

COLONIAL SCHOOL DISTRICT
PLYMOUTH MEETING, PA 19462
WORK SESSION MINUTES, OCTOBER 12, 2009

President Johnson convened the work session of the Colonial Board of School Directors at 7:31 p.m. in the District Office General Meeting Room on October 12, 2009.

Board Members Present: Lenore Bruno, Gary Johnson, Kelly Jowett, Hope Luken, Susan Moore, Dr. William Ryan and Mitch Zimmer.

Board Members Absent: Tom Davis, Steven Slutsky.

Also Attending: Dr. Vincent F. Cotter, Superintendent; Dr. MaryEllen Gorodetzer, Assistant Superintendent; Karen Berk, Director of Pupil Services and Special Education; Andrew Boegly, Chief Information Officer; Terry Yemm, Director of Operations; Richard Hartz, Director of Human Resources; John Quinn, Director of CITV; David M. Sherman, Community Relations Coordinator/Board Secretary; Christina A. Gottlieb, Juanita Rollins, Michael G. Gottlieb, Dr. Julian Toneatto.

Mr. Johnson led the Pledge of Allegiance and announced that the Board had met in executive session on September 24, October 7 and October 12 to discuss legal and personnel issues.

Dr. Cotter confirmed for Mr. Johnson that the Board will recognize the District's Commended Merit Scholars and Advanced Placement Scholars at Thursday's meeting. Dr. Cotter noted that there are seven Commended Scholars.

Minutes: Mr. Johnson requested that Board members review the minutes of the Work Session of September 14; the General Meeting of September 17; the Finance and Audit Committee of September 29; the Special Meeting and the Facilities Management and Transportation Committee of September 30 and the Human Resources Committee and the Community Relations and Student Life Committee of October 1. See enclosures #1 through #7. Mr. Johnson stated that the minutes of the October 7 Safety and Wellness Committee and the October 12 Curriculum Committee will be available for review and action on Thursday.

Financial Reports: Mr. Johnson asked the Board to examine the financial reports on the list for approval on Thursday evening. They included the Budget Transfers, Bond Fund Report, the Capital Projects Report, the General Fund/Federal Program Bills, the Capital Reserve Fund, the Food Service Bills/Cafeteria Report, the Outstanding Investment Report, the Cash Flow Summary, the Comparison of Taxes Collected, the Real Estate Tax Escrow Report, the Reconciliation of Cash Accounts, the Budgetary/Deficit Status Report and the Treasurer's Report for the month ending September 30 as shown in enclosures #8 through #19.

Public Comments on the Agenda: Mr. Johnson invited Dr. Toneatto to the podium for comments of a general nature. Dr. Toneatto read a prepared statement in which he expressed frustration over the District's lack of a written policy regarding holiday displays in its schools. Dr. Toneatto asked the Board to provide, or have Dr. Cotter provide, clear written guidelines regarding the types of displays that are and are not permissible. He stated that he had seen hundreds of menorahs and Jewish symbols displayed in his child's school but not one nativity scene. Dr. Toneatto distributed a letter from the Thomas More Law Center regarding "Colonial School District's Policies and Practices that Disfavor Christianity." See Attachment A.

Mr. Johnson directed the Community Relations and Student Life Committee to review and address Dr. Toneatto's concern.

Staff Report: Dr. Cotter explained that on Thursday evening Plymouth Whitmarsh High School (PWHS) Principal Dr. Monica Sullivan will present a report on the results of the Middle States Accreditation for Growth Team's visit to the high school in the spring.

Old Business: None.

Correspondence: Mr. Johnson noted that Conshohocken Elementary School (CE) Principal Denise Marks is requesting Board approval of a grant from ASTM to support the after school science club and a field trip to the Riverbend Environmental Center. See enclosure #20.

Mr. Johnson stated that Dr. Sullivan is seeking Board approval of a donation of 30 calculators from District resident Michael Schwab. See enclosure #21. He said that the calculators are to be used by the PWHS Science Department.

Mr. Johnson said that Mrs. Marks is requesting Board approval for the creation and installation of a mosaic tile mural in the main hallway of CE. See enclosure #22.

Superintendent's Report: Dr. Cotter reviewed his report that included the Personnel Report and Substitute List and the Extra Duty/Extra Pay List. See enclosures #23 and #24. He said that the Personnel Report and Substitute List contained 15 actions, including three resignations, three leaves of absence, seven replacements, a transfer of assignment and an additional need. Dr. Cotter said that there were seven substitute teachers and 44 support staff substitutes listed. He noted that the Extra Duty/Extra Pay List included stipends for three positions and two revised appointments.

