

FREEDOM FROM RELIGION *foundation*

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February 24, 2016

SENT VIA EMAIL AND U.S. MAIL:
mgauch@harrisburg3.org

Mr. Michael Gauch
Superintendent
Harrisburg CUSD #3
40 South Main
Harrisburg, IL 62946

Re: Outside adult promoting religion during school day

Dear Superintendent Gauch:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a serious constitutional violation occurring at Harrisburg Middle School. FFRF is a national nonprofit organization with 23,000 members across the country, including more than 700 in Illinois. FFRF's purpose is to protect the constitutional principle of separation between state and church.

A concerned local community member informed us that school administrators at Harrisburg Middle School allow a Baptist minister to lead a lunchtime religious group. We understand this outside adult offers pizza and soda to students who join the group. Parents received a permission slip asking them to allow their child to "meet occasionally with a youth minister representing the Baptist denomination during lunch break at the middle school."

It is inappropriate and unconstitutional for the district to offer religious leaders access to befriend and proselytize students during the school day on school property. No outside adults should be provided carte blanche access to minors—a captive audience—in a public school. This predatory conduct is inappropriate and should raise many red flags. The District cannot allow its schools to be used as recruiting grounds for churches during the school day. We write to request assurances that this practice will be stopped immediately.

It is a fundamental principle of Establishment Clause jurisprudence that a public school may not advance, prefer, or promote religion. *See generally 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 Twshp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962).

It is illegal for public schools to allow adults to lead religious instruction on school property during the school day. Nearly seventy years ago, the Supreme Court ruled that a program that permitted religious instruction on school grounds violated the Establishment Clause. *See Ill. ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203 (1948).

Allowing church representatives access during school hours to proselytize and recruit students for religious activities is a violation of the Establishment Clause. Federal courts have protected public school students from overreaching outsiders in similar situations. *See, e.g., Berger v. Rensselaer School District*, 982 F.2d 1160 (7th Cir. 1993) (holding that distribution of bibles by Gideons in school violated Establishment Clause). Courts have also granted injunctions against schools for their complacency in such situations. *See, e.g., Roark v. S. Iron R-1 Sch. Dist.*, 540 F. Supp.2d 1047, 1059 (E.D. Mo., 2008); *upheld in relevant part by* 573 F.3d 556, (8th Cir. 2009) (holding that school policy allowing evangelical Christian organization to distribute bibles in school violated Establishment Clause). This active, in-person contact with students is different from cases in which religious groups have been allowed to passively distribute literature to students or to send flyers to parents. *See, e.g., Peck v. Upshur Cnty. Bd. of Educ.*, 155 F.3d 274, 281 (4th Cir. 1998) (upholding school board's allowance of passive distribution of religious materials in part because the school board "preclude[d] religious speakers from delivering their messages to Upshur County students face-to-face.").

This practice demonstrates an unlawful preference not only for religion over non-religion, but also Christianity over all other faiths. Public schools have a constitutional obligation to remain neutral toward religion. When a school allows church representatives to recruit students for the church, it has unconstitutionally entangled itself with a religious message—in this case, a Christian message. This practice alienates those non-Christian students, teachers, and members of the public whose religious beliefs are inconsistent with the message being disseminated by the school. Public schools are not an appropriate place for outside adults to convince students to attend their church. This recruitment constitutes "a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith." *McCollum*, 333 U.S. at 210.

Our organization was a litigant in a case where a public school district allowed religious groups to teach in the public schools. In *Doe v. Porter*, 88 F.Supp.2d 904 (E.D. Tenn. 2002), we challenged the practice of allowing religious instruction by an outside group in a Tennessee public school. In

affirming the unconstitutionality of the practice, the Sixth Circuit found that there was no secular purpose to the program, the program communicated a message of government endorsement of religion, and the program fostered excessive entanglement between the state and religion. *Doe v. Porter*, 370 F.3d 558 (6th Cir. 2004).

The District must immediately stop allowing outside adults to promote religion to District students during the school day. We also request that school personnel be reminded of their constitutional obligations under the First Amendment. Please inform us promptly in writing of the steps the District takes to remedy this constitutional violation.

Sincerely,

A handwritten signature in blue ink that reads "Ryan D. Jayne". The signature is written in a cursive style with a large, stylized "R" and "J".

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