

**APPROVED MEETING MINUTES
PUBLIC CHARTER SCHOOL COMMISSION SPECIAL MEETING
MONDAY, NOVEMBER 23, 2009
650 W. STATE STREET, 3rd FLOOR
BOISE, ID 83709
CLEARWATER ROOM**

A special meeting of the Idaho Public Charter School Commission (PCSC) was held on Monday, November 23, 2009, at 650 W. State Street, 3rd Floor, Clearwater Room, Boise, Idaho, 83709. Chairman William Goesling presided.

The following members were in attendance:

Brad Corkill
Alan Reed

Gayann DeMordaunt
Esther Van Wart

Gayle O'Donahue

Chairman Goesling called the meeting to order at 9:00 a.m.

1. Nampa Classical Academy Use of Religious Texts

Chairman Goesling asked for a summary from PCSC staff.

Tamara Baysinger, PCSC staff, said Chairman Goesling issued a letter to NCA on November 17th requesting specific information in the form of a required report. The due date for that required report was today at 8:00 am. No report has been submitted.

Mr. Michael Moffett agreed that NCA has not submitted the requested information.

Chairman Goesling requested additional background information from PCSC staff.

Ms. Baysinger said the PCSC has previously inquired whether or not NCA has used, or intends to use, religious text as part of their curriculum. The purpose of today's discussion is a development on that issue. The additional information comes in the form of a letter addressed to Ms. Baysinger from David Cortman, legal counsel with the Alliance Defense Fund (ADF), representing NCA. In this letter, Mr. Cortman states that he has advised his clients to begin immediately using any and all relevant religious documents and texts as part of their curriculum.

Jennifer Swartz, PCSC counsel, said Idaho Statute requires the PCSC to issue a notice of defect where it has reason to believe that one of the circumstances identified in I.C. 33-5209 has occurred.

Mr. Michael Moffett said the material asked for in Chairman Goesling's letter was previously submitted. He said that NCA does plan to use religious texts whenever it is appropriate for the particular class, and a list of those texts has been provided to the PCSC.

Commissioner Corkill said that a notice of defect is in order because of the statement made by Mr. Moffett. Mr. Corkill asked whether NCA is currently using religious texts, in the classroom.

Mr. Michael Moffett asked for clarification of the question.

Eric Makrush, NCA board member, said that there may be a SDE approved textbook that references the Bible.

Ms. Swartz reiterated that references to the Bible included in other texts that are not in and of themselves religious are not of concern. The PCSC's concern is regarding use of the texts themselves in any form, including hardcopy, bound version, photocopies, etc.

Mr. Michael Moffett stated that NCA is not using religious texts.

Commissioner DeMordaunt asked whether, when 7th grade students were asked to compare the Hamarabi and Mosaic Law, the photocopied pages that they were given to complete that assignment were from a textbook that quotes the scriptural verses or from a Bible directly.

Mr. Michael Moffett the pages were from the California Institute of Ancient Studies website.

Commissioner Reed said the material received from the attorneys indicates that NCA plans on using religious texts.

Commissioner DeMordaunt asked for counsel's comments on the words in the motion "has violated" versus "the intent to violate".

Ms. Swartz addressed Commissioner DeMordaunt's earlier question to the school. The specific information regarding the assignment that Commissioner DeMordaunt referred to earlier has been requested, on more than one occasion, and the information has still not been produced by the school. Now, the school is saying they obtained the photocopies or printouts from a website. However, not having seen those documents, we don't know whether these are an excerpt from the Bible that is included in a larger discussion or a website that includes Bible verses. You cannot just go to a website and printout verses straight from the Bible and say it isn't a religious text. That is the distinction we are trying to make here. Without a copy of the documents to review, it is difficult to ascertain from the school's answer whether or not the information that was distributed to the students was an excerpt from a religious text or a broader document that includes excerpts or references to religious texts.

Ms. Swartz said that whether the school "has" violated the law versus the "intent" to violate the law, is a matter within the PCSC's discretion. Specifically, a violation of the law could be considered to have occurred simply by the inclusion of the religious texts, specifically the Bible, the Book of Mormon, the Quran, that are included in the list of curriculum and the assertion that those texts will be used. Even though the use may not have occurred yet, the fact that those documents are included in the curriculum list, and the statement that has been made that they will be used, that, in and of itself, may constitute a violation of the law.

