



December 7, 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;
Mr. Abdihakim Ibrahim, Board Member, ibrahim.abdihakim@slpschools.org;
St. Louis Park Public Schools
6300 Walker St
St. Louis Park, MN 55416

Principal María Graver
Aquila Elementary School
8500 W 31st St
St. Louis Park, MN 55426
graver.maria@slpschools.org

Principal Clarence Pollock
Susan Lindgren Elementary School
4801 W 41st St
St. Louis Park, MN 55416
pollock.clarence@slpschools.org

c/o Counsel:
Ms. Maggie R. Wallner
Kennedy & Graven, Chartered
150 South Fifth Street, Suite 700
Minneapolis, MN 55402-1299
mwallner@kennedy-graven.com

Sent via U.S. mail and email

Re: Renewed Request for Notice and Opt-Out

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

We write on behalf of our clients, [REDACTED],
[REDACTED], and [REDACTED]. Please continue to direct all
communications about this issue to us rather than our clients.

We were made aware of the District’s attempt to provide an “Alternative Learning Procedure,” as described in its newsletter on December 1. We view this as indicative that the District is able to provide alternative learning without undermining any of its educational objectives. While we appreciate this effort at a new policy, the Procedure still does not comply with Minn. Stat. 120B.20 for several reasons: (1) the District fails to provide advance notice or an opportunity to review curriculum or other materials before our clients’ children are exposed to it; (2) the District requires parents to describe their reasons for opting out, adding burdensome prerequisites inconsistent with a proper interpretation of the text and intent of Minn. Stat. 120B.20; and (3) the Procedure invites and requires government scrutiny of religious beliefs.

In the interest of reaching a mutually agreeable solution, we have attached a sample opt-out request form that avoids the problems described herein. Exhibit A. We ask that the District adopt this form, make it widely available, and guarantee advance notice to all parents who submit it. This will ensure compliance with both Minnesota state law and federal law.

I. Problems with the District’s “Alternative Learning Procedure”

A. Failure to Provide Advance Notice

To comply with Minnesota law, the District must provide parents with notice before sexualized topics will be covered in class, the opportunity for parents to review this curriculum to determine if it is consistent with their religious beliefs, and the ability to excuse their children from this curriculum.

Minnesota Statute 120B.20 requires: “Each school district shall have a procedure for a parent, guardian, or an adult student, 18 years of age or older, to review the content of the instructional materials to be provided to a minor child or to an adult student and, if the parent, guardian, or adult student objects to the content, to make reasonable arrangements with school personnel for alternative instruction.” This is a two-step process: (1) notice and curriculum review, and (2) working collaboratively with the parents to arrange alternative learning instruction.

The District’s Procedure fails to provide notice to parents *before* controversial issues are taught, or to give an opportunity for parents to review the curriculum in advance. If our clients submit the District’s forms about the texts their children have already been exposed to, including *My Shadow is Pink*, *Our Subway Baby*, and *Ho’onani: Hula Warrior*, this would be too little, too late. Our clients’ children were already exposed to these texts without any notice or consent. And they have no way of knowing what books their children will be exposed to next.

In a belated communication sent to three of our clients on November 29, 2023, Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED], Principal Graver sent “scope and sequence” documents for each grade. However, these documents are vague, and they do not list the author, publisher, or copyright date, such that our clients are not able to find or review all the books. These documents also do not list which day each book is being taught, so our clients have no way of knowing when controversial issues will be taught or discussed in class, or otherwise. The District’s new Procedure, *contra* Minn. Stat. 120B.20, requires parents to list the author, title, publisher/producer, copyright date, theme or purpose of the material, and reviews of the material. Yet the District has not provided this information to our clients, impeding parents’ efforts to adequately submit opt-out requests. Further, our clients whose children attend Susan Lindgren Elementary School, Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED], have received no lesson plans, curriculum lists, or opportunity to review curriculum before their children are exposed to it.

Since sending our first demand letter, we were made aware of the District’s recent efforts to seek input from parents by creating the District Instructional Programs Advisory Council, and we appreciate these efforts. We recognize this as an important step toward more effective collaboration in the future. However, our clients and other parents who have requested alternative learning instruction for specific topics still require advance notice of the contents of the existing curriculum, in order to have a meaningful opportunity to opt out as required by state and federal law.

