



# FREEDOM FROM RELIGION FOUNDATION

P.O. Box 750 • Madison WI 53701 • (608) 256-8900 • www.ffrf.org

June 9, 2010

Catherine Aukerman  
Superintendent  
Highland Local School District  
3880 Ridge Rd  
Medina OH 44256

COPY

Re: Separation of State and Church Concerns at Highland High School/Open Records Request

Dear Ms. Aukerman:

I am writing on behalf of a concerned district resident/parent and taxpayer, and other Ohio members of the Freedom From Religion Foundation (FFRF) to alert you to some serious state/church concerns occurring in your district. FFRF is a national nonprofit organization whose purpose is to protect the constitutional principle of separation between state and church. FFRF represents nearly 15,500 members across the country including over 400 members in Ohio.

Our complainant has informed us of three church/state concerns at Highland High School. First, our complainant informs us that prayer is part of an annual choir event. Second, our complainant informs us that the top choir, Added Attraction, performed at a church service in December. Finally, our complainant informed us about an annual baccalaureate service held for graduating seniors. I will address these concerns in turn.

### ***Prayer at Highland High School Choir Annual Banquet and Awards Ceremony***

It is our information and understanding that the Highland High School choir has a banquet and awards ceremony each year. Our complainant informs us a prayer starts this school-sponsored event. We understand this pre-dinner prayer has occurred at the last three annual banquet and awards ceremonies. The prayers given at the annual awards banquet were blatantly Christian prayers. This year's prayer ended, "In the name of Lord, Jesus Christ."

It is unlawful for any school-sponsored event, such as a banquet recognizing achievement in choir, to open with prayer. FFRF asks that you immediately take action to ensure that future banquet and awards ceremonies do not open with prayer.

First and foremost, the Supreme Court has continually struck down formal and teacher or school-led prayer in public high schools. *See, e.g., Engel v. Vitale*, 370 U.S. 421 (1962)(declared prayers in public schools unconstitutional); *Abington Township Sch. Dist. v. Schempp*, 374 U.S. 203 (1963)(declared unconstitutional devotional Bible reading and recitation of the Lord's Prayer in public schools); *See also Lee v. Weisman*, 505 U.S. 577 (1992)(ruled prayers at public high school graduations an impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S.

38 (1985)(overturned law requiring daily “period of silence not to exceed one minute ... for meditation or daily prayer.”); *Jager v. Douglas County Sch. Dist.*, 862 F.2d 825 (11th Cir. 1989), cert. den., 490 U.S. 1090 (1989)(holding unconstitutional pre-game invocations at high school football games). Even when student-initiated, the Supreme Court have found these prayers unconstitutional. *See generally, Sante Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000)(struck down a school policy that authorized students to vote on whether to hold a prayer at high school football games). In all of the aforementioned cases, the federal courts have struck down prayer in public schools because it constitutes a government-endorsement of religion, which violates the Establishment Clause of the First Amendment.

Likewise, the prayers at these annual banquets are unconstitutional. The banquets are school-sponsored events. It does not matter that this event occurs after-school hours because prayers at other traditional after-school events such as football games and graduations have been found unconstitutional by the U.S. Supreme Court. It is also inconsequential that these events are “optional.” Any voluntariness on the part of students attending the event does not excuse any inducement or coercion at the event. *See, gen., Lee*, 505 U.S. at 595 (rejecting the voluntariness argument and noting that “graduation is a time for family and those closest to the student to celebrate success and express mutual wishes of gratitude and respect”). The annual awards banquet is a time for choir students — of all faiths or no faith — to celebrate their success in choir during the previous academic year. A student’s choice in attending this event should not be predicated upon being subjected to Christian based prayers. As the Supreme Court in *Lee* explained, “It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.” *Id* at 596.

Finally, prayer occurring as part of a regularly scheduled annual event sponsored by the school certainly leads “an objective observer, acquainted with the [prayer to] perceive it as a state endorsement...” *Sante Fe Indep. Sch. Dist. v. Doe*, 530 U.S. at 308. This “[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). Prayer at these banquets turns any non-Christian and nonreligious Highland High School choir student into an outsider.

### ***Added Attraction Performance at St. Paul Lutheran Church***

It is our information and understanding that Added Attraction is the top choir at Highland High School. Our complainant informs us that Added Attraction annually performs at St. Paul Lutheran Church, which also happens to be the choir director’s church. On December 27, 2009, Added Attraction sang at the 8:30am and 11am Sunday services at St. Paul. According to an e-mail sent to all “Added Attraction families,” the choir was scheduled to sing “O Holy Night;” “Hallelujah Soulful;” “Carol of the Bells;” and, if time, “Do You Hear What I Hear.” Please find enclosed a copy of the e-mail sent to all parents and students about this performance.

“It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise..” *Lee*, 505 U.S. at 587. Therefore, it is grossly inappropriate for a public high school choir to perform in a church as part of Sunday worship services. This practice forces students and their parents, who may be of varying faiths or none at all, to enter a Christian house of worship. Highland High School should not be asking public school students to perform at the altar — likely at the foot of a Christian cross — of a church during worship services. This is a blatant violation of the First Amendment not to mention a misuse of class time preparing the students for this devotional performance.

