

FREEDOM FROM RELIGION *foundation*

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

March 29, 2016

SENT VIA EMAIL AND U.S. MAIL:
Donna.Hargens@jefferson.kyschools.us

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

Re: Promotion of religion in JCPS

Dear Superintendent Hargens:

I am writing on behalf of the Freedom From Religion Foundation regarding multiple serious constitutional concerns within Jefferson County Public Schools. FFRF is a national nonprofit organization with more than 23,000 members across the country, including many members in Kentucky and a state chapter, FFRF Kentucky. Our purpose is to protect the constitutional principle of separation between state and church.

Several concerned community family members alerted us to multiple issues that require your attention. First, we understand that Okolona Elementary School has a Fellowship of Christian Athletes (FCA) student club, sponsored by fifth-grade teacher Ashley Pearson. The Louisville FCA website lists Pearson as the “ministry leader” at Okolona Elementary¹. We understand that Principal Karen Stearman announces when it is time for students to meet in Ms. Pearson’s classroom for an FCA meeting and has stated that “this is something that Okolona Elementary needs.”

Second, we understand that on November 22, 2015 Okolona Elementary School art teacher Mary Smith showed a video featuring the hymn “Amazing Grace” to a class of kindergarten students. The video featured the Christian hymn in multiple languages and included images of Latin crosses on a hill.

Third, we understand that the outward-facing door to Room 318 at Pleasure Ridge Park High School includes multiple Latin crosses, a portrait of Jesus, and the words “Jesus is the way, the truth, and the life;” “FCA;” and “Coach Baxter,” referring to math teacher Michael Baxter. An image of this door is enclosed for your review.

Finally, we understand that a health class at Fern Creek High School, taught by David Myers, instructed students that one of the “aspects/components of health” is “spiritual health,” defined as “**the practice of a religion or guided by faith** which gives you

¹ <http://fcalou.org/campus-list>.

purpose—living according to one’s ethics, morals, and values” (emphasis added). Students were asked to write the following description of spiritual health: “an awareness of one’s purpose in life **and a higher power** that gives us direction, peace, and joy” (emphasis added).

We are writing to request an immediate investigation into these allegations. If confirmed, each of these practices gives the appearance that the District endorses religion over nonreligion, in violation of the Establishment Clause of the First Amendment to the United States Constitution. Taken together, it appears that many JCPS teachers and administrators are unaware of, or choose to disregard, the District’s constitutional obligation to remain neutral on matters of religion.

Elementary school students may not form religious clubs

As an initial matter, 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). The Supreme Court has long recognized 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 (2000) (quoting *Lee*, 505 U.S. at 589).

For elementary schools, the Establishment Clause dictates the extent to which religious clubs are permissible. Even when student religious clubs are permissible, such as at a high school, it is inappropriate and unconstitutional for JCPS schools or staff to lead or promote a student religious club.

Absent the Equal Access Act, 20 U.S.C. § 4071, which does not apply to elementary schools, religious clubs, when organized or run by the school or its 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).

Elementary schools 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. Elementary school students, by contrast, are not old enough to organize and run their own clubs and are 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.

Please ensure that all religious clubs that meet at District schools abide by the above guidelines. Any religious student groups at District elementary schools must be disbanded.² If outside religious organizations rent space at District schools, the District may not promote or endorse the meetings, including announcing meetings over the school's loudspeaker, and the outside groups must abide by a neutral policy for renting District facilities.

District schools may not display religious iconography

The District violates the Constitution when it allows its schools to display religious symbols or messages. The Latin crosses Mary Smith showed to kindergarten students, as well as the Latin crosses and promotion of Jesus displayed at Ridge Park High School, violate this principle because they unabashedly promote Christianity on behalf of the District.

Courts have continually held that school districts may not display religious messages or iconography in public schools. *See, e.g., Stone v. Graham*, 449 U.S. 39 (1980) (ruling that the Ten Commandments may not be displayed on classroom walls); *Lee v. York Cnty.*, 484 F.3d 689 (4th Cir. 2007) (ruling that a teacher may be barred from displaying religious messages on classroom bulletin boards); *Washegesic v. Bloomington Pub. Schs.*, 33 F.3d 679 (6th Cir. 1994) (ruling that a picture of Jesus may not be displayed in a public school).

The religious significance of the Latin cross is unambiguous and indisputable. "The Latin cross . . . is the principal symbol of Christianity around the world, and display of the cross alone could not reasonably be taken to have any secular point." *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 792 (1995) (Souter, J., concurring). An overwhelming majority of federal courts agree that the Latin cross universally represents the Christian religion, and only the Christian religion. *See, e.g., Separation of Church and State Comm. v. City of Eugene*, 93 F.3d 617, 620 (9th Cir. 1996) ("There is no question that the Latin cross is a symbol of Christianity, and that its placement on public land . . . violates the Establishment Clause"); *Harris v. City of Zion*, 927 F.2d 1401, 1412 (7th Cir. 1991) ("a Latin cross . . . endorses or promotes a particular religious faith. It expresses an unambiguous choice in favor of Christianity."), *cert. denied*, 505 U.S. 1218 (1992); *ACLU of Ill. v. City of St. Charles*, 794 F.2d 265, 271 (7th Cir. 1986) ("When prominently displayed . . . the cross dramatically conveys a message of governmental support for Christianity, whatever the intentions of those responsible for the display may be. Such a display is not only religious but sectarian."), *cert. denied*, 479 U.S. 961 (1986).

Please instruct Smith that she may not show movies promoting Christianity, and ensure that the religious iconography in Ridge Park High School is removed, as well as the accompanying religious text and portrait of Jesus.

² The FCA website lists clubs at the following District elementary schools: Carter, Fairdale, Goldsmith, Gutermuth, Jeffersontown, Johnsonstown Road, Mill Creek, St. Matthews, Stopher, and Tully.

Health classes should not promote spirituality

The health class at Fern Creek High School raises serious constitutional concerns. While it is certainly appropriate to encourage students to live “according to one’s ethics, morals, and values,” it is simply inaccurate to label this concept “spirituality,” since individuals can maintain high standards of ethical and moral values without being in any way “spiritual.”

More importantly, it is unconstitutional for the District to tell students that they will be healthier if they engage in “the practice of religion,” are “guided by faith,” or seek direction from “a higher power.” The District may not advise students to adopt religious beliefs or practices. Please ensure that future District health classes will not promote religious practice, faith, or belief in a higher power.

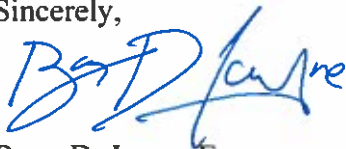
By telling students that they ought to engage in religious practices and seek guidance from faith and a higher power, the District also disparages the 23% of Americans, including more than one-in-three millennials, who now identify as nonreligious.³ Lacking religiosity or spirituality is not a health risk, and the District should not instruct students otherwise.

Conclusion

District elementary schools may not have religious student groups and may not endorse or promote outside religious groups. District employees may not display images promoting religion, including Latin crosses. The District may not encourage students to engage in religious beliefs or practices. Given the breadth of these problems, it would certainly be appropriate to remind all JCPS staff that they may not in any way promote religion on behalf of the District.

Please investigate each of these concerns and respond in writing, detailing the steps the District takes to ensure that these issues do not recur, so that we may notify our local complainants.

Sincerely,



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

Enclosure

³ *America’s Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

318

FCA 



311-315

309
311-315