B. Minnesota State Law Requires Opt-Outs without Explanation

In addition to requisite notice and the opportunity to review curriculum in advance, Minnesota law guarantees parents the ability to opt out from all instruction on particular issues, without requiring a reason for the opt-out request, “if the parent, guardian, or adult student objects to the content. . .” Minn. Stat. § 120B.20. The law does not require the reason for the objection to be religious, or even to be disclosed at all. The text and intent of this law both require broad opt-outs. Parents need only let the District know of their objections and requests for alternative learning instruction without describing their reasons for doing so, and the District is required to grant their requests.

As the Eighth Circuit held in *Stark v. Independent School District, No. 640*, “Minnesota law requires school districts to establish a procedure that allows parents to review the content of instructional materials provided to a minor child. If the parent objects to that content, the district must make reasonable arrangements for alternative instruction.” The court noted that one of the reasons the district in *Stark* complied with Minnesota’s opt-out law was that it “does not inquire into the motivations for a parent’s objections.” 123 F.3d 1068, 1071–72 (8th Cir. 1997).

On October 6, 2023, Ms. [REDACTED] submitted a written opt-out request which the District was required to grant under Minn. Stat. § 120B.20. Exhibit B. Yet the District

denied her request and ignored her rights. Ms. [REDACTED] and Ms. [REDACTED] met with Principal Graver in person, and Ms. [REDACTED] spoke with her on the phone. Principal Graver told our clients that these materials were part of the curriculum and that opting out would not be possible, because of the large number of requests that would come in. Principal Graver 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.” Principal Graver also told our clients, “I know this is against your religion.”

The District was legally required to grant Ms. [REDACTED] request, and the request of every other parent who expressed an objection to LGBTQ-related teaching (including our other clients). While we acknowledge the District’s efforts to create an Alternative Learning Procedure now, the present Procedure does not satisfy state law. As in *Stark*, the District must not “inquire into the motivations for a parent’s objections,” yet that is exactly what its Procedure does. The District can easily remedy this problem by granting Ms. [REDACTED] request and making a similar form available to other parents who share her concerns. *See, e.g.*, Exhibit A.

C. The Procedure Requires Exposure and Invites Government Scrutiny of Religious Beliefs

In addition to the concerns under Minnesota state law, the District’s Procedure raises several additional concerns under the Free Exercise Clause of the First Amendment.

The Supreme Court has repeatedly held that the government “cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices.” *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm’n*, 138 S. Ct. 1719, 1731 (2018) (citing *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534 (1993)). In other words, it is unconstitutional for government officials to question the merits of an individual or family’s sincerely held religious beliefs. *Holt v. Hobbs*, 574 U.S. 352, 362 (2015); *see also Ben-Levi v. Brown*, 136 S. Ct. 930, 934 (2016) (Alito, J., dissenting from cert. denial) (“[T]he government cannot define the scope of personal religious beliefs.”). Government officials are likely to misunderstand the beliefs and practices of religious families, especially minority faiths, and public school administrators are no exception. *See, e.g., A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 260–61 (5th Cir. 2010) (school officials questioned Native American student’s belief in “keep[ing] his] hair long and in braids as a tenet of [his] sincere religious beliefs”); *Gonzales v. Mathis Indep. Sch. Dist.*, No. 2:18-cv-43, 2018 WL 6804595, at *4 (S.D. Tex. Dec. 27, 2018) (school officials argued that students’ traditional religious promesa (promise) was not “religious” or “an established tenet of their Catholic faith”). Furthermore, inviting government officials “to decide which reasons for not complying with the policy are worthy of solicitude,” raises serious concerns under the Free Exercise

Clause and triggers the highest level of constitutional review. *Fulton v. City of Phila.*, 141 S. Ct. 1868, 1879 (2021).

By requiring parents to explain their beliefs in detail, the Procedure not only invites but requires government officials to scrutinize their viewpoints and determine “which beliefs are worthy of solicitude.” *Fulton*, 141 S. Ct. at 1879. The Procedure requires parents to list what specifically they object to, and to answer a series of invasive personal questions:

“What do you believe is the theme or purpose of this material?”

