



Orange County Public Schools

445 West Amelia Street · Orlando, FL 32801-1129 · Phone 407-317-3200 · www.oeps.net

LEGAL SERVICES

407-317-3200 Ext 295H
john.palmerini2@oeps.net

April 22, 2013

via email andrew@ffrf.org and
david@cflfreethought.org and U.S. MAIL

Andrew L. Seidel, Esq.
Freedom From Religion Foundation
P.O. Box 750
Madison, WI 53701

David Williamson
Central Florida Freethought Community
P.O. Box 621123
Oviedo, FL 32732

Re: Distribution of Materials

Dear Mr. Seidel and Mr. Williamson:

The Legal Services Department has completed its review of the materials submitted for distribution on May 2, 2013 at the following high schools in the District: Apopka High School, Boone High School, University High School, Cypress Creek High School, Evans High School, Edgewater High School, Wekiva High School, Colonial High School, Timber Creek High School, Winter Park High School, and Jones High School. These high schools were chosen as distribution sites because the Bible was distributed at those schools on January 16, 2013 by WorldChangers of Florida, Inc.

The Legal Services Department has reviewed the standard enunciated in case World Changers of Florida, Inc. v. School District of Collier County, Case No. 2:10-cv-419 (M.D. Fla. 2010). In that case, the Court approved standards which allowed the District to refuse to distribute materials which (1) are not appropriate for the age and maturity of high school students; (2) are pornographic, obscene or libelous; or (3) are likely to cause substantial disruption at the school despite the application of available discipline rules and procedures. Please be advised that the District is considering the age of all high school students, from 14-year old freshmen to 18-year-old seniors, when making its decision.

Considering this legal standard and in consultation with appropriate District Level Administrators, the District has made the following determinations on the materials submitted by your organizations:

Books:

1. *The Age of Reason* by Thomas Paine: This book may be distributed.



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2. *Letter to a Christian Nation* by Sam Harris: This book may not be distributed for the following reasons:

A. On page 26, the book described how those students who pledge to abstain from sex by taking "virginity pledges" are "more likely than their peers to engage in oral and anal sex." This material is not appropriate for the age and maturity of high school students.

B. On page 30, the book speaks about human blastocysts which are utilized for embryonic stem cell research. The author posits that killing a fly "should present one with greater moral difficulty than killing a human blastocyst." This argument could lead to a substantial disruption at school by those students who believe life begins at conception.

C. On page 37, the book describes back-alley abortions in El Salvador with perforated uteruses. This material is not appropriate for the age and maturity of high school students.

D. On page 38, when describing the natural process of miscarriage, the author described God as the "most prolific abortifacient of all." This material is not appropriate for the age and maturity of high school students and calling God an abortifacient is likely to cause a substantial disruption at the school, especially if read by those students who believe that God condemns abortion.

E. On page 94, when describing the religious rituals of many ancient societies, the book described the sacrifice of virgins, killing and eating of children in order to ensure the future fertility of mothers, feeding infants to sharks, and the burning of widows so they can follow their husbands to the next world. These concepts are not appropriate for the age and maturity of high school students.

3. *Jesus is Dead* by Robert Price: This book may not be distributed. The District has determined this book will cause a substantial disruption. The District's administration will not permit the distribution of materials which insult the leaders of other religions. The claim that Jesus was not crucified or resurrected is age inappropriate for the maturity levels of many of the students in high school.

4. *What on Earth is an Atheist* by Madalyn Murray O'Hair: This book may not be distributed. The District has determined this book will cause a substantial disruption. The Book discusses what it views to be the shortcomings of the Mormon Church and the Roman Catholic Church. The atheist materials may support the reasons why atheists feel atheism or free thought is proper, but the District's administration will not permit the distribution of materials insulting religions.

Moreover, one passages fall within the Collier County Consent Decree language. On page 178 the author describes what she refers to as "ritual prostitution" of nuns who then become the brides of Jesus Christ when they enter heaven. This material is not age appropriate for high school students.

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5. *Why I am Not a Muslim* by Ibn Warraq: This book may not be distributed for the following reasons:

A. Page 92: When describing the Prophet Muhammad's treatment of Jewish people, the author described raiding parties and stated "Muhammad began sending out raiding parties; in effect, he was no more than the head of a robber community, unwilling to earn an honest living." This will cause a substantial disruption to those students who practice the Islamic faith.

B. Page 93: The author recites a poem written by an opponent of Muhammad which utilizes the phrase "fucked men" twice. This material is not age appropriate.

