

FREEDOM *of* CONSCIENCE

DEFENSE FUND

CHARLES S. LIMANDRI*
PAUL M. JONNA
JEFFREY M. TRISSELL
B. DEAN WILSON

*BOARD CERTIFIED CIVIL TRIAL ADVOCATE
ADMITTED TO THE CALIFORNIA BAR
ADMITTED TO THE DISTRICT OF COLUMBIA BAR
ADMITTED TO THE NEW YORK BAR
ADMITTED TO THE U.S. SUPREME COURT

MAILING ADDRESS:
P.O. Box 9520
Rancho Santa Fe, CA 92067

TELEPHONE: (858) 759-9948
FAX: (858) 759-9938
WEBSITE: www.fcdfllegal.org

OFFICE ADDRESS:
16236 San Dieguito Rd.
Bldg. 3, Ste. 3-15
Rancho Santa Fe, CA 92091

DANIEL J. PIEDRA
Executive Director

May 10, 2019

Via Email

Dr. Michelle Reid, Superintendent
Northshore School District
3330 Monte Villa Parkway
Bothell, WA 98021

Re: Unconstitutional Ramadan Policy

Dear Dr. Reid:

The Freedom of Conscience Defense Fund is a pro bono legal team that focuses on First Amendment advocacy. As part of our mission, we educate school administrators, families and the local community about religion in public schools. We write to express our concern about the Northshore School District Equity and Diversity Department's policy letter about Ramadan accommodations ("Ramadan Policy"). To be clear, the Supreme Court has long recognized "the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause."¹ But "[a]t some point, accommodation may devolve into an unlawful fostering of religion."² The Ramadan Policy, in both adoption and implementation, plainly imposes liability on the District under the United States and Washington Constitutions.³ If the District does not revoke the policy and take active steps to comply with the First Amendment, then parents and students will have a legal cause of action against you and the school district.

"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. Students in such institutions are impressionable and their attendance is involuntary."⁴ By adopting the Equity and Diversity Department's Ramadan policy letter, you acted under color of state law to create an official government action that has a primary effect of advancing religion.⁵ For example, the following directives are unconstitutional:

¹ *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 144-45 (1987).

² *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 334-35 (1987) (cleaned up).

³ See, e.g., *Ulrich v. City & Cty. of San Francisco*, 308 F.3d 968, 985 (9th Cir. 2002).

⁴ *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).

⁵ See, e.g., *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986); *Larez v. City of Los Angeles*, 946 F.2d 630 (9th Cir. 1991).

- Create “safe spaces” for Muslim students with “books, magazines and other things to keep students busy”
- Plan with Muslim students to allow them to “quietly slip away” for prayer to “avoid calling unwanted attention to them”
- “Privately offer information about nutritional adaptations” during physical education
- Teachers should give “[a] brief mention of Ramadan or a lesson on it may promote the feeling of inclusivity” because “[m]any Muslim students may feel embarrassed to be specially accommodated”
- “[P]rivately ask[] Muslim students if they would like accommodations”
- “When planning school activities and events, think about how it will impact practicing Muslim students” by asking:
 - “Will they feel left out?”
 - “Will they feel pressured to break their fast before sunset or Iftar (breaking of fast)?”
- “If you are aware of practicing Muslim students in your school and are still unsure about how to support them during Ramadan, don’t hesitate to ask them privately what they need”

To be sure, “[i]t is important for schools to support the well-being of their students while providing a safe environment where they are able to continue the practice of their religion.”⁶ And nothing in the Constitution prohibits public schools from accommodating students’ religious exercise. But school officials must ensure that no policy or practice “conveys a message that a particular religion, or a particular religious belief, is ‘favored’, ‘preferred’, or ‘promoted’ over other beliefs.”⁷ Here, the Ramadan Policy exceeds the critical limitations imposed by the Establishment Clause.⁸ Administrators and teachers must never be placed in the position of monitoring a child’s compliance with a particular religious requirement, such as prayer, dietary restrictions, or wearing a head covering. “By reason of the First Amendment government is commanded to have no interest in theology or ritual, for on those matters government must be neutral.”⁹ Moreover, the Establishment Clause “prohibits government from appearing to take a position on questions of religious belief or from “making adherence to a religion relevant in any way to a person’s standing in the political community.”¹⁰

Therefore, we demand that you immediately do the following:

1. Rescind the Ramadan Policy;
2. Restore the rights of non-Muslim students of faith to be treated equally under the law;
3. Undertake a review of all instances in which District officials enforced the Ramadan Policy; and
4. Inform staff and parents of the District’s unlawful actions and your efforts to remedy them.

Please notify us within **five business days** in writing regarding whether you agree to these demands. If we do not receive a response by then, we may be forced to take legal action, by which we will seek injunctive relief, damages,

⁶ A copy of the Ramadan Policy as set forth in the Equity & Diversity Dept.’s letter is attached as Attachment A.

