

FREEDOM FROM RELIGION *foundation*

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SENT VIA EMAIL & FAX
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Robert Frankhouser, Jr.
Hartman Underhill & Brubaker LLP
221 East Chestnut Street
Lancaster, PA 17602

Re: Unconstitutional Religious Event Held During School Time

Dear Attorney Frankhouser:

I am writing to request that you inform your client, the Northern Lebanon School District, that it must immediately cancel a religious "See You at the Pole" (SYATP) event that is scheduled to take place on school property during the school day this Wednesday. The Freedom From Religion Foundation is a national nonprofit organization, with nearly 17,000 members across the country, including more than 550 in Pennsylvania. Our purpose is to protect the constitutional principle of separation between state and church. We have previously been in contact with your office regarding other constitutional concerns within the school district. This most recent violation is egregious and requires an immediate response.

It is our information and understanding that East Hanover Elementary School will host a prayer event at the flagpole on Wednesday right after the start of the school day. School begins at 8:50 a.m. at East Hanover Elementary. We understand that fliers went home with students that said:

See you at the pole is a global day of prayer for our schools at a designated time in front of the flag pole. This event is simply a day where students and parents can come to gather as one, standing side by side, to pray for our children, our families, our school, and our community. As a parent of an East Hanover student, I would like to invite all of our students and their families to participate on Wednesday, September 28th at 8:50am at the EAST HANOVER ELEMENTARY SCHOOL FLAGPOLE to take part in this event.

If your child would like to be part of this ten minute activity, we can't wait to see them at the flagpole. If this is something you would not like your child to participate in please sign the bottom of this paper and return to your child's teacher by TUESDAY, SEPTEMBER 27th.

We understand that a concerned parent contacted the Superintendent's office about SYATP but the Superintendent has not taken any action. The Superintendent indicated that the event would go on as planned and said that the SYATP had been held for years at the school.

The District would violate the Establishment Clause if it allows the event to continue as planned. Public schools cannot host religious events during instruction time. While SYATP often occurs during non-school hours at schools around the country, the prayer event in question is scheduled after the start of the school day.

The flier that went home with students indicates direct school endorsement. First, it relays that parents would have to opt their child out of the event. Second, it says that teachers will collect the opt-out forms from students. This is school coordination and involvement in a devotional event. It gives the clear impression to students and their families that the school promotes and endorses the prayer event. It also should be obvious that a religious event that is organized by an outside adult and that requires students to be split into participants and nonparticipants should not be taking place during the school day. We question what other ways the school is involved. It appears that teachers will be needed to escort students and that the school day will effectively be on hold while the prayer event takes place.

It is well settled that public schools may not advance or promote religion. *See generally, Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Arkansas*, 393 U.S. 97 (1967); *Sch. Dist. of Abington Twshp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962). Moreover, “the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2001)(quoting *Lee v. Weisman*, 505 U.S. at 589). In *Lee v. Weisman*, the Supreme Court extended the prohibition of school sponsored prayers beyond the classroom to all school functions (holding prayers at public school graduations an impermissible establishment of religion). Thus, a prayer event taking place on school property during the school day is well within the protections of the Establishment Clause.

Given the location, the timing and the promotional materials, a reasonable observer will perceive See You at the Pole as being “stamped with her school’s seal of approval.” *Santa Fe*, 530 U.S. at 307. The SYATP program is especially concerning given the young age of many of the students who would attend. Allowing outside adults with a religious mission access to the student body gives the appearance that East Hanover Elementary endorses the program’s message. The “[s]chool sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents ‘that they are outsiders, not full members of the political community and accompanying message to adherents that they are insiders, favored members of the political community.’” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-10 (2001)(quoting *Lynch v. Donnelly*, 465 U.S. at 668)(O’Connor, J., concurring).

The Constitution’s prohibition against school-sponsored religious messages cannot be overcome by claiming such activities are “voluntary.” As the Supreme Court said in *Engel*, “Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of students is voluntary can serve to free it from the limitations of the Establishment Clause” 370 U.S. at 430. In *Schempp*, the Court said the offending religious practices were not “mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of

unconstitutionality under the Establishment Clause.” 374 U.S. at 224-25. It makes no difference if the school requires students to opt-in to religious programming. *See Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1981)(Finding required express written permission by parents for students to participate in prayer did not cure Establishment Clause violations).

It also appears that SYATP is school-sponsored because private groups do not have access to school buildings at 8:50 a.m. on a school day. The special access given to the adult organizer of this event does not appear to be in accordance with Board of School Directors policy. Per Board Policy 707, “On days that school is in session, buildings will be available only between the hours of 4:00 PM and 11:00 PM.” Should this event be allowed, the District is opening itself up to a wide variety of events that would conflict with District policies and disrupt the school day.

On behalf of our local complainants, we respectfully request that the District immediately cancel the See You at the Flag Pole event that is scheduled on Wednesday. The school’s involvement violates the Establishment Clause. We would appreciate hearing from you immediately regarding the steps the District is taking to resolve this matter.

Sincerely,



Patrick Elliott
Staff Attorney