Today’s Cultural Changes and the Christian School
A Legal and Spiritual Look
Part 2

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Middle ground is disappearing on the question of whether LGBT persons should be treated as full equals, without any discrimination in society — and on the related question of whether religious institutions should be allowed to continue discriminating due to their doctrinal beliefs.

Professor David Gushee

Gay rights vs. Religious rights
Foundational Steps

The Statement of Faith & Statement of Final Authority

Issues where schools are vulnerable

1. Scenario: The school could lose tax-exempt status, or donors to the school could be denied credit for a charitable contribution.
   - Corporate Taxes to be paid
   - Sales Taxes to be paid
   - Property Taxes to be paid
   - Donors lose tax deduction

Tax Exempt Discussion

1. What could your school do now to help minimize the impact of losing your tax exempt status?
2. What would a new financial model for your school look like?
3. How can you start to build loyalty in your mission now so that donors would want to give whether there was a tax deduction or not?
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Issues where schools are vulnerable

2. Scenario: In states with voucher or tuition tax credit or educational savings plan programs, schools that resist the Sexual Orientation/Gender Identity (SOGI) agenda could be ruled ineligible.

   1. Could/would you still participate in a program that required open admissions but did not limit your hiring rights?
   2. What would you have to do in your school to make that change and still be faithful?
   3. What are other steps you should be doing in this area?

Issues where schools are vulnerable

Maryland Voucher, Aging Schools and Book Program

A nonpublic school participating in the program may not discriminate in student admissions on the basis of race, color, national origin, or sexual orientation. Nothing herein shall require any school or institution to adopt any rule, regulation, or policy that conflicts with its religious or moral teachings. However, all participating schools must agree that they will not discriminate in student admissions on the basis of race, color, national origin, or sexual orientation.

Issues where schools are vulnerable

3. Scenario: Legal challenges could arise with respect to hiring or (especially) firing, if the basis for decisions is sexual behavior outside of traditional marriage, or advocacy of acceptance of such behavior, or a change in gender identity.

   1. Has your school reviewed and updated your policies and practices?
   2. Are you currently engaged in your state and national legislatures to ensure your voice is being heard?
Issues where schools are vulnerable

4. Scenario: The school could be denied participation in inter-scholastic sports or other activities with peer institutions.

1. What would you do if you were required to adopt transgender policies in order to compete in an athletic league?
2. What if you had to compete against a team that has transgender athletes on its team?

Issues where schools are vulnerable

5. Scenario: The school could lose its accreditation with secular organizations or with states (where that exists).

1. Why as schools do you need secular accreditation?
2. Have you considered accreditation?

Issues where schools are vulnerable

6. Scenario: The school could be required to incorporate units favorable to the SOGI agenda in its curriculum for state recognition of your high school diploma.

1. Can Christian school create curriculum that is sensitive to the SOGI agenda?
2. How would you go about this?
Issues where schools are vulnerable

7. Scenario: The school could lose Title funding and other federal programs such as National School Lunch Program, e-Rate, etc.
   1. How much of this funding impacts your school operations today? Could you live without it?
   2. Direct Federal Financial Assistance

Issues where schools are vulnerable

8. Scenario: The school could be considered a public accommodation either in facility rentals or in enrollment. By public accommodation, you would be considered open to the general public and many of the religious protections would not apply to who you allow to enroll or rent to.
   1. Have you considered who you rent your facilities to?
   2. Have you implemented the changes to your rental policies?

Student Admissions

- What we advertise on our website
  - ABC Christian School admits students of any race, color, and national or ethnic origin.
- ABC Christian School admits students of any race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of race, color, national and ethnic origin in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.
### Student Admissions

- The Tour or Interview
  - Talk to them about who you are as a Christian School
  - We teach from the principles of the Bible and a Christian perspective
  - Talk about your Statement of Faith
  - Talk about the definition of Biblical Marriage
  - Talk about the partnership of the home and school
  - Parents must support all policies of the school

### Student Conduct and Discipline

- Attendance is a privilege and not a right
- Be clear on your policies in your handbook
- Be consistent in the application of your policies
  - This is where the courts will look
- Due Process

### Bentley v. Trinity Christian Academy, 2008-CA-000574, KY 05/29/2009

- Melissa Harp was a student in a Christian School in KY.
- Students were accepted on a one-year agreement or contract.
- Melissa did very well in her first year at the school.
- She was invited back for her senior year.
- In Feb and March, the administrator had met with Melissa and her mother to discuss the issues of tardiness and missing classes on test days.
- In April, she was suspended for the rest of the year for a negative attitude toward the school and continuing her same behavior.
- She was told that she would not be allowed to return for her senior year.
Attorneys for Harp filed a complaint with the trial court, “claiming denial of due process, breach of contract, libel and slander, and invasion of privacy.”

The school filed a motion for summary judgment and the court granted it.

The case was appealed to the KY Court of Appeals.

The attorneys argued that Melissa was entitled to due process prior to her dismissal.

