

# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

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SENT VIA EMAIL ONLY TO: [dsweeney@babco.com](mailto:dsweeney@babco.com)

Donald B. Sweeney, Jr., Esq.  
Bradley, Arant, Boult, Cummings LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203

Re: Multiple constitutional violations in Homewood City Schools

Dear Mr. Sweeney:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to several constitutional violations occurring within Homewood City Schools (District). Since we last corresponded, our organization has grown to more than 21,500 members.

A concerned District family contacted FFRF to report three issues:

1. We understand that some district football teams have a team chaplain that leads the team in prayer and even delivers a sermon. For instance, Homewood Middle School (HMS) meets on Thursdays before games in the school cafeteria where the chaplain (David) says a prayer and delivers a sermon before the team eats pizza.
2. We understand that local churches are given access to the students at lunchtime. The churches circulate through the lunchroom trying to recruit students. They also set up tables with brochures discussing the church and hold signs with messages for the students ("I love you" read one sign). For instance, HMS allows pastors from Trinity and Dawson churches to circulate in the lunchroom every Wednesday, and has done so for the last few weeks.
3. We understand that the First Priority Club (FPC) meets every Wednesday morning at HMS. FPC is a Christian organization. FPC meets in the gym, where all students arriving at school prior to classes are required to congregate. Last year, FPC met in room 111. Apparently, FPC is less a club and more a church. A local youth pastor leads a worship service over an amplified loudspeaker. Moreover, we understand the club is truly led and organized by a teacher.

I trust, given our past exchanges and your experience you are well aware that having a team chaplain, team prayers led by adults, staff participating in team prayers, and the general mixing of public school sports with religion is unconstitutional. I also trust that you know the law prohibits schools from allowing churches to use the schools as a recruiting ground, even during lunch. (Aside from the constitutional issue, this predatory behavior is deeply disturbing.) If my trust is misplaced or if you'd like to see precedent on any of these points, I'm happy to provide it.

The issues with the religious club may be less clear. Obviously, we have no issue with a student run religious club. However, there are two serious problems with FPC at HMS. **First**, the Equal Access Act does not permit teachers to participate in the activities of non-curricular clubs, including religious clubs. The EAA requires that “employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity.” 20 U.S.C.A. § 4071 (c)(3). Faculty sponsors are strictly chaperones: “Under the [Equal Access] Act, however, faculty monitors may not participate in any religious meetings, and nonschool person[s] may not direct, control or regularly attend activities of student groups.” *See Bd. of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 253 (1990). The Court continued, “[m]oreover the Act prohibits school ‘sponsorship’ of any religious meetings . . . which means that school officials may not promote, lead, or participate in any such meeting.” *Id.*

In *Sease v. Sch. Dist. of Philadelphia*, a school secretary sponsored and participated in a school gospel choir. 811 F. Supp. 183 (E.D. Pa. 1993). The secretary attempted to claim that the choir met after hours and that, as secretary, her school duties were never meant to be supervisory and therefore she was not prevented from participating. The court wrote that the “suggestion that Mrs. Safford ceases to be a school employee within the meaning of the Act because her role as leader of the Gospel Choir is assumed after school hours, and is outside the scope of her employment as a school secretary, defies logic and flies in the face of the manifest purpose of the Equal Access Act.” *Id.* at 192. This prohibition does not raise issues of the teachers’ rights under the Free Exercise Clause of the First Amendment. “A teacher has no free exercise rights to lead schoolchildren in prayer in the classroom.” *Doe v. Duncanville Indep. Sch. Dist.*, 994 F.2d 160, 166 (5th Cir. 1993).

Moreover, student clubs cannot invite outside individuals to their meetings on a regular basis: nonschool person[s] may not direct, control or regularly attend activities of student groups.” *Mergens*, 496 U.S. at 253. Hosting a local youth pastor violates this stricture.

**Second**, FPC is forcing their worship services upon students of all and no religion. Students who arrive at school early (e.g., because their parents must drop them off before work) are required to stay in the gym, where the FPC worship occurs. This worship uses amplified loudspeakers to spread a religious message to all. Apparently it can be heard throughout the gym and in other parts of the school. There is music, a guitar, and the youth pastor, all loudly praising their lord.

Obviously, there are serious coercion concerns in any school environment. Here, concerns are heightened by the volume of the religious message and the place the school has dedicated for preaching that message. In fact, this goes beyond coercion and amounts to forced participation. Students have no option but to suffer through the worship service, even if they are not Christian or not religious—and almost 20% of the U.S. population identify as non-religious, including 32% of the population under 30.<sup>1</sup>

This is the second serious problem we’ve had with a religious club in HMS. The previous was Men Striving for Success organized and led by teacher Steve Sills—the club we wrote about in February.

Due to the high level of entanglement between District staff and FPC, their continual violation of the EAA by regularly inviting in local youth pastors, and regularly forcing their worship on all students,

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<sup>1</sup> Pew Research Center, *Nones on the Rise: One-in-Five Adults Have No Religious Affiliation*, The Pew Forum on Religion & Public Life (October 9, 2012), available at <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>.

we ask that the club be disbanded for the remainder of this year. If students—and not teachers or local pastors—wish to re-form the club they should be allowed to do so next year like any other student club. But the high level of involvement makes this an illegal school-run, school-endorsed religious club. To make it clear to all parties where the appropriate line is, the club must be disbanded for this year.

We also request that all District staff, including coaches, be reminded that they cannot ask, suggest, encourage, require, or participate in any religious activity with students, including prayers and student clubs.

Sincerely,



Andrew L. Seidel  
Staff Attorney