

FREEDOM FROM RELIGION *foundation*

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September 28, 2015

Sent via mail and email to dwatkins@prosper-isd.net

Dr. Drew Watkins
Superintendent
Prosper Independent School District
605 East Seventh Street
Prosper, TX 75078

Re: First Amendment violations at Prosper High School

Dear Dr. Watkins:

I am writing on behalf of the Freedom From Religion Foundation in response to a local complainant to alert you to a serious state/church concern occurring in PISD. FFRF is a national nonprofit organization with over 23,000 members across the country, including nearly 1,000 members in Texas. We protect the constitutional separation between state and church.

It is our understanding that staff members at Prosper High School, including Principal Greg Wright, are violating the Establishment Clause of the First Amendment in several ways. This has led to several legal issues we hope PISD will work to correct:

1. We understand Principal Wright is preaching at student events, including the See You At the Pole (SYATP) gatherings, and that these events, ostensibly student-led, are often overrun by outside adults. The Friday, September 25 rally at PHS is a good example (video of adults leading and participating can be provided).
2. We understand that Principal Wright is forming a religious club for students, the First Priority Club, and that teachers have been allowed to form religious clubs in the past.
3. We understand that staff members display cross and other religious iconography on school property.
4. We understand that harassment and bullying of an atheist student and their family may already be occurring, and we can assure PISD from extensive experience that it is likely to occur if PISD does not take action.

It is important that PISD staff members understand that, as government officers and state actors, their personal rights of free exercise and free speech are not unlimited. In fact, PISD has an obligation to make certain that "subsidized teachers do not inculcate religion." *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971). To comply with that duty, "a school can direct a teacher to 'refrain from expressions of religious viewpoints in the classroom **and like settings**.'" *Helland v. S. Bend Comm. Sch. Corp.*, 93 F.3d 327 (7th Cir. 1993) (quoting *Bishop v. Arnov*, 926 F.2d 1066, 1077 (11th Cir. 1991)(emphasis added)). The Supreme Court has recognized that "[f]amilies entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family." *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).

It does not violate employees' free speech rights when a school district regulates their interactions with students. Teachers only have access to a captive audience of students due to their position as public educators. "Because the speech at issue owes its existence to [his] position as a teacher, [the School District] acted well within constitutional limits in ordering [the teacher] not to speak in a manner it did not desire." *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 970 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1807 (2012) (upholding decision of school board to require a math teacher to remove two banners with historical quotes referencing "God"). In short, PISD has a duty to regulate employees' religious action.

The Supreme Court has specifically held "that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006).

When a teacher or principal is on school property as part of the school day, even if it is before the official 8:24 a.m. start, they are there for their official duties, just as students are. School staffers cannot lead, encourage, or participate in student-led religious activity. And any religious event or religious club at a PISD school must be **genuinely** student-led. Staff cannot use the guise of "student-led" clubs and religious activities to promote religion themselves. This appears to be the case at PHS.

1. School staff cannot participate in, let alone lead, student religious events such as SYATP.

Wright regularly leads students in prayers and preaches at SYATP events. Please see the attached photos of him doing so on Sept. 23. Apparently, he has been doing this for 21 years, but time does not cure constitutional violations.

See You at the Pole's official website recognizes that adults cannot be involved:

See You at the Pole is a student-led event. Strong student leadership is crucial. **Adult volunteers and parents should not lead the See You at the Pole gathering.** Many well-meaning adults take over and take away from the students by trying to lead out in the prayers at the flagpole. This is not the intention for See You at the Pole, **nor is it legal for adults to lead.** Please step back or stay away and let the students grow and learn in their faith by leading. **The best place for an adult to pray on the day of See You at the Pole is not on campus with the students,** but at alternate locations.¹

Courts recognize this legal limitation too. It is well settled that a public school employee may not lead, direct, or encourage students to engage in prayer. The Supreme Court has continually struck down formal and teacher or school-led prayer in public schools. *See, e.g., Engel v. Vitale*, 370 U.S. 421 (1962) (holding teacher-led prayer in public schools unconstitutional); *Abington Twp. Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (holding devotional Bible reading and recitation of the Lord's Prayer in public schools unconstitutional); *Lee v. Weisman*, 505 U.S. 577 (1992) (ruling prayers at public school graduations unconstitutional); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturning law requiring daily "period of silence not to exceed one minute . . . for meditation or daily prayer.").

