

BEFORE THE MARTIN COUNTY SCHOOL BOARD

FILE No.: 2017-2018:0001

PETITIONERS (INSTRUCTIONAL MATERIALS PUBLIC OBJECTIONS):
SYDNEY GALLOGLY (BIOLOGY-MILLER AND LEVINE & ELEVATE
SCIENCE-MILLER, PADILLA, WYSESSION); NATHAN JOINER (BIOLOGY-
MILLER AND LEVINE); JOAN BALDWIN HOFFPAUIR (ELEVATE SCIENCE-
MILLER, PADILLA,WYSESSION); BRENT HOFFPAUIR (BIOLOHU-MILLER
AND LEVINE); AND AL ROBINSON (BIOLOGY-MILLER AND LEVINE &
ELEVATE SCIENCE-MILLER, PADILLA, WYSESSION),

and

RESPONDENT: MARTIN COUNTY SCHOOL BOARD, by DR. TRACY
MILLER and VALERIE GAYNOR

I

INTRODUCTION & PROCEDURE

1. This proceeding was initiated by the filing of *Instructional Materials Public Objections* by the petitioners above stated.
2. The objections were directed to:
 - a. *Biology* by Miller and Levine, a high school biology textbook;
 - b. *Elevate Science* by Miller, Padilla, Wyssession, a 7th grade science textbook.
3. a. Gallogly objects to each textbook because they only address Darwin's *Theory of Evolution* and do not present countervailing positions.

- b. Joiner objects to *Biology* because it presents Darwin's *Theory of Evolution* in factual manner.
- c. Joan Hoffpauir objects to *Elevate Science* because it does not address other theories of life in addition to Darwin's *Theory of Evolution*.
- d. Brent Hoffpauir objects to *Biology* because it does not present an objective case for and against evolution.
- e. Robinson objects to *Biology* because it presents Darwin's *Theory of Evolution* as fact to the exclusion of other explanations regarding the origin of life.
- f. Robinson objects to *Elevate Science* because it presents Darwin's *Theory of Evolution* as fact to the exclusion of other explanations regarding the origin of life.

4. In summary, the petitioners object that each textbook limits the discussion of the origin of life to *Darwin's Theory of Evolution* to the exclusion of other theories and a discussion of authorities that question the "gaps" in the *Theory of Evolution*.

5. Sydney Gallogly was not present for the hearing and did not submit a written statement for consideration.

6. Joan Hoffpauir and Brent Hoffpauir were not present for the hearing, but they did submit a written statement that was received for the record.

7. Dr. Tracy Miller, Chief Academic Officer, and Valerie Gaynor, Coordinator of Science presented on behalf of the Respondent.

II

DISCUSSION OF PRESENTATIONS

8. Joiner presented excerpts from various authorities regarding inaccuracies in Darwin's *Theory of Evolution*. He expressed an opinion that the focus of *Biology* on Darwin's *Theory of Evolution* was one-sided and failed to offer students other explanations concerning the origin of life or at least a discussion of authorities that question Darwin's *Theory of Evolution* as the sole explanation of the origin of life. (Transcript pg. 24, line 1 – pg. 29, line 15)

9. Robinson presented excerpts from various authorities and questioned the scientific accuracy of both *Biology* and *Elevate Science*. He characterized the textbooks as being one-sided and not presenting any clue that there is controversy

concerning Darwin's *Theory of Evolution*. For example, he cited Gerd Muller, of the University of Vienna's Department of Theoretical Biology and a member of Konrad Lorentz Institute for Evolution and Cognition Research, that modern Darwinian theory has failed to explain the origin of new anatomical structures. (Transcript pg. 22, lines 8 – 21)(Transcript pg. 17, line 18 – pg. 18, line 20)

10. In essence the petitioners take issue with the fact that both textbooks present Darwin's *Theory of Evolution* as the sole explanation of the origin of life or at least fail to present questions regarding the validity of Darwin's *Theory of Evolution* as the sole explanation of the origin of life. (Objection forms filed by Petitioners)

11. Robinson concludes that the text books present only one side of a controversial scientific subject and cited inaccuracies. Robinson advocates the development or purchase of supplementary materials that offer parallel explanations

[of the origin of life]. (Transcript pg. 16, lines 9 – 17) (Transcript pg. 35, lines 1 – 4)

(Transcript pg. 35, lines 13 – 25)

12. Joiner presented examples of various inaccuracies in the books and agrees with Robinson’s objections. (Transcript pg. 34, lines 15 -19) (Transcript pg. 55, lines 18 – 21)

13. The Respondent’s representatives, Dr. Tracy Miller, Chief Academic Officer, and Valerie Gaynor, Coordinator of Science, submitted a binder with 8 sections/tabs. Tab 1 consists of the instructional materials objections involved in this proceeding. Tab 2 consists of the instructional materials adoption time line. Tab 3 consists of the Science Progressive Pathways for middle and high school. Tab 4. Consists of the course description for grades 6-8 (“M/Comprehensive Science 2, Course # 2002070” and Biology 1. Tab 5 consists of the Martin County School Board Instructional Material Policy. Tab 6 consists of excerpts from Florida Statutes, K-20

Education Code, Excerpts Pertaining to Instructional Materials and 2017-2018 Florida Instructional Materials Short Bid List. Tab 7 consists of relevant State of Florida Science Standards and Publisher Responses Related to this proceeding. Tab 8 consists at 8.A of Science Standards for Grade 7 Science and Biology, regarding the theory of evolution; at Tab 8.B of Benchmark SC.7.N.3.1, regarding the theory of evolution; at Tab 8.C of Benchmark SC.7.L.15.2, regarding the theory of evolution; and at Tab 8.D of Benchmark SC.912..15.1, regarding evolution.

