



**ADVOCATES
FOR FAITH & FREEDOM**

Protecting Religious Liberty in the Courts!

January 13, 2014

**VIA ELECTRONIC
AND U.S. MAIL**

Mr. Timothy Ritter, Superintendent
Temecula Valley Unified School District
31350 Rancho Vista Road
Temecula, California 92592
Email: tritter@tvusd.k12.ca.us

Mr. Vincent O'Neal, President
Temecula Valley Unified School District
31350 Rancho Vista Road
Temecula, California 92592
Email: voneal@tvusd.k12.ca.us

Re: *Brynn Williams' Constitutional Right to Share her Family Traditions*

Dear Superintendent Ritter and Honorable Board of Education:

I am writing on behalf of Brynn Williams, a 1st grade student at Helen Hunt-Jackson Elementary School, and her parents concerning her humiliating experience during her class presentation on Thursday, December 19, 2013. As a matter of introduction, Advocates is a nonprofit public interest law firm and education organization. We represent clients across the nation to preserve their religious liberty and other constitutional protections. It is our preference to meet and educate appropriate officials. However, when necessary, we proceed to litigation in order to secure these rights. This letter is to serve as a formal complaint on behalf of Brynn Williams and her parents.

If you recall, our firm sent a previous letter to the Temecula Valley Unified School District ("District") on October 7, 2013 (see Attachment 1), requesting that the District provide staff training and compliance to educational rules and regulations as they relate to religious freedom. That letter was sent on behalf of an unrelated middle school student whose religious liberties were infringed upon by one of his teachers. This is now the third time in which our firm has been required to intervene on behalf a student to protect their religious liberties within the Temecula Valley Unified School District. In the two prior cases, the students were clear victims of bullying, not by another student, but by a teacher. Each case involved a teacher expressing hostility toward a student's religious speech or viewpoint.

It appears by the recent incident involving Brynn Williams that the District has done nothing to address the lack of appropriate staff training resulting in ongoing discriminatory practices by its employees. According to the statements of the teacher and principal, they were simply carrying out District approved policies pertaining to religion. Therefore, we will not

assume in this letter that the principal or teacher had malicious intent in this recent incident. Rather, our complaint is focused on the District's policies and the District's failure to properly address civil rights violations after having been made aware of their existence and after having been asked to adopt remedial policies and to conduct training to eliminate the violations.

Factual Concerns Giving Rise To The Brynn Williams Incident

On Wednesday, December 18, 2013, Brynn brought home a "share" bag as part of a school assignment. Brynn's teacher had, over the course of approximately three weeks, given every child in her class a canvas bag with verbal instructions to find something at home that represents a family Christmas tradition, put it in the bag, bring it to school, and be prepared to share the family tradition. To Brynn's recollection, there were no other rules or restrictions to the assignment. Brynn decided the Star of Bethlehem that adorns the top of the family Christmas tree represents her family's tradition of remembering why Christmas is celebrated. Brynn worked diligently on a one minute presentation in order to explain to the class that her family's tradition is to remember the birth of Jesus at Christmas time. Brynn and her father prepared her speech in writing, which is included as Attachment 2. A picture of the "Star of Bethlehem" is included at Attachment 3.

Brynn was the last student of the class to give her presentation. Brynn began by saying, "Our Christmas tradition is to put a star on top of our tree. The star is named the Star of Bethlehem. The 3 kings followed the star to find baby Jesus, the savior of the world. John" Brynn's teacher said, "Stop right there! Go take your seat." and did not allow Brynn to finish her presentation after she spoke the name "John." Brynn was the only student not allowed to finish her one-minute presentation. After Brynn took her seat, the teacher explained to Brynn in front of all the other students that she was not allowed to talk about the Bible or share its verses. That same day in the car driving home Brynn told her mother, Gina Williams, that she was not allowed to finish her presentation and thought she was in trouble because she talked about Jesus

