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Accommodation of Muslim Students

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Introduction

In February 2007, Inquiry & Analysis (I&A) published an article titled, *The Next Wave of Religious Accommodation: Responding to Requests By Muslim Students*, which addressed accommodations for Muslim students attending public schools. The article identified and discussed a number of issues related to the practice of Islam in the public school setting. These issues include dietary requirements, clothing, curricular activities, Muslim holidays, daily prayers, fasting and gender relations. At the time that the article was written, there were approximately 6 million Muslims living in the United States, and very little case law on issues related to accommodating Muslim students who attend public schools.¹

In the nine years since the article was published, the Muslim population in the United States has grown at a rapid pace.² Pew Research estimates that the current U.S. Muslim population of 3.3 million is expected to double by 2050.³ Although in most school districts Muslim students are a minority, they have become a significant minority in some districts and those districts continue to try to find ways to accommodate the students while remaining in compliance with federal and state laws.

The purpose of this article is to provide an update to the 2007 article, using the current state of the law (which is still sparse), regarding the various accommodations that Muslim students might seek. The 2007 I&A article discussed nine topic areas related to accommodating Muslim students; however, this article will narrowly focus on dietary requirements, clothing, classroom activities, Muslim holidays and daily prayer as these are the issues most likely to result in requests for accommodation.

Dietary Requirements

The 2007 article talked about the dietary restrictions observed by most Muslims. Although the article primarily focused its discussion on providing dietary accommodation by clearly labeling food containing pork or pork by-products, Islamic dietary law, known as halal, encompasses more than just the prohibition of pork. Halal is an Arabic word meaning lawful or permitted.⁴ According to the Islamic Food and Nutrition Council of American:

All foods are considered halal except the following sources:

1. Swine/Pork and its by-products;
2. Animals NOT properly slaughtered according to Islamic methods;
3. Alcoholic drinks and intoxicants;
4. Carnivorous animals and birds of prey;
5. Blood and blood by-products;
6. Foods contaminated with any materials from the categories mentioned about.

Foods containing ingredients such as gelatin, enzymes, emulsifiers, and flavors are questionable (mashbooh), because the origin of these ingredients or components thereof, may be haram (something forbidden or proscribed by Islamic law).⁵

There are a number of cases where federal courts have held that the denial of a halal diet to incarcerated individuals does not violate the individual's First Amendment Establishment Clause or Fourteenth Amendment Equal Protection Clause rights.⁶ For example, in *Williams v. Morton*, a federal appellate court held that prison authorities had a "legitimate

penological interest” in providing inmates with “vegetarian meals, rather than Halal meals with meat.”⁷ In *Ahmad v. Department of Corrections*, where a prisoner asserted that his dietary choices were not consistent with his Islamic faith, the Supreme Judicial Court of Massachusetts also stated: “In consulting decisions of courts that had considered this issue before 2002, a prison official would learn that an overwhelming majority of them had determined that prison officials permissibly discharged their duty to respect the dietary beliefs of Muslim inmates by offering a pork-free diet, and more broadly, that the law permitted prison officials to limit the dietary options available to inmates in the interests of reducing the costs and burdens entailed in accommodating the diverse food-related religious beliefs likely to be found in a prison population.”⁸

The prison environment and school environment are similar in the sense that they both have diverse populations with vastly different religious dietary restrictions. As pointed out in *DePaola v. Virginia Department of Corrections*, there are a number of sects within the Muslim religion.⁹ Therefore, an article in *Cardozo Law Review* titled *God is not the Lunch-Lady: Accommodation of Religious Dietary Practices in Public Schools* suggests that a rational basis analysis, similar to the one used in prison settings, would also seem applicable in a school setting.¹⁰ If this is the analysis that a court would use in determining the outcome of such a case, providing meals that are clearly labeled to indicate that they contain pork or pork by-products, with a vegetarian option, would most likely satisfy the school’s constitutional duty to provide religious accommodation.¹¹

However, there is also the matter of negative accommodation for religious dietary practices of students. A negative accommodation is one that allows for a student to be exempt from a neutral regulation, such as participating in lunch period, standing in lunch lines, or remaining on campus during the lunch period. In addressing this issue, the *Cardozo Law Review* article recommends,

based on the conclusion that “schools are hard-pressed to provide a justification for refusing a negative accommodation to survive a constitutional challenge under even a rational basis standard,” that “[s]chools should thus provide negative accommodations as any justification is likely to fail and could subject the school to needless, costly, and losing litigation.”¹²

Clothing

There is a line of cases that address school policies that prohibit students or employees from wearing hijabs or punishes them for engaging in certain grooming practices. The 2007 *Inquiry & Analysis* article discussed the settlement of a lawsuit against Muskogee Public School District by a female Muslim student who was prohibited from wearing a headscarf, or hijab at school.¹³ The consent agreement signed by the parties provided that the school district would allow the student to wear the hijab and would revise its student dress code policy to accommodate exceptions for bona fide religious reasons.¹⁴ In September 2014, The School District of Philadelphia settled a lawsuit with school police officer Siddiq Abu-Bakr.¹⁵ Abu-Bakr, who is Muslim, alleged that the school district was discriminating against him on the basis of religion because of its rule requiring school district employees to keep their beards at a certain length.

