

FREEDOM FROM RELIGION *foundation*

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August 16, 2017

SENT VIA U.S. MAIL & EMAIL: joe.garza@nbexcellence.org

Mr. Joe Garza
Superintendent
School District of New Berlin
4333 S. Sunnyslope Road
New Berlin, WI 53151

Re: Good News Club coming to School District of New Berlin

Dear Superintendent Garza:

We are writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to constitutional concerns regarding religious clubs planning to establish themselves in the School District of New Berlin this upcoming school year. FFRF is a Wisconsin-based national nonprofit organization with more than 29,000 members across the country, including more than 1,200 members in Wisconsin. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

Each year, "Good News Across America," a national children's outreach sponsored by Child Evangelism Fellowship, targets one major city for evangelism. For 2017, it has chosen to target the Greater Milwaukee area. It is our understanding that as part of this evangelical invasion a local church backed by CEF will seek to establish a "Good News Club" at Orchard Lane Elementary School.

We are writing to inform you of problems that can arise when religious clubs meet in public school facilities, as well as to remind the District of its obligation to protect students from proselytizing adults while they are at school.

As you may be aware, the Good News Club is an evangelical Christian program for 5-12 year old children that has often been criticized for its tactic of meeting in public elementary schools, blurring the distinction between church and state, and for masking its goal of proselytizing children. Its self-described mission is: "Child Evangelism Fellowship is a Bible-centered organization composed of born-again believers whose purpose is to evangelize boys and girls with the Gospel of the Lord Jesus Christ and to establish (disciple) them in the Word of God and in a local church for Christian living." The club lures children in with treats, games, and prizes, then imposes a fundamentalist Christian curriculum that focuses on children as sinners deserving of eternal punishment unless they are "saved." Club leaders actively encourage children to proselytize classmates, particularly those who are "unchurched" or following a different religion, leading to divisiveness, peer pressure, and raising the potential for bullying and exclusion. Religion in schools builds walls between children and calls attention to differences that children would otherwise be unaware of.

Wisconsin Supreme Court Justice H.S. Orton best expressed the divisiveness of religion in his 1890 concurring opinion in *State ex rel Weiss v. District Board*, which ruled bible readings and devotionals in public schools unconstitutional:

"There is no such source and cause of strife, quarrel, fights, malignant opposition, persecution, and war, and all evil in the state as religion. Let it once enter our civil affairs, our government would soon be destroyed. Let it once enter our common schools, they would be destroyed . . . Those who made our Constitution saw this, and used the most apt and comprehensive language in it to prevent such a catastrophe."

44 N.W. 967, 981 (Wis. 1890).

In dealing with issues related to the Good News Club in the past, we have often found that school districts dedicated to abiding by the Constitution have had their efforts thwarted by overzealous club leaders not willing to follow district guidelines or policies. In some instances, club leaders have deliberately misled school officials in order to advance the club's mission of evangelizing public school children.

To comply with its constitutional duty to protect its young students, the District should carefully monitor all outside groups operating within its school facilities to ensure they are following school policies.

Religious Endorsement

It is well settled that public schools may not advance 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); *McCullum v Bd. of Educ.*, 333 U.S. 203 (1948). The District cannot offer the Good News Club unique access to its students, or endorse the club and its activities to students. Any privileges granted to the Good News Club must be applicable to all outside groups using school facilities.

In order to help avoid the appearance that SDNB endorses the Good News Club, the District can:

- Make sure permission slips clearly state that the Club is not endorsed or sponsored by the school
- Make sure non-school groups such as the Good News Club meet well after the end of the school day
- Prohibit all non-school affiliated groups from using the school's and PTA's communication vehicles or from sponsoring school activities
- Ensure that school personnel are not endorsing or recruiting for the Good News Club, or serving as club teachers

School Rentals

In 2001, the U.S. Supreme Court found that it is constitutional for a school district to allow religious groups to use school property for meetings during non-instructional hours if the school district's policy allows other community groups to use its facilities, but the District may impose rules upon groups that use school property on a viewpoint neutral basis. For example, the District could restrict *all* outside groups from using school facilities and limit the use of its property to only school-sponsored events and/or activities.