“What do you think might be the negative result of a child using this material?”

“What do you think might be a positive result?”

“What reviews of this material have you read or viewed?”

This approach requires parents to expose themselves to the District’s scrutiny and provide unnecessary detail about the nature of their personal views and beliefs. By asking the Parents to describe what they “believe,” the District is inquiring into their viewpoints about sensitive topics in a way that puts their privacy at risk. By requiring parents to ask “Mother, may I?” in a way that exposes their innermost opinions opens them up to potential targeting by a school district and school board members who have proven themselves hostile to religious viewpoints in the past.¹

Here, it is important to note that the six clients we represent are not the only parents in St. Louis Park concerned about their children being exposed to teaching about LGBTQ+ sexuality without their knowledge or consent. An entire community, including members of other faiths and cultural backgrounds, are looking to our clients for leadership on this issue because they are afraid of the consequences if they make their sincere religious beliefs publicly known. Thus, the excessive detail required by District’s Procedure will have a chilling effect and may deter many parents from seeking opt-outs at all. The

¹ See, e.g., School Board Meeting, October 24, 2023, https://www.youtube.com/watch?v=H9J3ootlmXA&ab_channel=St.LouisParkPublicSchools (Board Member Sarah Davis told Ms. [REDACTED], “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.” She also called it “disappointing” to “have this come up” in St. Louis Park, and concluded that “we don’t need to talk about excluding books from our school that reflect our identity.” Ms. [REDACTED] 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).

District can address all these concerns by adopting Exhibit A instead, so that parents need only state the teaching topics they object to rather than describe their beliefs in detail.

D. The Procedure is Overly Complicated and Poses a Barrier to Minority Communities

As noted above, our clients represent an entire community of Somali Muslims in St. Louis Park who are concerned about this issue. Many other residents of St. Louis Park are concerned as well, including members of the Amharic Ethiopian community who are Orthodox Christians, and members of the Oromo Ethiopian community who are Muslim or Orthodox. Many Afghan refugees are concerned as well. While our clients have access to an attorney, most of these other constituencies does not. Thus, any workable procedure for opt-outs needs to be simple enough for busy parents who lack access to an attorney and for whom English is not their first language to easily participate. It is helpful that the District has published a Somali and Spanish version of its Procedure, but its complexity and unnecessary detail will still pose a barrier to many parents, particularly members of the Amharic and Oromo Ethiopian communities whose primary language is neither English nor Somali.

Again, the District can address this issue by adopting Exhibit A instead of its Procedure.

E. The Procedure Creates Unnecessary Delay and Bureaucracy

The Procedure includes a number of unnecessary delays that will make it more difficult for parents to raise their concerns before their children are exposed to material that violates their sincere religious beliefs. First, it appears that the parent has to meet individually with each child's teacher. Each of our clients has up to five children, and scheduling in-person meetings with each teacher would cause delay. The principal then has 10 school days to review the request and respond to the parent, and then the teacher has another 10 school days to develop an alternative learning plan for the student. The internal appeal processes add additional delay.

Thus, an entire month of school could go by before the fastest request could be processed, assuming the District would approve it with no appeals necessary. Parents would need more than a month of notice that a controversial topic was coming up, which is impossible given the current lack of notice or ability to review curriculum.

Minnesota state law, by requiring general opt-outs, also avoids this bureaucratic confusion so that parents need only send a short note to the District at the start of the school year, or at any time, listing the teaching topics from which they require opt-outs.

F. Conclusion

This is a time-sensitive matter. No later than December 20, 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 as required by Minn. Stat. 120B.20; and (2) provide other parents in the District advance notice and the opportunity to opt out as required by Minn. Stat. 120B.20. We appreciate your attention to these matters and your efforts to reach a mutually agreeable solution. If we do not hear from you and receive those assurances by that time, we will proceed as our clients direct, likely pursuing all available legal remedies.

