

LIBERTY COUNSEL



Post Office Box 540774
Orlando, FL 32854-0774
Telephone: 407•875•1776
Facsimile: 407•875•0770
www.LC.org

122 C Street N.W., Suite 360
Washington, DC 20001
Telephone: 202•289•1776
Facsimile: 202•737•1776

Post Office Box 11108
Lynchburg, VA 24506-1108
Telephone: 407•875•1776
Facsimile: 407•875•0770
liberty@LC.org

Reply to: Virginia

May 24, 2016

VIA EMAIL ONLY

Superintendent Raul Maldonado
Palmdale School District
39139 North 10th Street East
Palmdale, CA 93550
rmaldonado@palmdalesd.org

Re: Unconstitutional suppression and censorship of student religious speech

Dear Superintendent Maldonado:

By way of brief introduction, Liberty Counsel is a non-profit litigation, education, and policy organization with an emphasis on religious liberties issues. With offices in Florida, Virginia, and Washington D.C., and hundreds of affiliated attorneys across the nation, including California, Liberty Counsel specializes in First Amendment litigation, and represents students and parents throughout the country in the context of their liberties and the public schools. We have had particular success in representing our clients' interests in federal court.

Liberty Counsel represents "C," a 7 year old student in First Grade at Desert Rose Elementary School in the Palmdale School District ("the District"), and his parents, Christina and Jaime Zavala. C began attending Desert Rose in January 2016. Like many parents, C's mother, Christina, has included a short note for C's lunch-time benefit, which included a Bible verse for him to read. C began telling his friends about his mother's encouraging notes, and began reading the Bible verse to them. The students would eagerly anticipate the next days' lunch-time note and Bible verse, gathering round while C read to them.

After this had occurred for some time, one friend asked for a copy of the Bible verse, that he, too, could have. C relayed the request to his mother, who began to send a Bible verse for C, and one for his friend. Soon, five more students asked C for a Bible verse, and C brought additional copies for them, as well. The notes grew to include a short story providing context for the Bible verse, which C would read to the children. C brought copies of these notes as well, which never exceeded one page.

On April 18, 2016, however, Christina received a call from C's First Grade teacher, who stated that she had become aware of C's Bible verses and stories, when a girl in her class had come up to her and said, "Teacher, this is the most beautiful story I have ever seen - C gave it to me." When C's teacher saw that the note was actually a short Bible story and a Bible verse, she told C in front of the other students that he was not allowed to share such things while at school. C's teacher told him that he would have to wait outside the school

gate, and could give the Bible verses to his friends at that location, after the bell rang. She informed Christina that C could no longer read or share Bible verses or stories at lunch, stating "Please tell your son that there is a separation of church and state."

Following the phone call, on April 19, 2016, Christina wrote a letter to C's teacher, to explain that C was only sharing with children who asked to read what she had provided for his benefit during lunch; that he was not interrupting class time, and that this was not prohibited by the Establishment Clause. Christina reiterated her expectation that C would not be prohibited from discussing his religious beliefs, or from discussing religious topics during non-instructional time. However, despite the accurate information about student religious rights which Christina shared with her, when the students were lined up in the classroom the next day, in front of C and the whole class, C's teacher again told C that he was not allowed to share the notes at school.

When C returned home after school that day, he told his mother what had happened, and cried because he did not want his teacher to be mad at him, and said that he would not pass out the verses anymore. Thus, Christina and C began to stand near the school gate briefly after school, per his teacher's direction, to share the Bible verses and story with C's friends, who would congregate there after the school bell rang. By this time, as many as fifteen children were requesting a copy of the Bible verse from C, and excitedly looked forward to a new one every day.

