

FREEDOM FROM RELIGION *foundation*

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August 6, 2012

SENT VIA FAX & U.S. MAIL
(518) 377-6521

Kathryn McCary
McCary & Huff, LLP
107 North Ballston Avenue
Scotia, New York 12302

RE: Shenendehowa Central Schools' Prayer and Proselytizing Songs

Dear Ms. McCary:

Thank you for your July 26 letter. We appreciate the prompt reply but must write again because, despite your contention, this matter is not resolved. It is deeply troubling that the school district will not take action to remove prayers—even in the form of songs—from the curriculum. The law on prayer in schools—as set out in our original letter—is clear. Mr. Chaikowski, and any other District teachers, cannot impose prayers on students.

“Thank You For the World So Sweet” and “Now I Lay Me Down to Sleep” are *incontrovertibly* prayers. Words do not lose their meaning just because they are set to music. A Second Circuit case out of New York directly addressed “Thank You For the World So Sweet,” calling it “the simple and ancient prayer” in ruling that school officials were right to ban teachers from leading this prayer. *Stein v. Oshinsky*, 348 F.2d 999, 1000 (2d Cir. 1965), *cert. denied*, 382 U.S. 957 (1965). The Seventh Circuit, writing about near-identical words, said: “We are of the view that the verse is a prayer and that its compulsory recitation by kindergarten students in a public school comes within the proscription of the first amendment, as interpreted by the Supreme Court in the ‘school prayer’ cases,” even after the teacher had taken out the word “God” from the last line. *DeSpain v. DeKalb County Cmty. Sch. Dist.* 428, 384 F.2d 836, 837 (7th Cir. 1967)(citations omitted). The court acknowledged that there were perhaps some “commendable virtues” in the prayer, but said that did not justify compulsory prayer in public schools, and that “the so-called ‘secular purposes’ of the verse were merely adjunctive and supplemental to its basic and primary purpose, which was the religious act of praising and thanking the Deity.” *Id.* at 839. The same can be said of “Now I Lay Me Down to Sleep,” which even contains the line “I pray the Lord my soul to keep.”

These prayers must be removed from the music class repertoire immediately. Any number of secular songs could be substituted which avoid proselytizing a captive audience of very young public school students. There are countless alternatives to provide education in whatever musical concepts these prayers supposedly demonstrate and conform to more than 60 years of firm and clear Supreme Court precedent, notably dating to a school prayer abuse in New York state.

Mr. Chaikowski must be instructed to drop the aforementioned songs and the District must take action to ensure no other District teacher is inculcating religion. We ask you provide a written response indicating these prayers will no longer be part of classroom instruction or we will exercise legal options to ensure this improper proselytizing will not continue.

Sincerely,

A handwritten signature in blue ink, appearing to read 'RSM', is written over the word 'Sincerely,'.

Rebecca S. Markert
Staff Attorney

RSM:mez