

FREEDOM FROM RELIGION *foundation*

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October 26, 2016

SENT BY EMAIL AND MAIL TO: Arthur.McMillan@biloxischools.net

Mr. Arthur McMillan
Superintendent
Biloxi Public Schools
160 St. Peter Ave.
Biloxi, MS 39530

Re: District promotion of religious events, teacher participation in religious clubs

Dear Superintendent McMillan:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to constitutional concerns over religious promotion within Biloxi Public Schools (District). FFRF is a national nonprofit organization with more than 23,500 members nationwide, including members in Mississippi. Our purpose is to protect the constitutional separation between state and church.

A concerned District community member contacted us to report that administrators at both Biloxi Junior High and Biloxi High have been promoting religious events over the schools' public address systems. At Biloxi High School there was a broadcast announcement reminding students to participate in a "See You at the Pole" event taking place on school property. See You at the Pole is a Christian-oriented prayer rally organized each year around a bible verse. This year the event featured Psalm 24:3-6. Event organizers explicitly distinguish between Christian and non-Christian students, calling for non-Christian students to be "reached" through the event while Christian students "strengthen their unity."¹

At Biloxi Junior High, we understand that Principal Powell announced over the loudspeakers on October 4 and 5 that students "shouldn't forget to bring their bibles to school on October 6th" for "Bring Your Bible to School Day," a privately organized, non-school religious event. There was no disclaimer of school endorsement and we are informed that private events are not generally advertised over the intercom. Additionally, we understand that the school has a Fellowship of Christian Athletes club that was organized last year by two Biloxi Junior High staff members, Donna Moran and Carmen Davis, and that these two, along with additional faculty members, are actively involved in organizing and leading club activities. For instance, we understand that school faculty lead students in prayer and have quizzes on the bible at club meetings.

We write to ensure that District staff do not promote religious events to their students in the future and that the District ensures that its employees are not actively participating in religious clubs at school.

¹ See *You at the Pole*, <http://syatp.com/>, click "Adults."

District staff must not promote religious events to students.

As you are probably aware, public schools may not advance, prefer, or promote religion. *See 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 Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962). Public school representatives may not organize or endorse a prayer event like See You at the Pole or an event designed to promote a religious text like Bring your Bible to School Day.

It is unconstitutional for District staff to plan, promote, or participate in religious events. The District has an obligation under the law to make certain that “subsidized teachers do not inculcate religion.” *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971). Certainly, “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)). 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). When District staff members promote their personal religious beliefs to students, they violate not only the Constitution, but also parents’ trust.

Religion is a divisive force in public schools. The Supreme Court has repeatedly noted that “[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 an 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 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)). The promotion of a Christian event alienates those non-Christian students, families, teachers, and members of the public whose religious beliefs are inconsistent with the message being promoted by the school. The event excludes the 35% of young Americans who are not religious and the over 43% who are not Christian.²

Please note that promoting these events is illegal regardless of whether the events are voluntary for students. Federal courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *See Lee*, 505 U.S. at 596 (“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.”); *Schempp*, 374 U.S. at 288 (Brennan, J., concurring) (“Thus, the short, and to me sufficient, answer is that the availability of excusal or exemption simply has no relevance to the establishment question”); *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003) (“VMI cannot avoid Establishment Clause problems by simply asserting that a cadet’s attendance at supper or his or her participation in the supper prayer are ‘voluntary.’”).

² *America’s Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

Religious Clubs Must Be Student-Run.

When District employees take an active role in organizing or promoting religious events or clubs, they create the appearance that the school, and by extension the District, prefers religion over nonreligion and Christianity over all other religions. As you may be aware, the Equal Access Act (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 must be 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). Additionally, the EAA “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 argued 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. Moreover, this prohibition does not raise issues of the teachers’ rights under the Free Exercise Clause of the First Amendment. The Fifth Circuit, the controlling Court of Appeals in Mississippi has held that “[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).

If public school employees, teachers, or administrators are participating in Fellowship of Christian Athletes club activities, the District is not in compliance with the Equal Access Act. And to the extent that Biloxi Junior High is not a secondary school under the meaning of the EAA, participation by school staff violates the Establishment Clause, which does not permit any school involvement in running religious clubs.

If school employees have been actively participating in other religious events at school, such as See You at the Pole or Bring your Bible to School Day, that is illegal for the same reasons set out above. In *Duncanville*, the Fifth Circuit wrote that “if while acting in their official capacities, [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 406 n. 4. When school employees actively participate in religious events with their students, they unconstitutionally entangle the school with a religious message, in this case an exclusively Christian message.

Even See You at the Pole’s official website recognizes that students, not school staff, should be organizing and participating in these events:

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.³

We request that the District investigate the situations described above and take action to ensure that its employees understand and respect their constitutional obligation to remain neutral toward religion while acting in their official capacities. District schools cannot announce religious events over the public address system and school faculty cannot actively organize or participate in religious clubs on campus. Please respond in writing with the steps taken to ensure that these violations do not recur so that we may notify our complainant.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Grover', with a horizontal line extending to the right.

Sam Grover
Staff Attorney

cc: Principal Scott Powell, Biloxi Junior High *via* scott.powell@biloxischools.net
Principal Marcus Boudreaux, Biloxi High School *via* marcus.boudreaux@biloxischools.net

³ <http://syatp.com/>