Finally, a 2015 Rhode Island Bar Journal article, titled *Headscarves, Skullcaps, and Crosses: Does Banning Religious Symbols in Public Schools Deny Human Rights?*, suggests that “[w]hile the school discipline line of cases would tend to justify a headscarf ban, the obvious disparate effect on non-preferred minorities, Muslims and Jews, may militate a different outcome.”¹⁶ That suggestion, along with the settlements in the Muskogee and Philadelphia cases, indicates that schools would be wise to provide accommodation for prescribed religious attire, whether it be a headscarf, hijab, burqa, or skullcap.

Classroom Activities

From time to time, students will request

accommodation with regard to classroom activities. Classroom activities include student assignments, such as reports and presentations, and teacher instruction. As *West Virginia Bd. of Educ. v. Barnette* clearly indicates, school officials cannot force students to profess allegiance to a particular belief, including a religious belief.¹⁷ There is also case law that recognizes the fact that students have a right to express religious beliefs in assignments.¹⁸

However, the type of accommodation a Muslim student and his/her parents will often seek is a “negative accommodation,” i.e., exemption from a school rule, assignment, activity or instruction that runs afoul of Muslim practices or beliefs. In *Parker v. Hurley*, a federal appellate court three-judge panel held that that curriculum materials intended to encourage respect for gay persons and couples did not violate free exercise or parental due process rights, and did not impose a constitutionally significant burden on their children's free exercise rights.¹⁹

As the 2007 Inquiry & Analysis article aptly pointed out:

If school districts wish to accommodate Muslim students, or believe they are legally required to do so, they do not necessarily have to excuse the student from a course or a portion of a course.districts may offer an elective course or alternative instruction that is sensitive to the concerns of Muslim students.²⁰

Parents will sometimes assert a right to tell schools what they can teach. A U.S. Court of Appeals for the Second Circuit decision stressed that parents do not possess a fundamental right “to tell a public school what his or her child will and will not be taught.”²¹ The Second Circuit also quoted from *Brown v. Hot, Sexy and Safer Productions, Inc.*, [68 F.3d 525, 539 \(1st Cir.1995\)](#), cert. denied, [516 U.S. 1159](#) (1996), which stated: “If all parents had a fundamental constitutional right to dictate individually what

the schools teach their children, the schools would be forced to cater a curriculum for each student whose parents had genuine moral disagreements with the school's choice of subject matter. We cannot see that the Constitution imposes such a burden on state educational systems”²² As a result, the Second Circuit found that the school district had provided reasonable accommodation based on religious beliefs by exempting the student from that portion of the student health curriculum that focused on family-life instruction and AIDS education.

The Council on American-Islamic Relations published *An Educator's Guide to Islamic Religious Practices*,²³ which recommends that Muslim students be provided with private showers or that physical education (P.E.) classes be scheduled in a late period, allowing the student to shower at home.²⁴ The guide also suggests that school administrators discuss with Muslim students alternatives to the regulation P.E. uniforms, such as knee-length shorts for boys and full track suits for girls.²⁵ In addition, it asks that Muslim students not be forced to participate in coed swimming classes and that schools allow for Muslim students to take private instruction outside the school environment.²⁶

While the suggestions regarding P.E. attire and swimming instruction can be accomplished with little or no cost to schools, providing an accommodation that would require schools to renovate their locker room facilities to put in private showers is the kind of accommodation that courts might not require because the expense of putting in such showers could constitute an undue hardship to the school or district.