The following day, Gina scheduled a meeting and went to discuss the situation with the principal who informed her that California's Educational Codes support the teacher's actions. The principal explained that the school district has strict rules about sharing beliefs publicly because there have been lawsuits. The principal had apparently spoken to the teacher and said that the teacher had to stop Brynn because "we don't want to offend other students". Moreover, Gina was told by the principal that, "Brynn can write about her beliefs in her journal, in her class work and on her homework, but she is not allowed to share her beliefs aloud to other students." About that time, the principal saw Brynn waiting outside her office and invited her in. The principal told Brynn that she had heard that yesterday's presentation was wonderful and Brynn's eyes filled with tears at the memory of the unhappy incident. The principal then asked Brynn to complete the presentation in front of her without any other students around. Several days later, the principal sent Board Policy 6141/2(a) via email. Notwithstanding her previous comments defending the teacher's actions, the principal's email to Gina suggested that the teacher "did not 'stop' Brynn's presentation, but rather the class ran out of time."

Brynn's First Amendment Right To Free Speech

One of the most fundamental principles of the U.S. Constitution is that government (including public schools) may not suppress the speech of private citizens (including students), because that speech contains a religious prospective. *Good News Club v. Milford Central Sch. Dist.*, 533 U.S. 98 (2001); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993). The United States Supreme Court established that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Independent Community School District*, 89 S.Ct. 733, 736 (1969). The Supreme Court held, "[s]chool officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect. . ." *Id.* at 739. Under the *Tinker* decision, the Court stated "that student expression may not be suppressed unless school officials reasonably conclude that it will 'materially and substantially disrupt the work and discipline of the school'". *Tinker* 89 S.Ct. at 740. The only exceptions to the *Tinker* "substantial disruption" rule is if the student message is lewd¹, can be viewed as school-sponsored², or encourages illegal drugs³.

The First Amendment exists to protect, among other principles, Brynn's freedom to communicate religious views on her elementary school campus. "At the core of the First Amendment's right to free speech is the right of one student to express a religious viewpoint without fear." *Morgan v. Swanson*, 659 F.3d 359, 396 (5th Cir. 2011). Therefore, any act to suppress a student's free speech, in this case censorship of Brynn's presentation of her family traditions, has violated Brynn's constitutional rights unless the school district can reasonably conclude that Brynn's speech was going to materially and substantially disrupt the school's work or discipline. Here, the school district cannot reasonably come to that conclusion. The Court explained in *Tinker*:

The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an inevitable part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during authorized hours, ***[s]he may express [her] opinions, even on controversial subjects.*** . . . *Tinker*, 89 S.Ct. at 739 (emphasis added).

In addition to the free speech protections provided under the U.S. Constitution, Brynn is protected by (1) the California Constitution free speech clause⁴ and the free exercise and

¹ *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986).

² *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).

³ *Morse v. Frederick*, 551 U.S. 393 (2007).

⁴ CAL. CONST. ART. 1 § 2 (a) "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press."

enjoyment of religion clause⁵, (2) the California Educational Code protecting free speech⁶ and (3) the Temecula Valley Unified School District Board Policy⁷ protecting religious expression. The law is extensive regarding the value of free speech for all students. Cases arising within California will most certainly receive extensive First Amendment protection because California statute confers a greater degree of protection than the U.S. Constitution. *Lovell By & Through Lovell v. Poway Unified Sch. Dist.*, 90 F.3d 367, 371 (9th Cir. 1996) (citing Cal. Ed. Code § 48907(a)). “The Supreme Court has held that the First Amendment guarantees only limited protection for student speech in the school context. . . . The California Education Code extends students’ free speech rights while on campus to the same extent those rights may be exercised outside of the school context.” *Lovell By & Through Lovell* at 371.

