



MINNESOTA CATHOLIC CONFERENCE

December 2, 2014

Board of Directors
Minnesota State High School League

Dear Sir or Madam:

The Minnesota Catholic Conference (“MCC”), the public policy voice of the Catholic Church in Minnesota, writes to express its continued opposition to the MSHSL’s draft Transgender Student Policy (“Policy”). Though we believe that the most recent draft of the Policy is a step in the right direction by including an exemption for nonpublic schools (though, as noted below, one that should be amended), the Policy is, in its substance, unwise and will not help the students who are supposed to be assisted by the Policy. Moreover, the Policy is a solution in search of a problem, as no student has come forward saying that he or she has been denied extracurricular opportunities. Please reject this Policy, or otherwise affirm in an alternative Policy that boys and girls—“assigned” those sexes at birth based on biological reality—must play on the team of their respective sex, a rule that does not forbid anyone’s participation.

I. Accommodating Gender Confusion Does Not Promote Human Flourishing

The Policy presumes that gender dysphoria is a normal human condition that can and should be addressed by transitioning to a new gender different than the one “assigned” to a person at birth. Any opposition to recognizing a person’s preferred gender is, wrongly and offensively, deemed “discrimination” by the Policy. But such a claim is empirically unverified and is not consistent with human experience and basic biological reality. In fact, studies are now concluding that gender transitioning does not promote the well-being of persons.

In MCC’s detailed memo to this board dated July 28, 2014, we noted that the Policy is not consistent with the best science or medical practice. For example, Johns Hopkins University Medical Center has stopped performing sex reassignment surgery because it concluded that the medical treatments of gender dysphoria does not alleviate the underlying psychological problems present in patients (which the surgery should, theoretically, achieve, as “gender dysphoria” would no longer be present after “gender confirmation” surgery).¹ Further, a significant study

¹ Paul McHugh, “Transgender Surgery Isn’t the Solution,” *Wall Street Journal*, June 12, 2014.

out of Sweden's Karolinska Institute concluded that persons struggling with gender dysphoria, following sex reassignment surgery, had a higher death rate than expected and were almost 20 times more likely to commit suicide than the non-transgender population.²

Emerging research on the phenomenon of gender dysphoria encourages caution and precludes characterizing as bigoted those who believe that persons struggling with gender dysphoria need authentic compassion, as well as access to counseling and mental health services. More research and consideration is needed before the MSHSL embraces a dualistic view of the human person that identifies personhood with psychological self-consciousness instead of the union of body and soul.

II. The Policy is a Solution in Search of a Problem, Making It Instead Look Like Propaganda

In Minnesota, female athletes may participate on male athletic teams—particularly if there is no equivalent female team—irrespective of their gender identity.³ Further, no biological male student, to our knowledge, has come forward stating that he is being denied athletic opportunities in girls' sports. And according to MSHSL Executive Director Dave Stead,⁴ in his informal survey of 20 states, there was only one known instance where a boy wanted to play on a girls' team, and he was cut so the problem became moot. As that is the case, the question becomes: What exactly is the problem that the Policy purports to solve?

One reported rationale for the Policy⁵ is that a small number of parents of elementary-age students whose children are "transitioning" from male to female want something in place for their child as they reach the age of competitive sports. The fact that parents, though perhaps guided by care and concern, would, with such wanton imprudence, accommodate a young child's alleged gender preferences is troubling—especially when we, as a society, do not let much older children vote, buy beer, get a tattoo, or, in some cases, engage in sexual intercourse. Such policies are rooted in a concern that young people cannot properly engage in these activities in a responsible way because they lack the mental and emotional maturity to do so. As everyone knows, youth is a time of extraordinary growth and development, and young people are just beginning to learn about themselves and the world around them.

² <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0016885>

³ This rule does not apply to nonpublic schools that forbid participation by females in male sports based on the school's identity and values.

⁴ Communicated to the author by Mr. Dave Stead in a telephone conversation.

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Regardless of how one feels about gender dysphoria or “transgenderism,” we should all be able to agree that youth is not the time to be encouraging, in some cases irreversible, gender transitions. If one decides in adulthood that he or she would like to conform his or her lifestyle and body to the opposite gender, then one is currently unconstrained to make that choice—as imprudent and unhealthy as we and others believe it to be. But for schools, parents, and others to facilitate a child’s, particularly a *young* child’s, “transition” is not leadership but rather irresponsibility. It is not “compassion” in any sense of that term, particularly if a child whose gender preference was accommodated in youth grew into an adult who resented that the adults in his or her life did not provide guidance and leadership in a manner consistent with authentically healthy living.⁶ Again, youth is not the time to make decisions about one’s gender that could be irreversible, and schools should not be accommodating a worldview that dictates that it is the right time, which is what this Policy does.

Unfortunately, normalizing a worldview that gender transition is normal, healthy, and ethically responsible seems to be the real intent of the Policy. The rollout of this Policy makes it difficult to believe that some MSHSL officials simply hope to be proactive and avoid future lawsuits and controversies by offering “guidance” to member schools. Indeed, as noted above, it seems more apparent that the intent is to combat “discrimination” based on gender identity.

Besides the intransigence, until only very recently, of those developing the Policy to take serious account of the concerns of objecting stakeholders and incorporate even some basic concessions into the Policy, the materials being distributed in conjunction with the public education of the Policy leave little doubt that some believe that youth sports is the proper venue for “changing attitudes” concerning the legitimacy of gender transition.