SDNB can also place limitations on how outside groups may occupy public school buildings. Club leaders will undoubtedly try to have a presence in school halls and classrooms prior to students leaving for the day, but outside adults cannot be allowed access to students while classes are in session or as students are attempting to exit classrooms. Rental periods should be scheduled to begin after students have safely left for the day.

If the Good News Club wishes to advertise its program on school property, it may only use school property during the time it has *rented* the property, provided the District permits renters to place signs and banners. In that case, they can be placed no earlier than when the rental time begins and must be taken them down when the rental time ends.

The Wisconsin State Constitution was amended in 1972 to give districts discretion to allow civic, religious or charitable organizations to rent public schools “during nonschool hours upon payment by the organization to the school district of reasonable compensation for such use.” Wis. Const. art. 1, § 24. This means Good News Club and all other applicable clubs must be charged rent, and the District has an obligation to collect it in a timely fashion. We would assume SDNB periodically reviews its rate schedule to ensure renters are indeed carrying their weight and compensating the District for all extra costs associated with janitorial set-up, cleanup, extra HVAC costs, etc. Taxpayers should be assured they are not directly subsidizing child evangelism.

School Distributions

The Good News Club will likely seek to have its advertisements and flyers distributed through official school channels. The practice of distributing religious flyers by public schools is objectionable on many different grounds. First, school-sponsored distributions of religious material appear to carry the stamp of official endorsement. Certainly, small children are apt to confuse official school notices with religious propaganda. Second, even if the school disassociates itself from the religious activity through a disclaimer, the distribution of literature for religious organizations and activities requires the time and resources of paid school personnel. Policies that allow these third parties to distribute their literature forces teachers of diverse views and beliefs to distribute religious promotional materials. This also diverts time from instruction on overburdened teachers.

We encourage SDNB to ensure its policies allow only school-sponsored materials be distributed to students. This avoids the difficult First Amendment issues that arise when the school becomes involved in distributing materials for other groups, like the Good News Club. Many enlightened school districts across the country have sought to avoid the unseemly entanglement with religious groups by prohibiting third parties from distributing materials altogether.

For instance, one school district we recently contacted changed its policy so that “distribution of materials produced by organizations or individuals external to the [school district] is prohibited at District locations unless the material has been approved in writing by the Superintendent or designee. Any such written materials may only be distributed by:

- Governmental agencies or representatives acting in their official capacities;
- Support organizations specifically created and existing for the direct benefit of the District, its schools and their students for purposes of the District’s curricular, co-curricular and extra-curricular activities and non-profit foundations which exist for the purpose of fundraising for the benefit of the District and District activities.

- Institutions, agencies, and/or individuals with public common education as the known beneficiary of their services and activities.”

This policy prohibits outside groups from turning schools into religious battlegrounds while preserving the distribution system for the benefit of the school. We encourage SDNB to adopt a similar policy or to prohibit distributions altogether.

Public schools have a constitutional obligation to remain neutral toward religion and to protect the rights of conscience of young and impressionable students. SDNB must ensure it does not entangle itself with religion by endorsing the Good News Club, offering the club unique access to students, or giving the club preferential treatment. Besides violating the Constitution, and alienating non-Christian students, teachers, and members of the public whose religious beliefs are inconsistent with the message being promoted by the school, school entanglement with religion alienates the 23 percent of the American population that is nonreligious.¹

SDNB has an affirmative duty to protect students from proselytizing adults while the students are at school. Parents, not the school district or an evangelical Christian club, are responsible for determining the religious or nonreligious upbringing of their children. We would be pleased to hear from you about what steps SDNB is taking to protect itself and its students while the Good News Club is targeting it during this school year. Thank you for your attention to these serious concerns.

Very truly,

A handwritten signature in blue ink that reads "Dan Barker Annie Laurie Gaylor". The signature is written in a cursive, flowing style.

Dan Barker & Annie Laurie Gaylor
Co-Presidents

DB/ALG:cal

Cc: Principal Amy Fare, Orchard Lane Elementary School *via* amy.fare@nbexcellence.org

¹ *America's Changing Religious Landscape*, Pew Research Center (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.