



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

Washington, D.C. 20531

August 15, 2012

Commissioner Derrick D. Schofield  
Tennessee Department of Correction  
Rachel Jackson Building, Sixth Floor  
320 Sixth Avenue North  
Nashville, TN 37243-0465

Re: Notice of Findings  
[REDACTED] v. Tennessee Department of Correction (12-OCR-0178)

Dear Commissioner Schofield:

Thank you for the documentation that you submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) on behalf of the Tennessee Department of Correction (TDOC) in connection with the administrative Complaint that inmate [REDACTED] (Complainant) has filed against the TDOC. In his Complaint, the Complainant alleges that the TDOC discriminated against him based on religion (Baptist).

The OCR has completed our review of the documentation provided by both the TDOC and the Complainant and has determined that there is insufficient evidence of a violation of the civil rights laws that we enforce. Our findings are set forth below for your review.

Factual Background

The Complainant alleges the following:

Beginning in the middle of 2010, several TDOC correctional officers at the Lois M. DeBerry Special Needs Facility have been harassing the Complainant for carrying his Bible. Specifically, [REDACTED] repeatedly told the Complainant that he would lock up the Complainant if he did not stop carrying his Bible, and kept sending the Complainant back to his unit for refusing to stop carrying his Bible. [REDACTED] and [REDACTED] fired the Complainant from his job cleaning the captain's office for refusing to stop carrying his Bible. [REDACTED] told the Complainant that he should not carry his Bible when [REDACTED] was working, and [REDACTED] kept sending the Complainant back to his unit for carrying his Bible. Additionally, [REDACTED] told the Complainant that "[t]his is the white man's Bible, the Bible isn't real," and took the Complainant's Bible from him; [REDACTED] subsequently returned the Complainant's Bible to him. The Complainant alleges that the TDOC does not harass inmates of other religions, and that other inmates are allowed to carry books to their jobs at the library and

elsewhere at the TDOC and are not harassed. The Complainant states that he filed grievances regarding this matter in 2010 and 2011 but never received a response from the TDOC.

In the TDOC's June 8, 2012, Position Statement regarding the Complainant's allegations and the DOC's August 2, 2012, Response to the OCR's Supplemental Request for Information, the TDOC disputed that the TDOC discriminated against the Complainant based on religion. The TDOC said that inmates are not allowed to carry books, papers, or other non-work related items to their work areas, and while the TDOC does not have a written policy or procedure which states this the TDOC verbally advises inmates of this restriction. According to a written statement submitted by [REDACTED], this restriction is due to the fact that many times inmates will hide contraband among such materials. The TDOC asserted that it does not allow any inmates to bring books to the workplace. The TDOC further stated that religious texts and other religious personal property items may be used for religious purposes only and generally may only be carried to religious gatherings. The TDOC noted that inmates who wish to keep a Bible on their persons may carry pocket-sized versions of the Bible, which the TDOC makes available to inmates. [REDACTED] indicated in his written statement that he encountered the Complainant carrying his Bible while going to his work assignment or to the dining room on several occasions, and that each time he ordered the Complainant to return his Bible to his unit. The TDOC told the OCR that [REDACTED] does not recall speaking to the Complainant regarding his Bible, other than to inform the Complainant that he could not carry a full-size Bible unless he was going to a religious service.

As for the Complainant's allegations that the TDOC fired the Complainant from his job in the captain's office for refusing to stop carrying his Bible, the TDOC provided documentation indicating that the decision to change the Complainant's job assignment from work in the captain's office to a job within his housing unit was made by the Complainant's treatment team based upon the Complainant's mental status and on his failure to take his medication. In regard to the Complainant's assertions that he filed grievances with the TDOC regarding this matter but never received a response from the TDOC, the TDOC provided documentation demonstrating that the Complainant submitted two grievances to the TDOC in 2010 and 2011 which concerned issues unrelated to the Complainant's current allegations, and that the TDOC responded to those grievances.

#### Policies and Procedures Relevant to the Allegations

While the TDOC indicated that there is no written policy or procedure that specifically addresses bringing non-work related materials to an inmate's work area, the TDOC provided the OCR with a May 11, 2011, Memorandum from Commissioner Schofield to all Wardens and Chaplains which states that religious property must be used for religious purposes only, and any other use may result in disciplinary action. The TDOC also submitted TDOC Policy No. 118.01, entitled "Religious Programs" (effective date January 1, 2011), which states that inmates may receive religious literature, materials, and books in accordance with TDOC policies No. 504.01<sup>1</sup> and No.

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<sup>1</sup> TDOC Policy No. 504.01 sets forth the policies regarding an inmate's possession of personal property, but does not specifically address whether inmates can carry personal property outside of their cells.

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507.02<sup>2</sup>, and that misuse of religious rights and privileges, such as using a religious item for non-religious purposes, may result in appropriate disciplinary action.

### Legal Analysis

The Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), under which the TDOC receives DOJ funding, prohibits funding recipients from discriminating on the basis of race, color, national origin, sex, and religion. 42 U.S.C. § 3789d(c)(1). To demonstrate discrimination, the evidence must establish an intent to discriminate. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977). Discriminatory intent may be shown by such factors as substantial disparate impact, a history of discriminatory actions, procedural and substantive departures from the norms generally followed by the decisionmaker, and discriminatory statements. *Id.*

The OCR has carefully reviewed the documentation that has been submitted by both the Complainant and the TDOC, and finds that the evidence is insufficient to demonstrate that the TDOC's actions were based on an intent to discriminate against the Complainant due to his religion. Rather, the evidence demonstrates that the TDOC's actions were based on a TDOC policy to prohibit inmates from carrying non-work related items and literature to their work areas, which was intended to prevent inmates from hiding contraband in such materials. While the Complainant generally asserts that other inmates have been allowed to carry books to their jobs at the library and elsewhere at the TDOC, he does not provide any specific information regarding such instances, and the TDOC stated that it does not allow any inmates to carry non-work related materials to their work areas. The TDOC also noted that it allows inmates who wish to keep a Bible on their persons to carry a pocket-sized edition of the Bible; the Complainant did not provide the OCR with any information regarding whether he has a pocket-sized edition of the Bible or has attempted to obtain one. And while the Complainant alleges that [REDACTED] made derogatory remarks about the Bible, [REDACTED] denies making those remarks, and the evidence before the OCR is insufficient to demonstrate exactly what [REDACTED] said to the Complainant.

Accordingly, the OCR has determined that the evidence is insufficient to demonstrate that the TDOC's actions constitute discrimination based on religion in violation of the Safe Streets Act. Therefore, we are closing the administrative Complaint filed by the Complainant.

Sincerely,

/s/

Michael L. Alston

Director

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<sup>2</sup>TDOC Policy No. 507.02 sets forth the procedures regarding the distribution and inspection of inmate mail.