



November 2, 2023

Dr. Kate Maguire, Interim Superintendent, maguire.kate@slpschools.org;
Ms. Tami Reynolds, Director of Student Services, reynolds.tami@slpschools.org;
Ms. Anne Casey, Board Chair, casey.anne@slpschools.org;
Mr. C. Colin Cox, Board Member, cox.colin@slpschools.org;
Mr. Ken Morrison, Board Member, morrison.ken@slpschools.org;
Ms. Sarah Davis, Board Member, davis.sarah@slpschools.org;
Ms. Virginia Mancini, Board Member, mancini.virginia@slpschools.org;
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Principal María Graver
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Sent via U.S. mail and email

Re: Request for Notice and Opt Out

Dear Dr. Maguire, Ms. Reynolds, Board Members, Principal Graver, and Principal Pollock:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. We represent six families who are members of the Somali Muslim community in St. Louis Park, with thirteen children currently attending Aquila Elementary School and Susan Lindgren Elementary School, and six older children attending other schools in the District: [REDACTED], and [REDACTED].

St. Louis Park Public Schools' mission statement promises an environment of "racially equitable learning that energizes and enhances the spirit of our community."¹ Yet this apparent commitment to diversity does not extend to the Somali Muslim community, a significant portion of the population of St. Louis Park. Ignoring state and federal laws, Aquila Elementary School, Susan Lindgren Elementary School, and Peter Hobart Elementary School exposed young children to books and classroom discussion about sexuality without parental notice, consent, or opportunity to opt out.

We write to request advance notice and the opportunity to opt out of any lessons involving instruction on sexuality or LGBTQ+ topics, including but not limited to the reading and discussion of books that discuss sexuality, for our clients and other parents in the District. Please address all correspondence on this topic to me.

I. Factual Background

A. Our Clients' Sincerely Held Religious Beliefs

Our clients are devout Muslims whose families immigrated from war-torn Somalia over the past two decades to seek a better life for their children. Religious freedom and educational opportunities are among the most significant reasons why they came to the United States. The Somali Muslim community in St. Louis Park and the greater Minneapolis area has made incredible and ongoing contributions to the cultural diversity and pluralism that makes the Twin Cities such a unique and vibrant place to call home.

Our clients believe that they have a sacred obligation to teach the principles of their faith to their children.² This obligation, which applies to parents as they raise children, comes from the Prophet Muhammad, who proclaimed that "[t]he pursuit of knowledge is incumbent on every Muslim."³

In keeping with 1400 years of Muslim tradition, sacred texts, and sincere religious practice, our clients believe that men and women are two distinct biological sexes with important differences and relationships toward one another. The Quran makes this clear: "O Mankind! We created you all from a male and a female, and made you into nations and tribes so that you may know one another."⁴ Both Shi'ah and Sunni Muslims hold to

¹ 2020-25 Strategic Plan for Racial Equity Transformation, <https://www.slpschools.org/about/strategic-plan>.

² *Surah At-Tahrim* 66:6; *Sahih al-Bukhari* 7138; *Al-Adab Al-Mufrad* 212.

³ *Our Lady of Guadalupe v. Morrissey-Berru*, 140 S. Ct. 2049, 2065 (2020) (citing Asma Afsaruddin, *Muslim Views on Education: Parameters, Purview, and Possibilities*, 44 J. CATH. LEGAL STUDIES 143, 143-44 (2005)).

⁴ *Surah Al-Hujurat* 49:13.

the words of the Prophet Mohammad, who has stated that “men and women are twin halves of each other.”⁵ Muslims’ belief that sex is binary, fixed, and immutable is closely linked to the creation narrative and “brings home the fact that men and women are created from a single source. Furthermore, by using the analogy of twin half, the Prophet (pbuh) has underlined the reciprocal and interdependent nature of men and women’s relationships.”⁶

Muslims’ belief that the identities of biological men and women are unique and divinely created has important implications for marriage, religious worship, and discussions about sexuality and gender identity. “Men and women in Islam have different roles, responsibilities, and accountabilities, as they differ in anatomy, physiology, and psychology.”⁷ As a matter of religious obedience, Muslims must observe decency (*ih̄tisham*), which prevents a Muslim female from sharing a restroom with the opposite biological sex, modesty (*hijab*), which includes behavior as well as dress, and seclusion (*khalwa*), which means a man and woman who are unrelated and unmarried cannot be alone together in an enclosed space.⁸

Islamic teaching does not recognize alternate gender identities, because even when someone changes his or her outer appearance or receives hormones or surgery, there is no fundamental change in biology at the cellular level and thus “the rulings of that [biological] sex continue to apply.”⁹ Further, in keeping with centuries of tradition and their sacred texts, Muslims believe that marriage is only between a man and a woman.¹⁰ Our clients’ belief in traditional marriage and the distinct biological sexes is not only rooted in their sacred teachings but goes to the very core of their religious exercise.

