Who’s Protecting Our Children?

By Paul Engel

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- What would a parent do to protect their child?
- Who should be the final arbiter of what’s best for a child, the parents or the school?
- Should schools be required to notify parents of any substantial medical or mental changes in the child?

Probably the most powerful instinct as a parent is to protect our children. Parents work hard, sacrifice, and sometimes risk their own lives to protect their children. Most parents believe the government is there to help them protect their children, too, but is that true?

Take, for example, the case of Parents Protecting Our Children UA v. Eau Claire Area School District Wisconsin. Parents Protecting, an association of parents, sued the Eau Claire Area School District to prevent them from enforcing guidelines that interfere with a parents right to make decisions for their child. Both the District and Circuit Courts denied the parents, claiming that no child had yet been harmed by the school policy, and therefore they do not have the right to petition their government for a redress of their grievance. If a court can tell parents they are not allowed to protect their children until after someone is hurt, then who is? Because it’s not the school district.

There has been a lot of controversy over parent’s rights

lately, especially related to public schools. From the teaching of Critical Race Theory to Drag Queen Story Hours, there has been situations where the relationship between parents and the school district have become outright hostile. Since the 1932 case Meyer v. Nebraska, the Supreme Court has recognized the right of parents to direct the education of their children as being protected under the Due Process Clause of the Fourteenth Amendment. This was reinforced by the 2000 case Troxel v. Granville, which stated:

The Fourteenth Amendment's Due Process Clause has a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests," … including parents' fundamental right to make decisions concerning the care, custody, and control of their children,

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

However, when Parents Protecting Our Children sued the Eau Claire School District for putting in place a policy that directly infringed on their "right to make decisions concerning the care, custody, and control of their children", both the District and Circuit Courts "punted" the question, claiming the parents did not have standing.

The School District Policy

We start with the policy in question.

In 2021 the Eau Claire Area School District promulgated the Administrative Guidance for Gender Identity Support. The Administrative Guidance aims to "foster inclusive and welcoming environments that are free from discrimination, harassment, and bullying regardless of sex, sexual orientation, gender identity or gender expression." To this end, the document provides "guidelines" for schools to follow "to address the needs of transgender, nonbinary, and/or gender non-conforming students."

Parents Protecting Our Children, UA v. Eau Claire Area School District, Wisconsin, et al.,

Like other schools, the Eau Claire School District finds itself in the middle of the "transgender" controversy. It therefore decides to put in place guidelines to help prevent discrimination, harassment, and bullying. I think this a reasonable precaution for the school district to take and a laudable goal. Its unfortunate implementation though, leaves a lot to be desired.

The process envisioned by the Administrative Guidance recognizes that either students or parents may contact school officials with questions, concerns, or requests bearing on matters of student gender identity. By its terms, the Guidance acknowledges the delicacy and sensitivity of these matters, including the possibility that some students might "not [be] 'open' at home for reasons that may include safety concerns or lack of acceptance." For that reason, "[s]chool personnel should speak with the student first before discussing a student's gender non-conformity or transgender status with the student's parent/guardian."

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So far, so good. The school appears to want open communications between themselves and both the students and parents. I don't have a problem with the school talking with a student before discussing their "gender nonconformity or transgender" status with their parents, but the vision "inclusive and welcoming" seems to quickly dissipate.

In 2022 the School District prepared a template Gender Support Plan. …

Like the Administrative Guidance, the Support Plan recognizes that circumstances may arise where "parents are not involved in creating this plan," in which case the Plan directs school

officials that “it shall be made clear to the student that this plan is a student record and will be released to parents when they request it.” This disclosure commitment gives effect to the School District’s acknowledgment that a support plan “is not a privileged document between the student and the school district.”

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The “support plan” may not be a privileged document, but how are the parents supposed to know they can request it if they don’t even know it exists?

The Parents

Speaking of the parents, what is their view of this guidance?

Parents Protecting Our Children is an unincorporated association of parents whose children attend schools within the Eau Claire Area School District. …

Parents Protecting worries that the Administrative Guidance encourages the School District to leave parents in the dark if their children wish to explore their gender identity or begin to socially transition to a different gender at school. The association also fears that the School District will implement the Guidance and related support plans in ways that effectively displace parental rights by making major life decisions for their children. In these ways, the organization sees the District’s Administrative Guidance as sowing so much secrecy and mistrust between parents and their children as to offend principles of substantive due process and religious free exercise.

