

IN THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY, MARYLAND

CITIZENS FOR A RESPONSIBLE )	CIVIL ACTION
CURRICULUM )	
)	NO. 284980
PARENTS AND FRIENDS OF EX-GAYS )	
AND GAYS )	
)	
and FAMILY LEADER NETWORK )	MOTION FOR STAY AND
)	INCORPORATED LEGAL
<i>Appellants/Petitioners,</i> )	MEMORANDUM SUBMITTED
)	BY THE APPELLANTS/
vs. )	PETITIONERS
)	
MONTGOMERY COUNTY PUBLIC )	REQUEST FOR HEARING
SCHOOLS, MONTGOMERY COUNTY )	
PUBLIC SCHOOLS BOARD OF )	
EDUCATION and JERRY DEAN )	
WEAST, in his official capacity as )	
Superintendent )	
)	
<i>Appellees/Respondents.</i> )	
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Pursuant to Rule 7-205, of the Maryland Rules, the appellants/petitioners move this court to order a stay, pending the final determination of this appeal, of the implementation of the revised Grade 8 and Grade 10 human sexuality lessons in the Montgomery County public schools—lessons that are included in the semester-long health education program and that consist of (1) a two-part, 90 minute lesson for Grade 8 on “Respect for Differences in Human Sexuality,” (2) a two-part, 90 minute lesson for Grade 10 on “Respect for Differences in Human Sexuality,” and (3) one 45 minute lesson

for Grade 10 on condom use. (These lessons will be referred to hereinafter as the “human sexuality lessons.”)

1. On or about July 26, 2007, the appellants/petitioners timely filed their petition seeking judicial review of Opinion No. 07-30, dated June 27, 2007, that the Maryland State Board of Education had issued regarding the human sexuality lessons.

2. Based on information and belief, the human sexuality lessons are to be implemented district-wide by the appellees/respondents during the latter part of the fall 2007 semester and also may be implemented during the spring 2008 semester in all eighth and tenth grades of the Montgomery County public school system.

3. Based on the schedule issued by this court on August 1, 2007, this appeal will be governed by the following dates:

- a. The response to the notice of appeal by the appellees/respondents is due on August 27, 2007;
- b. The agency is to have the record prepared by September 26, 2007;
- c. The appellants/petitioners’ opening memorandum is due on October 26, 2007;
- d. The appellees/respondents’ responsive memorandum is due on November 26, 2007;
- e. The appellants/petitioners’ reply memorandum is due on December 26, 2007; and
- f. The hearing in this appeal is to take place on January 16, 2008, at 9:00 a.m.

4. According to Rule 7-205, this court has broad discretion to stay the action of the administrative agency, which in this case would be the implementation of the human sexuality lessons by the appellees/respondents. Rule 7-205 states: “The filing of a petition [for judicial review] does not stay the order or action of the administrative agency. Upon motion and after hearing, the *court may grant a stay*, unless prohibited by law, *upon the conditions* as to bond or otherwise that *the court considers proper*.” (Emphasis added.)

5. There is no law known to the appellants/petitioners that would prohibit this court from staying the implementation of the human sexuality lessons.

6. A bond would not be necessary since there are no monetary damages at stake in this appeal and no monetary judgment was entered against the appellants/petitioners.

7. This court should exercise its discretion and enter a stay of the implementation of the human sexuality lessons pending the final resolution of the appellants/petitioners’ appeal to preserve the status quo.

8. The Montgomery County public school system has had in place a health education program for many years. The requested stay will not prevent that program from continuing. The requested stay only deals with a small part of the health education program. The stay would only apply to the human sexuality lessons.

9. In November 2004, the Montgomery County Public Schools (MCPS) voted to approve certain changes to the health curriculum for Grade 8 and Grade 10. These changes were the predecessor to the human sexuality lessons. In May 2005, the

appellants/petitioners, Citizens for a Responsible Curriculum and Parents and Friends of Ex-Gays and Gays, filed a lawsuit in the United States District Court for the District of Maryland, Case No. 8:05-CV-01194, to enjoin the MCPS Board from implementing the curriculum. The federal district court granted an injunction and prevented the implementation. The appellees/respondents then began the process of revising the curriculum into what is now the human sexuality lessons that are the subject of this appeal. From the time the district court entered the injunction in 2005, until the present, save for a limited field testing of the human sexuality lessons, the public school system has been presenting its health education program district-wide without the human sexuality lessons.