New Business: At Mr. Johnson's request, Dr. Cotter reviewed six variations of a calendar outline for the 2010-2011 school year. See enclosure #25. He noted that the first three versions had the school year beginning after Labor Day, while the fourth version began the school year before the holiday. He added that versions five and six included partial spring breaks and an Easter Monday holiday. Dr. Cotter said that the various versions show the Board how the holidays will affect the development of the calendar.

Mr. Johnson asked members to review Board Policy #219, Behavioral Support on a first-read basis. See enclosure #26. He noted that the policy is mandated by the Pennsylvania Department of Education and involves the restraint of students. Dr. Ryan asked for clarification as to what type of staff training is provided and by whom. Mrs. Berk stated that two-day training sessions are provided by the Montgomery County Intermediate Unit on an annual basis. Responding to another question from Dr. Ryan, Mrs. Berk stated that PDE analyzes data of restraint use and reports back to schools. She noted that the report is on a cumulative basis but that schools must account for individual students, including those students in approved private schools and alternative schools.

Mr. Johnson said that the Board will act Thursday on an administration request to approve the renewal of the PA.Educator.net contract for the 2009-2010 school year. See enclosure #27. At Mr. Johnson's request, Mr. Hartz explained that the service is a Web-based recruiting service that allows the District to receive electronic resumes and applications from potential teachers based in the western part of the state. He noted the service complements the PAREAP service which covers the eastern half of the state. Mr. Hartz stated that there is no price increase to use the service this year.

Mr. Johnson noted that the Board is asked to approve a request for the PWHS head varsity baseball coach to attend a clinic in Cherry Hill, N.J. from January 14-16, 2010. See enclosure #28. He stated that the clinic is held in the evenings and on a Saturday.

Mr. Zimmer reported that Board approval is sought for three student trips. The first is for approximately 25 PWHS yearbook and newspaper students to attend the Columbia Scholastic Press Association Fall Conference held at Columbia University on November 9. See enclosure #29. The second request is for the PWHS Ski Club to travel to Killington, Vermont from January 8-10, 2010 and to Stratton Mountain, Vermont from February 19-21, 2010. See enclosure #30. The third trip request is for a PWHS English class to view a production of Hamlet and visit the Smithsonian Holocaust Museum in Washington, D.C. on May 14, 2010. See enclosure #31.

Solicitor's Report: None.

Committee Reports: Legislative: Dr. Ryan stated that he would not be in attendance at Thursday's meeting as he plans to attend the Pennsylvania School Boards Association (PSBA) Leadership Conference as a voting delegate on the legislative policy council. He added that two issues the council will address are Keystone Exams and future school board elections. Dr. Ryan noted that in July, a bi-partisan vote of senate approved legislative committee approved revisions to the Keystone Exams that are now in the regulatory process. Dr. Ryan stated that the PSBA does not support the senate revision. He also noted that the senate proposed to eliminate partisanship in future school board elections by eliminating primary elections. Dr. Ryan voiced his support of the non-partisan elections and encouraged the public to do the same.

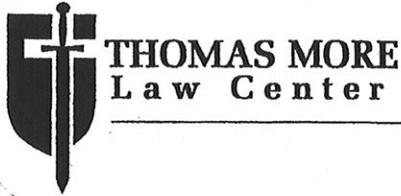
Public Comment: None.

There being no further business before the Board, Mr. Johnson adjourned the meeting at 7:59 p.m.

Respectfully Submitted,



David M. Sherman
Board Secretary



Richard Thompson
President and Chief Counsel
Admitted in Michigan

October 12, 2009

Mr. Gary J. Johnson
President, School Board
Colonial School District
230 Flourtown Road
Plymouth Meeting, PA 19462-1252

Re: Colonial School District's Policies & Practices that Disfavor Christianity

Dear Mr. Johnson and Members of the School Board:

Dr. Julian Toneatto and his wife, Ms. Elizabeth DeCordova, requested that we send you this letter.

By way of introduction, the Thomas More Law Center is a national, not-for-profit, public-interest law firm based in Ann Arbor, Michigan. We are dedicated to defending and promoting America's Christian heritage and moral values, to include challenging government policies and practices that discriminate against Christians. We accomplish our goals on behalf of our clients through education, litigation, and related activities. As a public-interest law firm, we do not charge our clients for our legal services.

It has come to our attention that the Colonial School District has adopted various policies and practices that favor certain religions, while disfavoring Christianity. As the U.S. Supreme Court stated, "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). According to the Supreme Court, "Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite." *Epperson v. Arkansas*, 393 U.S. 97, 103-04 (1968).