Moreover, it is significant that the school district’s Board Policy 6141.2 (a) expressly states that “[s]tudents may express their beliefs about religion in their homework, artwork and other class work if the expression is germane to the assignment.” When Brynn decided to share her family tradition at Christmas which involved a religious belief, it appears that the teacher violated 6141.2(a) by not allowing Brynn to complete her presentation. It is unclear however, whether the school district interprets this policy to the extent that the policy would protect Brynn’s speech and it is unclear whether the school district provides its teachers any guidance for implementing the policy. Regardless, the teacher humiliated Brynn in front of all her classmates when she stated that Brynn could not talk about the Bible or read any verses.

It is abundantly clear that the school has allowed Brynn’s free speech rights to be violated due to its conduct, its policies and its failure to adequately train its employees.

The First Amendment Prohibits Disapproval and Hostility Toward Religion

It is often the case that school officials censor religious viewpoints based on a misunderstanding of the First Amendment’s Establishment Clause (sometimes referred to as “the separation between church and state”). The Establishment Clause forbids the government (i.e. school officials and teachers) from “establishing religion”. See *Lemon v. Kurtzman*, 403 U.S. 602 (1971). The Supreme Court held, “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.” *Westside Community School v. Mergens*, 496 U.S. 226, 250 (1990). (emphasis in original). While school personnel may be limited in their official endorsement of religious views, students have no such legal prohibition.

⁵ CAL. CONST. ART. 1 § 4 (“Free exercise and enjoyment of religion without discrimination or preference are guaranteed.”)

⁶ CAL. EDUC. CODE § 48907 (a)(2011), (“Pupils of the public schools, including charter schools, shall have the right to exercise freedom of speech . . . except that expression shall be prohibited which is obscene, libelous, or slanderous.”).

⁷ TVUSD Board Policy 6141.2 (a) (“Students may express their beliefs about religion in their homework, artwork and other class work if the expression is germane to the assignment. Such work shall be judged by ordinary academic standards, free of discrimination based on religious content.”).

The Establishment Clause “mandates governmental neutrality” not only among different religions, but also “between religion and non-religion.” *McCreary Cnty. v. ACLU*, 545 U.S. 844, 860, 125 S.Ct. 2722, 162 L.Ed.2d 729 (2005) (“When the government acts with the ostensible and predominant purpose of advancing religion, it violates that central Establishment Clause value of official religious neutrality, there being no neutrality when the government's ostensible object is to take sides”). “The government neutrality required under the Establishment Clause is ... violated as much by government disapproval of religion as it is by government approval of religion.” *Vernon v. City of Los Angeles*, 27 F.3d 1385, 1396 (9th Cir. 1994); *see also (Vasquez v. Los Angeles County*, 487 F.3d 1246 (9th Cir. 2007) (“[I]f a reasonable observer would conclude that the message communicated is one of . . . disapproval of religion, then the challenged practice is unlawful”). Here, the teacher’s censorship of religious content from Brynn’s personal speech was a school-sponsored message of disapproval toward religion.

Further, in the eyes of a vulnerable first grader, the teacher’s action was not only disapproving of Christianity, but hostile toward Christianity and, therefore, unconstitutional. *See McCollum v. Bd. of Educ. of School Dist. No. 71*, 333 U.S. 203, 211–12, 68 S.Ct. 461, 92 L.Ed. 649 (1948) (“hostility to religion [and] religious teachings” is “at war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion”). The U.S. Supreme Court has clearly declared that government “may not be hostile to any religion or to the advocacy of no religion.” *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). Likewise, California Education Code § 220 broadly prohibits discrimination, harassment, intimidation and bullying based on religion and, consequently, provides additional protection for Brynn’s speech.

