

# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

February 20, 2019

**SENT VIA EMAIL & U.S. MAIL: marlon.king@fcsk12.net**

Marlon King  
Director of Schools  
Fayette County Public Schools  
10425 Hwy 76  
Somerville, TN 38068

Re: Promotion of Religion on Social Media

Dear Director King:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Fayette County Public Schools. FFRF is a national nonprofit organization with more than 31,000 members across the country, including members in Tennessee and a local chapter, FFRF East Tennessee. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

It is our understanding that Fayette County Public Schools has been promoting and endorsing religion. We understand that multiple official District Twitter accounts regularly post and share religious messages. Most of these religious messages are posted or shared by the official Fayette Schools account, which includes the District's logo and instructs the public to "email me at superintendent@fcsk12.net vs direct messaging." It also lists the District's website. Other religious messages have been posted by official school accounts, including "In GOD East trusts!!!!!!" posted by East Junior High School, and "Now I know my ABCs...next time won't you PRAY with me!!!" with a picture "the ABC's of Praying for Students" posted by LaGrange-Moscow Elementary School. Please see the enclosed screenshots.

It is well settled that 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). Advancing, preferring, and promoting religion is exactly what a school district does when its employees post religious messages and endorse religious events and activities on official public social media pages. These proselytizing messages give the appearance of District endorsement of religion over nonreligion, and Christianity over all other faiths. This "[s]chool sponsorship of a religious message is impermissible because it sends the ancillary message to . . . 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, 309-310 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)). It also conflicts with personal religious and nonreligious views of many District students and families, including the 38% of Americans born after 1987 who identify as nonreligious.<sup>1</sup>

Public school employees are government actors and subject to the strictures of the Establishment Clause's separation of church and state. To that end, "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)). Many federal courts

---

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

around the country have prohibited religious messages or conduct by school employees. *See, e.g. Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954 (9th Cir. 2011) (restricting teacher’s display of religious posters in the classroom), *cert. denied*, 132 S.Ct. 1807 (2012); *Lee v. York*, 484 F.3d 687 (4th Cir. 2007) (upholding school district’s removal of religious postings on classroom bulletin boards). *Roberts v. Madigan*, 702 F. Supp. 1505, 1513 (D. Colo. 1989), *aff’d*, 921 F.2d 1047 (10th Cir. 1990) (upholding school district requirement that a teacher refrain from reading the Bible silently during reading period and displaying other religious items in his classroom).

Furthermore, the federal courts have upheld restrictions on the posting of religious materials by government entities because such restrictions exist to avoid an Establishment Clause violation. The Ninth Circuit Court of Appeals has stated that the “government has a greater interest in controlling what materials are posted on its property than it does in controlling the speech of the people who work for it.” *Tucker v. Department of Education*, 97 F.3d 1204, 1214 (9th Cir. 1996); *see also Berry v. Department of Social Services*, 447 F.3d 642, 651 (9th Cir. 2006) (“materials posted on the walls of the corridors of government offices may be interpreted as representing the views of the state.”)

In *Berry*, the court upheld restrictions on displays of religious materials in workspaces, even private cubicles or offices, because public access to the area could cause someone to “reasonably interpret the presence of visible religious items as a government endorsement of religion.” *Berry*, 447 F.3d at 652. These restrictions clearly extend beyond the brick and mortar. They are just as applicable to the District’s webpage and any social media pages, including those utilized by school employees, which a reasonable viewer would assume represents the views of the school district these employees represent.

Even the private social media accounts of people who assume government office can become accounts that speak for the government, unless these government actors carefully distinguish their public and private roles. Courts are willing to treat accounts that government actors believe to be private as official government accounts when they are used to disseminate official government communications. The Ninth Circuit Court of Appeals recently noted that the President’s Twitter feed is composed of “official statements by the President of the United States.” *See Hawaii v. Trump*, 859 F.3d 741, 773 n. 14 (9th Cir.), *cert. granted sub nom. Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 198 L. Ed. 2d 643 (2017), and *vacated on other grounds*, 138 S. Ct. 377, 199 L. Ed. 2d 275 (2017). We see no legal reason why your social media accounts would be treated differently.

To avoid further Establishment Clause concerns, District personnel must not post further religious messages to public social media pages on which they represent themselves using their District job titles and interact with District students. Please inform us in writing of the steps the District is taking to ensure that its staff respects the rights of conscience of its students and families.

Sincerely,



Christopher Line  
*Patrick O’Reiley Legal Fellow*  
*Freedom From Religion Foundation*

Enclosures



## Fayette Schools

@suptking

I believe in these core values strongly:  
Family-Optimism-Courage-Unity-Service  
- FOCUS! (email me at  
superintendent@fcsk12.net vs direct  
messaging)

📍 Somerville, TN

🌐 [fcsk12.net](http://fcsk12.net)

Fayette Schools @suptking 22 Sep 2018

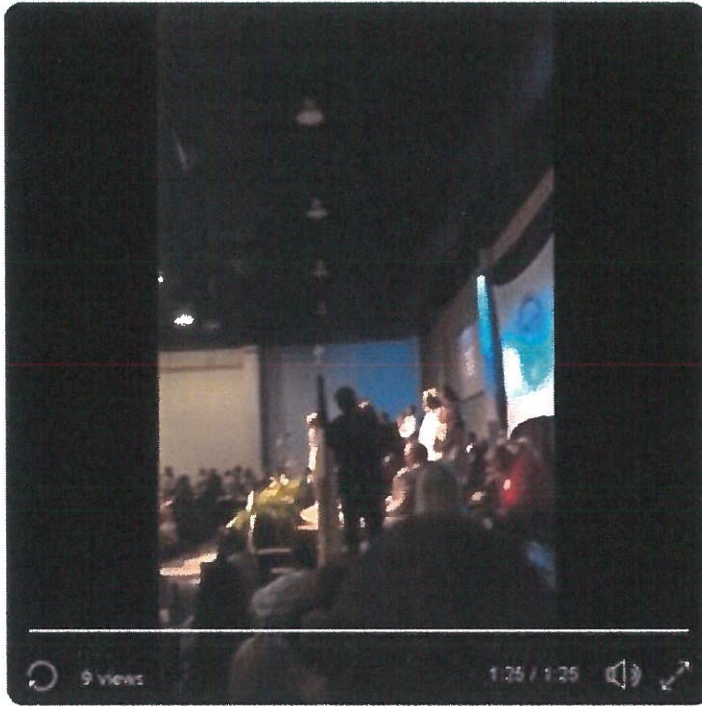
••• TRUST





Jessica M. @OES5thGradeMath · 1 Aug 2017

It's great teaching for a district that allows God to be the head and focuses on family @suptking @OESocI:STARS #loveFCPS #bestyear-ever #oes



LMES @LMES7generation · 24 Oct 2017

Now I know my ABCs... next time won't you PRAY with me!!! @suptking

# the ABC's of Praying for Students



- Attitude - Psalm 14:14
- Boldness - Psalm 27:1
- Courage - John 1:9
- Discernment - Philippians 1:4-10
- Enthusiasm - Colossians 3:23
- Friendliness - Proverbs 18:24
- Generosity - 2 Corinthians 9:7
- Humility - Philippians 2:3-5
- Initiative - 1 John 3:18
- Joyfulness - Philippians 4:4





**Buckley Carpenter** @BCESMunangCity · 17 Apr 2018

3rd grade students asked me to come to their class because they wanted to pray for me and the school! I'll be right there! @suptking

