



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC.  
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August 1, 2007

Janice Sterzer  
Principal  
Eastmont Middle School  
10100 S. 1300 East  
Sandy, UT 84094

RE: Eastmont Middle School's 2007 Yearbook

Dear Principal Sterzer,

I write to inform you of our concerns with the 2007 Eastmont Middle School yearbook. It has recently come to our attention that your school's yearbook included material which promotes and/or appears to sponsor LDS Seminary events, in violation of the Utah and United States Constitutions, as well as Utah Administrative Rules, and your school district's own policies and regulations.

As you may know, in *McCullum v. Board of Educ.*, 333 U.S. 38 (1948), the Supreme Court held that "released time" religious instruction in public schools is unconstitutional under the U.S. Constitution. However, students may attend religious classes off campus so long as the implementation of such programs does not unduly entangle the school with religion. *See Lanner v. Wimmer*, 662 F.2d 1349, 1358-59 (10th Cir. 1981).

In Utah, policies and guidelines with respect to released-time religious instruction courses are defined in the Utah Administrative Code, Rule R277-610. The code stipulates that seminaries are considered private schools and are separate in all respects from public schools. The code specifically addresses the use of public school publications, stating that they "**shall not include pictures, reports, or records of functions of released-time classes.**" Utah Admin. Code R277-610-3(H) (2007) (emphasis added). Additionally, your school district's own policy manual mandates that "[s]chool publications shall not publish articles, pictures, reports, or records related to released time class functions or activities." Jordan School District, Statement of Policy, Number AA436(II)(J).

We note that page 61 of the 2007 edition of the Eastmont Middle School yearbook appears to be devoted entirely to LDS Seminary classes and activities. Indeed, page 61 is comprised solely of photographs of what appear to be students attending seminary class, as well as photographs of seminary instructors (identified as Brothers Boyer and Barrus), and a photograph of the sign in front of the seminary building, reading "The Church Of Jesus Christ Of Latter Day Saints Seminary." See enclosed documents.

The inclusion of pictures and information about LDS Seminary in the Eastmont Middle School yearbook improperly sends the message, both to your students and to the community, that your public institution officially endorses the LDS religion. As you undoubtedly know, the great weight of both Utah and United States constitutional jurisprudence is unambiguous in holding that public schools must not endorse any particular religious belief, nor can they become unnecessarily entangled with religion. *Lemon v. Kurtzman*, 403 U.S. 602 (1971) (establishing the following test for determining whether a public school policy or practice violates the Establishment Clause of the U.S. Constitution: the policy or practice must (1) have a secular purpose; (2) not endorse the practice of any particular religion; and (3) the policy must not create excessive government entanglement with religion); *see also Bauchman v. West High School*, 132 F.3d 542, 555 (10th Cir. 1997) (holding that the Establishment Clause prohibits school activities which appear to “advance or promote religion or a particular religious belief.”)

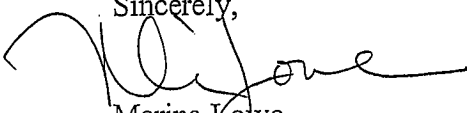
Additionally, the United States Supreme Court has routinely noted the particular impressionability of minors in the context of school-sponsored religious activities, stressing that such improper school actions could be viewed as an attempt to “coerce [students] to support or participate in religion or its exercise.” *Lee v. Weisman*, 505 U.S. 577, 587, 592-93 (1992) (distinguishing “mature adults” from “primary and secondary school children” and noting, in the context of school-sponsored religious activities, minors’ impressionability); *see also Stone v. Graham*, 449 U.S. 39, 42 (1980) (implicitly recognizing school students’ impressionability); *Skoros v. City of New York*, 437 F.3d 1, 31, n. 26 (2nd Cir. 2006) (observing that “the Supreme Court has noted that Establishment Clause analysis can yield different results depending on whether challenged conduct occurs within a public school or in some other setting”).

Thus, inclusion in your school’s yearbook of materials which promote LDS Seminary—and by extension, the LDS religion—is not only troubling, but is prohibited by the United States and Utah Constitutions, as well as applicable sections of the Utah Code, and provisions of the Jordan School District’s Policy Manual. Accordingly, we request that in the future, your institution refrain from engaging in this unconstitutional behavior, and no longer include material about a single religious belief in a public school publication.

Please confirm that future editions of Eastmont Middle School publications will not improperly include materials related to released-time activities. Feel free to contact me if you have any questions about the foregoing. I can be reached at 801-521-9862 x. 103. Alternatively, please respond in writing by Monday, August 27th. We look forward to hearing from you.

Thank you for your attention to this matter.

Sincerely,



Marina Lowe  
Staff Attorney

cc: Barry L. Newbold, Superintendent, Jordan School District  
Carol Lear, Utah State Office of Education