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Christian group threatens to sue Pascack Valley over transgender plan

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STAFF WRITERS | THE RECORD

A conservative Christian legal-aid group that defended a Kentucky clerk when she refused to issue same-sex marriage licenses last year is now threatening legal action against the Pascack Valley Regional High School District as it considers a policy that officials say would protect the rights of transgender students.

The Liberty Counsel, a Florida-based group that was affiliated with the late Jerry Falwell and has been labeled anti-gay by some anti-discrimination groups, wrote a letter last week saying the policy would violate the rights of other students to privacy in restrooms and locker rooms. It said it would consider action on their behalf to “prevent irreparable harm to cherished liberties.”

The letter underscored the national scope of an issue that had been largely under the radar in New Jersey, even as dozens of schools across the state are considering transgender policies. In the past year, at least a dozen North Jersey school districts quietly adopted such policies amid heated debate in North Carolina and other states over accommodations for transgender residents.

Last week, Pascack Valley Schools Superintendent P. Erik Gundersen called the Liberty Counsel letter “a threat,” adding that the group has a “particular bias” and that school district attorneys assured him the proposed policy is on firm legal ground. The policy, based on a model circulating throughout New Jersey, would allow transgender students to use restrooms and locker rooms and participate in sports based on their chosen gender identity.

The policy and its promulgation became an issue when some parents showed up at a Feb. 22 meeting to express opposition just as the Board of Education was set to vote on it. That led to the matter being tabled. School officials met with parents on Tuesday to provide more information and are set to start the process over on Monday, introducing the policy at a 4 p.m. school board meeting, with a vote expected the following week.

Carolee Adams of Montvale, the head of the New Jersey chapter of the Eagle Forum, a national group founded by conservative activist Phyllis Schlafly, said she stumbled on the policy when she attended a Board of Education meeting in February. She said she was “shocked the board would do this” without “proactive parental notification.” Adams said she contacted the Liberty Counsel. After Tuesday’s meeting, she handed out copies of the counsel’s letter to district officials.

Gundersen, whose district comprises the Pascack Valley and Pascack Hills regional high schools, said there was no attempt to hide the transgender policy. But at a Dec. 21, 2015, meeting, he appeared to be aware of its potential for controversy when he “cautioned that it might not be a good idea to bring too much attention to the issue as we need to be sensitive to the students involved,” according to the meeting’s minutes. He also said a program to “fully inform” parents about the matter “might be made available.”

Last week, Gunderson said the district wasn’t ready to hold a meeting for parents at the time. He did not explain why no meeting was held before the board was prepared to vote on the proposal in February.

Similar policies have been adopted without fanfare in at least 12 North Jersey school districts, based on an examination last week of policies on district websites and other material. East Rutherford, North Arlington, Tenafly and Westwood adopted policies this year.



AMY NEWMAN/STAFF PHOTOGRAPHER

Hannah Elyse Simpson, left, speaking Tuesday with Pascack Valley High School students, from center-left to right, Emily Smith, Jaimie Smith and Claudia Ralph. Simpson, a Pascack Valley High School graduate, transitioned from male to female after college.

Bogota, Carlstadt, Clifton, Harrington Park, Mahwah, Pequannock, Upper Saddle River, Woodland Park previously adopted policies.

Some Pascack Valley parents who are opposed to the policy have said their concerns are rooted in religious beliefs, and one woman said it could lead to “sexual immorality.” Adams said that she also was concerned about a “lack of transparency” and that the policy was being pushed through with little say from the public.

“This is good,” she said of the public discourse. “We may not agree with the outcome, but at least we’re going through the process.”

Gundersen said last week that he welcomes the discussion.

“We appreciate the beliefs of everyone,” he said. “Maybe they hadn’t been exposed to the concept of transgender students in our schools.”

He and other education experts have defended the policy as necessary to protect transgender students and a logical application of the New Jersey’s Law Against Discrimination, which includes people who are transgender as a protected group.

It also is a response to the federal Department of Education’s determination that transgender students are protected under Title IX, a federal law prohibiting discrimination on the basis of sex in federally financed education programs.

Hannah Simpson, a 2003 Pascack Valley High School graduate, said such a policy would have helped her when she was in school, when there was no support for transgender students.

Born male, she said, she was afraid that she would be ridiculed if she identified as a girl, and suffered from depression and anxiety as a result.

“It made high school all the more unbearable,” she said, adding that she “blossomed” once she was able to show her true identity, about five years ago.

In its letter, the Liberty Counsel said the federal government was incorrectly affording protections to transgender people under Title IX. It also said the state’s anti-discrimination law does not spell out the right of transgender people to use a restroom or a locker room based on gender identity.

The governor’s office and the state Attorney General’s Office declined to comment on the issue last week.

Richard Mast, a Liberty Counsel attorney, said the anti-gay label placed on his group by the Southern Poverty Law Center and others was an “unfortunate” attempt to silence debate.

“We have no hatred for anyone,” he said.

Last year, the group defended Kim Davis, a county clerk in Kentucky, when she refused to issue same-sex marriage licenses because, she said, it violated her religious beliefs. She was found to be in contempt of court for failing to uphold her duties as an elected official.

The Liberty Counsel also has promoted conversion therapy for young gay people, a widely discredited practice banned in New Jersey.

The group appears to be getting more focused on the transgender issue as schools and governments are moving to allow people to use restrooms based on gender identity. Mast said the group sent a letter to the Toms River school district, similar to the one received by Pascack Valley, as it considers a transgender policy. That proposal has been put on hold.

The counsel also offered legal support to the state of North Carolina, which recently enacted a law requiring people to use bathrooms corresponding to their gender at birth. The law was a response to an anti-discrimination ordinance approved in the city of Charlotte. North Carolina’s attorney general has said he won’t uphold the state law because it’s discriminatory.

The Liberty Counsel letter to Pascack Valley laid out the group’s legal reasoning and referred to its concerns about religion liberties, saying teachers “who have religious convictions about telling the truth” should not be forced to call a person who was born male “she” because “it is a lie.”

It also referred to statistics taken from a diagnostic manual published by the American Psychiatric Association indicating that an overwhelming number of children who question their gender identity return, as adults, to the one they had at birth.

But that represents only a portion of a range of studies cited in the manual, said the association, which noted that the counsel did not mention that many of the children in the studies who are not transgender determine as adults that they are gay.

“You can misrepresent data to make it seem that all these kids grow out of it,” said Dr. Jack Drescher of the American Psychiatric Association, who worked on the manual. “The reality is more complicated.”

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