



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

July 30, 2014

S.A. Godinez
Director
Illinois Department of Corrections
1301 Concordia Court
Springfield, IL 62794-9277

Re: [Redacted] v. Ill. Dep't of Corr. (14-OCR-261)
Letter of Finding

Dear Director Gordinez:

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice received the above-referenced administrative Complaint from [Redacted] (Complainant), an inmate of the Illinois Department of Corrections (IL DOC or Respondent) in the custody of the Lawrence Correctional Center (LCC) in Sumner, Illinois. The Complainant, who self-identifies as a Satanist, alleges that the Respondent discriminated against him based on religion. The OCR investigated the Complaint and found no merit to the claim.

I. Jurisdiction and Applicable Law

The OCR is responsible for ensuring that recipients of financial assistance from the OJP and its components comply with federal laws that prohibit discrimination in the delivery of services or benefits based on religion. *See* Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, as amended, 42 U.S.C. § 3789d(c)(1) (2012); 28 C.F.R. §§ 42.203(a), .205 (2013); *see also* Equal Treatment for Faith-Based Organizations (ETR), 28 C.F.R. §§ 38.1(d), .2(d). The IL DOC is a current recipient of financial assistance from one of OJP's components, the Bureau of Justice Assistance (BJA).¹ The IL DOC was also a recipient of BJA financial assistance during the time period of the alleged discrimination, which the Complainant claims was from October 15, 2013, to the present.² Because the Complaint alleges discrimination prohibited by the Safe Streets Act and the Respondent is not only a current recipient of financial assistance subject to the Safe Streets Act but was also a recipient at the time of the alleged discrimination, the OCR has authority to investigate and administratively resolve this Complaint. 28 C.F.R. pt. 42, subpt. D, app. A (Section 42.205(c)(1)). The Complaint is also timely, as OCR received the Complaint in early January 2014, less than one year from the date of the alleged discrimination. *Id.* §42.205(b).

¹ The BJA awarded the IL DOC a grant (Award Number 2010-RN-BX-0017) in the amount of \$300,000 for the grant period of October 1, 2010, to September 30, 2014. The BJA also awarded the IL DOC a grant (Award Number 2013-CZ-BX-0041) in the amount of \$100,000 for the same grant period.

² *Id.*; Comp. Ltr. (Dec. 28, 2013) (on file with OCR).

II. Claims

A. Disparate Treatment Related to Blank Journal

The Complainant alleges that during the time period of October 15, 2013, to the present, the chaplain at LCC prohibited him from having access to a blank journal adorned with the Sigil of Baphomet, a Satanic symbol consisting of a goat's head surrounded by a five-pointed star or pentagram. The Complainant alleges that the same chaplain allowed another inmate to receive a similar blank journal adorned with a Wiccan symbol. The Complainant alleges that the difference in treatment is evidence of discrimination based on religion.

The Complainant asserts that the chaplain's prohibition against the Complainant's use of a blank journal adorned with the Sigil of Baphomet is especially problematic, given that many books on the list of IL DOC's approved publications also allegedly have this symbol on them.

The Complainant and Respondent provided the OCR with a copy of the in-house grievance that the Complainant filed with the Respondent on October 19, 2013; similar to the instant Complaint, the grievance asserted that the Respondent discriminated against the Complainant by withholding his blank journal. Comp. Ltr. (June 19, 2014) (on file with OCR); Resp. 8. The Respondent stated in its review of the grievance, issued on March 17, 2014, that its reason for withholding the blank journal was that inmates must obtain all writing materials from the prison commissary: "This Grievance Officer recommends this grievance be denied as Journals/writing materials are not allowed due to Facility operations and practice." *Id.* (Response to Offender's Grievance Mar. 17, 2014).

