



DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

January 13, 2010

Rep. Sara Gelser
Chair, House Committee on Education
Oregon State Capitol
Salem, OR 97301

Dear Rep. Gelser:

I understand that the Legislature may consider modification or repeal of ORS 342.650 during the upcoming legislative session. The Department of Justice does not intend to take a position on this issue during the session. We do wish, however, to provide you and your committee with some basic information about the legal status of the statute in the hopes that this will help clarify the issues at stake.

ORS 342.650 provides that “[n]o teacher in any public school shall wear any religious dress while engaged in the performance of duties as a teacher.” This statute is short, but the issues it seeks to address are complex, for it implicates three compelling and potentially conflicting legal interests: a teacher's right to religious expression, children's right to attend religiously neutral public schools, and parents' right to control the religious upbringing of their children.

In Fall 2009, the United States Department of Justice sent a letter notifying Oregon that it intended to investigate whether ORS 342.650 violates Title VII of the Civil Rights Act of 1964 (Title VII) by restricting the ability of public-school teachers to wear religious dress while performing the duties of a teacher. In response to this inquiry, the Oregon Department of Justice initiated a thorough legal review of ORS 342.650.

To date, our review has analyzed potential legal challenges under Title VII, the United States Constitution, the Oregon Constitution, and Oregon statutes. Though we have not yet completed our analysis, we have concluded that the statutory scheme will likely be upheld as constitutional and valid if challenged in the courts under any of these legal provisions. We find support for our conclusion in the Oregon Supreme Court's decision in *Cooper v. Eugene School District*, 301 Or 358 (1986). In this case, the court interpreted the statute and provided some important guidance that permits the statute to

be applied in a manner that balances the competing interests in a constitutionally permissible way. The United States Supreme Court subsequently dismissed review of that case “for want of a substantial federal question” and there has been no further litigation involving the statute in the ensuing 24 years. Accordingly, we believe the current statute is valid and defensible if challenged in court.

We have also concluded that if the statute is amended or repealed, there is a significant risk that the new law will be challenged in court by parents who believe that the wearing of religious dress in the classroom violates their constitutional rights or those of their children. For that reason, we urge you make any changes with great care, with an eye to the potential liability that may be incurred by the state or local school districts as a result of the new policy.

The policy choices implicated by ORS 342.650 are complex and challenging. If we can assist your efforts in any way, or provide more thorough legal analysis, please let us know.

Sincerely,

A handwritten signature in black ink that reads "John R. Kroger" followed by a period and the word "for". The signature is written in a cursive, flowing style.

JOHN R. KROGER
Attorney General