

**THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TAMMY KITZMILLER, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 DOVER AREA SCHOOL DISTRICT and )  
 DOVER AREA SCHOOL DISTRICT )  
 BOARD OF DIRECTORS, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No. 04-CV-2688  
(Hon. Judge Jones)

**DEFENDANTS'  
STATEMENT OF  
MATERIAL FACTS  
PURSUANT TO LR 56.1**

Defendants Dover Area School District (“DASD”) and Dover Area School District Board of Directors, through counsel, hereby submit the following statement of material facts pursuant to LR 56.1.

1. The DASD Board of Directors is the governing body of DASD and is responsible for designing and implementing school curricula. (Compl. at ¶¶ 11, 26; Answer at ¶¶ 11, 26).

2. DASD is a standards-driven district and is responsible for complying with the Pennsylvania Academic Standards issued by the Pennsylvania Department of Education. (Baksa Decl. at ¶ 4 at Ex. 1).

3. In compliance with the Pennsylvania Academic Standards for Science and Technology, the students at DASD learn about the theory of evolution and take a standardized test in which evolution is a part. (Baksa Decl. at ¶¶ 4, 5, Ex. A at Ex. 1).

4. The Pennsylvania Academic Standards for Science and Technology require students to “Evaluate the nature of scientific and technological knowledge” and to “Critically evaluate the status of existing theories,” including the “theory of evolution.” (Baksa Decl. at ¶ 4, Ex. A at 10 at Ex. 1).

5. The textbook chosen by the DASD Board of Directors for use in the DASD ninth-grade biology class is the Prentice Hall book *Biology* by Dr. Kenneth R. Miller and Dr. Joseph Levine (hereinafter “*Biology*”). (Baksa Decl. at ¶ 10 at Ex. 1; *see also* Miller Dep. at 21-22 at Ex. 2).

6. Plaintiffs’ expert and co-author of *Biology*, Dr. Kenneth Miller, considers DASD’s selection of *Biology* as its primary textbook to be a “ringing endorsement of [his] book.” (Miller Dep. at 21-22 at Ex. 2).

7. According to Plaintiffs' expert and co-author of *Biology*, Dr. Kenneth Miller, evolution "is covered very thoroughly in" *Biology*. (Miller Dep. at 15 at Ex. 2; see also Baksa Decl. at ¶ 11, Ex. C at Ex. 1).

8. In a section entitled "Strengths and Weaknesses of Evolutionary Theory," the authors of *Biology* write,

Like any scientific theory, evolutionary theory continues to change as new data are gathered and new ways of thinking arise. As you will see shortly, researchers still debate such important questions as precisely how new species arise and why species become extinct. There is also uncertainty about how life began.

(Baksa Decl. at ¶ 11, Ex. C at 386 at Ex. 1).

9. *Biology* contains several sections that address some of the weaknesses of the Darwinian theory of evolution. (Miller Dep. at 288-297 at Ex. 2).

10. The origin of life is still an unsolved scientific problem. (Miller Dep. at 243 at Ex. 2).

11. According to the authors of *Biology*:

A useful theory may become the dominant view among the majority of scientists, but no theory is considered absolute truth. Scientists analyze, review, and critique the strengths and weaknesses of theories. As new evidence is uncovered, a theory may be revised or replaced by a more useful explanation. Sometimes, scientists resist a way of looking at nature, but over time new evidence determines which ideas survive and which are replaced. Thus, science is characterized by both continuity and change.

(Baksa Decl. at ¶ 12, Ex. D at Ex. 1).

12. Because the Darwinian theory of evolution is a theory, it continues to be tested as new evidence is discovered. (Miller Dep. at 319-320 at Ex. 2).

13. The Darwinian theory of evolution, like all scientific theories, is not a fact. (Miller Dep. at 319-320 at Ex. 2; *see also* ¶ 11 above).

14. A minority of working scientists, including Dr. Michael J. Behe, professor of biological sciences at Lehigh University in Bethlehem, Pennsylvania, and Dr. Scott Minnich, a microbiology professor at Iowa State University in Ames, Iowa, advocate for intelligent design as a scientific theory. (Behe Decl. at Exs. A, B, C at Ex. 3; Minnich Decl. at Ex. A at Ex. 4; *see also* Miller Dep. at 133-134 at Ex. 2).

