

# FREEDOM FROM RELIGION *foundation*

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March 18, 2016

**SENT VIA EMAIL AND U.S. MAIL:  
acummings@tricountyschools.com**

Mr. Allen Cumings  
Superintendent  
Tri County Area Schools  
P.O. Box 79  
Sand Lake, MI 49343

Re: Unconstitutional religious club at Tri County High School

Dear Superintendent Cumings:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to constitutional violations at Tri County High School (TCHS). FFRF is a national nonprofit organization with more than 23,000 members across the country, including more than 600 members in Michigan. Our purpose is to protect the constitutional principle of separation between state and church.

A concerned District community member informed us that a religious student club, "First Priority," meets weekly in the TCHS band room during a lunch break. We understand that the club is led, or regularly attended, by local pastor George Bolivion. We also understand that music teacher Alison Petriella participates in club meetings and promotes First Priority during class time, telling students things like, "in case you didn't know, I'm involved with First Priority, a Christian group that meets here in the band room every Friday. You should come." We understand that Petriella has also distributed First Priority flyers to students during lunchtime, sometimes telling students they should take a flyer because they "need Jesus."

These circumstances raise several serious constitutional concerns. We are writing to request an immediate investigation into these allegations. If confirmed, we expect the District to promptly correct these problems.

First, teachers and other District representatives may not participate in student religious clubs, nor may they promote religious clubs during the school day. Second, outside adults may not lead or regularly attend student religious clubs. Finally, student religious clubs may only meet during non-instructional time.

**Teachers may not participate in, or promote, student religious clubs**

The District impermissibly appears to endorse a religious club when it allows a teacher to be involved in the club beyond a supervisory capacity. If Petriella organizes, promotes, or participates in First Priority meetings in any way, she appears to endorse the religious club on behalf of the District.

District employees who promote religious clubs during the school day violate the Establishment Clause of the First Amendment to the U.S. Constitution, which prohibits government sponsorship of religious messages. The Supreme Court has said time and again that the “First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cnty., Ky. v. American Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15–16 (1947). This constitutional mandate is stronger within the context of public schools.

It is well settled that public schools may not advance or endorse religion. See generally *Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Sch. Dist. of Abington Twshp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962). Moreover, “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). Public school employees may not urge religious points of view on students, parents, or coworkers. This includes public school teachers and other employees promoting religious clubs, verbally or by distributing flyers.

The Equal Access Act, which allows the First Priority club to form, requires that “employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity.” 20 U.S.C. § 4071(c)(2). We often hear from students that public school teachers are overreaching and leading or directing the activities of student religious clubs. This is illegal. Any school religious groups must be bona fide student clubs that are both student-initiated and student-run.

Any teachers who have illegally participated in a student religious club in the past cannot be trusted to supervise that club in a non-participatory capacity in the future. The club should receive a new faculty sponsor who understands the strict limits of the Equal Access Act and is committed to following the law. The District should be particularly careful with faculty sponsors of First Priority, since at least some of their chapters encourage faculty sponsors to participate in the club and require faculty sponsors to “commit to” promoting the club within the school, incorrectly suggesting that these activities are legally permissible.<sup>1</sup>

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<sup>1</sup>See, e.g., <http://firstpriority.cc/faculty/>.

### **Outside adults may not regularly attend student religious clubs**

It is illegal for public schools to allow adults to lead religious instruction on school property during the school day. The Supreme Court ruled that a program that permitted religious instruction on school grounds violated the Establishment Clause. *See Ill. ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203 (1948). The District may not allow a local pastor to lead students in religious instruction while school is in session.

Our organization was a litigant in a case where a public school district allowed religious groups to teach in the public schools. In *Doe v. Porter*, 88 F.Supp.2d 904 (E.D. Tenn. 2002), we challenged the practice of allowing religious instruction by an outside group in a Tennessee public school. In affirming the unconstitutionality of the practice, the Sixth Circuit, the controlling court of appeals over Michigan, found that there was no secular purpose to the program, the program communicated a message of government endorsement of religion, and the program fostered excessive entanglement between the state and religion. *Doe v. Porter*, 370 F.3d 558 (6th Cir. 2004).

Even though the Equal Access Act (EAA) dictates that public secondary schools may not discriminate against student organizations based on their religious, political, philosophical, or other beliefs, *see Bd. of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 235 (1990) (holding the EAA constitutional), it is illegal for outside adults to regularly participate in, organize, or lead student religious organizations. “Under the [Equal Access] Act . . . nonschool persons may not direct, control or regularly attend activities of student groups.” *Id.* at 253 (citing 20 USC §§ 4071(c)(3) and (5)).

### **Student religious clubs may not meet during lunch at TCHS**

The EAA allows student religious clubs to meet only “during noninstructional time.” 20 U.S.C. § 4071(b). This plainly allows clubs to meet before or after school, but does not necessarily include lunch periods.

At least one court has held that lunch breaks are non-instructional time for the purposes of the EAA. *Ceniceros v. Bd. of Trustees*, 106 F.3d 878 (9th Cir. 1997). In *Ceniceros*, however, the court relied on the fact that “All students at [the school] have the same lunch period, from 11:30 a.m. to 12:10 p.m. daily, during which they are free to leave the school campus. No classes are held during lunch. Classroom instruction resumes at 12:15 p.m. and ends at 2:10 p.m.” *Id.* at 879–80.

By contrast, lunchtime at TCHS is still instructional time because classes are still taking place at that time—each day there is exactly one four-minute period when some students are at lunch and no classes are in session.<sup>2</sup> Especially

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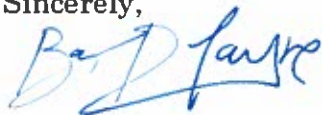
<sup>2</sup> The District website lists half-hour lunches beginning at 10:33 a.m. and 11:37 a.m. on Mondays, Wednesdays, and Fridays, and at 10:50 a.m. and 11:49 a.m. on Tuesdays and

combined with the above concerns, a religious club meeting while classes are in session gives the appearance that the club is school-sponsored.

**Conclusion**

Please investigate these concerns and provide written assurances that in the future all student religious clubs in the District will fully comply with the restrictions of the Equal Access Act. Faculty sponsors may only be present at student religious club meetings in a supervisory capacity, and may not otherwise promote the club. Outside adults should not be granted regular access to the club. Anyone who has overstepped these limits in the past should not be permitted to have any involvement with the club in the future. Finally, the club meeting time should be changed to non-instructional time at TCHS, either before or after the school day.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan D. Jayne".

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

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Thursdays. One-hour classes begin at 10:37 a.m. and 11:07 a.m. on Mondays, Wednesdays, and Fridays, and 55-minute classes begin at 10:54 a.m. and 11:24 a.m. on Tuesdays and Thursdays. <http://www.tricountyschools.com/ourschools/tricountyhighschool/our-school/>.