The handbook stated, “All students are entitled to enjoy the basic rights of citizenship recognized and protected by law for a person of their age and maturity.” Therefore, they contended that the right to due process was a “basic right of citizenship” and that Melissa was “entitled to the same protections afforded public school students.”

Bentley v. Trinity Christian Academy, 2008-CA-000574, KY 05/29/2009

The court disagreed, stating, “a private institution is not required to afford a student the same due process as if it were a public school or any other ‘state actor.’”

In the contract, the school never guaranteed the right to due process.

In the handbook, it stated, “major discipline problems are defined as those which cause substantial disruption of the educational process at TCA or those which endanger the safety and well-being of another. They could be grounds for suspension or expulsion even for a first offense.”

Bentley v. Trinity Christian Academy, 2008-CA-000574, KY 05/29/2009

In the school contract, that her mother had signed, she agreed to:

4. I understand the school reserves the right to suspend or dismiss any student who:
   a. has a scholastic or conduct record which is not in keeping with the best interest of the school
   b. develops a negative attitude toward the Christian philosophy of the school
   c. is found to be in possession of or using drugs, alcoholic beverages, or tobacco products.

They also argued that the school had not followed the five-step discipline process in the handbook.
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**Bentley v. Trinity Christian Academy, 2008-CA-000574, KY 05/29/2009**

- However, he had met with the student on several occasions regarding her behavior problems and her repeated tardiness. Also, in another section of the handbook under major offenses, it stated that the school "retained the discretion to expel or suspend a student who committed a major offense, even if it was a first offense."
- The appeals court also noted that if Melissa Harp truly believed that the school had breached the contract, her required remedy would be to avail herself of the grievance procedure by appealing the decision to the school board as required by the handbook.

**Bentley v. Trinity Christian Academy, 2008-CA-000574, KY 05/29/2009**

- **Take-away Principles:**
  - Policies and procedures stated in the handbook constitute terms of the contract for enrollment.
  - Handbooks should be very concise and complete.
  - The school can face liability if it does not follow its own policies and procedures.
  - Christian schools are private organizations and therefore are not subject to the same due-process issues as government schools.
  - Christian schools can set their standards of admission and continued enrollment.
  - Courts have noted that private schools are afforded broad discretion in conducting their programs, including decisions involving the discipline, suspension, and expulsion of their students.

**Calvary Christian School v. Huffstuttler, 238 S.W.3d 58 (Ark. 2006)**

This case shows the unique opportunity that Christian Schools have to incorporate their own religious beliefs into their contracts.

- The State Supreme Court of Arkansas overruled a trial court decision awarding $190,000 to the parents of a child who had been disenrolled from the school.
- The school contract which all parents signed each year contained a “Matthew 18 Principle [requiring the] … reconciling [of] differences by first conferring with the most immediate staff member related to the incident in question, and then only pursuing the proper, progressive chain of authority when matters are not acceptably resolved.”

- When the school received evidence that the parents were not following the Matthew 18 principles, their child was disenrolled.
- The State Supreme Court observed that the trial court had no jurisdiction because "any analyses of whether the school breached or interfered with its agreement with the Huffstuttlers would require us to determine whether the Huffstuttlers did, or did not comply with Matthew 18."


- Quotes from the Court:
  The record reveals that Calvary Christian disenrolled Preston due to his parents' failure to comply with the Matthew 18 Principles, principles that were expressly adopted by Calvary Christian in its handbook as the approved procedure for handling conflict. In fact, the Huffstuttlers signed a student/family intent form, which stated in relevant part:
  The signing of this document represents a visible and willful bond between the Huffstuttler family and Calvary Christian School. Before entering a student in any aspect of the school's program, which includes any day care through twelfth grade, several basic aspects relative to the philosophy and intent of the school must be agreed upon by the enrolling family and the school body.
  By signing this document the family understands that:
  2) The integration of Christian world views and application of biblical principals [sic] is required in every course and activity of the school program.


- Quotes from the Court:
  Furthermore, the family agrees:
  1) To respect the statement of faith of Calvary Christian School.
  2) To verbally and authoritatively support the individual teachers, their classroom rules.
  3) To carefully determine to use the Matthew 18 principle of reconciling differences by first conferring with the most immediate staff member related to the incident in question, and then only pursuing the proper, progressive chain of authority when matters are not acceptably resolved.
  During the dispute between the Huffstuttlers and Calvary Christian, the Huffstuttlers recommitted to adhering to the school's policies and procedures by signing a new agreement, which stated in part:
  "The family agrees to support the policies, procedures, staff, and administration of [Calvary Christian]. We will not make any negative comments that could possibly destroy the ministry and unity of [Calvary Christian]."
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- Quotes from the Court:

The disenrollment letter, sent to the Huffstuttlers seven days later, specifically stated:

As you know, we met with you recently for a conference due to concerns the school had about comments made, and it was discussed with you the conditions under which Preston would be allowed to continue as a student of Calvary Christian School without interruption. At that time, each of you signed an agreement to support the policies, procedures, staff, and administration of the school. A copy is attached to this letter although you should be aware of its contents.

