



School Law FYI

Federal Court of Appeals Affirms Dismissal of Challenge Against School District's Gender Identity Support Policy

SARAH GHAZI-MORADI, BRIAN P. GOODMAN | 03.25.24

The Seventh Circuit Court of Appeals issued a decision affirming the dismissal of a case challenging a Wisconsin school district's gender support plans and guidance. *Parents Protecting Our Children*, an unincorporated association of parents, sued the Eau Claire Area School District in federal court regarding the District's administrative guidance for gender identity support. The administrative guidance was designed to encourage gender inclusivity in schools and mitigate discrimination, harassment and bullying on the basis of sex, sexual orientation, gender identity, and gender expression. The guidance was intended to function as an internal resource for District schools in addressing the needs of students of various sexual orientations, gender identities, and gender expressions. In 2022, the District prepared a template gender support plan, a document for schools to complete in connection with implementing the administrative guidance for a particular student.

The Parents group sued the District in September 2022, alleging that the administrative guidance and support plan violated their rights as parents. The District Court dismissed the case due to the Parents group's lack of standing. In other words, the Parents group failed to sufficiently allege any injury or risk of injury sufficient to bring their claim in federal court. The Seventh Circuit Court of Appeals affirmed the District Court's decision, which held that neither the guidance nor the gender support plan excluded parents or guardians from discussions or decisions regarding a student's gender expression at school. The District Court emphasized that the complaint lacked any allegation that any of the plaintiff's children had questioned their gender identity or even sought support from the school under this

new policy. The harm to the plaintiffs was merely speculative. This case hinged on one of the foundational principles of the U.S. legal system – parties cannot allege hypothetical harms; claims must be concrete, particular, actual, or imminent. Similar cases have been dismissed against other school districts under this same legal principle.

School districts should continue to provide support for transgender students consistent with their gender identity, as is required under Title IX and the Equal Protection Clause, as determined by federal courts applicable to Wisconsin school districts. Districts are encouraged to continue to work closely with students and their families to respond to requests regarding student gender identity. This area of law is constantly changing. Do not hesitate to reach out to a member of [Boardman Clark's School Law Practice Group](#) for legal advice regarding LGBTQIA+ students.

School Law Practice Group Update: Attorney Mike Wieber Joins the Firm

In firm news, we are thrilled to announce that attorney [Michael Wieber](#) has joined Boardman Clark. Mike comes to the firm with an expansive background in employee benefits law. Mike will join Chris Schmidt and David Weller of our School Law Practice Group to advise our district and college clients on the complex challenges they face in administering their employee benefits programs.

Mike's 30 years of experience includes two decades serving as in-house counsel with two nationally recognized trustees and plan recordkeepers — roles that added a strong business perspective to his seasoned understanding of the law. Perhaps most importantly to our School Law clients, Mike has significant experience in the design and implementation of Section 403(b) retirement plans as well as governmental deferred compensation programs organized under Section 457.

Additionally, in his practice, Mike works closely with HR Professionals, business managers, trustees, custodians, third-party administrators, plan sponsors, investment advisors, and record keepers on a wide variety of issues, including guiding employers in designing and implementing executive and equity compensation programs, advising clients on the Affordable Care Act, COBRA, HIPAA planning and compliance, navigating clients through fiduciary investment rules, and assisting employers with the creation, administration, and termination, of their employer plans.

In addition to working with our School Law, Business, and Labor & Employment Practice Groups, Mike will chair our dedicated [Employee Benefits Group](#). We are

excited to welcome Mike to the team and invite you to learn more about Mike and his practice on his webpage.

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