Throughout its decisions, the Supreme Court has consistently described the Establishment Clause as forbidding not only state action motivated by a desire to promote or advance a particular religion, *see, e.g., County of Allegheny v. ACLU*, 492 U.S. 573, 592 (1989), but also actions that tend to "disapprove" of, "inhibit," or evince "hostility" toward religion. *See Edwards v. Aguillard*, 482 U.S. 578, 585 (1987) ("disapprove"); *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) ("hostility"); *Committee for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 788 (1973) ("inhibi[t]"). Indeed, our Constitution prohibits government action that "foster[s] a pervasive bias or hostility to religion, which could undermine the very neutrality the Establishment Clause requires." *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 845-46 (1995) (emphasis added).

Government endorsement of a particular religion is prohibited because the endorsement of one religious faith acts as a tacit disapproval of other faiths. Thus, an overt, state-sponsored message of disapproval of the religious beliefs and practices of one faith cannot pass constitutional muster

any more than the implied condemnation resulting from the endorsement of another. As Justice O'Connor explained in *Lynch*:

Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message.

Lynch, 465 U.S. at 688 (O'Connor, J., concurring).

A state-sponsored message of disapproval of Christianity sends a message to Christian students, parents, teachers, and administrators of the school district that their religious beliefs and traditions are disfavored in the community. The First Amendment mandates *neutrality* toward religion and *forbids hostility* aimed at a particular faith. In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993), the Supreme Court stated, "In our Establishment Clause cases we have often stated the principle that the First Amendment forbids an official purpose to disapprove of a particular religion or of religion in general." In sum, the First Amendment requires government neutrality in its policies and practices toward all religions, including Christianity.

With regard to your policy of prohibiting the display of a crèche during the holiday season, we respectfully request that you consider the following. In *Lynch v. Donnelly*, the Supreme Court noted with importance that "[t]he crèche in the display depicts the historical origins of this traditional event long recognized as a National Holiday" and "[t]o forbid the use of this one passive symbol—the crèche—at the very time people are taking note of the season with Christmas hymns and carols in public schools and other public places, and while the Congress and Legislatures open sessions with prayers by paid chaplains *would be a stilted over-reaction contrary to our history and to our holdings.*" *Lynch v. Donnelly*, 465 U.S. 668, 680, 686 (1984) (emphasis added). Similarly here, the school district's policy of banning certain holiday displays (i.e., crèches), particularly during "the very time people are taking note of the season with Christmas hymns and carols in public schools and other public places" is "a stilted over-reaction contrary to our history" and to Supreme Court precedent.

Indeed, courts have consistently upheld the public display of the crèche during the Christmas season. See e.g., *Elewski v. City of Syracuse*, 123 F.3d 51 (2d Cir. 1997) (upholding the constitutionality of a publicly funded, publicly sponsored crèche displayed on public property, emblazoned with a sectarian message); *Doe v. City of Clawson*, 915 F.2d 244 (6th Cir. 1990) (upholding the display of a crèche located at the entrance of the city hall); *Mather v. Village of Mundelein*, 864 F.2d 1291 (7th Cir. 1989) (upholding a village's display of the crèche on the lawn of its village hall during the Christmas season); *Citizens Concerned for Separation of Church & State v. City & County of Denver*, 526 F.Supp. 1310 (D. Colo. 1981) (upholding the public display of a crèche as part of the city's annual Christmas lighting display); *Lawrence v. Buchmueller*, 243 N.Y.S.2d 87 (N.Y. Sup. Ct. 1963) (upholding a school board resolution permitting the erection of a crèche on school grounds); *Baer v. Kolmorgen*, 181 N.Y.S.2d 230 (N.Y. Sup. Ct. 1958) (upholding the display of the crèche on a public school lawn); see also *McCreary v. Stone*, 739 F.2d 716 (2d Cir. 1984) (holding that it was improper for the village to deny the plaintiffs' applications to display a crèche on public property during Christmas). Consequently, there is no basis for concluding that a crèche could not be part of a school

district's holiday program or display. Indeed, to enforce a policy or practice of prohibiting the display of this traditional symbol because it is associated with Christianity, and for no other reason, is not a policy that is neutral toward religion.