This continued, until May 9, 2016, when C's father, Jaime, went to the school to pick up C, and supervise his distribution of Bible notes. When C handed out the first note after school, Principal Pagliagro approached, and ordered them to stop handing out the notes, because it was "against school policy." Instead, C would have to hand out his notes on the sidewalk, which was "a public place." Jaime and C complied, and soon returned home, but around 4:30 PM that afternoon, a Los Angeles Deputy Sheriff knocked at the door of C's family residence. He stated that the school had called him to report that C and his parents had been sharing papers at school; and that this was not permitted because "someone might be offended."

After this final incident, C's parents contacted Liberty Counsel for assistance. Having reviewed the above facts, District policies, and applicable law, it is clear that the actions of District staff in this instance, in prohibiting voluntary student religious expression during non-instructional time; then completely banning such student expression from school property entirely; and finally calling the police to report the same are simply unconstitutional. These actions must be disavowed and reversed, to avoid liability for civil rights violations.

Board Policy 5145.2, "Freedom of Speech/ Expression –Students" states that students have the right to "express ideas and opinion, whether controversial or not – through speech, writings, or printed materials." Policy 5145.2 goes on to reference Cal. Ed. Code 48907 (exercise of free expression, rules and regulations); 48950 (speech and other communications) and 51520 (prohibited communications and solicitations). Neither Policy 5145.2, nor these California Education Code sections support the District's actions in this case.

Cal. Ed. Code 48907 states that "**pupils of the public schools shall have the right to exercise freedom of speech, including but not limited to, distribution of printed**

materials. Expression can only be prohibited that is obscene, libelous or slanderous, and constitute a clear and present danger of commission of unlawful acts.” (Emphasis added). None of these apply here. Cal. Ed. Code 48950 sets forth the intent of the legislature in protecting First Amendment speech activity, and permits “reasonable” time, place and manner regulations, but student speech cannot be wholly proscribed. Further, Cal. Ed. Code 51520 prohibits “solicitations” on school premises where such “solicitations” are subscribing to, contributing funds to, or working for any non-school organization. This section goes on in subsection (d) to state that **nothing “in this section shall be construed as prohibiting the solicitation of pupils of the public school on school premises by pupils of that school for any otherwise lawful purpose.”** (Emphasis added). “Solicitation” as contemplated in this section thus does not cover peaceful literature distribution by students to their friends, and therefore, the presence of C and his father on school property, for the purpose of C engaging in protected conduct and speech by distributing notes with Bible stories and verses, is not a violation of Cal. Ed. Code 51520, nor Policy 5145.2.

Finally, Board Policy 5145.2 cites “Court Decisions,” including *Tinker v. Des Moines School District*, 393 U.S. 503 (1969). As you know or should know, *Tinker’s* seminal proposition is that **“it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.** This has been the unmistakable holding of this Court for almost 50 years [as of 1969].” *Id.* at 506. (Emphasis added).

Tinker is not the only guidance the Supreme Court and other federal courts have provided regarding private religious expression. “Private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.” *Capital Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995). Schools may not enforce secular orthodoxy: “If there is any fixed star in our constitutional constellation, it is that **no official, high or petty, can prescribe what shall be orthodox in...religion**, or other matters of opinion, or force citizens to confess by word or act their faith therein.” *West Virginia v. Barnette*, 319 U. S. 624 (1943). Discrimination against speech on the basis of religious viewpoint is unconstitutional: *Hills v. Scottsdale Unified School District*, 329 F.3d 1044 (9th Cir. 2003); *Child Evangelism Fellowship of Minn. v. Minneapolis Special Sch. Dist. No. 1*, 690 F.3d 996 (8th Cir. 2012); *Child Evangelism Fellowship v. Montgomery County*, 373 F.3d 589 (4th Cir. 2004); and *Good News Club v. Milford School District*, 533 U.S. 98 (2001). Beyond these federal decisions, California courts have found broader protection for student speech rights, greater than the First Amendment. See, e.g., *Smith v. Novato Unified Sch. Dist.*, 150 Cal. App. 4th 1439 (2007).