⁵ *Marriage in Islam*, Marriage in Islam, Why Islam? Facts About Islam (March 5, 2015), <https://www.whyyislam.org/social-issues/marriage-in-islam/>.

⁶ *Marriage in Islam*, supra note 5.

⁷ Ani Amelia Zainuddin, et al, *The Islamic Perspectives of Gender-Related Issues in the Management of Patients with Disorders of Sex Development*, NATIONAL LIBRARY OF MEDICINE (April 21, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5272885/>.

⁸ See, e.g., *Surah Nur* 24:31 (describing concept of *hijab*); MARWAN IBRAHIM AL-KAYSI, MORALS AND MANNERS IN ISLAM: A GUIDE TO ISLAMIC ADAB 60-61 (1986) (describing restroom obligations).

⁹ *Male, Female, or Other: Ruling of a Transgender Post Sex Change Procedures*, AMERICAN FIQH ACADEMY (May 2, 2017), <http://fiqhacademy.com/res03/>.

¹⁰ Ismail Royer, *The Joy of Our Eyes*, MUSLIMMATTERS (2022), <https://tinyurl.com/3e6n4ep7> (“[M]arriage is, by its nature, an institution ordained by God between men and women with the primary purpose of procreation, along with a rich, multilayered array of purposes such as love, companionship, and security....”)

B. St. Louis Park's Failure to Provide Notice or Opt-Out

In early October 2023, our clients' third, fourth, and fifth grade children informed their parents that their teachers had introduced books in English class with LGBTQ characters and themes. One of the books, *Our Subway Baby*, depicts two gay parents named "Daddy Danny" and "Papa Pete" as heroic and describes the adoption of their son as a "miraculous surprise" and a "dream" that "came true." Another of the books, *Ho'onani: Hula Warrior*, describes a young child who does not want to be called a girl or a boy and is applauded for this identity. At Susan Lindgren Elementary school during the 2022-23 school year, Ms. [REDACTED] second-grade child was exposed to *My Shadow is Pink*, a book that advocates gender fluidity and tells boys that they can wear dresses. In the story, a boy wants to wear a dress at school, and his dad, resistant at first, eventually puts on a dress as well and tells his son, "Your shadow is pink; it's your innermost you." He also says, "stand up with your shadow and yell, this is me...so put on that dress and get back to school. If someone won't like you, they are the fool."

The readings were accompanied by the teachers' commentary about what it means to be LGBTQ. For example, Ms. [REDACTED] fourth-grade daughter was required to write about *Ho'onani: Hula Warrior* during class. She also watched a video during class. These books and discussions have caused significant confusion and distress to our clients and their children.

On October 6, several Muslim parents, including our clients Ms. [REDACTED] and Ms. [REDACTED], met with Principal María Graver to express their concerns about the books and to request to opt their children out of the instruction based on their religious beliefs. At the meeting, Ms. [REDACTED] submitted a written exemption request asking to opt her child out of teaching that promotes LGBTQ identity and violates her religious beliefs. She included School Board Policy 623, which requires that "[s]tudents may be excused from participating in programs involving controversial issues upon written parental request."

Principal Graver told our clients that these materials were part of the curriculum and that opting out would not be possible. Principal Graver also tried to avoid responsibility by asserting that requiring these readings was not her doing, but that it was important for their children to learn this material because their children "have friends with LGBT parents" and "LGBT teachers." Principal Graver said that the curriculum was "aligned with their mission," and that "every child needs to be seen."

On October 8, Ms. [REDACTED] spoke with Principal Graver on the phone about her concerns. Shortly afterward, Principal Graver emailed Ms. [REDACTED] with the condescending suggestion that "parents would benefit from more information about the inclusive and representative goals of [the Collaborative Classroom Curriculum], which are directly in line with our mission and vision as a district." This characterization did not accurately reflect the concerns that many parents, including Ms. [REDACTED], had voiced to school district

officials, nor was it responsive to their request for notice and opt-out. Ms. Hicks replied to the email with a suggestion to “start with a feature piece for our next district-wide newsletter, similar to how we helped families understand some of the major curricular changes last year.” Ms. ██████ responded respectfully, asking for an in-person meeting. To date, the District has taken no action on this request.