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Parents Protecting sees two major issues with Eau Claire’s

guidance. First, it intentionally leaves parents in the dark about a major change in their child's life. Second, it effectively allows the school district to replace the parents in making such decisions. Both of these seemingly violate the parent's "fundamental right to make decisions concerning the care, custody, and control of their children". As stated in the court case:

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Notice, the school district's position is not simply a question of the student's safety, but of acceptance. Simply because the parents do not accept the student's position does not give the state, in the person of the school district, the authority to overrule the parents. The parents have a right, protected by the Constitution of the United States, to make decisions for their children. Not only does the state not have the authority to overrule the parents simply because they think the decision is wrong, but the state has the burden of proof that the child's safety is at risk. If the school district has probable cause to believe the child's safety is at risk, shouldn't they show examples where the child's safety was put at risk? It should not be enough for the school district to merely say "We think the child's safety may be at risk" to override parental rights.

The Court Decisions

So how did the courts come down on this question?

The district court concluded that the association failed to allege any injury or risk of injury sufficient to establish standing under Article III's Case or Controversy requirement.

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The District Court said Parents Protected failed to allege either an injury or risk of injury sufficient to establish standing under Article III of the Constitution, which states:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;

U.S. Constitution, Article III, Section 2, Clause 1

This case is a question of equity under the Fourteenth Amendment. Seems to me, between the actual language of Article III and the Supreme Court's decision in Troxel, there is an injury that should provide standing.

Neither the Administrative Guidance nor the template Support Plan, the district court determined, mandated the exclusion of parents or guardians from discussions or decisions regarding a student's gender expression at school.

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The policies do not mandate the exclusion of parents, but establish the process by which they can be excluded without probable cause. Although the school district claims that the Support Plan is not a privileged document, the court's own record shows that the parents or guardians can access the plan, how are the parents supposed to know the plan exists if they are not told?

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student record and will be released to parents when they request it."

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This places the decision of the student above the rights of the parents to control the child's upbringing. This is a direct violation of, and therefore an injury to, the parent's rights.

From there the district court emphasized that the complaint lacked any allegation that any member's child had questioned their gender identity or otherwise sought guidance or support under the School District's policy, leaving the association unable to plead any withholding of information from parents.

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By this logic, a threat to beat you up if you exercise your right to free speech isn't injured until you're actually beat up. The school district has stated, in writing, that they will violate the rights of parents, by not giving them the information they need to guide the upbringing of the child. If the school was allowed to tell a child to play with a fork next to an electric socket, then the parents cannot intervene because the child hasn't actually electrocuted themselves yet? And just how are the parent's supposed to know if the school district has a Support Plan if the district is withholding that information?

In its final analysis, the district court viewed the alleged harm as dependent on a "chain of possibilities" too speculative to establish Article III standing.

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Since both the District and Circuit Courts agree that Parents Protecting does not have standing, it appears that removing any imagination is a requirement to become a federal judge. Was the school district required by the court to provide documentation of the use of either the Administrative Guidance or the Support Plan? Not only is the very idea that a school district could keep information about the health of a child away from the parents an injury to their rights, but what are the mental harms of continually lying to one's parents? Just how far will the school district go in their support plan? Will it be limited to names, pronouns, and dress code on school grounds? How about counseling or even treatment to assist in the transition? What are the long-term effects the parents would not be aware of? Could parents seek counseling for depression and other mood disorders that are commonly present in such transitions, without being aware what other counseling the child is getting? Will parents seek medical treatment without being aware of all of the medications the child may be taking? How can a parent give informed consent to any treatment if they are not informed about other treatments the child is receiving? In my mind, the only way the court could find the alleged harms too speculative to establish standing is willful ignorance.

Conclusion

What can we logically conclude from the decisions of these two courts? First, we need to admit that, among the transgender policies schools have adopted, this is not the worst. While the Eau Claire Area School District does not mandate the keeping of information from parents, it certainly does facilitate it. By listing a lack of support as a justification for allowing students to refuse permission for the school district to share information with the parents, they have replaced the parental right to oversee the upbringing of their children with the promotion of a political agenda. And the courts are going along with the same agenda. After all, if it

found out the student started taking drugs, would the school be legally required to notify the parents? What if the school found out the child had another mental disorder, would the school be compelled to notify the parents? Then why not in this case? The answer is simple: The transgender agenda. The fact that the dangers this policy presents were beyond the imagination of the judges in these two courts says more to me about the agenda of these judges than of the quality of Parents Protecting's case.

If you are a parent, I hope this case helps show you that the school districts are not looking out for the safety of your children, or at least not as a first priority. It also appears that these courts are more interested in state power than citizen's rights. This is another example of why parents need to be more involved in their child's education, and especially in the school board. I have to wonder if the members of Parents Protecting Our Children view running for and serving on the school board as one method of protecting their children. If not, maybe they should.

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