

Hermiston Christian School alleges discrimination in lawsuit

By **ANTONIO SIERRA**
STAFF WRITER

A Hermiston private school, with a total enrollment of 51, is suing Gov. Kate Brown and several other state agencies with the help of a well-heeled conservative legal organization.

Attorneys from the Arizona-based Alliance Defending Freedom filed a complaint on behalf of Hermiston Christian School in federal court in Pendleton on Oct. 16. The complaint alleges that the governor was violating the school's constitutional rights by forcing it to remain closed during the COVID-19 pandemic.

"After 41 years of faithful service, Hermiston Christian School ... could be forced to shut its doors for good unless the court stops an obvious case of discrimination: Defendants' COVID-19 orders and guidance generally prohibit in-person instruction but grant a 'small school' exception to public schools, while denying the same exception to private religious schools ... in Umatilla County," the attorneys wrote in the introduction.

The lawyers wrote that the state's actions violated the school's First Amendment right to freedom of religion and 14th Amendment right to due process.

In the complaint, the alliance draws comparisons between Hermiston Christian School and Ukiah School, a public school with similar enrollment in the same county, albeit 80 miles away. While Ukiah was included in a list of small and remote schools that were allowed to reopen for in-person instruction, no private schools in the county, all of them religious, were afforded the same opportunity.

The filing also lays out a timeline of changing reopening standards, the law-



Ben Lonergan/Hermiston Herald

A sign directs visitors to the entrance of the Hermiston Christian School in Hermiston on Wednesday, Oct. 21, 2020.

suit alleging that the state had advised private schools they could reopen in the fall before changing course on July 29.

The school's lawyers argue that the governor's administration was motivated by a fear that allowing private schools to remain open, while most public schools stayed close, would lead to major disenrollment from the public school. One Brown staffer allegedly said it would cause a "mass exodus" in a conference call with administrators.

The alliance is asking the court to not only issue a temporary restraining order that would allow Hermiston Christian School to reopen, but also grant the school damages for the social distancing measures it installed in its facilities and for the potential enrollees who decided to go elsewhere because of the closure.

The attorneys argued that in-person instruction was not only essential to the school keeping its lights on, but also its affiliate church's ability to practice its faith.

"In-person education is essential for (the school's) free exercise of religion," the complaint states. "(The school's) mission is to teach its students what it means to be a disciple of Jesus Christ, not only through classroom education, but also through prayer, worship, and religious formation that occurs in-person."

The alliance not only sued Brown, but also the leaders of several state agencies, including Oregon State Police, Oregon Health Authority and the Oregon Department of Education. All, including the governor's office, declined to comment or didn't return a request for comment.

The legal team also sued the heads of Umatilla County Public Health and the Umatilla County Sheriff's Office. Public Health Director Joe Fiumara declined to comment, while Sheriff Terry Rowan said he was "shocked" because his deputies were never involved in this issue, but declined to comment further.

Ryan Tucker, a senior counsel for the alliance, said they needed to include law enforcement agencies in the lawsuit because of their capacity to enforce the governor's orders even if they hadn't enforced them yet.

While the alliance equated Ukiah School and Hermiston Christian School, the pandemic has affected each community disparately. Umatilla County Public Health has reported between 0-4 COVID-19 cases in the Ukiah area, while the Hermiston ZIP code has more than 1,600, according to OHA.

Despite these differences, Tucker said the state has already well established its case that the state was making its decision based on religious qualifications.

Morrow County School District to start hybrid learning Oct. 28

By **JADE MCDOWELL**
NEWS EDITOR

Morrow County School District is allowing any student who wants to return to an in-person classroom to do so starting Wednesday, Oct. 28.

The district had previously been offering limited in-person instruction for two hours a day to students in certain categories, such as special education students or those without internet access at home. While most school districts in Oregon are still limited to that model (if they meet the standards for opening at all), the state laid out special guidelines for rural counties with fewer than 30,000 residents and an average density of six or fewer people per square mile.

For those counties — a short list which includes Morrow County — schools can return to a "hybrid" model of learning that allows any students who wishes to attend classes in person the opportunity to do so, while those who wish to continue participating virtually can do so, if a county has fewer than 30 confirmed cases of COVID-19 over a three-

week period. The local health department must also determine that the county is not experiencing "community spread," defined as cases that contact tracers can't determine the origin.

Morrow County's past three weeks saw 11 cases, then 8, then 5, for a total of 24 confirmed cases over three weeks. Superintendent Dirk Dirksen said the district decided jump on the chance to return students to the classroom while it could.

"We can't pass up this opportunity," he said.

Dirksen said schools will have different schedules under the hybrid model, but in general, elementary school students will have in-person learning in the morning with students choosing to stay online watching the instruction over video, while the afternoon will involve teachers working with all students online in small groups or individually.

Secondary school students choosing to return to the classroom will stay in a single home room all day, with that teacher acting as a tutor as they interact with other teachers

over video.

"With COVID, we don't want those kids moving around (the building)," Dirksen said. "It's a lot easier to track for the local health department."

Umatilla County, with a population more than twice the limit of 30,000, does not fall under the same metrics for reopening schools. For most districts, including Hermiston School District, current state guidelines say they can't reopen to all students until their county sees fewer than 10 cases per 100,000 people (about eight cases a week in Umatilla County) for three weeks in a row and have a test positivity rate of less than 5% for three weeks in a row. Oregon as a whole must also experience a less than 5% positivity rate.

According to the Oregon Health Authority's latest calculations from Oct. 11 to Oct. 17, Umatilla County recorded 88 cases — or 108.4 cases per 100,000 residents — and a test positivity rate of 14.5%. Since test positivity rate started being recorded July 26, Umatilla County's lowest recorded rate was 12%.

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