



November 10, 2015

VIA U.S. MAIL & E-MAIL

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Tennessee Open Records Act Request

Dear [REDACTED]:

On September 16, 2015, I submitted a Tennessee Open Records Act request on behalf of the American Center for Law & Justice (“ACLJ”) to the [REDACTED] School District. Subsequently, the State Board of Education Chairman announced that due to the controversy surrounding World Religion and the discussion of Islam in the public schools, Tennessee will be reviewing the social studies standards *two years early*, in January 2016. Due to the delay in providing responsive records, and from recent communications, it seems that a complete response to the request would not be provided to the ACLJ by the [REDACTED] School District before the State addresses the concerns surrounding the presentation of certain religious material within the public school curriculum. Consequently, rather than requiring the school district’s resources to be utilized in responding to an open records request that will likely produce results ultimately of little to no value following any changes made at the state level, the ACLJ will instead be monitoring the planned changes and working with state officials to ensure that public school standards regarding world religions are factual, non-biased, non-indoctrinating, and in compliance with students’ rights as protected by the First Amendment. Since the Chairman made it clear that the local districts are solely responsible for the curriculum, instruction, and time devoted to a given topic, however, it may be necessary, following the State’s actions on this issue, to renew the request at an appropriate time in the future.

[REDACTED]
[REDACTED]
[REDACTED]

In the meantime, we would like to take this opportunity to share with the [REDACTED] School District information regarding religious studies curriculum, including relevant guidelines for compliance with the Establishment Clause of the First Amendment in the curricular context.

In general, the ACLJ supports the ability of public schools to teach about the Bible and other religious texts as part of an objective study of religion, literature, etc. However, schools must be careful to ensure that instruction is provided *about* a particular religion without inappropriately *indoctrinating* students in the tenets of a particular faith.

The Supreme Court of the United States has explained that government action violates the Establishment Clause of the First Amendment if its primary purpose or effect is to advance or inhibit religion (or a particular religious viewpoint) or if it creates an excessive government entanglement with religion.¹ A state entity, such as a public school, violates the Establishment Clause when it endorses a religion or coerces students to participate in religious activity.² The “First Amendment does not forbid all mention of religion in public schools; it is the advancement or inhibition of religion that is prohibited.”³ Thus, for example, a school should not require students to engage in activities of a religious nature, such as praying “in the name of Allah,” chanting “Praise to Allah,” or “pretending” to be Muslims during its instruction about Islam.⁴ Similarly, information about the tenets associated with a particular religion should be clearly identified as beliefs held by adherents to that religion, not stated as matters of fact.⁵

In this regard, the U.S. Department of Education has issued guidelines on prayer and religious expression in public elementary and secondary schools, and has explained:

The Supreme Court has repeatedly held that the First Amendment requires public school officials to be neutral in their treatment of religion, showing neither favoritism toward nor hostility against religious expression such as prayer. Accordingly, the First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by private individuals, and the line between government-sponsored and privately initiated religious expression is vital to a proper understanding of the First Amendment’s scope. As the Court has explained in several cases, “there is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.”⁶

¹ *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

² *Lee v. Weisman*, 505 U.S. 577 (1992).

³ *Comm. of Public Educ. v. Nyquist*, 413 U.S. 756, 788 (1973).

⁴ *Mozert v. Hawkins Cnty Bd. of Educ.*, 827 F.2d 1058, 1065 (6th Cir. 1987) (“It is clear that it [is] being compelled to engage in [a religious activity], not being exposed to the fact that others do so, that [is] an unconstitutional burden.”) (discussing *Spence v. Bailey*, 465 F.2d 797 (6th Cir. 1972)).

⁵ *See Doe v. Porter*, 370 F.3d 558, 563 (6th Cir. 2004) (finding a violation of the Establishment Clause where there was an intention to teach religious texts as literal truth).

⁶ U.S. Dept. of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, Feb. 7, 2003, http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html (quoting *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000) (quoting *Board of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (plurality opinion)); accord *Rosenberger v. Rector of Univ. of Virginia*, 515 U.S. 819, 841 (1995)).

To ensure the appropriate neutrality toward religion required by the Establishment Clause of the First Amendment, schools should be vigilant in using fact-based curriculum that is both accurate and non-biased, and should avoid using information from non-approved sources or partisan groups that clearly seek to indoctrinate students in the beliefs of a particular religion.

In the past, the ACLJ has been active in educating public officials on public school violations of First Amendment rights. Should the [REDACTED] School District have any questions in this regard, we invite you to contact the ACLJ for more information.

Respectfully,

A handwritten signature in cursive script that reads "Carly F. Gammill". The signature is written in dark ink on a light-colored background.

Carly F. Gammill
Senior Litigation Counsel
AMERICAN CENTER FOR LAW & JUSTICE