C. Page 145: When speaking about Jesus in the Koran, the author recites a virgin birth legend of the Greco-Roman civilization and describes how the virgin in the Greco-Roman legend "was impregnated by a shower of gold." This material is not age appropriate.

D. Page 290: The author describes how Muslims believe that sexuality flows from the vagina and how "Satan makes the juices flow from [a woman's] vagina." This material is not age appropriate.

E. Page 291: The author discusses the "Islamic fantasies of the 'infinite orgasm' and 'the perpetual erection.'" This material is not age appropriate.

F. Page 298: The author discusses how a wife "should never refuse herself to her husband even if it is on the saddle of a camel." This material is not age appropriate.

G. Page 304: When discussing issues of sodomy, the author argues that Muhammad's entourage "enjoyed their women from front and from behind." The author also argued that Muslim theologians concluded "that a man could take his wife when he wanted and how he wanted, from the front or from the back, as long as he ejaculated in the woman's vagina." This material is not age appropriate.

H. Page 305 has a graphic description of female circumcision and speaks of "clitoris cutters." This material is not age appropriate.

I. Page 308 describes how "major impurity results from sexual contact" and described how this occurs as a result of sexual intercourse, anal intercourse, bestiality, and menstruation. This material is not age appropriate.

Miniature Brochures

1. *What They Said About Religion*: This brochure may be distributed.

2. *Dear Believer*: This brochure will not be allowed to be distributed as it will cause a substantial disruption. This brochure asserts that God is hateful, arrogant, sexist and cruel.

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3. *Ten Common Myths about Atheists*: This brochure may be distributed.
4. *Why Women Need Freedom From Religion*: This brochure may not be distributed because it contains a solicitation for the Freedom from Religion Foundation. The Collier County Consent Decree allows the District to prohibit the distribution of materials which contain solicitations.
5. *What is a Freethinker?*: This brochure may not be distributed because it contains a solicitation for the Freedom from Religion Foundation. The Collier County Consent Decree allows the District to prohibit the distribution of materials which contain solicitations.
6. *What is Wrong with the Ten Commandments?*: This brochure may be distributed.
7. *Why Jesus?*: This brochure may not be distributed. This brochure will cause a substantial disruption because it argues that Jesus did not promote equality and social justice, was not compassionate, was not reliable and was not a good example.
8. *What Does the Bible Say About Abortion?*: This brochure may not be distributed. The discussion of what the Bible does or does not say about abortion will cause a substantial disruption in school and is not age appropriate for high school students.
9. *An X-Rated Book*. This brochure will may not be distributed. This brochure will cause substantial disruption and is age inappropriate. There is a picture on the cover of a Bible book given human features sticking its hand up the dress of a woman. Additionally, the brochure advertises how to become a member of the Freedom From Religion Foundation. The Collier County Consent Decree allows the District to prohibit the distribution of materials which contain solicitations.

Regular Brochures

1. *What Is an Atheist*: This brochure may be distributed.
2. *Nontheistic Students in Your School*: This brochure may be distributed.
3. *Secular Student Alliance*: This brochure may not be distributed. This brochure describes the Secular Student Alliance, a club for students who are atheists. This brochure seeks monetary gifts to help promote the club. The Collier County Consent Decree allows the District to prohibit the distribution of materials which contain solicitations.
4. *Humanist of the Year* wallet card: This wallet card may be distributed.

Sticker

1. *Good without God*: This may not be distributed. The World Changers were not allowed distribution of stickers. Therefore, we will not allow Central Florida Freethought Community or the Freedom From Religion Foundation to do so either.

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In summary, your group may distribute the following materials on May 2, 2013:

1. *The Age of Reason*
2. *What They Said About Religion*
3. *Ten Common Myths About Atheists*
4. *What is Wrong with the Ten Commandments?*
5. *What is an Atheist*
6. *Nontheistic Students in Your School*
7. *Humanist of the Year Award*

As for the distribution guidelines for May 2, 2013, they will mirror those imposed on World Changers of Florida when distributing Bibles. Passive distribution will be allowed. Passive distribution means the approved materials may be placed on one unattended table for distribution in a location where students normally congregate during non-instructional time. A written disclaimer should be displayed on the distribution table stating that the literature is not sponsored by, nor endorsed by, the Orange County School Board and identifying the organization sponsoring the distribution. The sign you have already provided and which is attached hereto is approved and must be displayed. A sign stating that the literature is available free of charge and one copy can be taken may be displayed on the table.

