

FREEDOM FROM RELIGION *foundation*

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May 17, 2016

**SENT VIA U.S. MAIL AND FAX
(502) 485-3991**

Dr. Donna Hargens
Superintendent
Jefferson County Public Schools
3332 Newburg Rd.
Louisville, KY 40218

Re: FCA Louisville Activities in Jefferson County Public Schools

Dear Dr. Hargens:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Jefferson County Public Schools (District or JCPS). We were contacted by concerned district residents and parents. FFRF is a national nonprofit organization with more than 23,500 members across the country, including over 150 members in Kentucky and a local chapter, FFRF Kentucky. FFRF's purpose is to protect the constitutional principle of separation between state and church.

It is our information that the Fellowship of Christian Athletes (FCA) in Louisville is embedding themselves into athletic programs throughout JCPS. Our complainants inform us that the group sends adult representatives to lead "voluntary" chapel, or religious services, during athletic practices at District schools, and in some cases they have assumed the role of "team chaplain."

FFRF is concerned that FCA Louisville is inappropriately inserting itself into school-sponsored activities, and inappropriately proselytizing JCPS students. Therefore, we ask for an immediate investigation and action to be taken to ensure JCPS students' rights of conscience are protected.

FCA Louisville has documented its activities throughout JCPS on its official Twitter feed. There, many situations raising constitutional concerns are outlined including actions of "official team chaplains," and prayer at team practices, as well as FCA activities in elementary schools. Below is a brief sampling of some of the egregious occurrences listed on Twitter just this year (accompanying pictures not included):

- January 26, 2016: "Southwest Church pastor, Tim Hartlage, getting prayer requests from the Farnsley girls bball before their practice."
- February 21, 2016: "Chaplains did more than just pose for a pic yesterday. Spent some time in prayer for teams & coaches."
- February 26, 2016: "Mill Creek Elem students getting their blood flowing at FCA by dancing for Jesus! Tim Hartlage taking the lead."

- March 30, 2016: “Johnstown Road Elem FCA had students leading the morning. Pleading God is more valuable than trophies!”

Our complainants report that FCA representatives have inserted themselves into athletic practices and events at Atherton High School, where FCA is supposedly “student-run.” It is our understanding that FCA representatives show up at practices and ask the student players if they want to leave for “voluntary chapel.” In particular, on April 26, 2016, a representative showed up at the boys baseball practice and spoke to the team for about ten minutes. There they recruited students to volunteer for a Christian event. On May 1, 2016, we understand a representative came to practice again and took students aside for about the first fifteen minutes of practice. During that time, the FCA representative preached at the students and ended the time by leading those student athletes in prayer before returning them to their practice.

These instances raise serious constitutional concerns. Any student-run FCA groups must be truly student-led and initiated. The volunteer chaplains and their regular attendance at school-sponsored events such as practices violate federal law. FCA huddles at elementary schools cannot be “student-run” because those students are too young to be leading any club.

The applicable law is outlined below:

Equal Access Act and FCA Presence at JCPS Schools

It is a well-settled principle of Establishment Clause jurisprudence that public schools 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 Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962).

It appears that at least some of the FCA groups may be official student clubs, such as the one at Atherton High School. However, this fact does not fully alleviate the constitutional concerns surrounding these clubs. The active involvement of the pastors from various local churches, including their coordination of voluntary chapel and visits to team practices is not in compliance with the federal Equal Access Act. *See* 20 U.S.C.A. § 4071. Under the Equal Access Act, supervision and participation by local pastors, youth ministers, etc., who are not affiliated with the school, of a student group is illegal. They are not public school employees attending to simply monitor the students. As you may know, “[u]nder the Act...faculty monitors may not participate in any religious meetings, and ***nonschool persons may not direct, control or regularly attend activities of student groups.***” *Bd. of Educ. of the Westside Community Schools v. Mergens*, 496 U.S. 226, 253 (1990)(emphasis added). Any school religious groups must be bona fide student clubs that are both student-initiated and student-run.

