, and Parents Don’t Know,” New York Times, Jan. 22, 2023, <https://www.nytimes.com/2023/01/22/us/gender-identitystudents-parents.html>.

⁶ <https://www.straussesmay.com/seportal/Public/DistrictPolicy.aspx?policyid=5756&id=381521499991483693f72c2c1580dae6>.

notification. Then, the student, counselor, parents/guardians, and others come together to develop a plan for the student.

The Policy therefore recognizes that every case is unique and does not prescribe a one-size-fits-all solution. Instead, it attempts to balance confidentiality for students with the constitutional rights of parents.

Importantly, the Policy centers on ensuring that parents/guardians are involved in critical aspects of their children’s development and prohibits school officials from keeping vital information from parents/guardians. But the Policy does not require notification if there’s a legitimate fear that such notification would harm the student.

The New Jersey Attorney General claims that this law violates New Jersey’s Law Against Discrimination (LAD).⁷ He has now taken the extraordinary step of filing an administrative complaint with the state against the school and is seeking an injunction preventing the policies from being implemented by the school district. The Attorney General contends that the LAD, as interpreted by the Department of Education, includes a blanket prohibition on school officials telling parents about decisions related to a child’s gender identity.

The Goldwater Institute is seeking to intervene in this case on behalf of a New Jersey mom, Angela Tycenski, who sends her two children to two schools governed by the Policy. Goldwater attorneys assert that the Policy is not only *required* by the federal and state constitutions, but that the interpretation of the LAD by the state facially violates those constitutional protections.

The Constitution and Parental Rights

The Supreme Court has consistently recognized that the right of parents to control and direct the education, upbringing, and healthcare decisions of their children is one of the “liberty interests” protected by the Fourteenth Amendment’s Due Process Clause. The Court has called it “the oldest of the fundamental liberty interests” recognized in constitutional law.⁸

The Supreme Court first recognized parental rights as “fundamental” in 1923, characterizing it as the right “to control the education of their [children].”⁹ It reaffirmed that right two years later, holding that “the liberty of parents and guardians” includes the right “to direct the upbringing and education of children

⁷ [Transgender Student Guidance for School Districts \(nj.gov\)](https://www.nj.gov/education/office-of-the-attorney-general/press-releases/2020/08/20200818-transgender-student-guidance-for-school-districts-nj.gov)

⁸ *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

⁹ *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923).

under their control.”¹⁰ And in 1944, it reiterated that parental rights have a constitutional dimension, noting that “the custody, care and nature of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”¹¹

The Court has repeatedly upheld parental rights over states’ attempts to interfere with parental choices. It has said that the “primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”¹² It is clear, then, that this right is “objectively, deeply rooted in this Nation’s history and tradition ... and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.”¹³ The right Angela is asserting is therefore constitutionally protected by the very highest degree of legal scrutiny.¹⁴

What’s more, New Jersey courts have consistently held that under New Jersey law, there is a presumption that parents are “fit” to make decisions for their own children.¹⁵ That presumption can only “be overcome by ‘a showing of gross misconduct, unfitness, neglect, or exceptional circumstances affecting the welfare of the child.’”¹⁶ Such a showing necessitates a neutral proceeding to evaluate the child’s welfare if unfitness is suspected. The Policy is directly in line with this legal requirement because it presumes parents are fit to be involved in decisions about how to best accommodate their children, while also allowing that presumption to be overcome if a school official believes harm would otherwise come to a child.

Parents need to be informed about decisions made by school officials that directly affect the mental health or physical well-being of their child to meaningfully exercise their right to control and direct the education, upbringing, and healthcare decisions of their children. The parental notification policy of the Marlboro Township Board of Education ensures parents have access to that information.

Case Logistics

¹⁰ Pierce, 268 U.S. at 535.

¹¹ Prince v. Massachusetts, 321 U.S. 158, 166 (1944).

¹² Wisconsin v. Yoder, 406 U.S. 205, 232 (1972).

¹³ Washington v. Glucksberg, 521 U.S. 702, 720–21 (1997).

¹⁴ Moriarty v. Bradt, 177 N.J. 84, 115 (2003) (calling the right to parental autonomy a fundamental right and concluding it is subject to strict scrutiny); Watkins v. Nelson, 163 N.J. 235, 245 (2000) (holding that parental rights “is both a natural and legal right” and that “the law should not disturb the parent/child relationship except for the strongest reasons and only upon a clear showing of a parent’s gross misconduct or unfitness.”).

¹⁵ W.M. v. D.G., 467 N.J. Super. 216, 230 (App. Div. 2021).

¹⁶ *Id.*

The Goldwater Institute is representing Angela Tycenski, a New Jersey mom, as an intervening party.

The Case was filed in the Superior Court Of New Jersey Chancery Division, General Equity Part: Monmouth County.

Angela is asking the court to reject the Attorney General's attempt to block implementation of the Policy and to declare that the Department of Education's guidance, relied upon by the Attorney General, is unconstitutional.

The Legal Team

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