

**BOARD OF EDUCATION
BEEVILLE INDEPENDENT SCHOOL DISTRICT**

Agenda Item No. _____

Date: August 21, 2007

Subject: Consideration and act on
Resolution Implementing the
Religious Viewpoints
Antidiscrimination Act (HB 3678)

Submitted by: John Hardwick
Related Pages: 18

Supt's Approval: _____

CONSENT

BACKGROUND INFORMATION:

Please note from Ms. Leon's attached letter the details of HB3678 (Religious Viewpoints Antidiscrimination Act-RVAA). Also we discussed the article from the July 2007 Lone Star as a resource.

ITEMS ADDRESSED:

RVAA as per HB3678 - resolution to the process for editing our policy.

RECOMMENDED ACTION:

Approve the attached resolution to support future policy revisions regarding RVAA.

BUDGETARY INFORMATION:

None



POWELL & LEON, L.L.P.

Attorneys at Law

1706 West Sixth Street
Austin, Texas 78703-4703

Telephone (512) 494-1177
Facsimile (512) 494-1188

Blake G. Powell
Sara Hardner Leon
Mark P. Tilley
Jamie Cameron Turner

William C. Bednar
of Counsel

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

August 1, 2007

Dr John Hardwick, Superintendent
Beeville Independent School District
2400 N. St. Mary's St.
Beeville, Texas 78102



Re: *Implementation of the Religious Viewpoints Antidiscrimination Act*

Dear Dr ^{John} Hardwick:

The 80th Texas Legislature recently passed H. B. No. 3678, called the Religious Viewpoints Antidiscrimination Act (RVAA). You may have received material from TASB or other sources urging rapid adoption of school policies to implement RVAA before the beginning of the school year "only after consulting with your school attorney." Because of potential constitutional problems posed by RVAA, we recommend a more deliberate and considered policy approach. Section 3 of RVAA makes the Act applicable beginning with the 2007-2008 school year, but we believe this necessarily implies an adequate period of time in which to formulate implementing policies.

A policy response to most of the RVAA's requirements can be achieved with relatively minor adjustments to existing district policies. Your Board Policy FB (LEGAL) already contains a prohibition against religious discrimination. It will be simple to extend that protection to voluntary expressions of religious viewpoints by students as required by Section 25.151 of the Act. Likewise, your Policies EMB (LEGAL) and EMB (LOCAL) can easily be augmented with a prohibition on religious discrimination in class assignments as required by Section 25.153 of the Act. Section 25.154 of the Act, regarding freedom to organize religious groups and activities, can be addressed with minor changes to the religious freedom provisions in your Policy GA (LEGAL), relating to access

to district programs, services and activities. We will be forwarding sample policy amendments on these subjects to you soon.

The most problematical aspect of the Act is Section 25.152, which mandates adoption of a model local policy establishing a limited public forum for student speakers. This section raises substantial federal and state constitutional problems, both on its face and with respect to its implementation. We regard the potential for litigation of several of its provisions as very high. Further, we remain very concerned about practical challenges to its implementation. School officials who implement this policy improperly may, for example, lose their qualified immunity defense if they implement the statute in violation of existing constitutional precedent. We do not believe there is adequate time between now and the start of school to sort out the risks involved and develop a legally sound policy approach to this section. Nor are we satisfied that either TASB sample policy as presented adequately addresses challenges to the policy's implementation. That will require consideration of not only compliance with the Act itself, but also compliance with the freedom of speech and religion provisions of the federal constitution and perhaps the separation of powers requirement in the state constitution.

For these reasons, we recommend that, for now, that you not adopt either version of the proposed TASB policy, but rather that you adopt the enclosed proposed board resolution. Agenda language for implementing the enclosed resolution might read: "Consider and act on resolution implementing the Religious Viewpoints Antidiscrimination Act (House Bill 3678)." The resolution affirms as a general policy the District's intent to comply fully with RVAA consistent with federal and state constitutional requirements. It also directs the policy development committee designated by the board to consult with the administration and district legal counsel to develop and recommend to the board specific policies, or amendments to existing policies, to implement the various requirements of RVAA.