It is even unconstitutional for public school employees to participate in the religious activities of their students. *See, e.g., Borden v. Sch. Dist. of the Twp. of East Brunswick*, 523 F.3d 153 (3rd Cir. 2008), *cert. denied*, 129 S.Ct. 1524 (2009) (declaring a coach's organizing, participating in, and leading

¹ <http://syatp.com/> (emphasis added).

student prayers unconstitutional); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995) (declaring coach's participation in student prayer circles an unconstitutional endorsement of religion).

In *Borden*, the court stated that even a school employee's involvement in the prayer by "taking a knee" and "bowing his head" during student-led prayers "would lead a reasonable observer to conclude he was endorsing religion." 523 F.3d at 176. The court continued, "if while acting in their official capacities, [school district] employees join hands in a prayer circle or otherwise manifest approval and solidarity with the student religious exercises, they cross the line between respect for religion and the endorsement of religion." *Id.* at 178 (quoting *Duncanville*, 70 F.3d at 406). Federal law requires government employees to refrain from actively participating in religious activities while acting within their governmental role.

Any religious events must be entirely and genuinely student-initiated and student-run. While PISD cannot prohibit students from organizing or participating in a prayer event like SYATP, the Supreme Court has stated that public school staff members must refrain from participating in the religious activities of students while acting within their governmental roles, to avoid any perception of government endorsement of religion.

2. School staff cannot participate, lead, or form student religious clubs.

We understand that Wright is starting a religious club, First Priority, for students. Parents advertising the club on Facebook, said of Mr. Wright:

He's beginning an organization for students called First Priority on October 7th and that will meet twice per month in the auditorium. **They will sing, pray and praise.** It's like FCA, but some tend to believe FCA is centered more around athletes so Mr. Wright wants all students to feel welcomed **at his First Priority meetings.** He said this morning [that] Christian faith is an active faith. **He's encouraging students to be proactive and make their daily walk with Christ a priority.** See You at the Flagpole was awesome!

A screenshot of this post is enclosed. Another parent put it this way:

He is a Christian man offering the kids who are Christian an opportunity to come together and pray and encourage God's word.

Apparently, when asked why he was starting a second religious club, Mr. Wright did not deny he was doing so, but instead said that the teacher who had been running the previous club was retiring. Given these clear admissions, any claim that this is a genuine student-led club would be disingenuous.

As you may know, the Equal Access Act does not permit school staff to run religious clubs. In fact, 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). Staff 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.*

Please understand that this restriction remains in place even if the club meets during non-instructional hours. The EAA was written to apply to noncurricular clubs meeting during non-

instructional time. That means the staff participation restriction was written to apply during non-instructional time too. In *Sease v. School District of Philadelphia*, a school secretary sponsored and participated in a school gospel choir. The secretary attempted to claim that the choir met after hours and that, as secretary, her school duties were not the same as teachers and therefore she was not prevented from participating. 811 F. Supp. 183 (E.D. Pa. 1993). 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).

Finally, students cannot invite outside adults to regularly attend club meetings: “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). If the club is regularly inviting outside adults to attend, it cannot be considered a student-led group under the EAA and must be disbanded.

In short, student clubs must be student clubs, not excuses for adults to lead religious worship on school grounds.

3. Public schools may not display religious iconography or messages.

We understand that PHS Assistant Principal Grant displays a Latin cross and a plaque about god in her office. The plaque reads: “God didn’t promise days without pain, laughter without sorry, nor sun without rain. But he did promise strength for the day.”