14. Miller testified that the Martin County School Board was obligated to teach the course standards that are established by the Florida Department of Education (DOE) and found at Tab 4. (Transcript pg. 37, lines 2-11)

15. The textbooks utilized must align to the standards promulgated by the DOE. (Transcript pg.37, lines 12-18)

16. Although the School Board's adoption of the subject textbooks complied with its policy, its action was redundant as the two textbooks, *Elevate Science* and *Biology* are state adopted textbooks and comply with Fla. Stat. §§ 1006.40 and 1006.31. (Transcript pg. 37, line 24 – pg. 38, line 9)

17. Gaynor, stated that the science standards, [promulgated by DOE], establish the expectation for what students must know and define what teachers must teach. (Transcript pg.39, line 15 – pg. 40, line 16)

18. The purpose of the District's instructional material is to provide teachers with resources necessary to teach and students to learn the material defined by the DOE standards.

19. *Elevate Science* and *Biology* have been reviewed approved both by the Florida Department of Education and the Martin County School Board and comply with state law regarding adoption to textbooks. (Transcript pg.42, lines 2 – 25)

20. The state’s science standards do not provide for the teaching of theories [regarding the origin of life] other than Darwin’s *Theory of Evolution*.

21. It is Robinson’s objection that the textbooks in question and the state standards do not permit any variance from the Darwin’s *Theory of Evolution*, (Transcript 53, lines 8 – 11).

22. Joiner concurs with Robinson’s objection. (Transcript pg. 55, lines 19 – 21)

III

CONCLUSIONS OF LAW

23. Guidance regarding the matter in question is provided by the United States Supreme Court in *Epperson v. Arkansas*, 393 U.S. 97, 89 (1968), in which the court struck down Arkansas’s prohibition against the teaching of evolution and *Edwards v. Aquillard*, 482 U.S. 578 (1987), which holds that the teaching of creation science violates the “*Establishment Clause*” of the First Amendment to the U.S.

Constitution as discussed and explained by the court in *Kitzmiller v. Dover Area School District*, 400 F. Supp. 2d 707 (M.D. Penn. 2005).

24. *Kitzmiller* involved issues much like the issues presented by this matter, although the roles were reversed. Suit was filed by plaintiffs challenging the decision of the District School Board permitting instruction of the doctrine of *Intelligent Design* in addition to the state mandate that required that students learn about Darwin's *Theory of Evolution* and ultimately take a standardized test of which evolution is a part.

25. The Dover District School Board resolution is as follows:

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. Note: Origin of life is not taught.

26. The resolution of the District School Board, with one exception, mirrors the substance of the presentations of Joiner and Robinson. The exception is that they did not identify their cumulative objections as creationism, creation science, or intelligent design.

27. As pointed out in *Kitzmiller*, at page 711, the utilization of scientific sounding language as advocating the teaching of alternative theories of the origin of human life to Darwin's *Theory of Evolution* offends the "*Establishment Clause*" of

the First Amendment to the U.S. Constitution because the alternatives are religious in nature, *e.g. intelligent design or creation science*.

28. The *Kitzmiller* court, at page 765, concluded that although Darwin's Theory of Evolution is imperfect the fact that a scientific theory cannot yet render an explanation on every point does not support an alternate theory that is expressed in scientific sounding language as advocated by Robinson and Joiner and that the courts recognize as being contrary to the "Establishment Clause" of the First Amendment to the U.S. Constitution.

29. In addition, the rule of administrative deference is applicable to this proceeding. The rule provides that an agency's interpretation of a statute that it is charged with enforcing is entitled to great deference and will be approved... unless it is clearly erroneous. *Bellsouth Telecommunications, Inc. v. Johnson*, 708 S0.2d 594, 596 (1998)

30. By reason of administrative deference, the Martin County School Board is obligated to adhere to the science standards established by the Florida Department of Education regardless of the text book(s) that it might adopt. In the instant matter it is noted that the School Board adopted two textbooks, *Elevate Science* by Miller, Padilla, Wyssession and *Biology* by Miller and Levine from the list of Florida Department of Education adopted science textbooks. Pursuant to the rule of deference, the School Board must presume that these textbooks comply with the

science standards for seventh grade science and high school biology promulgated by the Florida Department of Education/State Board of Education.

IV RECOMMENDATION

Based on the foregoing Discussion of Presentations and Conclusions of Law, it is RECOMMENDED that a final order be entered upholding the adoption of *Elevate Science* by Miller, Padilla, Wyssession and *Biology* by Miller and Levine.

Done and ordered at Stuart, Florida this 23rd Day of May, 2018.

S/ Ned N. Julian, Jr.

Ned N. Julian, Jr., Esquire
Hearing Officer
Fla. Bar No. 104736

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