As always, it is a privilege and pleasure to be of service. Please write or call with any questions you may have.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Sara Lem".

For the firm

Enclosures: H. B. No. 3678, Religious Viewpoints Antidiscrimination Act
Sample Board Resolution

AN ACT

relating to voluntary student expression of religious viewpoints in public schools.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as the "Religious Viewpoints Antidiscrimination Act" or the "Schoolchildren's Religious Liberties Act."

SECTION 2. Chapter 25, Education Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. STUDENT EXPRESSION OF RELIGIOUS VIEWPOINTS

Sec. 25.151. STUDENT EXPRESSION. A school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

Sec. 25.152. LIMITED PUBLIC FORUM; SCHOOL DISTRICT POLICY.

(a) To ensure that the school district does not discriminate against a student's publicly stated voluntary expression of a religious viewpoint, if any, and to eliminate any actual or

perceived affirmative school sponsorship or attribution to the district of a student's expression of a religious viewpoint, if any, a school district shall adopt a policy, which must include the establishment of a limited public forum for student speakers at all school events at which a student is to publicly speak. The policy regarding the limited public forum must also require the school district to:

(1) provide the forum in a manner that does not discriminate against a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject;

(2) provide a method, based on neutral criteria, for the selection of student speakers at school events and graduation ceremonies;

(3) ensure that a student speaker does not engage in obscene, vulgar, offensively lewd, or indecent speech; and

(4) state, in writing, orally, or both, that the student's speech does not reflect the endorsement, sponsorship, position, or expression of the district.

(b) The school district disclaimer required by Subsection (a) (4) must be provided at all graduation ceremonies. The school district must also continue to provide the disclaimer at any other event in which a student speaks publicly for as long as a need exists to dispel confusion over the district's nonsponsorship of the student's speech.

(c) Student expression on an otherwise permissible subject may not be excluded from the limited public forum because the subject is expressed from a religious viewpoint.

Sec. 25.153. RELIGIOUS EXPRESSION IN CLASS ASSIGNMENTS.

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions.

Homework and classroom assignments must be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school district.

Students may not be penalized or rewarded on account of the religious content of their work.

Sec. 25.154. FREEDOM TO ORGANIZE RELIGIOUS GROUPS AND ACTIVITIES. Students may organize prayer groups, religious clubs, "see you at the pole" gatherings, or other religious gatherings before, during, and after school to the same extent that students are permitted to organize other noncurricular student activities and groups. Religious groups must be given the same access to school facilities for assembling as is given to other noncurricular groups without discrimination based on the religious content of the students' expression. If student groups that meet for nonreligious activities are permitted to advertise or announce meetings of the groups, the school district may not discriminate against groups that meet for prayer or other religious speech. A school district

may disclaim school sponsorship of noncurricular groups and events in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

Sec. 25.155. ADOPTION OF POLICY. A school district shall adopt and implement a local policy regarding a limited public forum and voluntary student expression of religious viewpoints. If a school district voluntarily adopts and follows the model policy governing voluntary religious expression in public schools as provided by Section 25.156, the district is in compliance with the provisions of this subchapter covered by the model policy.

Sec. 25.156. MODEL POLICY GOVERNING VOLUNTARY RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS. In this section, "model policy" means a local policy adopted by the school district that is substantially identical to the following:

ARTICLE I

STUDENT EXPRESSION OF RELIGIOUS VIEWPOINTS

The school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

ARTICLE II

STUDENT SPEAKERS AT NONGRADUATION EVENTS

The school district hereby creates a limited public forum for student speakers at all school events at which a student is to publicly speak. For each speaker, the district shall set a maximum time limit reasonable and appropriate to the occasion. Student speakers shall introduce:

(1) football games;

(2) any other athletic events designated by the district;

(3) opening announcements and greetings for the school day; and

(4) any additional events designated by the district, which may include, without limitation, assemblies and pep rallies.