The Respondent's grievance procedure requires that the highest ranking official in a correctional facility, the chief administrative officer, must notify an offender in writing of the disposition of a grievance "within 2 months after receipt of the written grievance, where reasonably feasible under the circumstances." Resp. 7 (Ill. Admin. Code tit. 20, §504.830(d) (2014)). In this instance, in a departure from the applicable regulatory standard for the State of Illinois, a grievance officer, rather than the chief administrative officer, notified the Complainant of the disposition of his grievance in writing, and the time period for issuing the written decision extended significantly beyond the contemplated two-month deadline.

B. Denial of Medallion with Satanic Symbol

In addition, the Complainant alleges that the chaplain denied his request to order a medallion with the Sigil of Baphomet. The Complainant claims that the chaplain refused to speak to him about his request for the medallion or to explain the IL DOC's rules governing the religious symbols permitted on inmate medallions.

C. Disparate Treatment Related to Requests for Satanic Services

The Complainant further alleges that the chaplain ignores his submitted written requests to exercise his religion, while the chaplain honors similar requests from Christian inmates (e.g., allegedly responding favorably to requests for more Christian religious services).

III. Response

In response to the OCR's Notice of Discrimination Complaint and Data Request of March 4, 2014, the IL DOC answered the Complainant's allegations on April 3, 2014.

A. Disparate Treatment Related to Blank Journal

The Respondent conceded that it denied the Complainant a blank journal that he had ordered from a publisher that was adorned with the Sigil of Baphomet. The Respondent also acknowledged that it did provide to another inmate a similar journal with a Wiccan symbol on the cover. The Respondent explained that the differential treatment was an error rather intentional discrimination:

[T]his instance demonstrates an inadvertent and temporary error regarding the facility's policy governing permissible personal property in regard to the Wiccan inmate's journal. Please be informed that it is policy at LCC to not allow any inmates to receive writing materials, including blank journals, from outside sources and to require all inmates to purchase all writing materials from the prison commissary. The denial of [the Complainant's] request to obtain a journal from the outside was, therefore, in accordance with facility policy and not applied in a discriminatory manner. Furthermore, the Wiccan journal was ultimately confiscated in accordance with facility policy.

Letter from Jane F. Bularzik, Legal Counsel, IL DOC, to Sr. Counsel George J. Mazza, OCR, OJP 1-2 (Apr. 3, 2014) [hereinafter Resp. Ltr.]. The Respondent supplied documentation showing its confiscation of the journal with the Wiccan symbol. Resp. 11. The Respondent did not, however, cite any written policy that expressly requires inmates to obtain all writing supplies from the prison commissary.

The respondent acknowledged that the Complainant is correct in noting that there are a number of books that appear on its list of approved publications that have a Satanic theme, but none of these books is available in hard copy and accessible to inmates in prison libraries. Resp. 12(b). Therefore, the Respondent was unable to comment on whether any of the books on the approved list to which the Complainant refers has a cover design with a Sigil of Baphomet.

B. Denial of Medallion with Satanic Symbol

The Respondent contests the Complainant's allegation that the LCC chaplain denied his request for a medallion with a Sigil of Baphomet. The Respondent notes that the LCC chaplain's log book related to property requests contains no record of any request for the medallion. Resp. 13. The Respondent also notes that the Complainant previously "was permitted to order and possess a religious medallion of his choice, which in 2013 was a cross on a chain." Resp. Ltr. 2. The Respondent also noted that there is no documentation indicating that the Complainant ever filed a grievance alleging his inability to obtain a medallion with the Sigil of Baphomet. *Id.*; Resp. 13.

According to the Offender Orientation Manual at LCC, inmates may order and wear inside their clothing a religious medallion as long as it meets established criteria (e.g., the medallion is not more than two inches in diameter, the attached chain is no more than twenty-four inches in length, the combined value of the medallion and the chain is no more than \$50.00). Ill. Dep't of Corr., *Offender Orientation*

Manual 41, 47 (Jan. 1, 2014); *see also* Ill. Dep't of Corr., *Chaplaincy Handbook of Religious Beliefs and Practices* § 425.90(b), (c) (Aug. 2009).