Regardless of whether the FCA is being led by students or is an outside group using school facilities, FCA representatives cannot be allowed to come to team practices and proselytize to student athletes even if they are asking students to join “voluntarily.” Public schools may not allow teachers and coaches to promote proselytizing during school hours at school-sponsored events, this includes team practices and other extracurricular events. It is well settled that “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

(2001)(quoting *Lee v. Weisman*, 505 U.S. at 589). Teachers and coaches who promote religion are interfering with the rights of students as well as the rights of their parents to transmit religious beliefs to their children as they see fit.

Likewise, it is inappropriate and unconstitutional for public schools to offer a Christian minister unique access to befriend and proselytize student athletes. Non-school persons cannot be allowed to treat the school as a recruiting ground for their religious mission. Accordingly, public school sports teams cannot appoint or employ a chaplain, seek out a spiritual leader for the team, or agree to have a volunteer team chaplain, because public schools may not advance or promote religion.

Furthermore, public school teachers and coaches are also not allowed to participate in the religious activities of their students. It is illegal for public school representatives to lead their teams in prayer. The Supreme Court has continually struck down school-sponsored prayer in public schools. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (holding student-led prayer over the loudspeaker before football games unconstitutional. “Regardless of the listener’s support for, or objection to, the message, an objective Santa Fe High School student will unquestionably perceive the inevitable pregame prayer as stamped with her school’s seal of approval” because it occurred at a “regularly scheduled school-sponsored function conducted on school property.”); *Lee v. Weisman*, 505 U.S. 577 (1992) (finding 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”); *Abington Twp. Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (holding school-sponsored devotional Bible reading and recitation of the Lord’s Prayer unconstitutional); *Engel v. Vitale*, 370 U.S. 421 (1962) (declaring school-sponsored prayers in public schools unconstitutional).

In each of these cases, the Supreme Court struck down school-sponsored prayer because it constitutes a government advancement and endorsement of religion, which violates the Establishment Clause of the First Amendment.

Public school employees must refrain not only from leading prayers themselves, but also from participating in students’ prayers. It is unconstitutional for public school employees to participate in the religious activities of their students. *See, e.g., Bd. of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 253 (1990) (finding that public school faculty may only be at student-led religious meetings in a “nonparticipatory capacity.”). Federal courts have held that even a public school coach’s silent participation in student prayer circles is unconstitutional. *See, e.g., Borden v. Sch. Dist. of the Twp. of East Brunswick*, 523 F.3d 153 (3d Cir. 2008), *cert. denied*, 129 S.Ct. 1524 (2009) (declaring the coach’s organization, participation and leading of prayers before football games unconstitutional); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995) (holding a basketball coach’s participation in student prayer circles an unconstitutional endorsement of religion).

FCA Infiltration at JCPS Elementary Schools


For elementary schools, the Establishment Clause dictates the extent to which religious clubs are permissible. Absent the Equal Access Act, which does not apply to elementary schools, the Establishment Clause prohibits official religious clubs, because elementary students are too young

to truly run a club entirely on their own initiative with no input from school staff or outside adults, and school employees may not organize a religious club for students. It is unconstitutional for District elementary schools or staff to host, sponsor, lead, or promote a Christian club.

Students already feel significant pressure to conform from their peers. They must not be subjected to similar pressure from their school, faculty, or teachers, especially on religious questions. For this reason, federal courts have been particularly vigilant in enforcing the Establishment Clause in elementary schools, and concern over religious coercion and proselytization should be especially high.

We request that you investigate this matter immediately and take immediate action to halt any inappropriate and illegal behavior. Representatives from FCA Louisville cannot be present at any team practices, and they cannot serve as team chaplains or spiritual leaders. Any student-run FCA clubs at JCPS high schools or middle schools cannot be regularly attended or lead by outside adults. Likewise, teachers assigned to FCA clubs as faculty sponsors may only attend to monitor and supervise; they may not lead, direct or participate in any religious activities. We also request an investigation into the FCA activities at JCPS elementary schools to ensure constitutional dictates are being followed. Please inform us in writing of the steps the District is taking to investigate this matter and take appropriate action.

Sincerely,



Rebecca S. Markert
Staff Attorney