October 31, 2011

VIA FACSIMILE (208-350-5962) AND U.S. MAIL

Mr. Mike Vuittonet, Chairman (on behalf of the board of Trustees)
Joint School District No. 2
1303 E. Central Dr.
Meridian, ID 83642

Re: Policy Regarding Parental Consent for Participation in Clubs

Dear Chairman Vuittonet and Members of the Board:

We write in response to the Board’s recent decision to reject a proposed policy that would require students to obtain parental permission prior to joining a student club or organization. It is our understanding that this decision was made after receiving pressure from homosexual advocacy groups such as Lambda Legal, who inaccurately claim that such a requirement would violate student’s rights. Lambda Legal even claims that the policy “impermissibly would discourage students from joining the GSA who fear disclosure of their participation in the organization.” In other words, these organizations want parents to remain ignorant as to the clubs their child is involved in and the individuals with whom their child is associating. But such a policy hurts families, undermines parental authority, and deprives children of the necessary guidance they need from their parents. Requiring parental permission before a student can join a club does not violate any constitutional right of the students, and serves the important interest of advancing and respecting the constitutional rights of parents to control and direct their child’s education and upbringing. We would strongly urge the Board to reconsider this proposed policy as a means of reaffirming and supporting the constitutionally protected interest of parents to direct the upbringing of their children.

It is well established that parents have the fundamental right to direct the raising of their children. Implicit in this right is parental authority over their children’s education. The U.S. Supreme Court has consistently upheld this right, particularly in the education context. In Meyer v. Nebraska, 262 U.S. 390 (1923), the Court struck down a law prohibiting foreign language instruction for school children, holding that parents have the right “to engage [a teacher] so to instruct their children” in the languages banned by the law. Id. at 400. “Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life.” Id. The Court found that “[e]vidently the Legislature has attempted to materially interfere…with the power of parents to control the education of their own.” Id. at 401.
A few years later, the Supreme Court reaffirmed the rights of parents when it struck down an Oregon law requiring all children to attend public schools. Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary, 268 U.S. 510 (1925). “Under the doctrine of Meyer v. Nebraska, we think it entirely plain that the [attendance law] unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control... The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” Id. at 534-35.

When the State of Hawaii attempted to impose stricter requirements on private foreign language schools, the Supreme Court invalidated the legislation because of its encroachment on parental rights. Farrington v. Tokushige, 273 U.S. 284 (1927). The Court held that “[e]ffort of the act probably would destroy most, if not all, of [the foreign language schools]; and, certainly, it would deprive parents of fair opportunity to procure for their children instruction which they think important and we cannot say is harmful. The Japanese parent has the right to direct the education of his own child without unreasonable restrictions.” Id. at 298.

In Prince v. Massachusetts, 321 U.S. 158, 166 (1944), the Supreme Court, relying on Meyer and Pierce, reiterated that “[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.”

And finally, in a case involving the ability of parents to voluntarily admit their child to mental health facilities, the Supreme Court held that:

Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is “the mere creature of the State” and, on the contrary, asserted that parents generally “have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations.”... The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children....

That some parents “may at times be acting against the interests of their children”... creates a basis for caution, but is hardly a reason to discard wholesale those pages of human experience that teach that parents generally do act in the child's best interests. The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition.

Based upon these cases, it is unquestionable that parents have a fundamental interest in guiding and directing the education and upbringing of their children. The Board’s proposed policy that would have required students to obtain parental consent before participating in any extracurricular clubs or organizations is consistent with this fundamental right. Parents have the right to know what activities their child is involved in and decide whether they believe that activity is in the child’s best interest.

In 2007, the Idaho legislature enacted a parental consent law that requires young women under the age of 18 to obtain parental consent in order to receive an abortion. Idaho Code § 18-602. In its legislative findings, the legislature found that “minors too often lack maturity and make choices that do not include consideration of both immediate and long-term consequences” and that “the best interests of the minor are always served when there is careful consideration of the rights of parents in rearing their child and the unique counsel and nurturing environment that parents can provide.” Id. The legislature identified its compelling interest in enacting the parental consent requirement as “protecting minors against their own immaturity; preserving the integrity of the family unit; [and] defending the authority of parents to direct the rearing of children who are members of their household.” Id.

The Idaho legislature correctly acknowledged the right of parents to guide and have direct involvement in the decisions of their minor children, a right that extends to all aspects of their child’s lives, including their involvement in school activities. In fact, parental consent is an extremely common requirement at schools all over the country, including in Joint School District No. 2. For example, the District requires parental consent for students to go on school field trips (Policy 503.70), to participate in athletics (http://www.meridiansschools.org/HMS/Documents/Participation_Form.pdf), to register for health classes where topics such as sex education are covered (Policy 602.40), to drive to specialized classes located off-campus (Policy 504.40), to have their health records disseminated (Policy 703.20), and even to ride in a rented vehicle for an extracurricular activity or trip (Policy 702.40). Requiring parental consent for participation in clubs serves the same purpose as it does in these other areas that the District currently requires parental consent—it allows parents to have knowledge of what their children are doing and to make informed decisions as to whether they believe it is in the child’s best interest.

The extracurricular activities a child chooses to participate in, and the students and adults that child will interact with at those activities, will have a lasting impact upon that child’s development. A parent has a duty to ensure that his or her children are not being improperly influenced or indoctrinated with values that the parent does not wish the child to learn. Parental consent gives parents the opportunity to evaluate the clubs their child desires to join and decide whether or not they believe it is in the best interest of the child.

Lambda Legal’s assertion that requiring parental consent violates students’ right to association is simply wrong. Parental consent does not prohibit students from talking with other students during non-instructional time or befriending any students with similar interest. It does not prevent a student from supporting the message of a particular organization or expressing his or her opinion on the same topics discussed by the club. Rather, it allows parents to decide whether they want their child to actively participate in a given club, just as parents are currently allowed to decide if their child can actively participate in athletics at District schools. In light of
the Supreme Court cases discussed above, it is clear that parents’ constitutional right to direct the upbringing of their child is the controlling interest that should be considered by the District in support of the parental consent policy.

In denying parents the opportunity to consent to their child’s involvement in school clubs and organizations, the Board has severely handicapped the constitutional right of parents within the school district to direct the upbringing of their children. Rather than leave parents distant and uninformed about their children’s activities, the Board should encourage by every means possible active parent involvement in their children’s lives. Therefore, we strongly urge the Board to reconsider adopting the parental consent policy. By enacting the policy, the Board will take an important step towards building strong families in which parents are actively involved in shaping their children’s values and are available to offer guidance and support as children make important decisions that will heavily impact the rest of their lives.

Please respond to this letter and notify us as to whether the Board intends to reconsider the parental consent policy. Should the Board adopt this policy, and it is legally challenged in court, Alliance Defense Fund would be willing to consider providing legal representation to the Board without charge. If you have any questions concerning this letter, we would be happy to speak with you.

Sincerely,

David A. Cortman, ADF Senior Counsel
Jeremy D. Tedesco, ADF Legal Counsel

Bruce D. Skaug, Goicoechea Law Office