



AMERICAN ATHEISTS

1100 15TH STREET NW
WASHINGTON, DC 20005
(908) 276-7300 // www.atheists.org

Geoffrey Blackwell, Esq.
Litigation Counsel

September 8, 2020

Via Regular Mail & Email (Mitchell@cpsboe.k12.oh.us)

Laura Mitchell, Superintendent
Education Center
P.O. Box 5381
Corryville, OH 45201-5381

Via Regular Mail & Email (Roziere@cpsboe.k12.oh.us)

Mr. Eric Rozier, Principal
Cincinnati Digital Academy
425 Ezzard Charles Dr.
Cincinnati, OH 45203

**Re: Concerns regarding Edgenuity curriculum;
Ohio Public Records Act request**

Ms. Mitchell and Mr. Rozier:

The American Atheists Legal Center (AALC) recently received a complaint from members of the Cincinnati Digital Academy (CDA) community regarding curricular materials utilized by CDA. The materials documented by our complainants explicitly promote elements of Christian theology and have no place in a public school curriculum. By advancing a particular religious viewpoint, CDA and Cincinnati Public Schools are violating the Establishment and Free Exercise Clauses of the First Amendment, article I, section 7 of the Constitution of the State of Ohio, and the Religious Freedom Restoration Act.

In order to remedy these violations, the AALC asks that CDA and CPS immediately take steps to a) remove sectarian material from the curriculum used by CDA and any other school within CPS, b) ensure that students are not penalized or in any way disadvantaged for refusing to participate in any prior or pending assignments that promote religion generally or any particular religious beliefs, and c) review its relationship with Edgenuity and any other curriculum providers to determine whether CDA and CPS can meet their constitutional obligations to their students while maintaining those contracts. ***Within five business days, please inform me of the steps you have taken and the further steps you intend to take to address these violations.*** In addition, the AALC requests that the classes of documents listed below be produced in accordance with the Ohio Public Records Act.

The AALC is part of American Atheists, Inc., a national nonprofit organization dedicated to preserving the separation of religion and government and eliminating the stigma and discrimination atheists face in our nation's public and political discourse. American Atheists is based in Cranford, New Jersey, and has more than 350,000 members and supporters across the country, including in Cincinnati, Ohio.

The Establishment Clause of the First Amendment to the U.S. Constitution demands that government remain neutral between different religious sects and between religion and nonreligion,¹ a requirement that extends to state governments via the Fourteenth Amendment. [School District of Abington Twp. v. Schempp, 374 U.S. 203, 205 (1963).] When it comes to the education of our children, the government should be “particularly vigilant” in ensuring schools do not promote religious views that may conflict with the religious beliefs of students and their families.² “Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family.”³ When a school or school district “chooses to introduce and exhort religion in the school system,” it violates the Establishment Clause and the religious freedom of not only the students in its care and their parents, but also the faculty and staff required to take part in such activity, as well as the local taxpayer forced to fund it.⁴

The Free Exercise Clause imposes an additional barrier against religious instruction in public schools by prohibiting the government from taking an action that discriminates along religious lines or otherwise regulates or prohibits religious conduct.⁵ Although neutral and generally applicable government acts that only incidentally infringe religious exercise do not violate the Free Exercise Clause, government acts that are not neutral must be narrowly tailored to achieve a compelling governmental interest.⁶ Moreover, the Religious Freedom Restoration Act [42 U.S.C. 2000bb.] prohibits the government, including programs that received federal funding, from compelling an act inconsistent with a person's observance or practice of their beliefs.⁷

¹ *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968).

² *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987); *see also Widmar v. Vincent*, 454 U.S. 263, 274, n.14 (1981).

³ *Edwards*, 482 U.S. at 584.

⁴ *Coles by Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369, 385-86 (6th Cir. 1999); Ohio Const. art. I, § 7.

⁵ *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 532 (1993); *see also Employment Div. v. Smith*, 494 U.S. 872, 876-77 (1990).