15. *Of Pandas and People* is a book on intelligent design. (Baksa Decl. at ¶¶ 3, 8, 9 at Ex. 1; Miller Dep. at 329-330 at Ex. 2; Grindlay Decl. at ¶ 2, Ex. A at Ex. 5).

16. *Of Pandas and People* was made available for students in DASD who might be interested in gaining an understanding of what intelligent design involves by placing this book in the Dover High School library. (Baksa Decl. at ¶¶ 3, 8, 9 at Ex. 1).

17. The Dover High School library contains many reference books related to evolution. (Baksa Decl. at ¶¶ 3, 9 at Ex. 1).

18. The Santorum Amendment to the No Child Left Behind Act of 2001 was included in the Final Conference Report and states, in part, the following:

Where topics are taught that may generate controversy (such as biological evolution), the curriculum should help students to understand the full range of scientific views that exist, why such topics may generate controversy and how scientific discoveries can profoundly affect society.

(Zanotti Decl. at ¶ 2, Ex. A at Ex. 6).

19. Upon passage of the No Child Left Behind Act, Senator Santorum made the following statement, which is contained in the Congressional Record:

Mr. President, I am very gratified that the House and Senate conferees included in the conference report of the elementary and secondary education bill the language of a resolution I introduced during the earlier Senate debate. That resolution concerned the teaching of controversies in science. It was adopted 91-8 by the Senate. By passing it we were showing our desire that students studying controversial issues in science, such as biological evolution, should be allowed to learn about competing scientific interpretations of evidence. As a result of our vote today that position is about to become a position of the Congress as a whole. . . .

As the education bill report language makes clear, it is not proper in the science classrooms of our public schools to teach either religion or philosophy. But also, it says, just because some think that contending scientific theories may have implications for religion or philosophy, that is no reason to ignore or trivialize the scientific issues embodied in those theories. After all, there are enormous religious and philosophical questions implied by much of what science does, especially these days. Thus, it is entirely appropriate that the scientific evidence behind them is examined in science classrooms. Efforts to shut down scientific debates, as such, only serve to thwart the true purposes of education, science and law. There is a question here of academic freedom, freedom to learn, as well as to teach. The debate over origins is an excellent example. Just as has happened in

other subjects in the history of science, a number of scholars are now raising scientific challenges to the usual Darwinian account of the origins of life. Some scholars have proposed such alternative theories as intelligent design.

The public supports the position we are taking today. For instance, national opinion surveys show—to use the origins issue again—that Americans overwhelmingly desire to have students learn the scientific arguments against, as well as for, Darwin's theory. A recent Zogby International poll shows the preference on this as 71 percent to 15 percent, with 14 percent undecided. The goal is academic excellence, not dogmatism. It is most timely, and gratifying, that Congress is acknowledging and supporting this objective.

(Zanotti Decl. at ¶ 3, Ex. B at Ex. 6).

20. On October 18, 2004, the DASD Board of Directors by a 6-3 vote updated the ninth-grade biology curriculum to include the following preliminary statement:

Students will be made aware of gaps/problems in Darwin's Theory and of other theories of evolution including, but not limited to, Intelligent Design. The Origins of Life is not taught.

(Baksa Decl. at ¶ 6 at Ex. 1).

21. In coordination with the science department teachers, the school district solicitor, and the DASD Board of Directors, Mr. Michael Baksa, the Assistant Superintendent in charge of curriculum, developed the following procedural statement that will be read to the students as the new biology curriculum is implemented:

The Pennsylvania Academic Standards require students to learn about Darwin's Theory of Evolution and eventually to take a standardized test of which evolution is a part.

Because Darwin's Theory is a theory, it continues to be tested as new evidence is discovered. The Theory is not a fact. Gaps in the Theory exist for which there is no evidence. A theory is defined as a well-tested explanation that unifies a broad range of observations.

Intelligent design is an explanation of the origin of life that differs from Darwin's view. The reference book, *Of Pandas and People*, is available for students who might be interested in gaining an understanding of what Intelligent Design actually involves.

