

Vermont Principals' Association

Supporting Leaders & Learners

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Vicky Fogg
Head of School
Mid Vermont Christian School

5-8-23

Dear Ms. Fogg,

The VPA Activities Standards Committee (“ASC”) met on May 5, 2023, to consider the Appeal from Mid-Vermont Christian School (“School”). This letter is the decision of the ASC on the Appeal.

History of the Appeal

The School filed an Appeal by Ms. Fogg on March 19, 2023. The Appeal challenged the expulsion of the School from the VPA by the VPA Executive Council on March 13, 2003, on both procedural and substantive grounds.

The ASC responded to the Appeal on April 3, 2023. We described the governing procedure for any discipline. We required the VPA Executive Director to comply with that procedure if the VPA wished to impose discipline.

On April 4, 2023, the VPA Executive Director sent a Notice of Probable Violation to the School that complies with the governing procedure. The Notice described the allegation of misconduct:

Mid Vermont Christian School refused to play a tournament basketball game against another member school solely because that school included a transgender youth on its team. The specific policies that your school has violated are the Commitment to Racial, Gender-Fair, and Disability Awareness and Policy on Gender Identity. In addition, your actions do not comply with Vermont Law, including (but not limited to) the Vermont’s Public Accommodations Act, 9 V.S.A. § 4502.

The Notice recommended a penalty of expulsion and suspended the School from all VPA activities pending the resolution of the appeal. The notice described the justification for this sanction:

The violations that warrant this immediate suspension and recommended expulsion are serious and fundamental to the mission of the VPA. No Vermont student should endure the refusal of another school to compete with that student because of their gender identity. No Vermont student should have to fear that by virtue of their presence their

team may be denied the opportunity to play a game. Your school's actions harm students in other schools and the ability of member schools to provide safe, non-discriminatory access to activities.

On April 9, 2023, the School filed a letter in which it filed a second notice of appeal from the notice of probable violation and contested the recommended penalty. The School waived the right to an in-person hearing with the ASC, but then reconsidered and requested a hearing.

The ASC scheduled a hearing on April 17. The School asked to reschedule the hearing because of a personal conflict, which the VPA accommodated. The ASC held a hearing on May 5, 2023. The School presented arguments and factual claims through its legal counsel.

The School's Arguments

The School does not contest the allegation that it refused to play a tournament basketball game against another member school solely because that school included a transgender youth on its team. The School also does not contest the allegation that this action violates specific VPA policies that apply to the participation of transgender students.

The School argues that its behavior is justified for two reasons. First, the School, contends that it is unsafe and unfair for its team to compete against transgender students. Second, the School contends that complying with the VPA policies and competing against transgender students violates the School's religious beliefs.

These arguments are not persuasive and ignore the needs of transgender students.

Understanding the Need for Inclusion of Transgender Students

Transgender students are a small but vulnerable group. National studies estimate that approximately 1.8% of the high school population is transgender. Sadly, these young people encounter discrimination, harassment, bullying and even assaults because of who they are.

Vermont educators understand that providing a safe, inclusive environment for our transgender students is essential to respond to the threats these students face. The Vermont Agency of Education has published a "Best Practices" paper that describes our obligations to provide a safe and inclusive environment for transgender students. This includes the responsibility to provide safe and full access to activities.

Schools and educators also have a legal obligation to include transgender students in all educational programs. Vermont's Public Accommodations Act, 9 V.S.A. § 4502, explicitly prohibits any discrimination in schools based upon gender identity.

Science supports the need for fully including transgender students in interscholastic activities. Gender identity is both real and uniquely personal. Renowned organizations such as the American Academy of Pediatrics and the Vermont Chapter of the American Academy of Pediatrics agree that we would endanger the health, safety, and well-being of transgender students if we excluded them from playing sports or required them to play on teams that do not match their gender identity.

For many students, activities are an important part of their growth and high school experience. Schools sponsor activities because we know that they help students to learn, grow and develop. We are not recreation centers—we are schools. Safe and inclusive access to activities for all students is an important part of their education. Denying access to anyone because of who they are denies them a full education.

Transgender students have a right to participate in activities based on their gender identity and thereby enjoy a full education. Schools have a responsibility to protect that right. The VPA has a duty to intervene when there are actions that would deny transgender students full participation in activities.

