



AMERICAN ATHEISTS

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

Geoffrey Blackwell, Esq.
Litigation Counsel

September 23, 2020

Via Regular Mail & Email (teresa.salazar@mesd.us)

Ms. Teresa Salazar, Superintendent
Moriarty-Edgewood School District, Administrative Offices
2422 E. Highway 333
Moriarty, NM 87035

Re: Concerns regarding Edgenuity curriculum

Ms. Salazar:

The American Atheists Legal Center (AALC) recently received a complaint from members of the Moriarty-Edgewood School District (MESD) community regarding curricular materials utilized by Edgenuity, a third-party virtual learning service contracted by MESD. 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, MESD is violating the Establishment and Free Exercise Clauses of the First Amendment, article II, section 11 of the Constitution of the State of New Mexico, and the Religious Freedom Restoration Act.

Our understanding is that Edgenuity has recognized this problem, and the organization is currently working with Accelerate Education, a third-party organization that owns some of the course content, to address this issue. However, in the meantime, in order to remedy these violations, the AALC asks that MESD immediately take steps to a) remove sectarian material from the virtual learning curriculum used by any school within MESD 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 how best MESD can meet their constitutional obligations to their students. ***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.***

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 Moriarty, New Mexico.

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.² 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.³ “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.”⁴ 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.⁵

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.⁶ 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.⁷ Moreover, the Religious Freedom Restoration Act⁸ prohibits the government, including programs that received federal funding, from compelling an act inconsistent with a person’s observance or practice of their beliefs.⁹

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

² *School District of Abington Twp. v. Schempp*, 374 U.S. 203, 205 (1963).

³ *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987); *see also Widmar v. Vincent*, 454 U.S. 263, 274, n.14 (1981).

⁴ *Edwards*, 482 U.S. at 584.

⁵ *Coles by Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369, 385-86 (6th Cir. 1999); Ohio Const. art. I, § 7.

⁶ *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).

⁷ *Employment Div. v. Smith*, 494 U.S. 872, 879 (1990); *Sherbert v. Verner*, 374 U.S. 398, 403 (1963).

⁸ 42 U.S.C. 2000bb.

⁹ 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 Executive Order 13798*, U.S. Dept. of Educ., <https://www2.ed.gov/about/offices/list/ope/edguidanceonreligiousliberty.pdf>.

Materials provided by the complainants show that, for at least some classes and grade levels, the curriculum provided by Edgenuity for virtual instruction contains explicitly religious content. An entire module of Third Grade Social Studies¹⁰ is devoted to the creation myth of the “ancient Hebrews.”¹¹ 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” 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?”

Currently, about 24% of adults are religiously unaffiliated, and atheists and agnostics make up about 7% of the total population.¹² Studies show that approximately 13% of youth ages 13-18 identify as atheists and more than a third are non-religious.¹³ Another 6% of Americans follow various non-Christian faiths.¹⁴ 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.¹⁵ A recent study showed that Muslim and atheist parents face disproportionate discrimination by

¹⁰ A review of the entire syllabus for the course reveals a program entirely detached from the Social Studies learning standards adopted by the Michigan Department of Education, which states that: “Third grade students explore the social studies disciplines of history, geography, civics, and government, and economics through the context of Michigan studies. Building on prior social studies knowledge and applying new concepts of each social studies discipline to the increasingly complex social environment of their state, the third-grade content expectations help prepare students for more sophisticated studies of their country and world in later grades.”

Michigan’s Grade Level Content Expectations for Social Studies, Mich. Dept. of Educ.

¹¹ 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.

¹² 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/>.

¹³ *Gen Z: The Culture, Beliefs and Motivations Shaping the Next Generation*, The Barna Group and Impact 360 Institute (Jan. 23, 2018).

¹⁴ *America’s Changing Religious Landscape*, Pew Research Center, 3 (May 12, 2015).

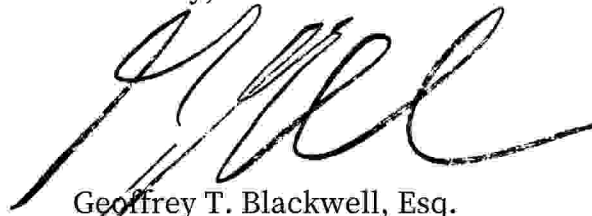
¹⁵ S. Frazer, A. El-Shafei, & Alison Gill, *Reality Check: Being Nonreligious in America*, 24 (2020).

public school principals.¹⁶ For these reasons, we are especially vigilant regarding failure to uphold the separation of religion and government in public education settings. Encountering content such as that described above fundamentally damages parents' trust in MESD.

The blatantly sectarian nature of the program provided by MESD through this virtual learning service is inexcusable and MESD 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.

If you require clarification regarding any of the above requests, please do not hesitate to contact me. Thank you for your time and assistance with this matter.

Sincerely,



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

CC: Mr. Charles Armijo, School Board President (*via email*)

¹⁶ Pfaff S., et al., "Do Street-Level Bureaucrats Discriminate Based on Religion? A Large-Scale Correspondence Experiment among American Public School Principals," *Public Administration Review* (Aug. 30, 2020), <http://onlinelibrary.wiley.com/doi/full/10.1111/puar.13235>.