⁷ *Cty. of Allegheny v. ACLU*, 492 U.S. 573 (1989).

⁸ *Lee v. Weisman*, 505 U.S. 577, 577 (1992).

⁹ *Engel v. Vitale*, 370 U.S. 421, 443 (1962) (Douglas, J., concurring) (cleaned up).

¹⁰ *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984) (O’Connor, J., concurring).

and attorneys' fees. Please do not hesitate to contact our office if you have any questions about this matter.

Sincerely,

A handwritten signature in black ink that reads "Daniel Piedra". The signature is written in a cursive style with a large initial "D".

Daniel J. Piedra, J.D.
Executive Director
Freedom of Conscience Defense Fund

Encl.

Cc: Sandy Hayes, Board President
David Cogan, Board Vice President,
Jacqueline McGourty, Board Member
Bob Swain, Board Member
Amy Cast, Board Member
Cindy Benson, Secretary to the School Board
Chris Bigelow, Director of Equity & Diversity

Greetings of Peace.

The Northshore School District recognizes the diverse religious backgrounds and values represented in the school community and the importance of being sensitive to the needs of all students and personnel. Making sure that every child feels supported requires deliberate attention, and the Northshore School District sees this as an ongoing focus of its work. As we continue to see our demographic change we must intentionally look at how we serve and partner with all families in our community. As many of you may already know, Ramadan is a Muslim religious observation month that includes fasting (including no water) from dawn until dusk.

This month, meant to promote perseverance and tolerance, can also be challenging for students who have to go through a normal school day without eating or drinking. This year, Ramadan will begin on May 5 (+/- one day) and lasts 29 to 30 days, during which Muslims abstain from food and drink from dawn until sunset. It is important for schools to support the well-being of their students while providing a safe environment where they are able to continue the practice of their religion.

Here are several ways to support your students during the month of Ramadan:

Space: Lunchtime is probably one of the most difficult periods to endure while fasting. It might help to provide a comfortable space for Muslim students to go to instead of the designated lunchroom. The room can have books, magazines and other things to keep students busy. Of course, it's then up to the student whether they choose to go there or not, but having that as an option, even for students who are not fasting, is usually beneficial. Some Muslim students may request a quiet space for their midday prayers. To avoid calling unwanted attention to them, plan ahead of time so your student can quietly slip away for prayer, which usually takes no longer than five minutes.

Physical Education: Many of our students and athletes will be participating in this observation. If a student brings a note from parents that they will be practicing this religious observation, our PE teachers and coaches need to accommodate these students. In no way, should this impact their grade or opportunity for participation in after school athletics.

The following recommendations have been made to accommodate for these students:

Fitness and cardio assessments could be done prior to the beginning of Ramadan. Students who are observing Ramadan should avoid playing tough sports and intense exercise during the day, especially in hot weather. Hot weather will cause the body to lose fluids, which may lead to dehydration.

Alternate activities should be offered during PE and practices. These could include:

- Minimizing movement activities to simple walking or calisthenics.
- Allowing them to provide a support role for coach/teacher while being responsible for content learning
- Avoid excessive movement while participating outside in warmer weather
- Privately offer information about nutritional adaptations (protein, complex carbs) that may be imperative during non-fasting times.
- Athletes and students should still be attendance to practices/classroom requirements
- Level of game/practice/classroom participation should be based on the communication between the parent, coach, and student/athlete.

Increased communication between parents/guardians, teachers, students/athletes is recommended to monitor, modify and meet the child's needs.

Closely monitor the student as they may experience a lack of hydration and/or nutritional support. Be aware that students participating may show more fatigue due to late nights and lack of typical nutrition.

Empathy: This sounds a bit easy, but having empathy requires one to truly understand the other person's situation and feelings. Many Muslim students may feel embarrassed to be specially accommodated. A brief mention of Ramadan or a lesson on it may promote the feeling of inclusivity. Administrators should encourage parents to contact their children's schools and teachers in advance to request religious accommodations for their children during Ramadan. However, this does not preclude teachers from privately asking Muslim students if they would like accommodations. When planning school activities and events, think about how it will impact practicing Muslim students. Will they feel left out? Will they feel pressured to break their fast before sunset or Iftar (breaking of fast)?

If students have the right accommodations and support from teachers and their peers, it can turn a challenging month into the most rewarding. If you are aware of

practicing Muslim students in your school and are still unsure about how to support them during Ramadan, don't hesitate to ask them privately what they need.

The resources below will provide more information on Ramadan

- <https://www.cbc.ca/news/canada/new-brunswick/ramadan-new-brunswick-high-school-1.4669551>
- <https://www.brighthubeducation.com/middle-school-social-studies-lessons/126797-ramadan-lunar-calendar-and-muslim-tradition-lesson/>
- <https://nurturestore.co.uk/what-is-ramadan-lesson-plan>