On October 24, our client Ms. ██████ spoke with Principal Clarence Pollock about her concerns and asked for her three children to be excused from class during teaching on LGBTQ+ sexuality because of her sincere religious beliefs. Principal Pollock initially agreed to provide this opt-out by notifying her children’s teachers, but when Ms. ██████ followed up later that week, he was not willing to talk with her further. To date, Principal Pollock has not followed through on providing opt-outs to Ms. ██████ children.

On the evening of October 24, the St. Louis Park School Board held its regular meeting. During open forum, three Somali Muslim women testified, including our client Ms. ██████, respectfully requesting notice and the ability to opt their children out from teaching that goes against their sincerely held religious beliefs.¹¹ They respectfully made the following points:

- “We wholeheartedly respect the importance of affirming LGBTQ identities, but we are troubled by the ways these books have been presented to our children. The way these books have been taught appears to exceed the boundaries of affirmation, urging every child to delve into their own understanding of sexuality and gender identity. This approach sincerely infringes on our religious beliefs.”
- “It is disheartening that these books were introduced to our children without our knowledge or consent, leaving us with no recourse to opt them out, despite our sincere religious objections.”
- “Our request is simply to be informed in advance when materials related to sexuality and LGBTQ are included in the curriculum, along with the option to exempt our children from those lessons.
- “We firmly believe that diversity and inclusion are principles that should extend to all members of the community, including religious families like ours. Our faith teaches us to respect all individuals, and we are dedicated to that principle. Our primary concern is that our children are encountering material that is sexualized and not age-appropriate in a school environment.”

Despite Board policy that members will not respond to open forum comments during the meeting, board member Sarah Davis voiced her opposition and hostility toward the three Muslim women who testified and the dozens of other Somali Muslim parents who attended the meeting. She stated, “I’ve been very open about my queer

¹¹ School Board Meeting – 10.24.2023, St. Louis Park Public Schools, https://www.youtube.com/live/Tf_isXdQO6s?feature=shared.

identity. My wife and I have 2 kids. Queer people exist, we're here, we're going to continue to be here. And there's going to continue to be books in our community and our schools reflecting our identity." Looking directly at the women who testified, Ms. Davis also voiced, in an emotional tone, "As a queer person in a marginalized community, I would hope and expect solidarity. Muslim communities have been historically marginalized, and so have queer communities." Pausing for effect, she called it "disappointing" to "have this come up" in St. Louis Park. Ms. Davis admitted that the teaching is intended to go further than merely exposure, that it is "encouraging [children] to engage with their gender identity." She called her own same-sex marriage "not controversial." She concluded with, "I hope that we can find solidarity because diversity and inclusion and equity are critical and foundational to this district. I'm not going anywhere, and getting rid of books that talk about me and my family is not going to change that."

Ms. Davis then shut down any attempt at discussion, when our client Ms. █████ explained, "That's not what we're trying to do." Ms. Davis responded that "we don't need to talk about excluding books from our school that reflect our identity." She concluded, "I understand and appreciate the respect that you tried to show, but I want you to understand how that is received as a queer person on this board, as a queer mom with kids in this school." Ms. █████ responded, "We respect everyone, like we said. We're just trying to protect our kids, and we believe in our religion." But Ms. Davis responded, "I'm not going to engage with you right now," and left the room shortly afterward.

II. Legal Analysis

St. Louis Park Public School District is violating multiple legal provisions by denying parents notice and the ability to opt out of teaching on family life and sexuality that contradicts families' sincere religious beliefs. The District's practice violates the First and Fourteenth Amendments to the U.S. Constitution, Minnesota law, and District policies.

A. The U.S. Constitution Requires Parental Notice, Review, and Exemptions.

The U.S. Constitution protects our clients' rights in at least four ways: (1) the Free Exercise Clause of the First Amendment to the U.S. Constitution protects parents' ability to direct their children's religious upbringing; (2) the Free Exercise Clause requires neutrality and prohibits hostility from government actors; (3) the Free Exercise Clause requires religious exemptions where secular exemptions are permitted; and (4) the Fourteenth Amendment protects parental rights from government interference.