When assessing hostility in the public school setting, the Ninth Circuit considers whether an objective observer in Brynn’s shoes would have viewed the teacher’s conduct as hostile toward Brynn’s religion. *Brown v. Woodland Joint Unified School Dist.*, 27 F.3d 1373, 1383 (9th Cir. 1994). Here, the objective observer would be based upon a first grade student and the vulnerability of a first grader must be taken into consideration. It is hardly questionable whether a first grader would be in fear and intimidated when, in the middle of Brynn’s presentation, her teacher demands, “Stop right there!” In fact, Brynn felt as if she had done something seriously wrong. In the eyes of a first grader, the censorship resulted in a message of governmental disapproval and created a hostile environment, especially since it felt like she was being reprimanded in front of the entire class for sharing her family tradition and beliefs.

Eradicating governmental disapproval and hostility experienced by Brynn as a result of her religion is exactly why the Establishment Clause exists. Moreover, the First Amendment exists to protect, among other principles, Brynn’s freedom to communicate religious views on her elementary school campus. *Morgan*, 659 F.3d at 396 (“At the core of the First Amendment’s right to free speech is the right of one student to express a religious viewpoint without fear.”)

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Conclusion

As you may know, the violation of an individual's constitutional rights, even for a moment, results in irreparable injury. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976). We are very concerned since this is not the first time we have had to remind the Temecula Valley Unified School District and its officials regarding the constitutionally protected rights of students to be free from the disapproval and hostility of teachers due to the students' religious speech and viewpoints. We have requested in the past that the school district become familiar with students' religious liberties and train its staff accordingly to prevent the type of situation that occurred to Brynn from happening in the future.

In order to rectify the incorrect interpretation of constitutional rights and Board Policies, we demand that the school district adopt an official policy that expressly prohibits school officials (including teachers) from adopting any action and from engaging in any expression that can reasonably be viewed by a religiously affiliated student as disapproval of the student's religion or hostile toward the student's religion. This policy will also need to affirm the right of students to express and communicate their own religious viewpoints on school property without fear of rebuke by school officials. This will help to ensure that young students are not intimidated by school officials into believing that there is something wrong with their religion or their religious views. Of course, this policy will function within the boundaries of jurisprudence that permit limitations on speech that causes substantial disruption, promotes drug use, or is lewd or obscene.

Additionally, we demand that the school district adopt a policy that requires teachers and other school officials to be trained at least once per year on the First Amendment, particularly as it relates to the rights of students to express themselves with religious viewpoints and to be free from religious hostility and free from school officials' disapproval of their religion. Administrators should retain proof of such training in personnel files. As you are aware, ongoing discriminatory conduct can result in the school district losing valuable federal and state funding until the violations have been properly addressed.⁸

Lastly, we demand that the school district issue a formal apology to Brynn Williams for violating her religious liberties and expressly authorize her to make her entire presentation to her first grade class as she had planned.

⁸ CAL. EDUC. CODE TITLE 1 § 250.

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We believe the above stated actions will help to provide Brynn, and all students, with an environment of neutrality and true tolerance. We would be willing to assist the school district in drafting the proposed policies and providing training to school officials on the First Amendment.

If we do not hear from you by January 20, 2014, we will be forced to take legal action. Please contact me with any questions or to commence discussions.

Kind regards,



Robert H. Tyler, Esq.
General Counsel
Advocates for Faith & Freedom

RHT/MJN:jal

cc: Principal, Jackson Elementary School (via electronic mail w/attachments)
Teacher, Brynn Williams class (via electronic mail w/attachments)
Mr. and Mrs. Williams

Attachments

Attachment 1



**ADVOCATES
FOR FAITH & FREEDOM**

Protecting Religious Liberty in the Courts!

October 7, 2013

VIA U.S. MAIL

Karen Hayes, Principal
Margarita Middle School
30600 Margarita Road
Temecula, California 92591

Timothy Ritter, Superintendent
Temecula Valley Unified School District
31350 Rancho Vista Road
Temecula, California 92592

Re: **CONFIDENTIAL:** Teacher [REDACTED] Conduct Regarding Violations of Protected Student Constitutional Rights and School District Policies

Dear Educators:

I am writing on behalf of [REDACTED] a 7th grade student at Margarita Middle School, concerning his humiliating and demoralizing experience while in Mr. [REDACTED] Language Arts class in the beginning of the 2013 school year (Aug./Sept.). As a matter of introduction, Advocates is a nonprofit public interest law firm and education organization. We represent clients across the nation to preserve their religious liberty and other constitutional protections. It is our preference to meet and educate appropriate officials. However, when necessary, we proceed to litigation in order to secure these rights.