Moreover, in *County of Allegheny v. ACLU*, 492 U.S. 573, 613 (1989), Justice Blackmun made the following relevant observation: "The menorah, one must recognize, is a religious symbol: it serves to commemorate the miracle of the oil as described in the Talmud." The lower federal courts have uniformly reached similar conclusions regarding the menorah. As the U.S. Court of Appeals for the Second Circuit stated in *Kaplan v. City of Burlington*, 891 F.2d 1024, 1028 (2d Cir. 1989), "The menorah . . . is clearly a religious symbol." Consequently, there is no justification for concluding that a menorah can be displayed, but that a crèche cannot. See also *Snowden v. Town of Bay Harbor Islands*, 358 F. Supp. 2d 1178, 1196 (S.D. Fla. 2004) (granting a preliminary injunction to permit the private display of a crèche on the same public property as a Jewish group displayed menorah).

In *Clever v. Cherry Hill Township Bd. of Educ.*, 838 F. Supp. 929 (D.N.J. 1993), the court upheld the constitutionality of a school district policy requiring classrooms to maintain calendars depicting a variety of national, ethnic, and religious holidays and permitting seasonal displays containing religious symbols. In doing so, the court noted that the *exclusion* of certain religious symbols during the holiday season is not warranted and such exclusion itself could be inconsistent with the Constitution. See *id.* at 940-41. The court stated, "*As our nation becomes overwhelmed with the tangible evidences of the year-end holiday spirit, the studied absence or even limitation of consistent celebrations within the school might well be interpreted by a student as governmental hostility to the celebrating religions.*" *Id.* at 940 (emphasis added). Moreover, the court stated, "We learn this lesson [i.e., understanding and respect for the rights of all individuals regarding their beliefs, values, and customs] not by being offended or threatened by the religious symbols of others, but by understanding the meaning of those symbols and why they have the capacity to inspire intense emotions." *Id.* at 939.

Christmas is a National Holiday, and the display of a crèche during the holiday is one of the rich traditions of this season. Those that are hostile to these traditions often hide behind the mantle of "tolerance," only to promote intolerance. As the court in *Clever* observed, we learn to understand and respect traditions, customs, and beliefs not by being offended or threatened by the traditions of others, but by understanding the meaning of such traditions and why they have the capacity to inspire. A policy or practice that excludes Christian symbols and traditions, because they are Christian, is hardly promoting tolerance.

Indeed, studying and learning about various religions and their traditions, including the Christian religion, advances a student's knowledge and appreciation of the role that religion has played in the social, cultural, and historical development of civilization. In *Engel v. Vitale*, 370 U.S. 421, 434 (1962), the Supreme Court observed that "[t]he history of man is inseparable from the history of religion." In *Bauchman v. West High Sch.*, 132 F.3d 542, 554-56 (10th Cir. 1997), for example, the U.S. Court of Appeals for the Tenth Circuit held that selecting Christian religious music and Christian religious sites for performance by the high school choir did not violate the Establishment Clause and noted that "it is recognized that a significant percentage of serious choral music is based on religious themes or text." The court further stated, "Courts have long

recognized the historical, social and cultural significance of religion in our lives and in the world, generally." *Id.* at 554.

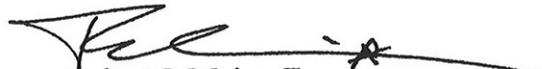
Consequently, religion is properly a part of a comprehensive educational program. Contrary to popular myth, there is no "wall of separation" between Church and State in the Constitution. And there is no constitutional requirement to cleanse the Christian religion from public schools. Our Nation's history and heritage is one that reflects an accommodation of all religions and hostility toward none. By selectively banning the Christian religion and its traditions, the school district's policies and practices serve no legitimate, secular educational purpose. And, as demonstrated by the cases cited in this letter, there is no requirement under the Establishment Clause that the school district take such an approach.

In his concurring opinion in *McCullum v. Board of Educ.*, 333 U.S. 203 (1948), Justice Jackson properly noted, "[I]t would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influences. Music without sacred music, architecture minus the cathedral, or painting without the scriptural themes would be eccentric and incomplete, even from a secular point of view. . . . One can hardly respect a system of education that would leave the student wholly ignorant of the currents of religious thought that move the world society for a part in which he is being prepared." *Id.* at 236. Indeed, a school district policy or practice that excludes Christianity leads to ignorance, which itself breeds intolerance.

In sum, we urge you to reconsider the policies and practices of the Colonial School District that a reasonable observer may perceive to be hostile toward Christians. Our Constitution does not require such policies and practices. In fact, the Constitution does not condone them, and nor should you.

Sincerely,

THOMAS MORE LAW CENTER



Robert J. Muise, Esq.

cc: Vincent F. Cotter, Ed.D., Superintendent
Dr. Julian M. Toneatto
Ms. Elizabeth DeCordova