First, the Free Exercise Clause of the First Amendment protects parents' freedom to direct their children's education and their ability to impart their sincere religious beliefs to their children without government interference. *See Wisconsin v. Yoder*, 406 U.S. 205,

214 (1972) (parental rights regarding religious upbringing are “specifically protected by the Free Exercise Clause,” “[l]ong before . . . universal formal education”). For nearly 100 years, the Supreme Court has reaffirmed the “enduring American tradition” of “the rights of parents to direct ‘the religious upbringing’ of their children.” *Espinoza v. Montana Dep’t of Revenue*, 140 S. Ct. 2246, 2261 (2020) (quoting *Yoder*, 406 U.S. at 213–214); see also *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2065–66 (2020) (describing how many religious traditions entrust parents with primary responsibility for imparting their faith to their children without government interference).

Courts have consistently recognized the link between parental rights and free exercise rights in the context of public-school policies, especially regarding religious families. The Supreme Court has recognized that “the discretion of the States and local school boards in matters of education must be exercised in a manner that comports with the transcendent imperatives of the First Amendment.” *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 864 (1982); see also *Stark v. Indep. Sch. Dist., No. 640*, 123 F.3d 1068, 1073 (8th Cir. 1997) (same). In *Tatel v. Mt. Lebanon School District*, a federal court vindicated parents’ Free Exercise claims based on their “sincerely held religious beliefs about sexual or gender identity and the desire to inculcate those beliefs in their children.” No. CV 22-837, 2022 WL 15523185, at *26 (W.D. Pa. Oct. 27, 2022). There, a first-grade teacher advocated her own agenda and beliefs about gender identity despite parents’ objections, and the school district refused to provide notice and opt-out rights. The court upheld the parents’ free exercise, equal protection, and due process claims, finding that the school’s failure to provide opt-outs violated all three constitutional clauses. “In a pluralistic society, absent a compelling need, a school district should have tolerance for differing parental views on sensitive topics and may at least need to provide notice and opt out opportunities for ‘those who take a different stand with respect to their offspring.’” *Tatel v. Mt. Lebanon Sch. Dist.*, 637 F. Supp. 3d 295, 326 (W.D. Pa. 2022), clarified on denial of reconsideration, No. CV 22-837, 2023 WL 3740822 (W.D. Pa. May 31, 2023) (internal citation omitted).

Second, the Supreme Court has repeatedly held that government decisionmakers violate the Free Exercise Clause when they treat religion less favorably than other protected classes or express animus toward religion. When “‘official expressions of hostility’ to religion accompany laws or policies burdening religious exercise . . . the Court has ‘set aside such policies without further inquiry.’” *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 n.1 (2022) (quoting *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1732 (2018)); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021) (“Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature.”).

During the October 24 board meeting, Ms. Davis demonstrated hostility toward the Somali Muslim women who testified and unconstitutionally elevated LGBTQ+ interests over free exercise rights when she told them she was “not going to engage” with

them, “we don’t need to talk about” their concerns, and called their concerns “disappointing.” Ms. Davis ignored our clients’ sincere religious beliefs when she said that the queer community “expects solidarity” from the Muslim community. This hostility violates the Free Exercise Clause.

Third, a government policy or practice is not neutral and generally applicable when it provides exemptions or when it otherwise treats secular conduct more favorably than religious exercise. See *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021) (“A law is not generally applicable if it invites the government to consider the particular reasons for a person’s conduct by providing a mechanism for individualized exemptions”); *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (regulations “trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise”); see also *Stark v. Indep. Sch. Dist., No. 640*, 123 F.3d 1068, 1076 (8th Cir. 1997) (upholding public school’s grant of exemptions to religious parents because the First Amendment “affirmatively mandates accommodation” of religion). Here, by refusing to provide notice and opt-outs for instruction on LGBTQ+ topics, but providing notice and opt-out for other reasons including standardized testing, fifth-grade sexual education, and other “controversial issues” per Policy 632, the District is “prohibiting religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Fulton*, 141 S. Ct. at 1877; see also *Tatel*, 2023 WL 3740822, at *14 (upholding free exercise claim where school district gave “parental notice and opt out for numerous other secular or religious reasons” but not for parents whose religious beliefs were violated by elementary school teacher’s “transgender agenda”).

Fourth, the Fourteenth Amendment protects parental rights from government interference. *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (“[T]he Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”) The “‘liberty’ specially protected by the Due Process Clause includes the right[] ... to direct the education and upbringing of one’s children.” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). As explained above, the District’s actions in refusing to respect the concerns of our clients or provide them notice and opt out interfere with their ability to direct their children’s upbringing.

