



April 21, 2014

Dr. Mark Henry  
Superintendent, Cypress Fairbanks ISD  
10300 Jones Road  
Houston, TX 77065

Joni Conn  
Principal, Hamilton Elementary School  
12050 Old Kluge Road  
Cypress, TX 77429

Subject: Religious Discrimination at Hamilton Elementary School

Dear Superintendent Henry and Principal Conn,

Liberty Institute is a national religious liberties law firm that is dedicated to securing religious freedom in our schools. Please direct all correspondence relating to this matter to me at the address provided below. Liberty Institute recently received a complaint alleging that a teacher at Hamilton Elementary School prohibited a second-grade student from reading the Bible during “read to myself” time, that the Bible did not meet the requirements of a “Just Right” book, and that the teacher prohibited the student from bringing a Bible to school again. At this time, the student and parents wish to remain anonymous due to fear of reprisal or retaliation.

The teacher’s actions are illegal, and violate the Constitution, federal guidelines, and state law. The First Amendment to the Constitution prohibits public schools from treating religious activities and materials less favorably than non-religious materials, as long as such materials do not create a substantial disruption to discipline or the academic environment. More than forty years ago, the Supreme Court stated that public school students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines*, 393 U.S. 503, 506 (1969). More recently, the United States Court of Appeals for the Fifth Circuit, in which Texas resides, affirmed *Tinker’s* rationale, holding that “[s]chool officials may only restrict such private, personal expression to the extent it would ‘materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.’” *Morgan v. Swanson*, 659 F.3d 359, 374 (5<sup>th</sup> Cir. 2011) (internal citation omitted).

The Supreme Court has repeatedly upheld the principle that public school students may engage in religious activities during non-instructional time in the decades following the *Tinker* decision. In fact, schools may not prohibit or restrict students’ activities because of their religious nature. This is called religious viewpoint discrimination, and it’s unconstitutional. See *Lamb’s Chapel v. Central Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990); *Good News Club v. Milford Centr. Sch.*, 533 U.S. 98 (2001). And in 2003, the Department of Education published guidelines stating that public school students enjoy the right to engage in religious activities during non-instructional time, such as “read to myself” time. *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, ([http://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html)). Finally, the Texas Religious Viewpoints Anti-discrimination Act (TRVAA) requires that Texas public

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schools treat religious expression in the same manner as otherwise permissible subjects are treated, Tex. Educ. Code §§ 25.151-156.

If students at Hamilton Elementary are permitted to read non-religious materials of their choice, then the Bible must also be permitted. It is our understanding from other students and other CFISD schools' published guidelines for "Just Right" books that children are allowed to choose or bring reading material of their choice as long as it fits the "Just Right" criteria. For example, Ault Elementary School permits students to "choose [books] on their current reading level and interest level." Cypress Fairbanks ISD, Ault Elementary School Parent Handbook (<http://schools.cfishd.net/ault/ParentHandbook2013-14.pdf>). Accordingly a "Just Right" book is a book that the student chooses on their own, that interests them, and is suitable for their current reading, comprehension, and vocabulary knowledge.

Under the "Just Right" criteria, the Bible is clearly an appropriate book. The student chose to read the Bible because it is a book of interest. The Bible is suitable because the student can read it, comprehend most of it, and its vocabulary is within the student's abilities. This is particularly true considering that students in past generations were taught to read using the Bible, and that many of the words in common use today came from the Bible. Thus, the Bible's suitability for reading by second-grade students is unquestionable. In fact, the Hamilton Elementary School's own library contains at least ten books whose subject is the Bible or Biblical stories. If these books are suitable for the school library, then the Bible is suitable for "read to myself" time in second-grade classrooms.

We believe the incident may be the result of a misunderstanding of the law by the teacher, and we invite you to use this opportunity to remind all Cypress Fairbanks ISD employees of their legal obligations to students. We ask you to resolve this unfortunate incident quickly and amicably by informing us that you have addressed this matter with District employees, and providing us with your assurances that this will not happen again. We request the courtesy of a response within thirty days of your receipt of this letter to avoid any further action on this matter.

Thank you for your prompt attention to this issue and your commitment to the vital principles of religious liberty for our school children.

Sincerely,



Michael Berry  
Senior Counsel  
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