Muslim Holy Days

Many school districts are being asked by the members of their communities to accommodate Muslim students' observance of certain holy days. For example, after many discussions with the members of its community, a local school board in Maryland has decided to honor its students' request for an accommodation that would allow

them to observe Eid al-Adha.²⁷ In March 2015, New York City Mayor Bill de Blasio announced that the city's public schools would be closed in observance of the Muslim holy days of Eid al-Fitr and Eid al-Adha.²⁸ New York City became the first major metropolitan school system in the nation to observe the Muslim holy days.²⁹ In addition, municipalities in Massachusetts, Michigan and New Jersey, have added the Muslim holy days to their school calendars.³⁰

Some states also statutorily allow students excused absences for the observance of religious holy days.³¹ These statutes typically allow for a reasonable number of excused absences for observing religious holy days. In 2014, the New Jersey State Board of Education adopted a resolution providing a list of the religious holy days falling under the state's statutory excused absence provision.³²

Given the choice of closing schools for religious holy days or providing students with a reasonable number of excused absences to observe religious holy days, Charles C. Haynes, director of the Religious Freedom Center of the Newseum Institute, recommends that schools adopt policies providing for excused absences.³³ He also suggests that the "policy should also ensure, to the extent possible, that significant school events aren't scheduled on major religious holy days."³⁴

Haynes contends that once a school district decides to close for one religion's holy days, it creates a "slippery slope" of every religious sect expecting the same treatment.³⁵ Policies providing excused absences avoid the "slippery slope," while allowing students to observe those days sacred to their religion.

Daily Prayer

Muslims are expected to pray five times a day.³⁶ Two of those prescribed prayer times are likely to occur during school hours.³⁷ On Fridays Muslims also gather for a midday congregational prayer, called Jum'ah, at the mosque.³⁸ Accommodating Muslim students' religiously mandated prayer, thus, involves not only prayer during school

hours on campus, but also prayer on Fridays in an off-campus setting. It is clearly established law that students may voluntarily pray at school before, during or after school hours.³⁹ Some school districts have adopted policies recognizing Muslim students' right to prayer and providing them with space to do so.⁴⁰

According to the U.S. Department of Education's 2003 guidance on prayer in public schools, under U.S. Supreme Court precedent schools have discretion to dismiss students for off-campus religious instruction, which would include Friday midday prayer at the mosque.⁴¹ The guidance points out that schools may not encourage or discourage participation in such instruction or penalize students for attending or not attending.⁴² It also warns that if a school has a policy or practice of releasing students from school to accommodate non-religious activities, then release for religious activities must be accommodated on the same basis.⁴³

However, providing prayer rooms in school raises First Amendment Establishment Clause concerns. The First Amendment Center warns that there are limits to accommodations.⁴⁴ It asserts that allowing Muslim students to use an empty classroom every Friday for congregational prayer and by releasing students from classes to attend a prayer service in the school building, schools are implicating the Establishment Clause because school "administrators may not organize, sponsor, or otherwise entangle themselves in religious activities during the school day."⁴⁵

The bottom line on accommodating Muslim student prayer is that schools may provide space, but should not dedicate a classroom as a mosque. Schools may adopt a policy or practice that does not allow for release time for students for any activity regardless of whether the activity is secular or religious. However, if the policy or practice provides for student release time for secular activities, it must also do so to allow students to participate in religious activities.

Conclusion

Muslim students, like their non-Muslim school mates, are first and foremost attending the nation's public schools in order to obtain an education. Like other students they bring their religious beliefs and practices to the schoolhouse door. In large part, the level of accommodation that school districts afford Muslim students must be tempered by the First Amendment's Free Exercise of Religion and Establishment clauses.

For example, while a strict halal diet is not required to accommodate Muslim students, they must be given fair warning of food products that violate their dietary laws and provided with a reasonable alternative, such as a vegetarian

selection. Although Muslim parents, like all parents regardless of religious affiliation, do not possess a constitutional right to dictate curriculum to schools, they do have the right to expect reasonable accommodation by way of their children being exempted from those parts of a course that are counter to their religious beliefs or to be offered alternative instruction.

Finally, accommodation of one student's religious belief and practices should never infringe on the religious beliefs and practices held by a student belonging to a different religious sect. Schools must respect, but never favor or endorse, one religion over another.

¹ Lisa Soronen, *The Next Wave of Religious Accommodation: Responding to Requests By Muslim Students*, Inquiry & Analysis (Feb. 2007), <https://cdn-files.nsba.org/s3fs-public/reports/Inquiry&AnalysisFebruary2007.pdf?O6i86cEfp8xZ54a8TGejWbKipVpykY7k>.

² Houssain Kettani, *Muslim Population in the Americas: 1950 – 2020*, International Journal of Environmental Science and Development, Vol. 1, No. 2, 127, 129 Table 3 (June 2010), <http://www.ijesd.org/papers/26-D435.pdf>.

³ Besheer Mohamed, *A new estimate of the U.S. Muslim population*, Pew Research Center (Jan. 6, 2016), <http://www.pewresearch.org/fact-tank/2016/01/06/a-new-estimate-of-the-u-s-muslim-population/>.

⁴ *What is Halal*, Islamic Food and Nutrition Council of American, <http://www.ifanca.org/Pages/staticwebpages.aspx?page=whatisHalal>.