Commissioner DeMordaunt asked Mr. Michael Moffett and Mr. Eric Makrush if they intend to use religious texts included in the list of curriculum and would these be primary text or copied versions from the California Institute of Ancient Studies text?

Mr. Michael Moffett said that it would probably be both.

Commissioner DeMordaunt asked if it is the intent of NCA to continue on this course to use the primary text of the Bible.

Mr. Michael Moffett said yes.

Commissioner O'Donahue clarified that in addition to the Bible, the PCSC is referring to the Book of Mormon and Quran also.

Chairman Goesling said that is correct.

Commissioner Corkill said he finds this discussion very disturbing and feels the motion is not strong enough in the wording.

Chairman Goesling said that a timeline could be included, as well as failure to provide required reports.

Ms. Baysinger clarified that the PCSC has already issued a notice of defect addressing NCA's failure to comply with public records law, which includes the request sent for the lesson plans. That notice of defect does not address the issue of required reports, however, an issue which was raised in a prior notice of defect that was subsequently cured. For that reason, another notice of defect would need to be issued to address the specific required report requested in Chairman Goesling's November 17th letter.

Ms. Swartz added that it has also been communicated, from counsel for the school, that it is his position that the school does not need to respond to any of these requests due to the ongoing Federal lawsuit over the religious texts issue. Included in materials is a response from the Attorney General's Office disputing that position. It is the position of the PCSC that the school is required to continue to comply with state law pertaining the PCSC's oversight and regulation of the school, and failure to do so would be a violation of that law.

Chairman Goesling asked whether that was not only the PCSC's position, but also the outcome of a federal judge's opinion as to the merits of that case.

Ms. Swartz said that the federal judge did not specifically address this question, but the judge was presented with a motion by the plaintiffs to issue a temporary restraining order preventing the PCSC from taking any sort of action against the school if the school proceeded to use religious texts. The judge denied that order.

Chairman Goesling asked if that order would include notices of defect.

Ms. Swartz said that in her opinion, it would extend to notices of defects.

Commissioner Van Wart asked how many notices of defect have been issued and how many of those have been cured.

Ms. Baysinger stated that four notices of defect have been issued. The November 13th notice of defect has not been resolved, but the corrective action plan for that notice of defect, which cites numerous, specific defects, is not yet due.

Commissioner Van Wart is extremely surprised and disappointed at the atmosphere of this meeting between the school and the PCSC. It sounds like the PCSC has been asking for information and wanting to help and NCA has not reciprocated.

Commissioner DeMordaunt suggested the PCSC focus on the current motion, adding a timeframe in which NCA must submit a corrective action plan.

Ms. Baysinger said statute does not specify a timeframe for a corrective action plan. Typically, the PCSC allows 30 days, but shorter timelines have been used previously according to the PCSC's discretion.

M/S (Reed/Corkill): A motion to direct staff to issue to Nampa Classical Academy a notice of defect on the grounds that the Public Charter School Commission has reason to believe that NCA has violated any provision of law, specifically: Failure to comply with Idaho State Constitution (Article IX § 6) with regard to the use of religious texts in public school classrooms. The motion passed unanimously.

Chairman Goesling asked if the commission wishes to issue a notice of defect to NCA for failure to submit required reports as requested in the November 17th letter.

Ms. Baysinger reviewed the November 13th notice of defect and said failure to submit required reports is not included.

Commissioner DeMordaunt asked if the PCSC always issues a notice of defect to any school that does not submit required reports relevant to each request.

Ms. Baysinger said that is correct.

M/S (DeMordaunt/Reed): A motion to direct staff to issue to Nampa Classical Academy a notice of defect on the grounds that the Public Charter School Commission has reason to believe that NCA has violated any provision of law: specifically failure to provide required reports. Chairman Goesling's letter of November 17 and the report required thereby. The motion passed unanimously.

Commissioner Corkill said it is apparent that NCA, and their legal counsel, are showing blatant disregard for the laws of the State of Idaho.

Ms. Swartz clarified the statutory process with regard to notices of defect and charter revocation.

M/S (DeMordaunt/Van Wart): A motion to adjourn. The motion passed unanimously.