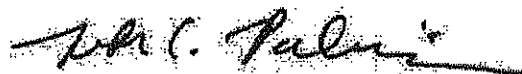
The representatives must not speak to students or encourage them to pick up the literature. The representatives must not position themselves at the table continuously throughout the distribution day. The representatives may only be allowed to replenish the literature if it runs out and must remove any undistributed literature at the end of the distribution day. The representatives may be provided with suitable staging area where students do not generally congregate so that they do not have to leave the school campus. The representatives should not enter classrooms or other instructional areas.

No student may be excused from instructional time to visit the distribution table. Students shall only be allowed to visit the distribution table during non-instructional time, such as between classes or during lunch.

No school employee shall assist or participate with the distribution of literature, other than to direct the representative to the distribution location and to ensure strict adherence to these distribution guidelines.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,



John C. Palmerini
Associate General Counsel

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cc: School Board
Superintendent Barbara Jenkins
General Counsel Diego "Woody" Rodriguez
Community Relations Senior Manager Pam Carson



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April 25, 2013

Via Email andrew@ffri.org and
U.S. Mail

Via Email david@cflfreethought.org
and U.S. MAIL

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Re: Distribution of Materials

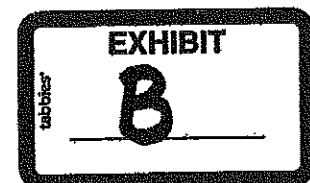
Dear Mr. Seidel and Mr. Williamson:

I am in receipt of your letter dated April 25, 2013. We have guided our legal opinions on an area of law that has been well-established through a series of litigated cases. Beginning with Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), the United States Supreme Court was clear that schools can prohibit distribution of materials if those materials "might reasonably [lead] school authorities to forecast substantial disruption of or material interference with school activities." Id. at 740.

The 5th Circuit expounded on Tinker in Shanley v. Northeast Independent School District, 462 F.2d 960 (5th Cir. 1972).¹ The Court in discussing the free speech rights in schools stated:

¹ Prior to 1981, Florida was in the jurisdiction of the 5th Circuit. It is currently in the jurisdiction of the 11th Circuit. In Bonner v. City of Richard, 661 F.2d 1206, 1209 (11th Cir. 1981), the 11th Circuit adopted as binding precedent all decisions of the 5th Circuit decided prior to the close of business on September 30, 1981. Only the 11th Circuit sitting *en banc* can overrule an old 5th Circuit decision. Id.

"The Orange County School Board is an equal opportunity agency."



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"While a school is certainly a market-place for ideas, it is certainly not a market place. The educational process is thwarted by the milling, mooning and haranguing, along with the aggressiveness that often accompanies a constitutionally protected exchange of ideas on the street corner. There is, of course, a substantive difference between schools and the street corners in terms of weighing the sometimes competing interest of a completely free flow of any and all expression with the requirement that there be order and discipline. . . . Because high school students and teachers cannot easily disassociate themselves from expressions directed toward them on school property and during school hours, because disciplinary problems in such a populated and concentrated setting seriously sap the educational process, and because high school teachers and administrators have the vital responsibility of compressing a variety of subjects and activities into a relatively confined period of time and space, the exercise of rights of expression in high schools, whether by students or others, is subject to reasonable constraints more restrictive than can normally limit First Amendment freedoms." *Id.* at 968-969.

The *Shanley* court found there is nothing *per se* unconstitutional if a school requires that persons submit materials to school administration prior to distribution and that there was nothing *per se* in directing the time place and manner of distribution. *Id.* at 969. The *Shanley* court also found that in formulating regulations regarding what is to be distributed in schools, "school officials have a wide latitude of discretion." The Court further held "It is not for us to consider whether such rules are wise and expedient but merely whether they are a reasonable exercise of the powers and discretion of the school authorities."

Additionally, the Court held that it is reasonable for school administrators to consider the feelings of other students when making decisions regarding whether materials will constitute a disruption: "If the content of a student's expression could give rise to a disturbance from those who hold opposing views, then it is certainly within the powers of school administration to regulate the time, place and manner of distribution with even greater latitude of discretion." *Id.* at 973-974.

Moreover, nothing in the law requires that school administration "stay a reasonable exercise of restraint until disruption actually occurs." *Id.* at 970, citing *Butts v. Dallas Independent School District*, 436 F.2d 728 (5th Cir. 1971).

The 11th Circuit applied these principals in favor of a school district in *Heinkel v. School Board of Lee County*, 194 Fed.Appx. 604 (11th Cir. 2006). In that case, Freedom to Learn, a non-profit organization, informed the School Board that students in its middle and high schools intended to distribute written materials regarding abortion and the pain experienced by women who had abortion. The School Board denied

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distribution based upon its written policy because the materials would "tend to create a substantial disruption in the school environment."