The Respondent states that the objection it has to inmates having the Sigil of Baphomet is not based on religion; rather, items with five- or six-pointed stars, such as the Sigil of Baphomet, may signal gang membership:

The 5 point star is one of the symbols of the People Nation, a well-known Chicago based group of street gangs, and the 6 point star is one of the symbols of the Folk Nation, another well-known Chicago based group of street gangs. These star symbols are used as gang identifiers and are frequently used to mark gang territory or as an assertion of power. Many offenders incarcerated in IDOC facilities are members of these particular gangs/security threat groups.

Resp. 3 (Memorandum from S.A. Gordinez, Director, IL DOC, to Executive Staff, Wardens, and Chaplains (Aug. 13, 2012)). The Respondent's policy is that any written material, including religious items with illustrations that contain five- or six-pointed stars, is subject to the IL DOC's review process governing acceptable publications. *Id.* (citing Ill. Admin. Code tit. 20, §§ 525.200-.230).

C. Disparate Treatment Related to Requests for Satanic Services

The Respondent denied that the LCC chaplain ignored the Complainant's requests to exercise his religion while favoring similar requests from Christian inmates.

IV. Discussion

In evaluating the Complainant's religious discrimination claims under the Safe Streets Act and the ETR, the OCR relies on constitutional standards, especially the Free Exercise Clause of the First Amendment and the Equal Treatment Clause of the Fourteenth Amendment. *See* U.S. Const. amends. I & XIV, §1; 28 C.F.R. § 42.203(b)(8); *see also, e.g.,* Va. Dep't of Corr., No. 13-OCR-10, Office for Civ. Rts. Ltr. of Finding (U.S. Dep't of Justice Aug. 12, 2013), *available at* <http://ojp.gov/about/ocr/pdfs/VA-13-OCR-10.pdf> (finding that prison's denial of inmate's request for *The Satanic Bible* did not constitute religious discrimination).

The Respondent concedes that it treated the Complainant and a similarly situated inmate differently by denying the Complainant's request for a blank journal adorned with a Satanic symbol while granting another inmate's request for a blank journal adorned with a Wiccan symbol. The Respondent claims that the inequitable treatment was not religious discrimination but a failure to enforce uniformly the Respondent's policy that requires inmates to obtain writing materials exclusively from the commissary.

Supporting the Respondent's position is evidence that it provided to the OCR that showed that in the interim it confiscated the blank journal with the Wiccan symbol. Resp. 11. Moreover, as previously noted, the Respondent relied on the same policy rationale, obtaining writing materials exclusively from the commissary, in denying the Complainant's in-house grievance. Resp. 8.

Three factors, however, call into question the Respondent's justification for denying the Complainant's access to the blank journal adorned with a Satanic symbol. First, although the Respondent claims that it

has a policy that requires inmates to obtain all writing materials, including blank journals, from the commissary, the Respondent cites no written policy that contains this directive. Second, the subsequent confiscation of the other inmate's journal does not excuse the inequitable treatment that the Complainant experienced. Third, and most importantly, the Respondent provided no evidence that it followed its own detailed procedures for reviewing whether the Complainant's journal was an acceptable publication for inmates. *See* Ill. Admin. Code tit. 20, § 525.230.