⁶ *Employment Div. v. Smith*, 494 U.S. 872, 879 (1990); *Sherbert v. Verner*, 374 U.S. 398, 403 (1963).

⁷ Jeff Sessions, *Federal Law Protections for Religious Liberty, Memorandum for All Executive Departments and Agencies*, U.S. Dept. of Justice (Oct. 6, 2017), <https://www.justice.gov/opa/press-release/file/1001891/download>; *see also Guidance Regarding Department of Education Grants and*

Materials provided by the complainants show that in multiple courses at multiple grade levels, the curriculum provided by Edgenuity for virtual instruction at the Cincinnati Digital Academy contains explicitly religious content. An entire module of Third Grade Social Studies⁸ is devoted to the creation myth of the “ancient Hebrews.”⁹ Students are asked to recount the story of the Tower of Babel and explain Yahweh’s motivations, draw a pictorial representation of the story and transcribe the following:

The people decided to build a mighty tower. They called it the Tower of Babel. From it, they would defeat Yahweh. Yahweh came and confused the people. They could no longer understand one another. The people were spread to all the corners of the Earth.

Another lesson instructs the students to make plant, animal, and human “forms”¹⁰ out of clay and “think about how you feel when you create, and then destroy, each of your forms. How does it feel to bring form out of nothing? How does it feel to create something out of a lump?”

A CDA Eighth Grade U.S. History lesson manages to be even more blatant. As part of lesson on the Great Awakening, the instructor delves into the specific teachings of Jonathan Edwards, even reading sections of his sermons about sinners held over the mouth of a volcano. The course even goes so far as to helpfully underline important phrases like “full of the fire of wrath,” “You hang by a slender thread,” “divine wrath,” and “sing it, and burn it,” all while the instructor discusses the afterlife and “what God has in store for them if they do not represent of their sins.”

Executive Order 13798, U.S. Dept. of Educ., <https://www2.ed.gov/about/offices/list/ope/edguidanceonreligiousliberty.pdf>.

⁸ A review of the entire syllabus for the course reveals a program entirely detached from the Social Studies learning standards adopted by the Ohio Department of Education, which state:

The local community serves as the focal point for third grade as students begin to understand how their communities have changed over time and to make comparisons with communities in other places. The study of local history comes alive through the use of artifacts and documents. They also learn how communities are governed and how the local economy is organized.

Ohio’s Learning Standards: Social Studies, Ohio Dept. of Educ. (Feb. 2018)

<http://education.ohio.gov/getattachment/Topics/Learning-in-Ohio/Social-Studies/Ohio-s-Learning-Standards-for-Social-Studies/SSFfinalStandards01019.pdf.aspx>.

⁹ Although the class does devote time to ancient African, Phoenecian, and Native American myths as well, it devotes more time to the “ancient Hebrew culture” than it does to these other cultures combined.

¹⁰ Hopefully someone is also pointing out to the students attending CDA that humans are animals.

Currently, about 24% of adults are religiously unaffiliated, and atheists and agnostics make up about 7% of the total population.¹¹ Studies show that approximately 13% of youth ages 13-18 identify as atheists and more than a third are non-religious.¹² Another 6% of Americans follow various non-Christian faiths.¹³ In a recent survey of nonreligious Americans, nearly a third of respondents (29.4%) reported being discriminated against in education because of their nonreligious viewpoint. [S. Frazer, A. El-Shafei, & Alison Gill, *Reality Check: Being Nonreligious in America*, 24 (2020).]

As atheists, nonbelievers, and humanists—and as parents entitled to control the upbringing of their children—the complainants hold the sincere belief that decisions about whether and when their children will be introduced to religious beliefs, ideas, and concepts belong to their children alone and not something to be dictated by a government contractor. By instructing students on religious matters, CPS has not only impermissibly promoted a particular religious perspective in violation of the Establishment Clause, but has also substantially burdened the free exercise rights of these parents.

