

McCARY & HUFF, LLP
ATTORNEYS AT LAW
107 NORTH BALLSTON AVENUE
SCOTIA, NEW YORK 12302
Phone #: (518) 377-6489
Fax #: (518) 377-6521



Kathryn McCary
Margaret D. Huff*

Sender's e-mail address: kathrynmccary@mccaryhufflaw.com William M. O'Hare (1937-1993)

*Also admitted in Mass.

June 26, 2012

Rebecca S. Markert, Esq.
Freedom from Religion Foundation
PO box 750
Madison, WI 53701

RE: Shenendehowa Central School District

Dear Ms. Markert:

This firm is general counsel to the Shenendehowa Central School District; Superintendent Robinson has asked us to respond to your letter to him dated June 13.

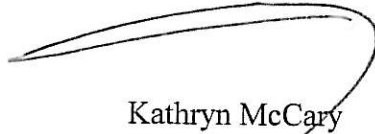
Shenendehowa understands and respects the requirements of the establishment, free exercise, and free speech clauses of the First Amendment. After careful investigation, District administration is satisfied that the inclusion and use, in the elementary school music curriculum, of the songs listed in your letter did not violate any of the District's First Amendment obligations.

None of the songs was taught, or used, as a prayer. Thus, the cases you cite dealing with school prayer are inapposite.

As you know, the analytical framework and standards used by courts in deciding curriculum content cases are different from those used in school prayer cases. Music included in the curriculum of public schools must comport with constitutional constraints, as must indeed the entire curriculum, but that has never meant that all music with religious connections, themes, or language is prohibited. As the Ninth Circuit acknowledged in *Nurre v. Whitehead*, there is a significant distinction between music performed at graduation and music included as part of the curriculum--including the performing arts curriculum--during the school year. As the Eighth Circuit noted in *Florey v. Sioux Falls Sch. Dist. 49-5*, 619 F.2d 1311, 1316 (8th Cir. 1980) "when the primary purpose served by a given school activity is secular, that activity is not made unconstitutional by the inclusion of some religious content." The musical selections you mention were used appropriately to teach specific musical concepts, and as the basis for secular classroom activities.

Parents who are concerned about their children's curriculum can, and indeed should, discuss those concerns directly with the teacher and, if necessary, the school principal. In order for such a discussion to proceed, however, at a minimum the teacher needs to be assured that the other party is in fact the parent of a student enrolled in the teacher's class. The person who complained to you is welcome to reinstitute the discussion with school personnel, but needs to do so openly, not anonymously. It would, of course, be entirely inappropriate for any school personnel to retaliate, or to initiate any kind of negative action, against the student or the family as a result of such discussions, and Shenendehowa, as a matter of policy, would not permit such conduct.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Kathryn McCary', written over a thin horizontal line.

Kathryn McCary

KM:s

cc: L. Oliver Robinson, Superintendent, Shenendehowa CSD