Regardless of whether the Respondent's rationale for its inequitable treatment of the Complainant is credible or whether the Respondent failed to follow its own procedures for reviewing acceptable religious symbols and processing grievances or whether the Respondent can justify the prohibition against the Sigil of Baphomet as a security threat (*see Shatner v. Page*, No. 00-0251-DRH, 2009 WL 260788 at *29-*31 (S.D. Ill. Feb. 4, 2009) (holding that IL DOC's rationale for prohibiting items with five- or six-pointed stars was unwarranted)), the Complainant's discrimination claim fails. A religious discrimination claim based on the First Amendment must show a substantial burden on a complainant's exercise of religion. *Kaufman v. Pugh*, 733 F.3d 692, 697 (7th Cir. 2013) (citing *Kaufman v. McCaughtry*, 419 F.3d 678, 683 (7th Cir 2005) (holding that inmate's Free Exercise Clause claim failed because he did not show that the prison's denial of his request for an atheist study group substantially burdened his religious exercise.)). The exercise of religion under the First Amendment is "an act or practice mandated by or central to a particular religion." *Rogers v. Hellenbrand*, No. 04-1918, 204 WL 2698957 at **2 (7th Cir. Nov. 23, 2004) (118 F.App'x 80, *83) (holding that inmate's Free Exercise Clause claim failed because he did not show that forced attendance at a prison school's holiday program conflicted with his beliefs or any central practice of his religion). There is no evidence that the Respondent's denial of the Complainant's access to the blank journal in question would impose a substantial burden on his practice of Satanism. In the absence of the requisite evidence, the OCR finds that the Respondent's confiscation of the Complainant's blank journal did not constitute religious discrimination under a First Amendment analysis.

Even if one were to construe the underlying facts concerning the Complainant's request for a medallion with a Sigil of Baphomet most favorably to the Complainant, the Complainant's religious discrimination claim related to the Satanic medallion fails for the same reason that the claim related to the blank journal fails: there is no evidence that the Respondent's alleged denial of the medallion substantially burdened the Complainant's exercise of religion.

The OCR also finds that there is no evidence, aside from the Complainant's mere assertion, to support an Equal Protection Clause claim that the LCC chaplain denied the Complainant's request for additional Satanic services while granting similar requests from Christian inmates.

V. Findings and Recommendations

The OCR concludes that there is no merit to the Complainant's claim that the Respondent discriminated against him based on religion. Consequently, the OCR is administratively closing this Complaint.

The Respondent should review, however, how it handled this Complaint with the goal of improving the way it may deal with similar issues in the future. The OCR offers the following recommendations: (1) the Respondent should consider whether it adheres to its own grievance procedures, especially in documenting the reasons for exceeding the two-month deadline in issuing a written disposition to an inmate; (2) if it has not already done so, the Respondent should issue an express written policy, along

S.A. Godinez, Director
Ill. Dep't of Corr.
July 30, 2014
Page 6 of 6

with a justification, that informs inmates that they must obtain all writing materials, including blank journals, from the commissary; (3) mindful of *Shatner v. Page*, a decision from the U.S. District Court with jurisdiction over the LCC, the Respondent should revisit its policy on banning religious items with five- and six-pointed stars as applied to inmates; (4) the Respondent should follow and document its own process for reviewing whether inmates' religious medallions, journals, illustrations, or other writings with five- or six- pointed stars are acceptable; (5) the Respondent and the LCC chaplain should consider how they might improve respectful communication with the Complainant and other Satanist inmates regarding the possession of permissible and impermissible Satanic symbols; and (6) the Respondent should consider revising the section on Satanism in the *Chaplaincy Handbook of Religious Beliefs and Practices* to provide better guidance on permissible Satanic symbols that would not run afoul of security concerns.

The Respondent should be mindful that federal law protects the Complainant from retaliation for having filed this Complaint. The OCR will initiate an investigation if it should receive credible evidence of reprisal.

This Letter of Finding is a public document that the OCR will post on its website with minor redactions to protect the Complainant's identity.

If you have questions regarding the disposition of this Complaint, or if you would like to request technical assistance in implementing OCR's recommendations, please contact Senior Counsel George J. Mazza at the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531.

Sincerely,

/s/ Michael L. Alston

Michael L. Alston
Director

cc: Stephen Duncan, Warden
Lawrence Correctional Center
10940 Lawrence Road
Sumner, IL 62466

Jane Bularzik, Legal Counsel
Illinois Department of Corrections
100 W. Randolph Street, Suite 4-200
Chicago, IL 60601