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Board prayer allowed with settlement

*By Jonathan Starkey
Staff Reporter*

A settlement offered by the plaintiffs in the Dobrich/Doe prayer suit and denied unanimously by the Indian River School board on Feb. 27 would have allowed board members to continue opening monthly meetings with a prayer, a board member and two other sources close to the case told the Coastal Point.

The school board prayer issue is just one part of the extensive complaint filed by the two families in federal court, claiming that the district violated their First Amendment rights by creating a district-wide “environment of religious exclusion.” With the negotiated settlement, though, the district and its board would not have had to compromise on its school board prayer policy, according to the three sources.

School board member Dr. Donald Hattier confirmed that the settlement would have allowed the board to pray before meetings, but he said other settlement stipulations made it unacceptable.

“It was one of the bigger issues but not the whole thing,” Hattier said of the school board prayer policy. “If you were to read the entire settlement package, there would be things you wouldn’t sign off on either.”

Various sources close to the case, including Hattier, confirmed in April that one of the settlement stipulations would have forced the district move one of the plaintiff’s children to the front of the line for admittance into Southern Delaware School of the Arts. Another would have disallowed the district from using the words “Christmas” and “Easter” in outlining vacation dates.

The late-December vacation would have to be called “winter break,” for instance. What is now called “Easter break” would have, if the settlement was accepted, been called “spring break.” Those stipulations, among many others not yet disclosed (including ones dealing with “policy issues,” Hattier said), were the main reasons the board denied the offer, a move that prompted more legal problems for the southern Delaware district.

Indian River School District’s insurer, Utica National (Graphic Arts), filed suit under seal in April, suing the board reportedly for denying the settlement, which Utica-appointed attorneys John Balaguer and John Cafferky allegedly told board members to accept. Balaguer and Cafferky are no longer representing the district. That suit reportedly asks for legal fees accumulated after Feb. 27, the date on which the settlement was denied.

Jason Gosselin, an attorney with the Philadelphia law firm Drinkle, Biddle and Reath — and the district’s lead attorney on both matters — filed a response under seal on Tuesday to the insurance company’s suit.

Gosselin said that it is the insurance company’s “obligation” to pay for the district’s defense on the prayer suit but filed the response under seal because it contained “confidential settlement information.”

A federal judge in Wilmington ordered the Utica Insurance filing sealed because it contained such “confidential” information, prompting Gosselin to do the same.

“In order to be fair, we need to file response under seal,” Gosselin said.

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The district has not yet received a bill from Gosselin's firm — which also has two other attorneys working on the case — but it could be held responsible for all legal fees accumulated after Feb. 27, depending on the result of the insurance company's suit.

"We're hoping that won't happen (but) there's always a chance," Bireley said. "(Gosselin is) trying to explain our position. He was supposed to go talk to the insurance company to see if they would pay him instead of the other two attorneys."

Mona and Marco Dobrich, a Jewish family, and another unidentified family filed suit against the district in February of 2005, claiming that it had violated their First Amendment rights. School-sponsored prayer at academic and athletic events had "pervaded the life" of district teachers and students, the complaint says.

The complaint filed in federal court in Wilmington claims that a district teacher preached "one true religion" and that others offered preferential treatment to students in a school-sponsored Bible club. It also claims that some teachers handed out Bibles in district classrooms. The complaint further challenged the board's legal ability to pray at board meetings.

The families — who are being represented by the American Civil Liberties Union — didn't file the suit, however, until after Samantha Dobrich's 2004 graduation ceremony at Sussex Central High School. Local Pastor Jerry Fike delivered the invocation and offered two Christian prayers which specifically mentioned Jesus and, according to the complaint, offended the plaintiffs' graduating daughter.

"We pray that You direct them into the truth and eventually the truth that comes by knowing Jesus," Fike said in one of the day's prayers.

In October 2004, the school board adopted policy regarding school-sponsored prayer after district Superintendent Lois Hobbs heard complaints from Mona Dobrich but before the families filed suit. In those policies, the district decided not to select graduation speakers on a religious basis.

In August of 2005, U.S. District Court Judge Joseph Farnan released the board members as individual defendants. In his opinion, he wrote that opening legislative sessions with a prayer is steeped in the history of the nation, perhaps tipping a future decision. A jury trial is set for June 4, 2007, in a Wilmington federal court.

A case similarly dealing with school board prayer was decided against a Louisiana school board in federal district court last year. That decision held that the school board was a function of the public school system and not a legislative body.

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