With respect to any theory, students are encouraged to keep an open mind. The school leaves the discussion of the Origins of Life to individual students and their families. As a Standards-driven district, class instruction focuses upon preparing students to achieve proficiency on Standards-based assessments.

(Baksa Decl. at ¶¶ 8, 14, Ex. E at Ex. 1).

22. This procedural statement was slightly modified in June 2005 to read as follows:

The Pennsylvania Academic Standards require students to learn about Darwin's Theory of Evolution and eventually to take a standardized test of which evolution is a part.

Because Darwin's Theory is a theory, it continues to be tested as new evidence is discovered. The Theory is not a fact. Gaps in the Theory exist for which there is no evidence. A theory is defined as a well-tested explanation that unifies a broad range of observations.

Intelligent Design is an explanation of the origin of life that differs from Darwin's view. The reference book, *Of Pandas and People*, is available in the library along with other resources for students who might be interested in gaining an understanding of what Intelligent Design actually involves.

With respect to any theory, students are encouraged to keep an open mind. The school leaves the discussion of the Origins of Life to individual students and their families. As a Standards-driven district, class instruction focuses upon preparing students to achieve proficiency on Standards-based assessment.

This revision reflects the fact that there are other resources regarding the topic of evolution in addition to *Of Pandas and People* available to the students in the Dover High School library. (Baksa Decl. at ¶ 9 at Ex. 1).

23. The preliminary statement and the procedural statement were developed to provide a balanced view and not to teach or present religious beliefs. (Baksa Decl. at ¶¶ 13, 14, Ex. E at Ex. 1).

24. Pursuant to his responsibility for implementing the revised ninth-grade biology curriculum, the Superintendent for DASD, Dr. Richard Nilsen, has directed that no teacher will teach Intelligent Design, Creationism, or present his or her, or any DASD Board member's religious beliefs. (Baksa Decl. at ¶¶ 14, 15, Ex. E at Ex. 1).

25. Teaching Intelligent Design is not part of the ninth-grade biology curriculum and students will not be tested on this subject. (Baksa Decl. at ¶ 15 at Ex. 1).

26. In addition to maintaining its standards-based curriculum focused on teaching and testing students on the theory of evolution, the minor change to DASD's ninth-grade biology curriculum has the purpose of informing students

about the existing scientific controversy surrounding the theory of evolution, including the fact that alternative explanations, such as intelligent design, are being advanced by scientists. (Nilsen Dep. at 22 at Ex. 7; *see also* Carpenter Decl. at Ex. A at Ex. 8).

27. DASD's ninth-grade biology curriculum advances at least six secular pedagogical goals, including: (1) raising students awareness about multiple ways of knowing; (2) promoting critical thinking; (3) encouraging students to assume more responsibility in their learning and to play an active part in constructing their own knowledge; (4) promoting a fuller understanding of the theory of evolution, including its limitations; (5) aligning its curriculum with the Pennsylvania Academic Standards, which require students to "Critically evaluate the status of existing theories," including the "theory of evolution"; and (6) helping students understand the views inherent in controversial issues, such as biological evolution, which is consistent with the Santorum Amendment. (Carpenter Decl. at Ex. A at Ex. 8; *see also* Baksa Decl. at ¶ 14, Ex. E at Ex. 1).

28. A copy of the ninth-grade biology curriculum is attached to the declaration of Michael Baksa as Exhibit B. (Baksa Decl. at ¶ 7, Ex. B at Ex. 1).

29. The challenged curriculum is for the ninth-grade biology class; no other students or classes will be presented with it. This curriculum was implemented for the first time on January 18, 2005. (Baksa Decl. at ¶ 2 at Ex. 1).

30. On November 19, 2004, DASD issued an official statement concerning the district's biology curriculum. This statement was reposted on December 14, 2004. A true and accurate copy of this statement is attached to the declaration of Michael Baksa as Exhibit E. (Baksa Decl. at ¶ 14, Ex. E at Ex. 1).

Respectfully submitted this 13<sup>th</sup> day of July, 2005.

By:



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