

FREEDOM FROM RELIGION *foundation*

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October 2, 2018

SENT VIA EMAIL & U.S. MAIL: lherring@bhm.k12.al.us

Dr. Lisa Herring
Superintendent
Birmingham City Schools
2015 Park Place North
Birmingham, AL 35203

Re: Unconstitutional Teacher-Led Prayer and Religious Instruction

Dear Superintendent Herring:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Birmingham City Schools. FFRF is a national nonprofit organization with more than 32,000 members across the country, including members in Alabama. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned parent has reported that a first-grade teacher at Norwood Elementary School leads her students in prayer every day before lunch. Our complainant also reports that she teaches students bible verses and Christian songs, including a song about “the blood of Jesus.” We also understand that Carolyn Russell-Walker, Norwood Elementary School’s principal, begins meetings with prayer. Our complainant reports that Principal Russell-Walker began an open house at the beginning of the school year with a Christian prayer.

Public school teachers and administrators may not promote religion by leading students in prayer, encouraging students to pray, participating in student-initiated prayer, or otherwise endorsing religion to students. The Supreme Court has continually struck down teacher or school-led prayer in public schools. *See, e.g., Engel v. Vitale*, 370 U.S. 421 (1962) (declaring prayers in public schools unconstitutional); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (declaring unconstitutional devotional Bible reading and recitation of the Lord’s Prayer in public schools); *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”).

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). This extends to public school administrators as well. By including Christian prayer in the classroom and at meetings, the District abridges that obligation and alienates the 38% of younger Americans who are not religious.¹

Please note that it is not a violation of the free speech rights of teachers when a school district regulates what they teach to students while acting in their official capacities. Teachers have access to a captive audience of students due to their position as public educators. Therefore, the District has a duty to regulate religious proselytizing during school-sponsored activities.

“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”); *see also Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (“We hold 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.”).

The District should make certain that none of its employees are unlawfully and inappropriately indoctrinating students in religious matters by leading prayer, encouraging them to pray, or setting aside time for prayer or religious instruction. We ask that the District immediately investigate this situation and ensure that Principal Russell-Walker and all teachers at Norwood Elementary School comply with the Establishment Clause. Please respond in writing outlining the steps the District will take to end these serious constitutional violations.

Sincerely,



Christopher Line
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation

¹ Robert P. Jones & Daniel Cox, *America's Changing Religious Identity*, PUBLIC RELIGION RESEARCH INSTITUTE (Sept. 6, 2017), available at www.prrri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.