It must also be noted that, for many parents, threats of hellfire and eternal damnation amount to nothing short of child abuse. Encountering content such as that described above fundamentally damages these parents' trust in Cincinnati Public Schools. Parents entrust their children to CPS not only for their instruction, but also for their safety. Although the current crisis may mean that CPS is not currently entrusted with the physical safety of students engaged in virtual or distance learning from home, it nonetheless has an obligation to students and their families to protect their mental wellbeing, especially during this particularly chaotic and emotionally fraught time.

The blatantly sectarian nature of the program provided by Edgenuity (and, potentially, other providers) is inexcusable and CPS must immediately take steps to end this ongoing constitutional violation and remedy the harms the district has already inflicted on its students and their families.

¹¹ Daniel Cox & Robert P. Jones, *America's Changing Religious Identity: Findings from the 2016 American Values Atlas*, Public Religion Research Institution (Sep. 6, 2017), <https://www.prrri.org/research/american-religious-landscape-christian-religiously-unaffiliated/>.

¹² *Gen Z: The Culture, Beliefs and Motivations Shaping the Next Generation*, The Barna Group and Impact 360 Institute (Jan. 23, 2018).

¹³ *America's Changing Religious Landscape*, Pew Research Center, 3 (May 12, 2015).

OHIO PUBLIC RECORDS ACT REQUEST

Pursuant to the Ohio Public Records Act,¹⁴ the American Atheists Legal Center (AALC) hereby requests that copies of the following public records be produced to my office via email at records@atheists.org.

1. All current contracts between Cincinnati Public Schools (including any school, office, department, or division under its control) (CPS) and Edgenuity, Inc. and any other virtual, digital, or remote instructional program.
2. All emails, letters, faxes, memos, or other written records created as part of the decision-making process that resulted in CPS entering into the contracts identified in response to Request # 1, above.
3. All records documenting grant funding received by CPS from the U.S. Department of Education on or after January 1, 2018.
4. All records documenting grant funding received by CPS from the Ohio Department of Education on or after January 1, 2018.

The AALC respectfully requests that all records responsive to the above requests be delivered in a searchable and analyzable electronic format to records@atheists.org. However, if the records do not exist in electronic format, please deliver paper copies to:

American Atheists Legal Center
1100 15th St. NW
Fourth Floor
Washington, D.C. 20005

If a different officer is designated as the records custodian for your office, please forward this request to that official and inform me of the proper recipient for any future communications.

If there are any fees for copying these records, please inform me if the cost will exceed \$20.00. However, the AALC requests a waiver of all fees because American Atheists is a 501(c)(3) nonprofit corporation and the disclosure of the requested information is in the public interest.

If access to the records requested above will take longer than 5 business days, please inform me via email of when we should expect copies. If you require clarification

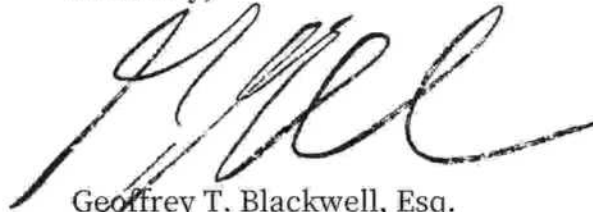
¹⁴ Ohio Rev. Code Ann. § 149.43, *et seq.* (Lexis Nexis 2020).

regarding any of the above requests, please do not hesitate to contact me at records@atheists.org.

If you should deny all or any part of this request, please cite each specific exemption you believe justifies the refusal to release the information and notify the AALC of the appeal procedures available under the law.

Thank you for your time and assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Blackwell', written in a cursive style.

Geoffrey T. Blackwell, Esq.
Litigation Counsel
American Atheist Legal Center
legal@atheists.org

CC: Carolyn Jones, CPS Board President (*via email to davisph@cps-k12.org*)