Sincerely,



Kayla A. Toney
FIRST LIBERTY INSTITUTE
1331 Pennsylvania Ave. NW, Suite 1410
Washington, DC 20004
ktoney@firstliberty.org

Justin Butterfield
FIRST LIBERTY INSTITUTE
2001 W. Plano Pkwy, Suite 1600
Plano, TX 75075
jbutterfield@firstliberty.org

Renee Carlson
True North Legal
525 Park Street, Suite 460
Saint Paul, Minnesota 55103
rcarlson@truenorthlegalmn.org

EXHIBIT A

Request for Alternative Instructional Materials for ISD 283

At the beginning of each school year, each ISD 283 school will send out a notice to parents or other legal guardians of students enrolled in the school district, that this form for alternative learning instruction is available for their use, and easily accessible. If a new family joins the school mid-year, school administrators or other authorized personnel will notify the parent or legal guardian of the new student(s) about this form and provide easy access. ISD 283 schools and the central administration office will keep this form request on hand and easily accessible for alternative learning requests.

Parents, once you fill out this form, the school district is required to give you 30 days' advance notice before the topic(s) you include is going to be addressed. If you require additional notice, please note that on this form.

Date of Request _____

Parents/Guardian Name _____

Name(s) of Child(ren) _____

Grades of Child(ren) and School _____

Pursuant to Minnesota Statute 120B.20, as well as existing state and federal law, I am exercising my right as a parent/legal guardian to request alternative instruction for my child(ren), and hereby opt my child(ren) out of the following instructional topics:

This includes lectures, classroom discussions, books, homework assignments, assemblies, guest speakers, and any other form of teaching regarding the instructional topics listed above.

Alternative Instruction Plan Offered By School

(This plan should be completed and signed by the building principal or staff member after a conference with parents, following *Request of Alternative Instructional Materials - Procedure*)

Completed by (staff member)

Building

Date given to parent

Parent/Guardian Name _____

Attach copy of completed " *Request For Alternative Instructional Materials*," summarizing parent concerns and

requests. Child's Name _____ Grade & School

Child's Course/Subject _____ Teacher's Name _____

1. What is the required learner outcome to be addressed? _____

2. Describe the alternative materials proposed by (check one or both): Parent School

Author _____

Title _____

Publisher/Producer _____ Copyright Date _____

Type of Material _____

3. How would this alternative be used by teacher and student? _____

4. Method of proposed teacher assessment of the quality of students' work and learning level achieved: _____

5. What extra costs/services will be provided by the parent? _____

6. The student will complete the above items by what date? _____

7. Other notes about this plan: _____

Signatures of Approval

Yes, the alternative plan with comments on page one is agreed to by:

Parent/Guardian _____ Date _____

Student _____ Date _____

Instructor _____ Date _____

Principal _____ Date _____

Statement of Failure to Resolve Parent Requests

No, the proposed plan is **not agreed to** by: _____ on _____
(date)

This paperwork was forwarded to the superintendent for instruction on _____
(date)

by _____

What are the reasons for this disagreement? _____

What are you asking the school to do? _____

Signed _____
(Parent/Guardian)

Daytime phone _____

Home phone _____

Date _____

EXHIBIT B

October 5, 2023

To Whom it may concern,

I am exercising my right as a Muslim parent and requesting my child be excused from any and all teachings of Homosexuality, LGBTQIA and any other form of education that is against my religion. Per your School Board Policy 600-Education section titled Teaching about Controversial Issues, it states, "Students may be excused from participation in programs involving controversial issues upon written parental request. Appropriate arrangements shall be made for a meaningful alternative program of study."

This is my request and my right. Thank you.

Sincerely,

[REDACTED]

INDEPENDENT SCHOOL DISTRICT 283

SECTION/FILE 632 DATE OF ADOPTION 09/30/75
REVISED 09/25/06

TITLE Teaching About Controversial Issues

Students shall be afforded opportunities appropriate to their level of development and understanding to study, consider, and discuss controversial issues. All sides of a controversial issue are to be clearly and fairly presented. Staff members shall guard against advocating partisan causes, sectarian religious doctrines, or advancing prejudiced or self-held viewpoints. Students may be excused from participation in programs involving controversial issues upon written parental request. Appropriate arrangements shall be made for a meaningful alternative program of study.