The forum shall be limited in the manner provided by this article.

Only those students in the highest two grade levels of the school and who hold one of the following positions of honor based on neutral criteria are eligible to use the limited public forum: student council officers, class officers of the highest grade level in the school, captains of the football team, and other students holding positions of honor as the school district may designate.

An eligible student shall be notified of the student's eligibility, and a student who wishes to participate as an introducing speaker shall submit the student's name to the student

council or other designated body during an announced period of not less than three days. The announced period may be at the beginning of the school year, at the end of the preceding school year so student speakers are in place for the new year, or, if the selection process will be repeated each semester, at the beginning of each semester or at the end of the preceding semester so speakers are in place for the next semester. The names of the volunteering student speakers shall be randomly drawn until all names have been selected, and the names shall be listed in the order drawn. Each selected student will be matched chronologically to the event for which the student will be giving the introduction. Each student may speak for one week at a time for all introductions of events that week, or rotate after each speaking event, or otherwise as determined by the district. The list of student speakers shall be chronologically repeated as needed, in the same order. The district may repeat the selection process each semester rather than once a year.

The subject of the student introductions must be related to the purpose of the event and to the purpose of marking the opening of the event, honoring the occasion, the participants, and those in attendance, bringing the audience to order, and focusing the audience on the purpose of the event. The subject must be designated, a student must stay on the subject, and the student may not engage in obscene, vulgar, offensively lewd, or indecent

speech. The school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

For as long as there is a need to dispel confusion over the nonsponsorship of the student's speech, at each event in which a student will deliver an introduction, a disclaimer shall be stated in written or oral form, or both, such as, "The student giving the introduction for this event is a volunteering student selected on neutral criteria to introduce the event. The content of the introduction is the private expression of the student and does not reflect the endorsement, sponsorship, position, or expression of the school district."

Certain students who have attained special positions of honor in the school have traditionally addressed school audiences from time to time as a tangential component of their achieved positions of honor, such as the captains of various sports teams, student council officers, class officers, homecoming kings and queens, prom kings and queens, and the like, and have attained their positions based on neutral criteria. Nothing in this policy eliminates the continuation of the practice of having these students, irrespective

of grade level, address school audiences in the normal course of their respective positions. The school district shall create a limited public forum for the speakers and shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

ARTICLE III

STUDENT SPEAKERS AT GRADUATION CEREMONIES

The school district hereby creates a limited public forum consisting of an opportunity for a student to speak to begin graduation ceremonies and another student to speak to end graduation ceremonies. For each speaker, the district shall set a maximum time limit reasonable and appropriate to the occasion.

The forum shall be limited in the manner provided by this article.

Only students who are graduating and who hold one of the following neutral criteria positions of honor shall be eligible to use the limited public forum: student council officers, class officers of the graduating class, the top three academically ranked graduates, or a shorter or longer list of student leaders as the school district may designate. A student who will otherwise have a

speaking role in the graduation ceremonies is ineligible to give the opening and closing remarks. The names of the eligible volunteering students will be randomly drawn. The first name drawn will give the opening and the second name drawn will give the closing.

The topic of the opening and closing remarks must be related to the purpose of the graduation ceremony and to the purpose of marking the opening and closing of the event, honoring the occasion, the participants, and those in attendance, bringing the audience to order, and focusing the audience on the purpose of the event.

In addition to the students giving the opening and closing remarks, certain other students who have attained special positions of honor based on neutral criteria, including, without limitation, the valedictorian, will have speaking roles at graduation ceremonies. For each speaker, the school district shall set a maximum time limit reasonable and appropriate to the occasion and to the position held by the speaker. For this purpose, the district creates a limited public forum for these students to deliver the addresses. The subject of the addresses must be related to the purpose of the graduation ceremony, marking and honoring the occasion, honoring the participants and those in attendance, and the student's perspective on purpose, achievement, life, school, graduation, and looking forward to the future.