Again, it makes no difference that this event was apparently “voluntary” for the same reasons that argument fails for the awards banquet. Again, the voluntariness of the performance is debatable. Under Mr. Ilg’s Choir Rules, under Rule #1/Concerts are required he states, “In performing arts, one of the assessments and time requirements outside of class is performing for an audience. This is a *vital and central component* to the student’s choir experience.” (emphasis added) After reading this, what student would choose not to attend and perform at the church? Moreover, nothing in Mr. Ilg’s e-mail, which is enclosed for your review, indicates that this performance is voluntary.

Finally, it is our understanding that some of the awards given at the end of the year are based on points. Under this system, choir students can earn points by completing various tasks including singing in a church choir throughout the year (which is worth 5 points). Another avenue for earning points is seasonal musical activities. It is not clear to us whether the annual December performance at St. Paul Lutheran Church counts toward these points. Certainly, if it does, then a student may feel pressured to perform at a church in order to “succeed” in choir.

The school district must take the appropriate steps to ensure that Highland High School students are not being forced — directly or indirectly — to sing at worship services. Mr. Ilg should be directed to keep his performance schedule secular and free from religious proselytizing.

### ***Baccalaureate Service for Graduating Seniors***

It is our information and understanding that the Sharon Ministerial Association organized a baccalaureate service for Highland High School graduating seniors. As pointed out on the program for the event “a Baccalaureate is a Christian worship service in which graduating high school seniors, their families, friends, and community gather together to praise and worship God through Jesus Christ.” Please find enclosed a copy of the program. Our complainant informs us that this service was held on May 24<sup>th</sup> at 7PM in the high school auditorium. Our complainant further informs us that this year was the first year the service has been held on school grounds. Moreover, Mr. Ilg, the choir director, told parents and students at the choir banquet and awards ceremony that the baccalaureate had been moved to the school auditorium to make it easier for students and their families to attend.

While we understand that the baccalaureate service was “sponsored and organized” by the Sharon Ministerial Association, we are concerned that the high school has not done enough to distance itself from the religious event. This event was held on school property, included participation from public school employees (Mr. Ilg in particular), and was listed as a scheduled

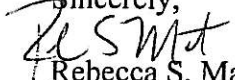
event on the school's website. Therefore, any reasonable Highland Local School District student, parent or community member could conclude this was "school-sponsored." *See Bd. of Educ. v. Mergens*, 496 U.S. 226, 249-50 (1990)(finding that a religious activity is school-sponsored if "an objective observer in the position of a secondary school student will perceive official school support for such religious activity.") *see also Verbena United Methodist Church v. Chilton County Bd. of Educ.*, 765 F.Supp. 704("The court agrees that a ceremony to honor a public high school's graduates is vulnerable to carrying with it an aura of school affiliation..."). To avoid the perception of school sponsorship of this religious service, Highland Local School District must "take all additional measures necessary to disassociate itself from the activity." *Verbena v. Chilton County*, 765 F.Supp. at 714. *See also Carlino v. Gloucester City High School*, 57 F.Supp.2d 1, 245 (D.N.J., 1999)(noting that the "school officials made no effort to disassociate themselves from the Baccalaureate Service."). Given the circumstances, the simple "disclaimer" on the website is not enough to eliminate this perception.

Furthermore, Mr. Ilg's apparent promotion of and participation in the Christian service signals the school district's endorsement of the event. The school district should take steps to further disassociate itself from the event by ensuring no public school official or employee, acting in his/her official capacity, is promoting the event or encouraging attendance. *See Verbena United Methodist Church v. Chilton County Bd. of Educ.*, 765 F.Supp. 704, 714 (M.D. Ala. 1991)("The Board must also ensure that no other school officials promote, lead, or participate in the service."). Therefore, Mr. Ilg cannot promote, and should not have promoted, the baccalaureate service while he was acting as the choir director at the choir's annual banquet and awards ceremony. His action, which is imputed on the school, demonstrates an endorsement of this overtly Christian worship event. This is a direct violation of the First Amendment.

Finally, under Ohio Open Records law, we request a copy of the district's policy on facility use and rental; a copy of the application by Sharon Ministerial Association to use the high school auditorium; a copy of the permit or approved application for use of the space; and verification of payment for use of the high school auditorium by Sharon Ministerial Association for its baccalaureate service.

We respectfully request that you commence an immediate investigation into these allegations. The District must take the necessary and appropriate steps to eliminate prayer from school-sponsored events; end scheduling choir performances at worship services; and address concerns of apparent school-sponsorship and support of the Christian baccalaureate service. Any results of the investigation and any disciplinary action taken should be included in Mr. Ilg's personnel file. We request that you respond in writing about the steps you are taking to correct these violations so that we may notify our complainant.

Sincerely,

  
Rebecca S. Markert  
Staff Attorney

Enclosure

cc: Peter Ulrich, Principal, Highland High School