

Pennsylvania School District Settles Lawsuit Regarding Its Handling of Opt-Out Requests for Its Social and Emotional Learning Curriculum

West Shore School District (“the District”) recently reached a legal settlement to resolve a federal lawsuit alleging the District violated parents’ rights to control their children’s education, as provided under state and federal law. Specifically, the plaintiff parents claimed the District handled Opt-Out Requests for the District’s Social and Emotional Learning (SEL) curriculum, “CharacterStrong,” inconsistently—in violation of the First Amendment, Fourteenth Amendment, 22 Pa. Code § 4.4, and District Policy 105.3. As part of the settlement, the District stipulated it handled Opt-Out Requests inconsistently, and thus violated the referenced state and federal laws—which is highly uncharacteristic language for a settlement, as settling parties frequently seek or accept language expressly disclaiming any admission of wrongdoing. As a result, the now-resolved case has garnered heightened public attention as parents groups champion the case as an example of holding public schools to account for discrimination based on political or religious beliefs. Beyond the potential public relations strife, the District is otherwise responsible for attorney’s fees in the amount of \$40,000.00.

Facts:

On August 25, 2022, Kristi Alwine (“Alwine”) attempted to opt her children out of the District’s CharacterStrong curriculum by contacting Elementary School Principal Christopher Stine (“Stine”), High School Principal Dr. Kevin Fillgrove (“Dr. Fillgrove”), and Assistant Superintendent Dr. Jamie Whye (“Dr. Whye”). The communication contained multiple sentences written in all capital letters but did expressly invoke religion as the basis for their Opt-Out Request.

On August 26, 2022, Chris Stine, Principal of Rossmoyne Elementary School, responded to Plaintiff Alwine’s request by stating: “I have received the form and will let the teachers know that your children will not be present for these lessons.

But, later on August 26, 2022, the School District reversed course when Assistant Superintendent Whye emailed Alwine stating that the School District would not honor Alwine’s request to have her children excused from the CharacterStrong SEL curriculum.

Whye told Alwine that the School District would not respect Alwine’s rights because:

“[y]ou have not identified specific instruction within the curriculum, which conflicts with your religious beliefs. I have included the link to the CharacterStrong and Social Emotional Learning page on our website, which includes information about the curriculum (including specific lessons), as well as a link to obtain family access so you may review the curriculum in even greater detail. You might consider this review in order to better substantiate a later request for exemption. . . . The CharacterStrong curriculum has been approved by the Board of School Directors, and your children will participate as scheduled, unless you are able to identify specific instruction within the curriculum, which conflicts with your religious beliefs.”

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The interaction chartered a circuitous path, as the District attempted to assuage Alwine's concerns regarding the CharacterStrong curriculum by providing related details, but also sought to have Alwine specifically identify the portions of the curriculum that Alwine found objectionable (in addition to utilizing the District's designated Opt-Out Request form) before the District would approve an Opt-Out Request.

On August 29, 2022, defendant Whye again reiterated that Alwine's children would not be excused from the CharacterStrong SEL curriculum explaining "[a]t this time your children are not exempt from instruction as you have not identified specific instruction that is contrary to your religious beliefs."

Thereafter, on September 7, 2022, Alwine again stated that she was exercising her rights under the Code stating: "Pursuant to 22 Pa. Code 4.4(d)(3) and Board Policy 105.3, I am opting my children . . . out of all CharacterStrong classroom lessons for the entire CharacterStrong curriculum. This opt out is because the CharacterStrong curriculum conflicts with my religious beliefs."

22 Pa. Code 4.4(d)(3) provides:

(d) School entities shall adopt policies to assure that parents or guardians have the following:

(3) The right to have their children excused from specific instruction that conflicts with their religious beliefs, upon receipt by the school entity of a written request from the parent or guardians.

On September 9, 2022, the Defendants denied the parents' request.

Similarly, in September of 2022, Brandi Brandl ("Brandl") submitted an Opt-Out Request for the District's CharacterStrong curriculum, which also cited religion as the basis for the Opt-Out Request. The request was initially denied, and denied again upon Brandl's re-submission on the District's provided form.

As a result, Alwine and Brandl collectively filed the present lawsuit against the District, which alleged violations of rights under the First Amendment, Fourteenth Amendment, and Pennsylvania state law, while asserting those violations flow through

Board Policy 105.3. The Complaint asserts "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others to merit First Amendment protection." *Fulton v. City of Philadelphia, Pennsylvania*, 141 S.Ct. 1868, 1876 (2021). Moreover, the state cannot compel affirmation of religious beliefs, *Employment Div., Dep't of Human Res. Of Oregon v. Smith*, 494 U.S. 872, 877 (1990), which the District violated through its policy requiring the identification of specific curriculum/religion conflicts.

