

FREEDOM FROM RELIGION *foundation*

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

March 9, 2018

Ms. Louise Dyer
Leadership Academy
6720 Oak Hill Blvd.
Tyler, TX 75703

Re: Illegal lunchtime prayer practice within Leadership Academy

Dear Ms. Dyer:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a serious constitutional violation occurring within Leadership Academy. FFRF is a national nonprofit organization with more than 32,000 members across the country, including over 1,300 in Texas. Our purposes are to protect the constitutional principle of separation between state and church and to educate the public on matters related to nontheism.

A concerned parent of a Leadership Academy student contacted us to report that teachers within the school have established a prayer practice that takes place every day before lunch. We understand that every day either a teacher selects a student to lead a prayer or a teacher leads a prayer before students begin their lunch.

We write to ensure that the school ends this unconstitutional practice.

Public school teachers may not lead their students in prayer, encourage students to pray, participate in student-initiated prayer, or otherwise endorse religion to students. The Supreme Court has continually struck down teacher- or school-led prayer in public schools. *See, e.g., Engel v. Vitale*, 370 U.S. 421 (1962) (declaring prayers in public schools unconstitutional); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (declaring unconstitutional devotional Bible reading and recitation of the Lord's Prayer in public schools); *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"). Even if led by a student, a prayer scheduled and endorsed by a public school violates the Constitution. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (holding school-sponsored prayers delivered by students before football games unconstitutional).

As a public charter school, Leadership Academy has an obligation under the law to make certain that "subsidized teachers do not inculcate religion." *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971). Certainly, "a school can direct a teacher to 'refrain from expressions of religious viewpoints in the classroom and like settings.'" *Helland v. S. Bend Comm. Sch. Corp.*, 93 F.3d 327 (7th Cir. 1993) (quoting *Bishop v. Arnov*, 926 F.2d 1066, 1077 (11th Cir. 1991)). The Supreme Court has recognized that "[f]amilies entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family." *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).

It is not a violation of the free speech rights of teachers when a school regulates what they teach to students while acting in their official capacities. Teachers have access to a captive audience of

students due to their position as public educators. Therefore, the school has a duty to regulate religious proselytizing during the school day. "Because the speech at issue owes its existence to [his] position as a teacher, [the School District] acted well within constitutional limits in ordering [the teacher] not to speak in a manner it did not desire." *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 970 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1807 (2012) (upholding decision of school board to require a math teacher to remove two banners with historical quotes referencing "God"); *see also Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) ("We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.").

Please note that it would not change the illegality of this practice if participation was made optional for students. Courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *See generally Lee v. Weisman*, 505 U.S. 577, 596 (1992) ("It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice."); *Schempp*, 374 U.S. at 288 (Brennan, J., concurring) ("Thus, the short, and to me sufficient, answer is that the availability of excusal or exemption simply has no relevance to the establishment question"); *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003) ("VMI cannot avoid Establishment Clause problems by simply asserting that a cadet's attendance at supper or his or her participation in the supper prayer are 'voluntary.'").

FFRF is committed to defending the rights of students in public schools. Given how young and impressionable these students are, this violation of the law is particularly egregious. In 2015, we settled a lawsuit with Emanuel County School District in Georgia over a similar issue. In Emanuel County, two different teachers asked students to pray before eating lunch. Given how clear the law is on the illegality of this practice, those teachers were sued in their official *and personal* capacities, as were district administrators. The lawsuit ended with Emanuel teachers receiving educational training on the Establishment Clause and our complainants being financially compensated for the harm they suffered. There is no reason for Leadership Academy to invite a similar lawsuit here.

Nothing in the law prevents students, teachers, or school employees from freely exercising their religion on their own time and in their own way. But a public school itself must not promote a decidedly religious ritual to a captive student audience, thereby isolating and excluding those students who are nonreligious. Any teachers engaging in or promoting this practice must be instructed to cease scheduling prayers at once. Please inform us in writing of the steps the school takes to protect the right of conscience of its students so that we may notify our complainant.

Sincerely,



Sam Grover
Associate Counsel