10. Because the public school system may continue to implement its health education program as it has been doing for years, there is no compelling reason for the school system to implement the human sexuality lessons during the short period of time in which this appeal will take to reach a final resolution. The lessons are not to begin until shortly before the January 2008 hearing in this case and may be taught to the same students during the spring semester, which would be after the resolution of this appeal. The human sexuality lessons have never been taught district-wide. Thus, even with a stay of the implementation of the human sexuality lessons, the health education program would still be taught the same as it has been taught over the past years. The status quo would be in place.

11. The appellants/petitioners should be permitted to brief and argue the merits of their appeal before the human sexuality lessons go into effect. The status quo should be preserved pending this appeal.

12. There are many problems with the human sexuality lessons that underscore why the lessons should not be taught in the Montgomery County public school system. In light of the purpose of this motion to stay, however, only a sample of the problems will be discussed. Further exposition of the problems is more appropriate in the merits brief. The following sampling, however, should make the point that there are significant problems with the human sexuality lessons (in how the lessons were created and in the information in the lessons) that run contrary to governing law and which support a stay of the implementation of the lessons while this court reviews the merits of this appeal.

13. This appeal presents an example of the significant constitutional and legal implications of a local school board's decision to abdicate its responsibility to educate in order to indoctrinate students with a particular ideological viewpoint on a scientifically debated, controversial social issue and to violate specific provisions of governing law.

14. The human sexuality lessons were created in violation of State laws concerning the development and instruction of a comprehensive health education curriculum. In particular, the appellees/respondents acted arbitrarily, unreasonably, and

illegally in developing and approving the human sexuality lessons in violation of COMAR 13A.01.05.05.<sup>1/</sup>

15. One example of how the human sexuality lessons run contrary to sound education policy is in how they teach sexual orientation to students. The Grade 8 curriculum teaches students that “[a]lmost certainly there is no single reason why some people are homosexual, heterosexual, or bisexual. According to the American Psychological Association, sexual orientation results from an interaction of cognitive, environmental, and biological factors.” (Exhibit 2, hereto, at 0019.) Students, however, are taught in Grade 10 that sexual orientation, which would include homosexuality, is “innate” and unchangeable, (Exhibit 6, hereto, at 008), a statement that lacks scientific and factual support. (Exhibit 1, hereto, at 001, 0020-0023, 0028-0035.) Thus, the instruction in Grade 8 that sexual orientation results from a combination of factors, and the instruction in Grade 10 that sexual orientation is innate and inborn, contradict each other. Teaching conflicting statements is unreasonable on its face, especially for adolescent children, regardless of the subject matter, and is contrary to sound educational policy. COMAR 13A.01.05.05.

16. By mandating in the Grade 10 human sexuality lessons that sexual orientation (for example, homosexuality, lesbianism, transgenderism) is “innate,”

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<sup>1/</sup> The local board’s decision was arbitrary and unreasonable, which means that the decision was (1) “contrary to sound educational policy” or (2) a “reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached,” COMAR 13A.01.05.05(A)-(B), and was illegal, which means it was one or more of the following: “(1) unconstitutional; (2) exceeds the statutory authority or jurisdiction of the local board; (3) misconstrues the law; (4) results from an unlawful procedure; (5) is an abuse of discretionary powers; or (6) is affected by any other error of law.” COMAR 13A.01.05.05(C).