Second, the Complaint contends the District violated the Fourteenth Amendment's Equal Protection Clause by arbitrarily approving or denying Opt-Out Requests, in addition to the incorporation of its First Amendment arguments. To this end, the District identified other similarly-situated individuals who attempted to opt-out of a portion of the curriculum, but the District granted those individuals' Opt-Out Requests—despite their Requests having the same "defects" as the plaintiffs' Requests. Furthermore, the Complaint also claims the District violated the Fourteenth Amendment's Substantive Due Process Clause by infringing upon parents' fundamental right to control their child's education, particularly in relation to morality or ethics. See *C.N. v. Ridgewood Board of Education*, 430 F.3d 159, 185 (3d. Cir. 2005) (" . . . parents, not schools, have the primary responsibility to inculcate moral standards, religious beliefs, and elements of good citizenship . . ."). Thus, the District's denial of an Opt-Out Request for the CharacterStrong curriculum amounted to a violation of this fundamental right.

Finally, the Complaint contends Board Policy 105.3 is invalid as it is facially deficient and inconsistent with 22 Pa. Code § 4.4, which provides parents or guardians the right to "have their children excused from specific instruction that conflicts with their religious beliefs, upon receipt by the school entity of a written request from the parent or guardians."

This situation is a cautionary tale to school districts when the district attempts to go too far into the weeds inquiring about specific instruction that is contrary to the parents' religious beliefs.

Religious Garb

Back in 1949 when the School Code was comprehensively codified, a provision regarding wearing of religious garb, insignia, etc., was established. Section 24 Ps 1112(a) provided:

(a) That no teacher in any public school shall wear in said school or while engaged in the performance of his duty as such teacher any dress, mark, emblem or insignia indicating the fact that such teacher is a member or adherent of any religious order, sect or denomination.

The first offense required an individual be suspended from employment for a one-year period and a second offense would result in permanent disqualification. In addition, Board School Directors would be subject to a Misdemeanor and a fine. 24 PS 11-1112(b)

In 2003, the US District Court for the Western District of Pennsylvania in the case of *Nichol vs. Arin Intermediate Unit 28* 268 F. Supp. 2d 536 (W.D. Pa. 2003), held that policies prohibiting teachers from wearing religious garb or symbols were in violation of the Free Exercise of Religion and Free Speech Clauses of the First Amendment. Twenty years later, the Pennsylvania legislature sent a Bill to Governor Josh Shapiro to repeal this Section of the School Code.

On November 6, 2023, Govern Josh Shapiro signed into law Act 26 of 2023 (Senate Bill 84), which repeals Section 1112 of the Public School Code.

The repeal is effective sixty (60) days from November 6, 2023. It should be noted, however, it is doubtful that any school entity would even have undertaken steps to enforce this School Code provision since the Pennsylvania Federal District Court had weighed in over twenty (20) years later stating that any such action by a school entity prohibiting someone from wearing religious garb or symbols would have violated the First Amendment.



Legislative News

Textbooks/Curriculum

- Possible legislation
 - SB 7 Parental Control of Student Exposure to Sexually Explicit Content in Schools
 - Requires schools to identify sexually explicit content in school curriculum, materials and books and notify parents that their child's coursework includes such content or that a book their child wishes to view in the school library contains explicit content.
 - Final passage out of Senate 29-21 (Moved to House Ed Committee)
 - SB 340 Creates Section 1529 – Online Curriculum Availability
 - School entity shall post an Internet link or title for every textbook used by the school entity, a course syllabus or a written summary of each instructional course and the State academic standards for each instructional course offered by the school entity on its publicly accessible Internet website. (Referred to House Ed Committee 10/25/2023).

Kids On-Line Safety Act (KOSA) 2022

- This bill sets out requirements to protect minors from online harms.
- The requirements apply to covered platforms, which are applications or services (e.g., social networks) that connect to the internet and are likely to be used by minors. However, the bill exempts internet service providers, email services, educational institutions, and other specified entities from the requirements.
- Additionally, covered platforms must provide (1) minors (or their parents or guardians) with certain safeguards, such as settings that restrict access to minors' personal data; and (2) parents or guardians with tools to supervise minors' use of a platform, such as control of privacy and account settings.

NOTE: On June 8, 2023 the White House announced OCR is appointing a new Coordinator to take on book bans in libraries and classrooms. OCR will provide training on how book bans may violate Federal Civil Rights laws.

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Subsequent Issues

If you have a school law question or topic you would like to have addressed in subsequent issues of the newsletter, please send an email to:

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