

FREEDOM FROM RELIGION *foundation*

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January 17, 2019

SENT VIA EMAIL AND U.S. MAIL:
mkryshak@waupacaschools.org

Mark Kryshak
School Board President
Tomorrow River School District
357 North Main Street
Amherst, WI 54406

Re: Religious promotion concerns at Tomorrow River Community Charter School

Dear President Kryshak:

I am writing on behalf of the Freedom From Religion Foundation to alert you to constitutional concerns involving the Tomorrow River Community Charter School. A concerned local community member contacted us to report that the school board is currently considering leasing St. James and St. Mary of Mount Carmel Church in Amherst for Tomorrow River Community Charter School classes. We wrote the school board in September to request public records to learn more about this arrangement and to ensure that the District will not impermissibly advance religion through this proposed partnership.

After reviewing records related to the selection of classroom space for Tomorrow River, we urge the board to select one of the alternative secular classroom spaces. If the board does decide to lease space at the church, substantial steps must be taken to ensure that the District does not appear to endorse the church or its religious message.

As you may know, holding school-sponsored events at churches is constitutionally suspect, particularly if the space includes religious iconography or other religious messages, or if the District allows the church to take advantage of the event to recruit students. The Seventh Circuit Court of Appeals, which has jurisdiction over Wisconsin, struck down another school districts' use of a church for school functions. *See Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840 (7th Cir. 2012) (overturning prior opinion and holding that a school's graduation held in a church violated the Establishment Clause). Other federal courts around the country have also struck down similar practices. *See, e.g., Does v. Enfield Pub. Sch.*, 716 F. Supp. 2d 172 (D. Conn. 2010) ("By choosing to hold graduations at [a church], [a school] sends the message that it is closely linked with [the church] and its religious mission, that it favors the religious over the irreligious, and that it prefers Christians over those that subscribe to other faiths, or no faith at all."); *Musgrove v. Sch. Bd. Of Brevard Cty.*, 608 F. Supp. 2d 1303 (M.D. Fla. 2005) (ruling that plaintiffs had demonstrated likelihood of success on the merits of their claim that holding public high school graduations in a church violates the Establishment Clause).

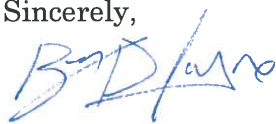
Given the precedent associated with holding a single public school event in a church, a public school's decision to hold *all* classes in a church obviously raises serious concerns and requires substantial steps to ensure constitutional compliance. The records we received listed "Church and State" as a "Challenge" of the "Fancher Building Decision Matrix," indicating that the board is already aware of these potential constitutional problems. If Tomorrow River does decide to lease church space for classrooms, there are two basic issues that must be resolved in order to ensure constitutional compliance.

The first issue is the presence of religious iconography. If Tomorrow River moves classes to a church, any space used by the school must meet the established public school standards prohibiting the display of religious images or symbols. *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 Cty.*, 484 33 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 painting of Jesus may not be displayed in a public school).

The second issue is the potential for interaction between church personnel and Tomorrow River students. Tomorrow River may not allow its school to be used as a recruiting ground for the church during the school day. It would be inappropriate and unconstitutional for Tomorrow River to offer religious leaders unique access to befriend and proselytize students during the school day on school property, and leasing space at a church would only underscore the importance of maintaining a separation between the school and the church. Federal courts have prohibited public schools from allowing church representatives access to promote religion to students. *See generally Lee v. Weisman*, 505 U.S. 577 (1992) (delivering graduation prayer); *Tudor v. Bd. of Educ. of Rutherford*, 14 N.J. 31 (1953), *cert. denied*, 348 U.S. 816 (1954) (distributing religious literature); *McCollum v Bd. of Ed.*, 333 U.S. 203 (1948) (leading religious instruction).

We strongly urge the board to find classroom space that is not in a church. If the board does decide to lease church space, it must ensure that students will not be exposed to religious iconography and that the District will not otherwise appear to endorse the church's religious mission. We request a written response indicating how the board intends to address these concerns so that we may notify our complainant that this matter has been resolved. We look forward to hearing from you soon.

Sincerely,



Ryan D. Jayne
Staff Attorney

RDJ:lcm