

FREEDOM FROM RELIGION *foundation*

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August 20, 2014

SENT VIA MAIL & EMAIL TO: kjudy@emmanuel.k12

Dr. Kevin Judy
Superintendent
Emmanuel County Schools
201 North Main Street
Swainsboro, GA 30401

Re: Unconstitutional Teacher-led Prayer

Dear Dr. Judy:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to serious constitutional violations in Emmanuel County Schools. A concerned ECS family contacted us. FFRF is a nonprofit organization with 21,000 members nationwide, including more than 400 members in Georgia and a state chapter based in Atlanta. We protect the constitutional principle of the separation between state and church.

It is our information and understanding that teachers at Swainsboro Primary School regularly lead their students, including first-graders and kindergarteners, in prayer. Prior to lunch Ms. Cel Thompson (K) and Ms. Katherine Brights (1st grade) ask their student to bow their heads, fold their hands, and pray as they do. We understand this is occurring in other classes as well.

We also understand that when the family complained to Principal Watkins, the situation was not resolved. Instead of complying with the Constitution, the teachers instructed our complainants' children to sit in the hallway while the rest of the class prayed. One child felt Ms. Brights "used her mean voice" when asking the child to wait in the hall. Apparently, Ms. Watkins said something like "other parents who don't want their kids to participate in class prayer are okay with their children being taken out of class." This shows that this is a consistent, systemic problem in the school.

Public school teachers and staff may not lead, direct, ask, or even encourage students to pray. The Supreme Court has continually struck down school-sponsored prayer in public schools. *See, e.g. Engel v. Vitale*, 370 U.S. 421 (1962) (declaring prayers in public schools unconstitutional); *Abington Township Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (declaring unconstitutional devotional Bible reading and recitation of the Lord's Prayer in public schools); *see also Sante Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (striking down a school policy that authorized students to vote on whether to hold a prayer at high school football games); *Lee v. Weisman*, 505 U.S. 577 (1992) (ruling prayers at public high school graduations an impermissible establishment of religion); *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.").

In each of these cases, the federal courts struck down organized prayer in public schools because it is a government advancement and endorsement of religion, which violates the Establishment Clause of the First Amendment. This is particularly true when the prayer is conducted or encouraged by teachers and when the students are as young as five years old.

ECS 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). It is not a violation of teachers’ First Amendment rights to require them to keep their religious beliefs to themselves: “a school can direct a teacher to ‘refrain from expressions of religious viewpoints in the classroom and like settings.’” *Helland v. South Bend Comm. Sch. Corp.*, 93 F.3d 327 (7th Cir. 1993) (quoting *Bishop v. Arnov*, 926 F.2d 1066, 1077 (11th Cir. 1991)).

Teachers and staff have access to a captive audience of students due to their positions in public education. Therefore, the District has a duty to regulate religious proselytizing in the classroom and at school functions. “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.”).

While acting in their official role as public school employees, and while they are present in the classroom or public school, teachers and administrators may not pray with students. Courts have upheld the termination of teachers who violate this constitutional mandate. *See, e.g. Grossman v. South Shore Public Sch. Dist.*, 507 F.3d 1097 (7th Cir. 2007).

The school has mentioned two issues that it seems to think solve this constitutional violation—neither does. First, these prayers are clearly not genuine, voluntary student led prayers. Kindergartners and First-graders do not pray before walking to the lunchroom without adult prompting. That a child may actually say the words is irrelevant. If the school is coordinating the prayer opportunity, as it clearly is by taking time out of class for prayer, and the school is facilitating the prayers, as it clearly is by forcing some students into the hall, the school is violating the Constitution. *See Santa Fe*, 530 U.S. 290 (striking down student led prayer even though students voted to have the prayer because the school coordinated the prayers); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (striking down an Alabama law allowing a moment of silence because it was clearly meant to encourage prayer, an unconstitutional religious purpose).

Second, removing some students from the classroom is not an acceptable remedy. The prayers are a violation, whether the students are there or not. Removing the students simply creates division along religious lines. Avoiding this is precisely why the founders wrote the religion clauses of the First Amendment. This practice alienates students, singling them out for bullying, *which has already happened to the first-grader*. This practice must stop now, before things get worse.

Of course, nothing in this letter prevents a student from praying on their own, before lunch, if they wish. But teachers cannot set aside time for students to pray, lead prayers, or even

encourage prayers. Given the history of this problem at the school and the age of the students, announcing or setting aside a "time for silent" prayer is not an acceptable solution. *Wallace v. Jaffree*, 472 U.S. 38 (1985) (striking down an Alabama law allowing a moment of silence because it was clearly meant to encourage prayer, an unconstitutional religious purpose).

We request that you ensure that all school staff members are aware of these restrictions. Teachers within the school system should be directed to refrain, when acting as school staff, from leading students in prayer, encouraging students to pray, and participating in student-led prayer. Teachers should be informed that any such religious activity violates the Constitution of the United States as well as the rights of conscience of the students and their parents. Any staff member found to have been leading prayers should be disciplined and notice of that discipline should be placed in their employment file. Please inform us in writing of any actions you are taking to address this issue.

Sincerely,



Andrew L. Seidel
Staff Attorney

Cc: Principal Valorie Watkins
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