

FREEDOM FROM RELIGION *foundation*

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

May 2, 2016

**SENT VIA EMAIL AND U.S. MAIL:
abourff@hse.k12.in.us**

Dr. Allen Bourff
Superintendent
Hamilton Southeastern Schools
13485 Cumberland Rd.
Fishers, IN 46038

Re: Teacher-led religious student club

Dear Superintendent Bourff:

I am writing on behalf of the Freedom From Religion Foundation to alert you to a serious constitutional violation at Riverside Intermediate School. FFRF is a national nonprofit organization with 23,000 members across the country, including more than 300 members in Indiana. Our purpose is to protect the constitutional principle of separation between state and church.

A concerned District community member informed us that a student group at Riverside Intermediate School, the Foundation of Christian Students (FCS), meets every week just before school starts. We understand that the meetings are led by adults, including the following teachers: Heather Morrison, Chris Conway, Ross Wolfe, and Shelley Brown. The meetings include adult-created religious lessons and prayer. FCS appears to be organized as a student club, being included in the annual yearbook and mentioned during the school's daily announcements.

The adult involvement with FCS raises a serious constitutional problem. We write to request assurances that FCS, and any other student religious clubs in the District, will be entirely student-initiated and student-led in the future. Teachers should be trained that they may not participate in student religious clubs beyond a supervisory capacity, and teachers who have violated this principle in the past should not be considered as faculty sponsors for student religious groups in the future.

If District teachers organize, promote, or participate in FCS meetings in any way, they appear to endorse the religious club on behalf of the District beyond a supervisory capacity.

As an initial matter, it is well settled that public schools may not advance or endorse religion. *See generally Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Sch. Dist. of Abington Twshp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962). Moreover, “the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (quoting *Lee*, 505 U.S. at 589).

For intermediate schools in Indiana, the Establishment Clause dictates the extent to which religious clubs are permissible. Even when student religious clubs are permissible, it is inappropriate and unconstitutional for District staff to lead or organize a student religious club. Teachers may be present to ensure that students are not violating school rules, but may not participate.

Absent the Equal Access Act, 20 U.S.C. § 4071, which does not apply to intermediate schools in Indiana, religious clubs, when organized or run by school employees, are *prohibited* from meeting on school property during non-instructional time. The Supreme Court noted that this was the state of the law prior to the Equal Access Act, which only changed the law with regard to secondary schools. *Bd. of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 239 (1990) (“ . . . the [Equal Access] Act was enacted in part in response to two federal appellate court decisions holding that student religious groups could not, consistent with the Establishment Clause, meet on school premises during noninstructional time.”); *see also Lubbock Civil Liberties Union v. Lubbock Indep. Sch. Dist.*, 669 F.2d 1038, 1042–48 (5th Cir. 1982), *cert. denied*, 459 U.S. 1155–56 (1983); *Brandon v. Guilderland Bd. of Educ.*, 635 F.2d 971 (2d Cir. 1980), *cert. denied*, 454 U.S. 1123 (1981).

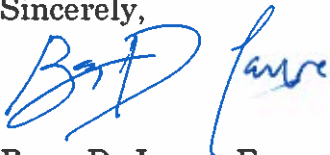
Intermediate schools in Indiana remain in a pre-Equal Access Act state of the law, where teacher-run religious clubs are impermissible. This makes sense because the Act is premised on the idea that secondary school students are mature enough to run clubs on their own and dictate the activities that the club will undertake. Intermediate school students, by contrast, may not be old enough to organize and run their own clubs and are likely not mature enough to appreciate the nuanced distinction between a teacher acting as a school official and a teacher acting as a private sponsor of a religious club.

If students did not initiate FCS’s formation, the club violates the Establishment Clause and should be immediately dissolved. Students would be free to reform the club on their own, if they wish, provided they act on their own initiative and not at the direction of any adult. If students do reinitiate the club, District staff may not participate beyond a supervisory capacity.

Any teachers who have illegally participated in a student religious club in the past cannot be trusted to supervise that club in a non-participatory capacity in the future. The District should find other District representatives who will not overstep their constitutional limitations with the club.

Please investigate these concerns and provide written assurances that in the future Riverside Intermediate School staff will not organize, lead, or participate in student religious clubs. Faculty sponsors may only be present at student religious club meetings in a supervisory capacity, and may not otherwise promote the club. Thank you in advance for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan D. Jayne". The signature is stylized and cursive.

Ryan D. Jayne, Esq.
Diane Uhl Legal Fellow
Freedom From Religion Foundation