The District simply cannot prohibit student speech during non-instructional time, where that speech is neither lewd, obscene, nor indecent. Students are allowed to discuss a variety of topics during non-instructional time, including super heroes, television and current events, extra-curricular activities, and other things of interest to the students, including religious topics.

The District cannot prohibit spontaneous student verbal speech, or handwritten notes passed between students, during non-instructional time, or require (legally, or practically), prior review of all student expression, before it is permitted. Students are allowed to express

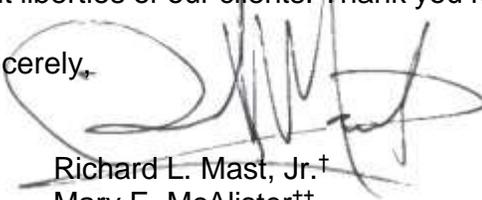
themselves via means of cards or personal notes, or invite their friends to birthday parties,¹ verbally, or via means of written birthday party invitations. Students distribute such invitations, as well as Christmas cards and Valentine's Day cards², to willing recipients, all without prior review by the District. All of this is permissible, and may not be prohibited by the schools, and may not be subjected to prior review or restraint. Moreover, the District may not discriminate by prohibiting only verbal or written student religious expression during non-instructional time, where it routinely allows secular student expression.

Therefore, it was improper to ban student religious discussion during lunch-time. The District cannot suppress and censor this discussion, or the one-page notes consisting of Bible stories and verses placed by C's mother in C's lunch for his own personal enjoyment and edification; which he voluntarily chose to share with his little friends during non-instructional time; which interested classmates were free to accept or refuse, at their own discretion. The additional copies requested by C from his mother, for his friends (who had specifically requested them from him), are likewise protected, and fall into no classification of material that might be lawfully prohibited by the School District. The consigning of C's speech to the "schoolhouse gate," and then the prohibition of it even there, is unconstitutional, and must fall. Finally, if being censured for religious expression by one's First Grade teacher in front of one's classmates is not intimidating and humiliating enough, the message of hostility to a child's religious expression is underscored by the District calling law enforcement for a "follow-up visit" to his house.

"Separation of church and state" does not justify the District's actions. For these reasons, I hereby request that the District **respond in writing by close of business, June 1, 2016** that it 1) has rescinded the directive banning C's voluntary religious expression during non-instructional time, including lunch or recess; 2) has rescinded any other directives barring C (under his parents' supervision) from C giving written notes containing Bible stories/verses to willing students on school property around the school gate; and 3) has corrected the erroneous reprimand to C and instruction to C's First Grade classmates, who should be verbally informed, consistent with this letter, that students have the First Amendment right to engage in protected religious speech during non-instructional time, and that the previous reprimand was erroneous. The District has a duty to correct the record, not only to C, but to these other future citizens.

If we do not receive this response, we will take further action to prevent irreparable harm to the cherished First Amendment liberties of our clients. Thank you for your immediate attention to this matter.

Sincerely,



Richard L. Mast, Jr.†
Mary E. McAlister††

¹ <http://www.palmdalesd.org/Page/599>

² <http://www.palmdalesd.org/site/default.aspx?PageType=3&ModuleInstanceID=5057&ViewID=DEDCCD34-7C24-4AF2-812A-33C0075398BC&RenderLoc=0&FlexDataID=7321&PageID=3838&Tag=>

† Licensed in Virginia

†† Licensed in California, Florida and Virginia

RLM/vab

CC VIA EMAIL:

Palmdale School Board:

Juan Carillo, President
Nancy Smith, Board Member
Joyce Ricks, Clerk
Dennis Trujillo, Board Member
Sharon Vega, Board Member

jcarillo@palmdalesd.org
nksmith@palmdalesd.org
jricks@palmdalesd.org
dmtrujillo@palmdalesd.org
savega@palmdalesd.org

Melanie Pagliaro, Principal

mjpagliaro@palmdalesd.org