Transgender Students and the Safety of Activities

It is a myth that transgender students endanger others when they participate in high school sports or create unfair competition. Our own experience in Vermont and the weight of persuasive experience elsewhere demonstrates that transgender students do not harm others or jeopardize competitive fairness.

Other than asserting that boys as a group are stronger than girls as a group, the School has submitted no evidence to support its claims of danger or unfair competition.

We—and other states—now have the evidence of actual experience. There is no evidence of transgender girls dominating girls' sports in Vermont or creating unfair competition. Nor is there any evidence of transgender girls injuring others when they play on girls' teams in our state. Some transgender girls will be stronger or better athletes than others, including cisgender girls. Some cisgender girls will be stronger or better athletes than others, including transgender girls. Nothing in our experience, however, supports the myth that participation by transgender girls creates danger or unfairness.

This has also been the experience of other states that have allowed transgender students to play on the team that matches their gender identity. California has allowed transgender students to compete on the team that matches their gender identity since enacting legislation in 2013. Nothing in that state's experience implies a safety risk or unfair competition.

The United States Department of Education recently proposed regulations under Title IX outlawing any categorical ban on transgender girls joining high school teams that are consistent with their gender identity. While the proposed regulations open the door to limited exceptions, those exceptions require extraordinary circumstances that do not apply in Vermont given our actual experience. Moreover, those exceptions would do nothing to support the School's appeal.

Governor Scott's recent comments on the participation of transgender students in Vermont sports bear repeating: "Let them be who they are and let them play. Now on a higher level – professional, collegiate, and so forth – there probably should be some parameters, but let's let the kids be kids."

Protecting Transgender Students Does Not Burden Religious Beliefs

The School claims that we should grant its appeal to avoid burdening the exercise of their religious beliefs. The School's Appeal states: "By attempting to force young ladies to compete against biological males, the VPA is forcing MVCS to affirm something that violates our religious beliefs—i.e., that the males who play in the girls' league are females."

The School's claim is wrong. Participating in an athletic contest does not signify a common belief with the opponent. Brigham Young University athletes do not compromise their Mormon faith—or endorse Catholicism—when they play Notre Dame. The act of playing together on a basketball court does not imply any approval of the values or beliefs of the opponent.

This case has nothing to do with beliefs. It has everything to do with actions and their impact on transgender students.

The School boycotted a game solely because of the presence of a transgender student on the opposing team. That action publicly stigmatized a transgender student who had every right to play. That action denied all members of the opposing team the right to play solely because of their association with a transgender teammate. Actions—not beliefs—are the basis of discipline.

The Penalties Are Reasonable and Necessary to Protect Transgender Students

The School does not contest that it refused to play a tournament basketball game against another member school solely because that school included a transgender youth. The School argues that because its boycott resulted in a forfeit loss to the School, the forfeit is a sufficient penalty.

We reject this argument because it ignores the impact of the School's boycott and the fundamental purpose of interscholastic sports.

Participation, not the outcome, is the fundamental educational goal of interscholastic sports. Forfeiting a game does nothing to redress the lost opportunity to play. Worse, the forfeit does nothing to redress the impact of telling transgender students: "we won't play with you because of who you are."

Had the School made a sincere commitment to abide by VPA Policies and Vermont law, and that its teams would compete with other schools who include transgender athletes, we would be open to penalties short of expulsion. If the School changes course in the future, that change would have to be considered in any new application for membership.

The School's Appeal makes it clear that it has no intention of reversing course. To the contrary, the School adamantly maintains that it will not play against teams that include transgender students. The School's refusal to change course makes the penalty of expulsion the only remedy that protects students from repeated denials of participation in the future.

Conclusion

We unanimously deny the Appeal and uphold the penalty of expulsion. We also uphold the suspension pending any further appeals from this decision.

The School may appeal this decision to the VPA Board of Appeals by filing a written notice with the VPA Executive Director within seven calendar days. VPA Policy 12 defines the requirements for this appeal and is on the VPA website.

Sincerely,

A handwritten signature in black ink, appearing to be 'M. Thomas', written over a light blue horizontal line.

VPA Activities Standards Committee

CC. Jay Nichols, Executive Director, Vermont Principals' Association

Lauren Thomas, Assistant Executive Director, Vermont Principals' Association