meaning “inborn” and therefore immutable and unchangeable, (Exhibit 6, hereto, at 008), the appellees/respondents are not adhering to facts but are relying on a theory that is at odds with credible scientific evidence. (Exhibit 1, hereto, at 001, 0020-0023, 0028-0035.) Clearly, if there is any credible explanation for the underlying causes of a particular sexual orientations such as homosexuality, it is that homosexuality is not “innate” but rather a result of complex, and only partially understood factors, such as the interaction of cognitive, environmental, and biological factors, as stated in the Grade 8 human sexuality lessons, which differ from the Grade 10 lessons that teach students that sexual orientation is “innate.” Under Maryland law, the “innate” statement taught as fact has no place in the curriculum, especially since curriculum materials are to be factually correct. *See* COMAR 13A.04.18.03(C)(2). In addition, MCPS Policy IFA(D), dealing with curriculum, states that a focused curriculum should be one that is “well-balanced and appropriate” and “reflects current research.” That is not the case here with the human sexuality lessons. The “innate” statement has yet to be proven, while current studies show just the opposite. (Exhibit 1, hereto, at 001, 0020-0023, 0028-0035.) A reasoning mind could not have reasonably reached the conclusion that a highly controversial theory should be taught as fact to impressionable students. COMAR 13A.01.05.05(B)(2). Moreover, the courts that have addressed the innate theory have concluded opposite of MCPS. The Ninth Circuit Court of Appeals held that “[h]omosexuality is not an immutable characteristic; it is behavioral and hence is fundamentally different from traits such as race, gender, or alienage . . .” *High Tech Gays v Defense Industrial Security Clearance Office*, 895 F. 2d 563,573 (9<sup>th</sup> Cir. 1990).

See also, *Anderson v. King County*, 138 P. 3d 963 974 (Wash. 2006) homosexuality not immutable. Every court that has looked at the issue has found homosexuality to NOT be innate. The Supreme Court has consistently not included homosexuality as an immutable characteristic.

17. By teaching that homosexuality is innate in Grade 10, the appellees/respondents are showing their intolerance and hostility toward the ex-gay community. The appellees/respondents teach students that the sexual orientation of gays, lesbians, transgenders, and bisexuals is innate, healthy, and normal, while denying the existence of other sexual variations such as those who are ex-gay or attempting to overcome unwanted same-sex attractions or gender confusions, despite the factual evidence of their existence and repeated appearances before the school board by ex-gays and former transgenders.<sup>2/</sup> (Exhibit 3, hereto, at 001-003; Exhibit 4, hereto, at 001-003; Exhibit 5, hereto.) The appellees/respondents are instructing students that it is normal to change your birth sex (transgender) but that it is not normal to change your unwanted same-sex attractions (former homosexual) because sexual orientation is innate from birth. The appellees/respondents pick and choose which sexual orientations they favor, in violation of their own instructions to the curriculum committee and their own policies that mandate tolerance and non-discrimination for all sexual orientations and in violation of State law that requires that “sexual variations” be taught and not just the ones the

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<sup>2/</sup> Members of the appellants/petitioners, Citizens for a Responsible Curriculum and Parents and Friends of Ex-Gays and Gays, were part of the Curriculum Advisory Committee which was involved in the preparation of the human sexuality lessons and have first-hand knowledge of what took place during the creation of the human sexuality lessons.



appellees/respondents favor.<sup>3/</sup> See COMAR 13A.04.18.03(B)(3)(c). The appellees/respondents' decisions with respect to the development of the curriculum were arbitrary, unreasonable, or illegal in violation of COMAR 13A.01.05.05.

18. In addition, the human sexuality lessons inaccurately portray “transgender” as a “sexual variation” when transgenders are actually classified by the American Psychiatric Association as having a mental disorder. Transgenderism, gender dysphoria, and gender identity disorder constitute mental illness according to the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM-IV). The human sexuality lessons fail to mention this fact, despite the request of the appellants/petitioners. Rather, the Grade 10 human sexuality lessons, in particular, contain a personal story about a boy who wants to be known at school as a girl. The boy calls himself “Portia,” receives a new student ID, which identifies him as a girl, and is given a key to a private unisex restroom by the principal. (Exhibit 6, hereto, at 0025.) The human sexuality lessons fail to include information on counseling for students like “Portia” who experience gender confusion. The lessons, then, implicitly support treatment of persons afflicted with gender identity disorders with steroids and radical surgery without mentioning the medical risks or alternative psychiatric therapy. (Exhibit 6, hereto, at 009, 0025.) The human sexuality lessons also refer to “Portia” as a “she” when the law classifies the student as a “he.” The human sexuality lessons force

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<sup>3/</sup> The MCPS Board instructed the curriculum committee to provide teachers and students with comprehensive instruction about human development, including information that “promotes tolerance and understanding towards *all people* regardless of sexual orientation.” See MCPS Board Memorandum Discussion/Action, dated July 27, 2005 (emphasis added).

students to acknowledge that “Portia” is a female when he is not and creates unnecessary gender confusion for the students. The lessons, therefore, are contrary to sound educational policy in violation of COMAR 13A.01.05.05(B)(1).