Sometime in Aug./Sept. 2013, Mr. [REDACTED] assigned students to select a non-fiction book and read for thirty minutes as homework. [REDACTED] complied with the assignment selecting the Bible as his book and read from the Book of Genesis. In class the next day, Mr. [REDACTED] instructed the students to place their non-fiction books on their desks so he could approve their homework. When Mr. [REDACTED] approached [REDACTED]'s desk he said, "Oh, the Bible is not non-fiction." [REDACTED] explained he believed the Bible to be non-fiction and Mr. [REDACTED] said, "I'll come back to you", not giving [REDACTED] credit for his homework at that time.

After checking all the other students' homework, Mr. [REDACTED] went to the front of the class and asked in a sharp, humiliating, and demeaning tone of voice, used to show that he did not believe the Bible to be non-fiction, "How many think the Bible is non-fiction?" It was clear to [REDACTED] that Mr. [REDACTED]'s expectation was that no student would dare raise their hands. In an ironic set of events, all but two students raised their hands to signify they believed the Bible to be non-fiction. Mr. [REDACTED] then asked the class, "Well, raise your hand if you think its fiction?" This time two kids raised their hands. If that wasn't enough, Mr. [REDACTED] then directs the

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class to, "Tell your partner if you think it's fiction". Next, one of the students asked Mr. [REDACTED], "What do you think?" He replied in a negative tone, "It's fiction." At that point, the school bell rang and the class was dismissed. [REDACTED] left the classroom feeling extremely intimidated, harassed, and bullied.

When [REDACTED] arrived home he informed his mother, [REDACTED], what had transpired in school. Afterward, Ms. [REDACTED] met with Pam Blasich, the Assistant Principal. Evidently, a girl in Mr. [REDACTED]'s Language Arts Class, following [REDACTED]'s class, had also read the Bible for homework. Ms. Blasich informed Ms. [REDACTED] that she had asked two girls from [REDACTED]'s class what had occurred and both girls confirmed that they had felt extremely uncomfortable with Mr. [REDACTED]'s actions. Subsequently, [REDACTED] has not wanted to attend school, feigning illness in an apparent attempt to avoid Mr. [REDACTED]'s hostility.

Mr. [REDACTED]'s conduct was not only unconstitutional but clearly violated the public trust afforded to teachers. The First Amendment of the United States Constitution guarantees citizens the freedom to exercise their religious beliefs and that government will not establish any religion. The latter right is commonly referred to as the "Establishment Clause." Under the Establishment Clause, the United States Supreme Court has held that government may "neither advance nor disprove of religion." See *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971). The Court has specifically stated, "[t]he First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion". *Epperson v. State of Ark.* 393 U.S. 97, 104 (1968). Clearly, Mr. [REDACTED]'s statements are in violation of the Establishment Clause evidenced by his disapproval of the Bible. Furthermore, Mr. [REDACTED]'s actions violated his obligation to remain neutral illustrated by his illegal hostility towards [REDACTED]'s religious beliefs. While Mr. [REDACTED] has the right to express his own personal view, in this situation, his statements were never stated as personal opinions, but rather, used his position of authority to force his view on his students.

