

SAD 17 policy committee takes meeting into executive session

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By Nicole Carter

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The policy committee of SAD 17's school board took their Monday evening meeting into executive session on the advice of the district's legal counsel.

Nicole Carter / Advertiser Democrat

PARIS — "I would think you would want this to be in executive session."

This was the advice from Maine School Administrative District 17's legal counsel, Tom Trenholm of Drummond Woodsum when he joined Monday night's policy committee meeting to consult with directors on revising proposed policy Student Gender Identity ACAA.

The committee members present, Directors Troy Ripley and Sarah Otterson, both of Paris; Curtis Cole of Norway and Board Chair Natalie Andrews of West Paris voted unanimously to enter executive session. Director Diana Olsen of Otisfield arrived just as the public was asked to exit the meeting. Superintendent Heather Manchester, Assistant Superintendent Stephen Ciembroniewicz and Director Rose Lacasse of Harrison were also in attendance.

Trenholm cited 1 MRSA 405 § (6)(f), consultation between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this sub-chapter or

where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage.

“Some of these questions are asking for legal advice,” he told the committee members. “Some, you are asking for general answers that could be found on the internet or something. I don’t know if it’s more efficient to go into executive session and you can decide how to proceed after asking your questions or whether or not you want to just have answers be published and not worry about inadvertently waiving attorney/client privilege.”

The agenda for the meeting contained three actions: (1) review the questions [from board members] developed for the lawyers; (2) Discussion with Trenholm; (3) next steps.

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Tuesday morning Manchester said that notes taken during the executive session, minus confidential legal discussions, would be available later in the week.

While review of the questions was not done in public before the executive session began, Manchester confirmed that the committee had agreed on its next steps.

“They are going to look again at Drummond Woodsum’s sample [gender identity] policy, and review it against the adapted policy draft” the first reading of which was approved by the school board in October but tabled indefinitely last month, Manchester said.

Having received additional legal advice, the policy committee will then draft a revised policy that addresses concerns and present it to the entire board at a future date.

She provided the aggregated list of board director questions presented to Trenholm for feedback below:

A. What is the direct legal force of a MHRC memo/policy/ruling/decision?

How do such formal statements relate to ME law? What is directly relevant in the Maine Human Rights Act?

What is the enforcement mechanism – and what are the various types of adverse judgments and the potential penalties? Who makes such judgments? MHRC? Only the courts? Or some other entity? Is there any reliable notion of if and/or when the Maine judicial system is likely to get involved?

Where do you see unnecessary trouble if we keep the changes we made from the Drummond-Woodsum version by using MHRC language?

B. Is there any direct statutory basis for ACAA? Are there any exceptions to the applicability of the statute?

C. Given the MSMA newsletter report on the gender identity legal battle in New Hampshire, are there any differences in the legal situations in NH and ME?

What % of ME school districts have adopted a policy such as ACAA? Are school districts rescinding such policies in the face of local controversy, as we have heard claimed? Are there any distinguishing characteristics of districts which have adopted such policies vs ones which have not, or ones that have rescinded such policies?

In case of court involvement, what might be the consequences of having enacted and then rescinded ACAA?

Similarly, what could be the possible legal/liability consequences of not passing a policy at all?

[Note: a policy similar to SAD 17’s original draft has been the basis of a New Hampshire parent suing the Manchester school district over its confidentiality provisions. “Jane Doe’s” lawsuit was dismissed by Superior Court Judge Amy Messer last September. The case is currently being appealed. The Manchester school district revised language in its policy last March, and last May a proposed law that would have given parents more explicit rights regarding their children’s gender identity while at school, HB 1431, was defeated in the state’s House of Representatives.]

D. One comment we received said that the MHRC memo contains further explanation re “consistent assertion;” what is that wording and would it be helpful for ACAA?

E. The same comment says that Maine law and MHRC memo does NOT require confidentiality in all cases, implying that, the way our policy is written, that we think it is required. How does our language read to you, and would there be a more legally sound way to phrase this section?

Should we explicitly make clear that no District policy encourages or even permits any school employee to counsel any student re “transitioning”?

Should we ask the teacher/contact person who receives the student’s request to submit a standardized form to the superintendent that records the student’s request for confidentiality? Would this help limit legal blowback from parents?

F. The same writer raises the issue of “improper purpose”.

What is this legal concept and does it apply in any way to these circumstances?

G. Are any portions of the ACAA already covered by Title 9, e.g. for bathrooms and locker rooms?

If so, which ones? Should we remove such portions from ACAA and/or cross-reference them?

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