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Tenth Circuit Affirms Dismissal of Substantive Due Process Challenge to School District's Gender-Identity Policies

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Content Warning: This article references child suicide.

In Lee v. Poudre School District R-1, the U.S. Court of Appeals for the Tenth Circuit affirmed the dismissal of a complaint filed by parents alleging that Poudre School District maintained official policies discouraging disclosure of transgender or nonbinary students' gender identities, thus violating their substantive-due-process right to the care, custody and control of their children. The circuit court ruled that the parents had failed to adequately allege municipal liability.

In Lee v. Poudre School District R-1, 2025 U.S. App. LEXIS 9600, ___ F.4th. ___ (10th Cir. Apr. 22, 2025), the U.S. Court of Appeals for the Tenth Circuit affirmed the dismissal of a complaint filed by parents alleging that Poudre School District (the district) maintained official policies discouraging disclosure of transgender or nonbinary students' gender identities, thus violating their substantive-due-process right to the care, custody and control of their children. The circuit court ruled that the parents had failed to adequately allege municipal liability.

Relevant Allegations of the Complaint

Two sixth-graders attending Wellington Middle School—C.L. and H.J.—were encouraged by the school's art teacher to attend an after-school meeting put on by the school's Gender and Sexualities Alliance (GSA). C.L. was under the impression that the meeting was for an "art club" and was not initially aware that sexuality would be discussed. At the meeting, a substitute teacher in the district lectured students about gender identity and sexual orientation. The substitute told the students that if they were not comfortable in their bodies, they were likely transgender and that transgender youth are more likely to attempt and complete suicide than their cisgender peers. During the meeting, several students announced they were transgender, and the substitute awarded these students themed prizes. Before the meetings ended, the substitute warned the students that it might not be safe to tell their parents about their transgender identity or

about the meeting itself.

Although C.L. hadn't questioned her gender identity or experienced dysphoria before attending the meeting, she began to question her identity after attending. C.L. announced during the meeting that she was transgender. When she went home and told her parents, several stressful conversations about her gender identity led to C.L. disclosing that the substitute and the art teacher had warned her that it might be unsafe to come out to them.

H.J. was invited to a GSA meeting the following week. After attending the meeting, she began experiencing suicidal ideation. Because H.J. had been told transgender people were more likely to commit suicide, H.J. took her suicidal thoughts as confirmation that she was transgender. H.J.'s mental health deteriorated so badly she did ultimately attempt suicide.

Before C.L. and H.J. attended these meetings, neither set of parents knew that school officials would be discussing gender or sexuality with their children.

The School District's Policies

The district had several written and de facto policies (policies). The written policies, among other things, attempted to support transgender or nonbinary students by instructing school officials not to disclose students' gender identities without consent from the student. For example, the district followed guidelines that:

- required school personnel to use the name and pronouns that transgender or nonbinary students' parents/guardians use when contacting or communicating with those parents, unless the students requested otherwise;
- forbid school personnel from disclosing a transgender or nonbinary student's status to parents or community members, unless legally required to do so or unless the students authorize the disclosure; and
- tasked the school counselor with working with students in coming out to their families, as appropriate, and collaborating with families to promote consistent gender support.

Additionally, the plaintiffs alleged that the district had several informal, de facto policies that furthered the culture of nondisclosure, such as refusing to notify parents of their children's participation in GSA meetings and telling the children that the meetings were confidential; requiring personnel to attend trainings instructing them not to reveal a student's nonconforming gender identity to the student's parents; and circumventing the parental notice requirements required by federal-disclosure law by keeping informal internal lists of students' preferred names and pronouns without updating the record-keeping software.

District Court Proceedings

C.L. and H.J.'s parents initially sued the school district and its board of

education on behalf of themselves and their children, alleging violations of their Fourteenth Amendment substantive-due-process rights by interfering with their parental decision-making and seeking injunctive relief and monetary damages. The school district moved to dismiss the complaint, and the district court granted its motion.

The parents subsequently moved for leave to file an amended complaint, which brought a claim solely on behalf of parents and was directed solely toward the school district. The proposed amended complaint again alleged a substantive due-process violation by the district, but this time only alleged monetary damages. The school district opposed the motion on futility grounds. The district court agreed with the district, concluding that the parents had failed to plausibly allege municipal liability.

The Court Majority Declines to Decide Whether Parents Alleged a Fundamental Due Process Right

Parents have a fundamental right to determine the “care, custody, and control of their children.” See *Troxel v. Granville*, 530 U.S. 57, 66 (2000). That right includes a parent’s ability to direct the upbringing and education of children under their control. *Troxel* also announced a “traditional presumption that a fit parent will act in the best interest of his or her child.” But these rights have limits; for example, parents have no right to replace state educational requirements with their own views, nor can they control every aspect of their children’s education.

In this case, the parents alleged the district violated their fundamental right to care for and control their children by concealing information regarding their children’s gender identities. According to the parents, the district inverted the presumption that parents are presumed to act in the best interest of their children and instead gave constitutional deference to school administrators. But the court majority reasoned they need not reach the issue of whether the district’s alleged violation of this right would afford the parents relief because the parents failed to plausibly allege municipal liability.

The Court Concludes That the Parents Failed to Plausibly Allege Municipal Liability

To state a plausible municipal-liability claim, a plaintiff must allege the municipality had a policy or custom that was so entrenched as to constitute an official policy; the municipality was deliberately indifferent to the obvious consequences of the policy; and the policy directly caused, through the municipality’s deliberate conduct, the plaintiff’s constitutional injury. Courts apply rigorous standards of culpability and causation to ensure the municipality is not punished for the conduct of its employee.

Here, the parents alleged that the policies promoted the idea that the district knew better than the parents and that approval of this idea precipitated the GSA meetings and the teachers’ statements and activities at those meetings. The circuit court determined that parents’ allegations fell short of establishing causation because they failed to explain how “policies that presume the district knows better than parents” directly

caused school personnel to, *inter alia*, recruit students to attend GSA meetings, present questionable information at those meetings, award prizes to students who came out as transgender during the meeting, and discourage students from telling their parents about the meeting or gender-identity issues.

Judge McHugh Concurs

Although she concurred in the judgment, Judge Carolyn McHugh wrote separately to opine that the parents sufficiently alleged that the district's policies implicated a cognizable substantive due process right. McHugh agreed with the parents that the district's policy of discouraging disclosure of a student's gender identity turned the *Troxel* presumption on its head, emphasizing that unless a parent is demonstrated not to be fit, there is no reason for the state to inject itself into the parent/child relationship.

Nonetheless, because the only injury that parents alleged was an impaired parent-child relationship after school personnel encouraged C.L. and H.J. not to discuss their gender identities with their parents, McHugh reasoned that the parents did not sufficiently allege causation because the policies did not instruct employees to discourage students from discussing their gender identities with their parents. She therefore ultimately agreed that the parents failed to state a claim for municipal liability.

Stephen Masciocchi and Aja Robbins are attorneys in Holland & Hart's Denver office. Masciocchi co-leads the appellate team and assists clients with high-stakes federal and state appeals and class actions. Robbins helps clients navigate complex litigation at the trial and appellate level.

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