19. The Grade 8 and Grade 10 human sexuality lessons, without exception, communicate to students a positive moral view of homosexuality, lesbianism, transgenderism, and the like and portray these lifestyles to impressionable students as naturally and morally correct lifestyles. The presentation of this moral view runs contrary to the federal establishment clause in that it is presenting, as a truth, the religious view of secular humanism to these students, a religious view that condones homosexual conduct at the same time condemning contrary religious views as being intolerant. As the United States Supreme Court stated decades ago, “neither a State nor the Federal Government can constitutionally force a person to profess a belief or disbelief in any religion. Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against *those religions founded on different beliefs.*” *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961) (emphasis added). Among the “religions founded on different beliefs” that were listed by the Supreme Court was the religion of secular humanism. *Id.* at 495 n. 11. Not only does the federal constitution prevent religious indoctrination in the classroom, but so does Maryland law, which does not allow religious education to be included in a school’s curriculum as is occurring through the human sexuality lessons. COMAR 13A.04.04.01.

20. Along with presenting a positive moral view of homosexuality, the human sexuality lessons in Grade 10, for example, also communicate a strongly negative stereotype of anyone whose religious beliefs are not supportive of homosexual conduct. Anyone who takes a negative moral view of homosexual conduct is chastised by the human sexuality lessons as being “prejudiced,” “uneducated,” and “homophobic.” This is demonstrated by the vocabulary definitions used in the human sexuality lessons. The term “prejudice” is defined as a “preconceived opinion, not based on *reason or experience*. . . .” (Exhibit 6, hereto, at 0020; emphasis added.) The term “homophobia” is defined as “any range of *negative attitudes* toward or about gays, lesbians, bisexuals or transgender people. . . . Like any other *prejudice*, homophobia is learned.” (Exhibit 6, hereto, at 009; emphasis added.) Based on these definitions, it is easy for a student with religious beliefs (something not necessarily based on “reason or experience”), who believes that homosexual conduct is immoral and sinful, to deduce from the human sexuality lessons that he has a “negative attitude” and is “prejudiced” and is therefore a “homophobe.” As such, the human sexuality lessons lump religious people in with all others who are “homophobes” without any consideration that their religious faith may condemn the homosexual act but not the homosexual. Contrary to what the appellees/respondents will contend, the human sexuality lessons do not teach real tolerance (respect for fellow human beings) but teach intolerance toward anyone who does not subscribe to the pro-homosexual viewpoint being advanced through the human sexuality lessons.

21. The Grade 10 condom lesson endangers the lives of the students. This lesson creates a misleading impression that condoms are similarly effective in preventing disease transmission in anal intercourse as they are in vaginal intercourse, which runs contrary to all credible medical evidence. (Exhibit 3, hereto, at 001-003; Exhibit 7, hereto; Exhibit 8, hereto; Exhibit 9, hereto; Exhibit 10, hereto, at 001, 004-005, 008-009.)<sup>4/</sup> Stated differently, this lesson fails to warn students that the risk of contracting HIV/AIDS and other sexually transmitted diseases through anal intercourse has not been proven to be significantly reduced by the use of condoms and in fact contains information that is likely to mislead students into believing that anal intercourse can be made effectively safe by the proper use of a condom, something that is not true. The inclusion of this lesson was arbitrary and unreasonable in that it runs contrary to sound educational policy and no reasoning mind could have reasonably reached the conclusion that it is proper to provide students with false information that will endanger their lives.<sup>5/</sup> COMAR 13A.01.05.05(B).

22. Furthermore, teaching impressionable students about anal intercourse runs contrary to the prohibition in Maryland law that erotic techniques of human intercourse

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<sup>4/</sup> According to the United States Surgeon General, “Condoms provide some protection, but anal intercourse is simply too dangerous to practice.” (Exhibit 8, hereto, at 002.)

