

FREEDOM FROM RELIGION *foundation*

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SENT VIA U.S. MAIL AND FAX: (989) 356-3385

Scott Reynolds
Superintendent
Alpena-Montmorency-Alcona Educational Service District
2118 US 23 South
Alpena, MI 49707

Re: Unconstitutional Religious Play and Discrimination

Dear Superintendent Reynolds:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in the Alpena-Montmorency-Alcona (AMA) Educational Service District. FFRF is a national nonprofit organization with more than 35,000 members, including almost 900 members in Michigan. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned parent contacted us regarding the annual Christmas show at Pied Piper School, which includes a nativity play. Parents who object to the religious nature of the nativity segment can “opt out” their children. Children who are opted out are segregated from the other students during the nativity portion of the show.

In addition, it was reported that one student who was opted out could not participate in the Christmas show in any role because that student’s class was responsible for the nativity portion and no non-religious roles were available.

It is well-settled law that public schools may not advance or promote religion. *See generally Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Ark.*, 393 U.S. 97 (1967); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962). All school events must be neutral toward religion. Not only is Pied Piper School, a school tasked with the duty of educating students with cognitive impairments, endorsing a Christian message, it is ostracizing students on the basis of religion.

Please note that providing an “opt out” is wholly irrelevant to the analysis. The Supreme Court and lower federal courts have held that “voluntariness” does not remedy an Establishment Clause violation. *See generally Lee*, 505 U.S. at 596 (“It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.”); *Schempp*, 374 U.S. at 288 (Brennan, J., concurring) (“Thus, the short, and to me sufficient, answer is that the availability of excusal or

exemption simply has no relevance to the establishment question...”); *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003) (“VMI cannot avoid Establishment Clause problems by simply asserting that a cadet’s attendance at supper or his or her participation in the supper prayer are ‘voluntary.’”). The Constitution does not require nonreligious families to choose between publicly displaying their nonbelief by removing their children from a portion of a public school event or displaying deference by allowing their children to view and participate in a religious story they do not believe. The Establishment Clause requires students be treated as full members of the student body regardless of personal religious belief.

The school district’s bylaws and policies also require nondiscrimination based on religion.¹ In the section titled Nondiscrimination and Access to Equal Educational Opportunity, the district emphasizes its policy “to provide an equal opportunity for all students, regardless of . . . religion” The superintendent is tasked with “ensur[ing] that all students have equal access . . . and are not segregated on the basis of any legally protected interest in any . . . play, classroom, or school practice,” Denying full access to participate in the Christmas show and segregating students during the show on the basis of religion contravenes AMA Educational Service District’s clearly stated policies.

Pied Piper School can provide a holiday show without unconstitutionally promoting a Christian message and abrogating its responsibilities. There are secular options for music and plays that are appropriate substitutes for the nativity story. Not only does the school district entangle itself with religion by promoting a religious story, it alienates the thirty-five percent of Americans who are non-Christians, including the more than one in four Americans who identify as religiously unaffiliated.²

We ask that staff at Pied Piper School be reminded of their obligations to remain neutral toward religion while educating students. Segregation and discrimination on the basis of religion has no place in a public school and conflicts with the district’s own policies. All students must be allowed to fully participate in the Christmas show. Please inform us in writing of the steps you are taking to protect the personal beliefs of your students and their parents, who have the right to direct the religious, or non-religious, upbringing of their children.

Sincerely,



Karen M. Heineman
Patrick O’Reiley Legal Fellow
Freedom From Religion Foundation

¹ <https://www.amaesd.org/downloads/piper/2260.pdf>.

² *In U.S., Decline of Christianity Continues at Rapid Pace*, PEW RESEARCH CENTER (Oct. 17, 2019), available at <https://www.pewforum.org/2019/10/17/in-u-s-decline-of-christianity-continues-at-rapid-pace/>.