To comply with the First and Fourteenth Amendments, the District must provide parents with notice that these sexualized topics will be covered in class, the opportunity to review this curriculum to determine if it is consistent with a parent’s religious beliefs, and the ability to excuse their children from this curriculum.

B. Minnesota State Law Requires Parental Notice, Review, and Exemptions.

Minnesota law requires school districts to give parents the opportunity to “review the content of the instructional materials to be provided to a minor child.” Minn. Stat. § 120B.20. This same statute requires the ability to opt out: “if the parent, guardian, or adult student objects to the content, to make reasonable arrangements with school personnel for alternative instruction.” This law is not limited to health classes that include sexual education, although it applies there. It also applies to education about other topics, including sexuality and LGBTQ+ themes. This statute also requires: “Alternative instruction may be provided by the parent, guardian, or adult student if the alternative instruction, if any, offered by the school board does not meet the concerns of the parent, guardian, or adult student.” This law requires the District to provide parents the opportunity to opt out. If the school’s “alternative instruction” is not adequate, parents may still opt their children out and provide alternative instruction at home.

C. St. Louis Park’s Policies Require Parental Review and Exemptions.

Finally, the District violated its own policies when it adopted the new Collaborative Classroom Curriculum without following the curriculum and instruction review process that is required to involve parent review and input.

Policy 603, Curricular Program Development, requires the Board to establish “an advisory community,” which “must reflect the diversity of the district and its school sites” and include parents; “parents and other community residents must comprise at least two-thirds of committee members.” This committee must implement “strategies to ensure that curriculum and learning and work environments validate, affirm, embrace, and integrate the cultural and community strengths of all racial and ethnic groups.” Even though Somali Muslim families constitute a significant portion of the District’s residents, Somali Muslim parents were not given the opportunity to serve on this committee or to review the Collaborative Classroom Curriculum before it was adopted.

Policy 629, Sex Education, requires that “[p]arents and other citizens shall be permitted to review and observe all materials used in instruction in these areas, upon request. Students may be excused by the teacher from participation in these special areas of instruction upon written parental/guardian request. In such cases, appropriate arrangements shall be made by the teacher for meaningful alternative programs of study.” The District violated this policy when its teachers presented books and discussions about sexuality and LGBTQ+ themes to children without parental notice, review, or ability to opt out.

Policy 632, “Teaching About Controversial Issues,” requires “[a]ll sides of a controversial issue are to be clearly and fairly presented,” “staff members shall guard against advocating partisan causes . . . or advancing prejudiced or self-held viewpoints.” This policy also requires that “[s]tudents may be excused from participating in programs involving controversial issues upon written parental request.” The District violated this policy when it presented LGBTQ+ issues from only one perspective, and when its officials refused to provide our clients an opportunity to opt out.

The District’s Curriculum and Program Review Process requires “input” “from the community to understand their perspectives and needs.” It also requires “open and honest conversations, addressing challenges and exploring innovative solutions.”¹² The District failed to follow this process when it adopted books into its curriculum promoting a pro-LGBTQ viewpoint without parental input, notification, or consent.

III. Conclusion

Our clients understand that the District’s new curriculum is part of an initiative of racial equity, and they initially supported it because they believed that the school district would respect the diversity of all families, including their own. But these parents never imagined that this curriculum would force their children to be instructed in ideologies that violate their religious beliefs. Even after multiple Muslim parents voiced their concerns to Principals Graver and Pollock and members of the school board, teachers continue to read the same books multiple times in class to the same students, comparing the books and discussing their themes and characters.

This is a time-sensitive matter. No later than November 16, 2023, please provide your written assurances that the St. Louis Park Public School District will: (1) provide our clients advance notice and the opportunity to opt out before any books or class discussions about sexuality or LGBTQ+ themes are introduced or repeated at Aquila Elementary School, Susan Lindgren Elementary School, or Peter Hobart Elementary School; (2) provide advance notice and the opportunity to opt out of teaching relating to sexuality and LGBTQ+ themes to any parents who request it, at Aquila Elementary School, Susan Lindgren Elementary School, or Peter Hobart Elementary School, and other schools in the District; (3) agree to include at least one Somali Muslim parent on any committees that review curriculum within the District. If we do not hear from you and receive those assurances by that time, we will pursue legal recourse.

¹² Curriculum and Program Review Process, <https://www.slpschools.org/utility-pages/curriculum-and-program-review-process>.

Sincerely,

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