<sup>5/</sup> The pro-homosexual agenda is obvious in the human sexuality lessons. The appellees/respondents would never consider teaching students in a health class that there are people who do not smoke cigarettes and there are people who do smoke cigarettes without informing students that those who smoke cigarettes have a greater chance of being stricken with lung cancer, emphysema, and other ailments. Such instruction would be considered factually inadequate and harmful to students, but the appellees/respondents have no problem with presenting students with factually inadequate and harmful information when it comes to homosexual conduct.

may not be taught. COMAR 13A.04.18.03(B)(3)(b). If anal intercourse is not an erotic technique, then what is? Anal intercourse is clearly not done for procreative purposes. Moreover, the introduction of the topic of anal intercourse without providing information about the risk of disease transmission during anal intercourse, even with the use of a condom, runs contrary to State law, which requires health education programs to have students adopt “sound personal health practices,” COMAR 13A.04.18.02(C), to develop an understanding of behavior and skills that promote safe living, to identify and attempt to prevent hazardous situations, to analyze risk-taking behaviors and their consequences, COMAR 13A.04.18.02(E), and to develop and use skills to make responsible decisions about sexual behavior based on its consequences to the student and others, COMAR 13A.04.18.02(F)(8).

23. Although the Grade 8 and Grade 10 human sexuality lessons are being portrayed by the appellees/respondents as only an “opt-in” course—one in which parents have to want their children to attend—the so-called “opt-in” system serves to punish those who do not want to participate in the human sexuality lessons but want to participate in other aspects of the health education program. If a parent marks “No” on the permission form, (Exhibit 11, hereto), and denies permission for her child to participate in the Family Life and Human Sexuality unit, which is a multiple-week unit within the semester-long health education program that includes the couple of hours of the human sexuality lessons, then her child is opted-out of the entire multiple-week Family Life and Human Sexuality unit and not just the human sexuality lessons. As such, a parent and child that want to participate in any of the Family Life and Human

Sexuality unit must also participate in the human sexuality lessons. If they want to opt-out of the human sexuality lessons, then they are punished by being denied the other information in the multiple-week unit.

24. In sum, the appellees/respondents made a deliberate decision to include discussion of the highly controversial social issue of sexual orientation, including homosexuality, bisexuality, lesbianism, transgender, intersexual, “coming out” for gays, and gender identity in their health education program. Yet, in so doing, the appellees/respondents refused to include information from reputable sources, including the United States Centers for Disease Control, that discussed the substantial and unique health risks associated with same-sex sexuality activity. (Exhibit 7, hereto; Exhibit 8, hereto; Exhibit 12, hereto.) Instead, the school district decided to introduce the subject of “sexual orientation” and “sexual identity” to impressionable children by presenting only one side of the story, that is, that same-sex attractions are normal and innate and that there are no increased health risks associated with homosexual activities, sexual reassignment surgery, and administering steroids and other drugs for the gender confused individual. Indeed, the appellees/respondents are only presenting students with a pro-homosexual view in Grade 8 and Grade 10 without explaining that there are people who were homosexual but are now heterosexual, a reality that undercuts the agenda of the appellees/respondents to indoctrinate students into believing that homosexuality is “innate,” a proposition without factual, legal, or scientific support.

25. The above-stated problems with the human sexuality lessons are just a sample of the many reasons the lessons should not be allowed to be taught in the

Montgomery County public school system and illustrate that the human sexuality lessons run contrary to governing law. The teaching of the human sexuality lessons should be stayed pending the final resolution of this appeal.

26. Again, the appellants/petitioners are *not* requesting that this court stay the *entire* health education program during the pendency of this appeal, but only stay the implementation of the *small portion* of the program that involves the human sexuality lessons. The appellants/petitioners have meritorious arguments to make on appeal, and they should be permitted to brief and argue their points before the human sexuality lessons go into effect. The status quo should be maintained.

27. Accordingly, for the above-stated reasons, the appellants/petitioners respectfully request that this court grant this motion and enter an order staying the implementation of the human sexuality lessons to preserve the status quo until the final resolution of this appeal.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_\_\_ day of August 2007, a true and correct copy of the foregoing, along with Exhibits 1 – 12, was caused to be sent to the following by U.S. Mail, first-class postage prepaid:

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