⁵ *Id.*

⁶ E.g., *Allah v. Jordan-Luster*, No. 04-1083, 2007 WL 2582199 (C.D.Ill. Aug. 3, 2007); *DePaola v. Virginia Department of Corrections*, No. 7:12CV00592, 2015 WL 3767255 (W.D.Va. Jun. 17, 2015).

⁷ *Williams v. Morton*, 343 F.3d 212, 218 (3d Cir. 2003).

⁸ *Ahmad v. Department of Corrections*, 845 N.E.2d 289, 295 (Mass. 2006).

⁹ *DePaola v. Virginia Department of Corrections*, No. 7:12CV00592, 2015 WL 3767255, *3 (W.D.Va. Jun. 17, 2015).

¹⁰ Jesse Ryan Loffler, *God Is Not the Lunch-Lady: Accommodation of Religious Dietary Practices in Public Schools*, 2010 Cardozo L. Rev. 430, 441-42 (2010).

¹¹ *Id.* at 442-43. ("The refusal to grant a positive accommodation would not coerce a religious adherent from departing from his religion in order to gather a benefit-there is no benefit offered to the non-adherent which the adherent is losing.")

¹² *Id.* at 444-45.

¹³ Lisa Soronen, *The Next Wave of Religious Accommodation: Responding to Requests By Muslim Students*, Inquiry & Analysis (Feb. 2007), <https://cdn-files.nsba.org/s3fs-public/reports/Inquiry&AnalysisFebruary2007.pdf?O6i86cEfp8xZ54a8TGejWbKipVpykY7k>.

¹⁴ *Justice Department Reaches Settlement Agreement with Oklahoma School District in Muslim Student Headscarf Case*, U.S. Department of Justice, 2004 WL 1117202 (May 19, 2004).

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- ¹⁵ David Chang, *Philly School District, Department of Justice Reach Settlement in Beard-Length Lawsuit*, NBC10.com (Sept. 9, 2014), <http://www.nbcphiladelphia.com/news/local/Philly-School-District-Department-of-Justice-Reach-Settlement-in-Beard-Length-Lawsuit-274411951.html>.
- ¹⁶ Elliot Taubman, Esq., *Headscarves, Skullcaps, and Crosses: Does Banning Religious Symbols in Public Schools Deny Human Rights?*, 53-JUN R.I. B.J. 9, 29 (May/Jun. 2005).
- ¹⁷ *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943).
- ¹⁸ Cullen B. Casey, *Accommodation of Student Religious Expression and Practices*, National School Boards Association (2008), https://cdn-files.nsba.org/s3fs-public/reports/Accommodation.pdf?OGC_A1KDkncTh_nozUu3smo8JBCxYIFM.
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- ²⁰ Lisa Soronen, *The Next Wave of Religious Accommodation: Responding to Requests By Muslim Students*, Inquiry & Analysis (Feb. 2007), <https://cdn-files.nsba.org/s3fs-public/reports/Inquiry&AnalysisFebruary2007.pdf?O6i86cEfp8xZ54a8TGejWbKipVpykY7k>.
- ²¹ *Leebaert v. Harrington*, 332 F.3d 134, 141 (2d Cir. 2003).
- ²² *Id.*
- ²³ *An Educator's Guide to Islamic Religious Practices*, Council on American-Islamic Relations (1997), https://www.cair.com/images/pdf/educators_guide.pdf.
- ²⁴ *Id.* at *7.
- ²⁵ *Id.*
- ²⁶ *Id.* at *7-8.
- ²⁷ Donna St. George, *In push for Muslim school holiday, some Montgomery students will stay home*, The Washington Post (Oct. 13, 2013), https://www.washingtonpost.com/local/education/in-push-for-muslim-school-holiday-some-montgomery-students-will-stay-home/2013/10/13/b26b8f6e-2d22-11e3-8ade-a1f23cda135e_story.html.
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- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ 105 Ill. Comp. Stat. 5/26-1(5) (2016); 22 Pa. Code Stat. § 11.21 (2016); Tex. Educ. Code § 25.087(b) (2016).
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- ³⁷ *Id.*
- ³⁸ *Id.* at 13.
- ³⁹ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000).
- ⁴⁰ Jerry Shaw, *5 Public Schools That Have Installed Muslim Prayer Rooms*, NewsMax (Mar. 25, 2015), <http://www.newsmax.com/FastFeatures/Muslim-Prayer-in-Schools-Religion-Students/2015/03/25/id/634403/>.
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⁴¹ *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary School*, U.S. Department of Education (2003), available at

http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Accommodating Muslims in public school: where to draw the line?, First Amendment Center (May 9, 2004), <http://www.firstamendmentcenter.org/accommodating-muslims-in-public-school-where-to-draw-the-line>.

⁴⁵ *Id.*