In determining hostility in the public school setting, the Ninth Circuit court considers whether an objective observer in the position of a student would have viewed Mr. [REDACTED]'s conduct hostile. *Brown v. Woodland Joint Unified School Dist.*, 27 F.3d 1371, 1383 (9th Cir. 1994). Similarly, the U.S. Supreme Court declared that government "may not be hostile to any religion or to the advocacy of noreligion." *Epperson*, 393 U.S. 97, 104. Given the remarks made to Ms. Blasich by two students in [REDACTED]'s class, there can be no doubt that a court would find Mr. [REDACTED]'s conduct hostile toward [REDACTED]'s religion and beliefs. Thus, Mr. [REDACTED] has not only failed to be neutral but has crossed the line into prohibited hostility.

Aside from the violations of constitutionally protected rights, Mr. [REDACTED]'s conduct also violated the Temecula Valley Unified School District's ("District") Anti-Bullying Policy and the National Council of Teachers of English ("NCTE") Right to Read policies. Under Education Code § 220, the District prohibits discrimination, harassment, intimidation and bullying based on actual or perceived characteristics. The policy sets religion as one of the protected classifications. Here, Mr. [REDACTED]'s actions were meant to intimidate, at the very

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least, and, as a result, violated District policy. [REDACTED] as a teacher, is responsible for enforcing District policy as opposed to providing a poor example to students by harassing [REDACTED] in front of his peers because of his religious beliefs. Additionally, Mr. [REDACTED] is a teacher of English and should have been well aware of NCTE's "The Right to Read" policy which states, "[t]he right of any individual not just to read but to read whatever he or she wants to read is basic to a democratic society." Therefore, Mr. [REDACTED] has acted in disobedience to the District's Anti-Bullying Policy and the NCTE's Right to Read Policy.

It is important to note that [REDACTED] is going through a very difficult time in his life because his father has been battling cancer. Recently, [REDACTED]'s father was hospitalized and the family is suffering emotionally and, economically. At a time when [REDACTED] could use a safety net of school support and encouragement, especially from his teachers, [REDACTED] has been set apart for ridicule, harassment and intentional humiliation.

For these reasons, it is clear that Margarita Middle School and the Temecula Valley Unified School District must take immediate action to stop this type of student mistreatment. We request that Ms. Hayes counsel Mr. [REDACTED] regarding his behavior as soon as possible and that he is directed to refrain from any retaliatory actions against [REDACTED]. [REDACTED]'s grades in Language Arts should not suffer as a result of his reporting obvious unlawful conduct by his teacher. Moreover, it is clear the District is in need of employee training programs that address the conduct of its employees, especially its teachers, and take necessary, appropriate discipline to prevent hostility and unlawful violations of constitutionally protected First Amendment rights.

We are concerned since this is not the first time we have had to confront the Temecula Valley Unified School District regarding religious hostility expressed toward students by a teacher. In 2007, we sent a similar letter to the District because of hostility expressed by Teacher Karen Moreland toward students in another classroom setting. We request that the District's adopted Anti-Bullying Policy clearly include teachers and outline appropriate disciplinary steps for those teachers who violate it. If no policy is adopted or training commenced within a reasonable time, the District may be opposed to additional liability.

With respect to [REDACTED] Ms. [REDACTED] [REDACTED] and I are requesting a meeting with appropriate school personnel in order to properly address his feelings of intimidation and bullying. You are welcomed to contact my office at 951-600-2733, so we can facilitate a meeting as soon as possible.

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On behalf of [REDACTED], his parents, and all the students in the District, we request you, as administrators and educators, to be proactive in providing a learning environment free from all forms of discrimination and intimidation by training staff and requiring compliance to District policies. If you need additional information, please feel free to contact me.

Kind regards,



Robert H. Tyler, Esq.

RHT: mjn

cc: Dr. Kristi Rutz-Robbins, President;
Temecula Valley Unified School Board

Attachment 2

Our Christmas tradition is to put a star on top of our tree.

The star is named The Star of Bethlehem.

The 3 Kings followed the star to find baby Jesus, the saviour of the world.

John 3:16

For God so loved the world that He gave His only son, that whoever believes in Him shall not perish but have everlasting life.

Attachment 3