We have been made aware that the MSHSL is distributing in its educational materials a document from the National Federation of State High School Associations entitled, “Developing Policies for Transgender Students on High School Teams.”⁷ Among the many problems and unsubstantiated claims in the document, one section stood out for clarity in terms of its objective, which is to undermine a reasonable view of sex and gender (emphasis added):

It is important for policy-makers to understand that transgender girls (who were assigned a male gender at birth) are not boys. Their consistent and affirmed gender identity as girls is as deep-seated as the gender identity of non-transgender

⁶ Indeed, this scenario is no hypothetical, as more and more folks who have transitioned are now expressing their regret. See Stella Morabito, “Trouble in Transtopia: Murmurs of Sex Change Regret,” *The Federalist*, Nov. 11, 2014, available at <http://thefederalist.com/2014/11/11/trouble-in-transtopia-murmurs-of-sex-change-regret/>

⁷ <http://www.nfhs.org/articles/developing-policies-for-transgender-students-on-high-school-teams>

girls. The belief that transgender girls are not “real” girls is sometimes expressed as a concern that allowing transgender girls to compete on girls teams displaces opportunities for “real” girls to participate.

This statement contradicts experience, science, and rationality. It is one thing to say that we are going to try and accommodate students who struggle with different challenges and conditions and afford them an opportunity to participate. It is another to compel people to refute the reality of the natural order.

III. The Draft Policy’s Nonpublic School Exemption is Insufficient

MCC is opposed to this Policy because it promotes a view of the human person that undermines human flourishing. Yet another reason to oppose the Policy is because it does not contain a clear exemption for nonpublic schools.

MCC is pleased to see, after multiple drafts, that an explicit accommodation for at least some nonpublic schools is now included in the Policy. As a matter of sound policy, such an exemption makes sense and is a reasonable way of accommodating multiple viewpoints on highly contested moral and social issues. It ensures institutional diversity, which is a service to parents who should be able to have the option to choose a school that operates consistently with their values.⁸

Though the exemption in the current draft is a step in the right direction, the language of the exemption could create ambiguity in its application, and should be clarified before passage of the Policy is even considered.

For example, the exemption found in Minn. Stat. § 363A.26 applies to schools that are “operated, supervised, or controlled by a religious association, religious corporation, or religious society that is not organized for private profit.” But what of independent religious schools founded by parents or others, and not connected with or controlled by a specific religious society, house of worship, or denomination, and which operate with a statement of faith or

⁸ Properly speaking, religious and other nonpublic schools could, in fact, serve as a refuge for those parents who are trying to assist a child struggling with gender dysphoria by providing spiritual counseling and other resources to help them raise their children in a way that promotes the child’s well-being. Therefore, to accommodate those parents who prefer to treat or address gender dysphoria in ways other than, ultimately, sex reassignment or gender transition, and want the child’s school to assist them in the child’s formation, exemptions for nonpublic schools that serve this mission are critical.

distinct religious values? Or what about secular nonpublic schools that may have other, non-religious objections to the Policy?

Moreover, Minn. Stat. § 363A.24 allows for distinctions to be made in changing and restroom facilities based on “sex.” But how will that term be applied in the case of gender identity? Will “sex” be determined by biology or by identity? If by the latter, then the presence of the statute in the exemption could actually narrow the exemption by limiting its application to the facilities of schools already protected by Minn. Stat. § 363A.26.

If the intent of the Policy is to exempt nonpublic schools, then the statutory references should be eliminated for clarity. We propose the following language: “Nonpublic schools are exempt from mandatory compliance with all aspects of this Policy.”

Though some may claim that any exemptions for nonpublic schools must be limited to “religious” schools as described in Minn. Stat. § 363A.26, that is not an accurate description of the law. First of all, as the MSHSL has noted in its communications, the Policy is not required by state or federal law.⁹ Therefore, the contours of the Policy with regard to exemptions for private educational institutions (which are not public accommodations) need not be limited to those found in state or federal statute. Furthermore, statutory conscience clauses and religious liberty accommodations, as a general matter, are a floor, not a ceiling, and can always be expanded consistent with state and federal constitutional law.

Should our proposed language seem problematic, MCC repeats its offer to work with MSHSL officials to arrive at suitable language for an exemption, rather than continue a needlessly time consuming trial-and-error process where new language is created, without sufficient input from actual stakeholders, and only then is an opportunity provided for comment.

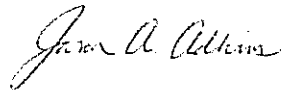
Conclusion

In closing, we would like to point out that there is an opportunity to end this process on a better note than has been the case thus far. In order to engender good will among all of your member schools and participating students—beyond explicitly addressing their most reasonable concerns in the text of the Policy—please strike the term “discrimination” from the opening sentences of the Policy.

⁹ Email of Mr. Dave Stead to Athletic Directors dated November 17, 2014.

It is horribly offensive to castigate the views of a likely majority of students, parents, and schools participating in MSHSL-sponsored activities as “discrimination,” when objections to how the MSHSL is addressing transgender student participation in sports are grounded in science and experience, while the view represented in the Policy is merely the product of ideology and the subjective preferences of a small number of individuals. As noted above, it is one thing to reasonably facilitate the participation of all students, but it is a different thing altogether to impose an untested and potentially harmful ideology on schools. We hope that any amendments to this Policy wisely strike such unnecessarily inflammatory and factually false verbiage.

Respectfully yours,

A handwritten signature in cursive script that reads "Jason A. Adkins".

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