

FREEDOM FROM RELIGION *foundation*

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August 30, 2022

SENT VIA EMAIL & U.S. MAIL: JennyLam@sfusd.edu, kevineboggess@sfusd.edu, MattAlexander@sfusd.edu, annhsu@sfusd.edu, lainiemotamedi@sfusd.edu, MarkSanchez@sfusd.edu, lisaweissman-ward@sfusd.edu

Jenny Lam
President, Board of Education
San Francisco Unified School District
555 Franklin Street
San Francisco, CA 94102

Re: Resolution officially observing and closing schools for religious holy days

Dear President Lam and Board of Education members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to request that you reconsider a recent resolution officially observing and honoring two religious holy days. FFRF is a national nonprofit organization with more than 38,000 members across the country, including more than 5,000 members and two chapters in California. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

It is our understanding that the Board of Education recently passed a resolution to include the recognition of two Muslim holidays, Eid al-Fitr and Eid al-Adha, in the San Francisco Unified School District (SFUSD) academic calendar. We understand that this “recognition” means that all schools will be closed and that all the district’s students will miss two days of instruction in order to observe the religious holy days. The resolution stressed the “importance” of these religious holy days:

Incorporating Eid al-Fitr and Eid al-Adha on the District-wide calendar as days when San Francisco public schools would be closed **to allow students to observe these important Muslim holidays**, would be consistent with and in furtherance of those core values;

Eid al-Fitr, or “Feast of Breaking the Fast,” **is the most important holiday celebrated by Muslims worldwide**

Eid al-Adha, also known as the “Festival of Sacrifice,” **is the second most important holiday on the Islamic calendar**, and is a day of remembrance. Eid al-Adha is celebrated with prayer and traditions involving food, family, and charitable giving;

The resolution also explained that if these holy days fall on a weekend, schools and offices will be closed the day before or the day after the weekend, confirming that this resolution is not simply an accommodation for students' required religious practices. Parents will be forced to arrange childcare or lose work, a serious financial burden, and students will be denied education because of these religious closures.

The Board's resolution appears to be well-intended, and seeks to foster an inclusive school environment. This is a laudable goal. FFRF supports SFUSD in its efforts to ensure that all students feel welcome and have equitable access to our public schools. However, this resolution goes too far. As a public school system serving students who are nonreligious as well as students from various religions, SFUSD must be careful not to show preference for particular religions, even if it is a minority religion in the U.S.

Rather than fostering inclusivity, the resolution appears to elevate Muslim holidays above all other religious holidays. The current 2022-23 school calendar does not identify any religious holidays. While students are provided "winter break," over Christmas, the SFUSD correctly does not seek to single out this period as connected to the Christian religion. The calendar does not list any days off for Easter, Rosh Hashanah, Yom Kippur, or any other religious holidays.

It is well settled that public schools may not favor religion. *See 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). Favoring religion is exactly what a school district does when it seeks to highlight particular religious holidays by closing schools, requiring all students, parents, and staff members to recognize certain religious holidays, but not others.

FFRF strongly opposes this kind of government preference or discrimination on the basis of religion. In 2018, we filed an amicus brief with the Supreme Court in *Trump v. Hawaii*, opposing President Trump's travel ban on immigration from several Muslim-majority countries.¹ While in this case, rather than discriminating against Muslims, SFUSD is singling out Islam for favored treatment, the same principles apply. It is not the business of a public school system to declare preference for a particular religion's holidays or to encourage students to observe religious holidays or particular religious practices.

The resolution is also problematic because school systems should identify days off for secular reasons and not because they wish to support religious observance. In *Metzl v. Leininger*, the Seventh Circuit held that a state statute requiring schools to close for Good Friday violated the Constitution because there was no secular justification for closing schools. 57 F.3d at 621. As the court stated in that case, there must be "a secular justification for the difference in treatment" if a governmental body wants to make it easier for adherents of a particular faith to practice their religion. *Id.* The Seventh Circuit looked at the secular purpose of whether a significant number of students would be absent if the school did not close for Good Friday. *Id.* Finding no evidence

¹https://www.supremecourt.gov/DocketPDF/17/17-965/41812/20180330153952846_17-965%20Ami%20ALL%20P DFA.pdf

that the school could not afford to stay open on Good Friday due to lack of attendance, the court held that requiring schools to close for Good Friday violated the Establishment Clause.

Additionally, SFUSD's new practice of observing specific religious holidays as vacation days invites further constitutional violations. In order to remain neutral toward religion, a school district choosing to recognize some religious holidays must then consider the addition of holidays from other religious groups who may rightly demand equal treatment from the district. The result, as SFUSD will no doubt realize once this resolution has gone into effect, is that the District will be impermissibly entangled with religion as it struggles to determine which religious holidays are worthy of its mandatory observance. Not only will the district need to justify its observance of Eid ul-Fitr but not Diwali, and justify the specific day on which it chooses to observe Eid ul-Fitr, but also its observance of Eid al-Adha but not Rosh Hashanah, or indeed the rest of the ten days of repentance falling in between Yom Kippur and Rosh Hashanah.

On a practical level, scheduling days off based on the Islamic calendar is problematic because these holidays are not static on the Gregorian calendar. Over the next decade, your schools will be mandated to schedule two days off that will take place anywhere from January to June. This is not in the overall best interests of your students and staff.

While we acknowledge that the Board's decision to include these religious holy days on its calendar is a good faith effort to be inclusive of an oft-disparaged religious minority population within the school district, the Board's solution is inappropriate and impractical. It crosses the line between accommodation of religious viewpoints, which is essential for healthy learning, and establishment or coercion of honoring a particular religion, which is impermissible. We encourage the Board to rescind its newly passed resolution and instead maintain its policies that allow for penalty free, out-of-school holiday observance for all students and staff. The Board should recognize that to go further and compel others to observe these holidays by marking them as official school holidays is an unconstitutional and ultimately untenable approach. We recommend that the Board stick to observing only secular holidays on the official district calendar.

Please notify us in writing at your earliest convenience of the steps the Board takes to ensure the preservation of the separation of church and state mandated by our constitution.

Sincerely,

A handwritten signature in blue ink that reads "Chris Line". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Line
Staff Attorney
Freedom From Religion Foundation