The 11th Circuit upheld the District Court's grant of summary judgment with respect to the as-applied challenge against the decision of not allowing the materials to be distributed. The Court held that the decision to not allow distribution because the documents would tend to create a substantial disruption in the school environment was "the appropriate measure for restraint of student expression." *Id.* at page 609.

The court also held that school administration is well within its rights to consider the age and maturity levels of the children in its care when determining whether to allow distribution of materials. "Any analysis of students' rights to expression on one hand, and of schools' needs to control behavior and foster an environment conducive to learning on the other, must necessarily take into account the age and maturity of the students." The Court, citing to *Shanley*, stated that the school officials can properly take into account whether the materials can "polarize a class" and become "disruptive to the educational setting."

Taking these cases into account, the District and its administration stands firm behind the decisions and the rationale enunciated in the undersigned's April 22, 2013 letter to you. Please note that given the volume of materials we received, the prior letter is not an exhaustive list of the reasons we determined for denying the materials. Based on the cases cited herein, we believe the District's actions will stand up to judicial scrutiny, if challenged.

With respect to the new materials submitted with your April 23, 2013 letter, attached hereto is the "List of Materials" provided to this office for review by CFFC. While "Don't Believe in God" is on the list, it was not actually in the materials provided. "The Truth" is not on the list of materials provided, nor was it actually provided. Notwithstanding that, "Don't Believe in God? You may be a Humanist" is approved for distribution.

"The Truth" is not approved for distribution. On Page 6 of the document, the essay criticizes the Protestant faith regarding how the Bible is communicated to members of the church. On page 7, the essay criticizes the Roman Catholic Church regarding how the Bible is communicated to members of the church. On page 8, the essay refers to "Christian savages" because they believe those who do not follow the word of the Bible would be subject to eternal damnation. On pages 8 and 9, priests are referred to as "heartless and relentless" and are accused of "torture." On page 9, the essay again criticizes Protestants and Roman Catholics as "enemies of reason." On page 12, the essay states that the church gave to Christians a code of laws which were "stupid, unphilosophic and brutal to the last degree." The District's Administration believes such statements read by students who are Protestants or Catholics will cause

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substantial disruption in the schools and declines to allow its distribution under the law as enunciated in Shanley.

With regard to the materials containing solicitations "Why Women Need Freedom from Religion," "What is a Freethinker" and the Secular Student Alliance brochure, if the solicitation material is eliminated, those items will be approved for distribution. Please send a copy of what the redaction would look like so the District may give final approval for those three materials.

Finally, your letter suggests that as an alternative, the District could close the forum at the school altogether in order to avoid this controversy. Please be advised that at a School Board meeting on Tuesday night, one of our School Board members has requested that the Board consider the policy that allows the passive distribution of materials in school at a future work session for further discussion. At this time, no date certain has been assigned for this work session topic. However, given your obvious interest on this issue we will be notifying you once a date has been assigned for this work session topic so that you may be present to hear the discussion. I should add that work sessions unlike rule making workshops are not traditionally open to members of the public for public comment.

In conclusion, you group may distribute the following materials on May 2, 2013:

1. *The Age of Reason*
2. *What They Said About Religion*
3. *Ten Common Myths About Atheists*
4. *What is Wrong with the Ten Commandments?*
5. *What is an Atheist*
6. *Nontheistic Students in Your School*
7. *Humanist of the Year Award*
8. *Don't Believe in God? You may be a Humanist*
9. *Why Women Need Freedom From Religion* (presuming redaction of the solicitation in a form approved by the District)
10. *What is a Freethinker?* (presuming redaction of the solicitation in a form approved by the District)
11. *Secular Student Alliance* brochure (presuming redaction of the solicitation in a form approved by the District.)

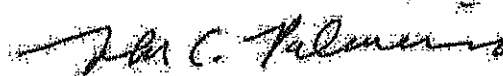
Based upon the foregoing, the District has approved 11 separate materials for distribution by CFEC. The District hardly thinks this qualifies as "viewpoint discrimination" or "censorship" as alleged in your April 23 letter. We think a Court, should it come to litigation, would view the District's actions to be very reasonable and we certainly do not think the District would be found to have committed unconstitutional acts.

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Please confirm your group's continued interest in participating in the distribution on May 2nd, and should you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,



John C. Palmerini
Associate General Counsel

cc: School Board
Superintendent Barbara Jenkins
General Counsel Diego "Woody" Rodriguez
Community Relations Senior Manager Pam Carson