Since then, the school has learned that you violated the terms of this agreement. Additionally, the school has a philosophy, based on Biblical principles, to cooperate with the home in the education of the child. The comments and actions of the last several days indicate that the school cannot fulfill this philosophy in the case of Preston. The school is also concerned that comments that have been made may be defamatory. After careful review of all the circumstances involved, the school board has determined that the school is no longer in a position where it can continue the enrollment of Preston.

- Take Away Principles:

  - Schools should have a parent cooperation statement or a contract that has in it the Matthew 18 principal and how it works in a school setting.
  - Mediation and Arbitration Clause

Student Conduct and Discipline

- Code of Conduct (24/7/365)

  - Off Campus or outside of school conduct
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Employment Issues

• Title VII of the Civil Rights Act of 1964
  – The Nation’s employment non-discrimination law.
  – Employers cannot discriminate based on race, sex, religion, or national origin.
  – Amended to add age discrimination, pregnancy, or pregnancy-related medical conditions, and disabilities.
  – Section 702
    • Has specific wording that allows religious nonprofit employers to discriminate based on religion.

Employment Issues

• The cultural battle!
  – We must clearly articulate our religious mission and religious requirements for employment at the school.
  • Have a Biblical statement of faith that employees must adhere to without mental reservations.
  • Have a mission statement that identifies the school’s religious purpose.
  • Have job descriptions that clearly identify the religious qualifications such as being born again and other expectations.
  • Have a lifestyle statement that articulates what type of life the person must lead to qualify for an employment position in a religious school ministry. (24/7/365)

Employment Issues

• Bishop v. Amos 483 U.S. 327 (1987)
  – Amos, a support worker in a Mormon church-owned gymnasium who was discharged because he failed to qualify for a certificate that he was a member and eligible to attend its temples.
  – The lower court ruled in favor of Amos and it was appealed.
  – It was heard by the US Supreme Court in 1987.
  – The Supreme Court ruled that applying the exception to a religious organization’s secular activities does not violate the Establishment Clause.
  – Religious exemption applies to all employees of a religious ministry.
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Employment Issues

• Emphasize that individuals on your staff must serve as “Christian role models” for your students.
  – This should enable you to require higher standards from applicants and employees than is typical for secular employers.
  – This phrase and concept of “Christian role models” should be a part of your job descriptions and contracts.
  – Use scripture.

Employment Issues

• Emphasize that teaching is a ministry.
• Schools can lose their religious exemption in the law if a school is not consistent in applying its religious criteria to its hiring and employment practices.
  – Hiring of a non-Christian
  – Knowingly hiring a person not living the Christian lifestyle
  – Inconsistency can cost your greatly!

Employment Issues

• Employee Life Style Requirements
  – Luke 6:40 is a key verse for those that would seek to train or teach children:
    A student is not above his teacher, but everyone who is fully trained will be like his teacher.
  – Use the phrase “Christian role model” often in your employment materials.
  – Have employees sign a “Lifestyle Statement” as a part of their contract.
• Declaration of Moral Integrity
  • Deals with moral standards expected of employees.
  • Attach it to your job applications
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Employment Issues

• Threat of New “SEXUAL ORIENTATION” Nondiscrimination Category

• Three steps to protect your school ministry:
  1) Amend your school’s Statement of Faith by adding a sentence or two that acknowledges God’s intention for the sexuality of men and women and traditional marriage. If your school is owned by a church, both the church’s and schools’ statements should be amended with the same wording.
  2) Adopt a clear Lifestyle Statement for your ministry that, among other things, speaks to the homosexual issue.
  3) Adopt and use the Declaration of Moral Integrity will all staff positions on an annual basis.

Employment Issues

• The Ministerial Exception
  – Hosanna-Tabor
    • K-8 founded on biblical principles
    • Cheryl Perich was a commissioned minister in the church who taught fourth grade
    • Dismissed for insubordination, disruptive conduct and threatening to sue the church
    • She sued claiming the school retaliated against her for threatening to file a discrimination claim
    • Ministers cannot sue their churches in disputes over qualifications, job performance, or rules for ministry
    • Job descriptions with spiritual qualifications is a must!

Employment Issues

• Employee Applications
  – Two Part Application
    • Part I – General questions and testimony
    • Part II – More sensitive questions about lifestyle and morality
  
  • What about Employment Agreements?
    – Gives clear expectations
    – Emphasis on Christian Role Model
    – Give yourself the option for immediate dismissal for serious misconduct
    – Arbitration and Mediation Agreement
Engaging the Culture

• We need to FACE the facts that our culture is changing!
  F – Focus on the Word of God
  A – Acknowledge that as this culture shifts, our methods may also have to shift
  C – Courage and Creativity
  E – Examine ourselves and Engage

Jeremiah 29 – Engaging the Culture

• Build houses and live in them; plant gardens and eat their produce.
• Take wives and have sons and daughters; take wives for your sons, and give your daughters in marriage, that they may bear sons and daughters; multiply there, and do not decrease.
• But seek the welfare of the city where I have sent you into exile, and pray to the LORD on its behalf, for in its welfare you will find your welfare.

UMSI Resource Page – www.acsi.org/UMSI
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