As you are certainly aware, the display of religious messages in the school setting violates the Establishment Clause of the First Amendment. The Supreme Court has continually held that public schools may not display religious messages or iconography. *See generally Stone v. Graham*, 449 U.S. 39 (1980) (ruling that the Ten Commandments may not be displayed on school walls). Other courts agree. *See, e.g., Washegesic v. Bloomingdale Pub. Sch.*, 813 F. Supp. 559, 559 (W.D. Mich. 1993) *aff’d*, 33 F.3d 679 (6th Cir. 1994); *Ahlquist v. City of Cranston ex rel. Strom*, 840 F. Supp. 2d 507 (D.R.I. 2012) (ruling that prayer mural in a school auditorium violated the Establishment Clause).

That these displays are in Grant’s office is immaterial. Students enter her office regularly and the displays are orientated towards those student visitors. Again, public school employees accept certain limitations on their free speech and free exercise rights as part of their governmental positions. Those limitations include not proselytizing students and not displaying religious iconography.

4. Bullying often occurs in schools addressing state-church issues.

PISD appears to be doing a good job curbing bullying. We understand PISD has extensive policies in place, a NO Bully Zone, and a confidential reporting process. FFRF has more than 35 years of experience dealing with state-church issues and that experience shows that the community backlash in school districts dealing with state-church issues can be severe and often leads to serious bullying.

Even though the number of nonreligious students is rising rapidly—now one in three young Americans are not religious²—the stigma attached to nonbelief has not disappeared and often leads to bullying. We request that PISD clearly communicate to students and staff that any retaliatory action taken against district families they believe *might* be responsible for raising state-church issues with the school will not be tolerated.

As you may be aware, federal law allows lawsuits for private damages against schools for acting with deliberate indifference to known acts of student-on-student harassment. *See Davis Next Friend LaShonda D. v. Monroe County Bd. of Educ.*, 526 U.S. 629, 633 (1999) (suit for ignoring sexual harassment; 42 U.S.C. §1983 would allow a similar suit for the denial of Equal Protection on the basis of religion.) FFRF will take any bullying, harassment, or threats very seriously and we hope PISD will do the same.

To ensure that student-led religious activities are truly student-led, and to ensure that PISD complies with the Constitution, we ask that PISD:

1. Inform staff that they must refrain from organizing, participating in, or speaking at SYATP and ensure they do so.
2. Inform staff that they must refrain from organizing, participating in, or speaking to student-led religious clubs and ensure they do so.
3. Because Wright, not students, organized the First Priority Club it must be disbanded. If students wish to reform a religious club, that is their responsibility, not the staff's.
4. Remove the cross and quotes about God's plans and promise from Grant's office and any other religious iconography from PISD schools
5. Inform the PISD community that bullying will not be tolerated, even if those being bullied are raising concerns about the separation of state and church.

I look forward to a written response at your earliest convenience.

Warmest,



Andrew L. Seidel
Staff Attorney
Freedom From Religion Foundation

Cc:
Greg Wright, Principal, PHS

enclosures

² "Nones on the Rise: One-in-Five Adults Have No Religious Affiliation," Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012), *available at* <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>.



1 hour ago 

We're blessed to live in a Christian community where our student's leaders at school support the student's boldness and encourage them to reach out to others who may not be so bold, but wish to be. Mr Wright at PHS is well known for his school spirit and getting students fired up for pep rallies, but he's a man of God who has a mission to get them fired up for God also! He's beginning an organization for students called First Priority on October 7th that will meet twice per month in the auditorium. They will sing, pray and praise. It's like FCA, but some tend to believe FCA is centered more around athletes so Mr Wright wants all students to feel welcomed at his First Priority meetings. He said this morning Christian faith is an active faith. He's encouraging students to be proactive and make their daily walk with Christ a priority. See You at the Flagpole was awesome!

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