The subject must be designated for each student speaker, the student must stay on the subject, and the student may not engage in obscene, vulgar, offensively lewd, or indecent speech. The school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

A written disclaimer shall be printed in the graduation program that states, "The students who will be speaking at the graduation ceremony were selected based on neutral criteria to deliver messages of the students' own choices. The content of each student speaker's message is the private expression of the individual student and does not reflect any position or expression of the school district or the board of trustees, or the district's administration, or employees of the district, or the views of any other graduate. The contents of these messages were prepared by the student volunteers, and the district refrained from any interaction with student speakers regarding the student speakers' viewpoints on permissible subjects."

ARTICLE IV

RELIGIOUS EXPRESSION IN CLASS ASSIGNMENTS

Students may express the students' beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of the students' submission. Homework and classroom work shall be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school. Students may not be penalized or rewarded on account of religious content. If a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards, including literary quality, and not penalized or rewarded on account of its religious content.

ARTICLE V

FREEDOM TO ORGANIZE RELIGIOUS GROUPS AND ACTIVITIES

Students may organize prayer groups, religious clubs, "see you at the pole" gatherings, and other religious gatherings before, during, and after school to the same extent that students are permitted to organize other noncurricular student activities and groups. Religious groups must be given the same access to school facilities for assembling as is given to other noncurricular groups, without discrimination based on the religious content of the group's expression. If student groups that meet for nonreligious activities are permitted to advertise or announce the groups' meetings, for example, by advertising in a student

newspaper, putting up posters, making announcements on a student activities bulletin board or public address system, or handing out leaflets, school authorities may not discriminate against groups that meet for prayer or other religious speech. School authorities may disclaim sponsorship of noncurricular groups and events, provided they administer the disclaimer in a manner that does not favor or disfavor groups that meet to engage in prayer or other religious speech.

SECTION 3. This Act applies beginning with the 2007-2008 school year.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 3678 was passed by the House on May 1, 2007, by the following vote: Yeas 121, Nays 10, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3678 on May 26, 2007, by the following vote: Yeas 108, Nays 28, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3678 was passed by the Senate, with amendments, on May 23, 2007, by the following vote: Yeas 27, Nays 3.

Secretary of the Senate

APPROVED: _____

Date

Governor

RESOLUTION OF THE BOARD OF TRUSTEES
_____ INDEPENDENT SCHOOL DISTRICT

Upon motion by _____, duly seconded by _____, it is
resolved by the Board of Trustees of _____ Independent School

District as follows:

WHEREAS the 80th Texas Legislature recently passed House Bill No. 3678, the Religious Viewpoints Antidiscrimination Act (RVAA), which requires the District to consider and adopt policies relating to the expression of religious viewpoints by students; and

WHEREAS the Board currently has in place policies which prohibit discrimination against constitutionally protected student speech, including speech communicating religious viewpoints; and

WHEREAS the Board finds that there is insufficient time to give proper and careful consideration to the development of additional board policies on this significant subject before the commencement of the 2007-2008 school year; and

WHEREAS the Board affirms as a general policy its intention to comply with RVAA consistent with state and federal constitutional requirements;

NOW, THEREFORE, BE IT RESOLVED:

1. That the Board intends to comply with RVAA consistent with state and federal constitutional requirements;
2. That a Board Policy Development Committee be appointed and charged to consult with the administration and district legal counsel to develop and recommend to the Board specific policies, or amendments to existing policies, for the implementation of RVAA.

MOVED, PASSED, and ENTERED this the ____ day of _August, 2007.

President, Board of Trustees
Independent School

District

ATTEST:

Secretary, Board of Trustees
Independent School District