

APR 13 2016

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April 11, 2016

Ryan D. Jayne, Esq.
Freedom From Religion Foundation
P.O. Box 750
Madison, WI 53701

Re: Tri County High School and March 18, 2016 Letter

Dear Mr. Jayne:

Tri County Area Schools ("District") forwarded your letter of March 18, 2016 to my attention for review and response. We appreciate your bringing the concerns raised in your letter to the District's attention. We have investigated these concerns, and the District does plan to take some corrective action.

As we understand, your letter raised three issues: (1) teachers participating in a student religious club; (2) outside adults, specifically, a local pastor, George Bolivion, attending the religious club's meetings during the school day; and (3) the student religious club meeting during the lunch hour.

Our investigation disclosed that some students affiliated with a religious club, known as First Priority, apparently have been conducting informal meetings during some of the lunch periods. A music teacher, Allison Petriella, apparently has met with a few students on occasion during the lunch hour, and on two occasions, she did promote the club by distributing flyers during her lunch period. Typically, student clubs do not meet during the lunch hour, but there may be meetings of officers for planning purposes among other clubs during the lunch hour.

The District does operate as a limited public forum and recognizes a number of student-led organizations. The District is aware of its obligations under the First Amendment Establishment Clause with respect to separation of church and state, especially as articulated by the case of *Lemon v Kurtzman*, 403 US 602 (1971).

As you know, since the District is a limited open forum, it does have an obligation under the Equal Access Act not to discriminate against any students who wish to conduct a meeting within that limited forum on the basis of religious, political, philosophical, or other content of speech at such meetings. 20 USC §4071 *et seq.* The District is also aware of its obligations that

it cannot sponsor any such student-led meeting, that school staff members may be present only in a non-participatory capacity, that the meetings cannot materially or substantially interfere with the orderly conduct of educational activities within the school, and that non-school persons may not direct, conduct, control, or regularly attend activities of the student groups.

As I am sure you can appreciate, there is some tension within the First Amendment between respecting freedom of expression, which may include religious expression, and respecting the requirements of the Establishment Clause. As reflected in *Allen v School Board for Santa Rosa County*, 782 F Supp 2d 1304 (N.D. Fla., 2011), school employees have certain freedom of expression rights even in connection with religious expression or religious exercise.

The District recognizes the restrictions that should apply with respect to outside participation in student-led religious clubs. Nonetheless, based on the District's investigation, we can assure you that nothing occurred that remotely resembled the circumstances involved in the case in which you were a litigant, *Doe v Porter*, 88 F Supp 2d 904 (E.D. Tenn., 2002), *aff'd* 370 F3d 558 (CA6, 2004). As you know, in that case, a public school district improperly permitted a Christian college to actually conduct bible classes during school hours at a public school.

While we appreciate the concern about religious clubs meeting during the lunch hour, as noted above, other student groups meet on an informal basis during their lunch hours. As you acknowledge, the Ninth Circuit United States Court of Appeals allowed a student-led religious club to meet during the lunch hour. *Ceniceros v Board of Trustees*, 106 F3d 878 (9th Cir., 1997). When a District allows other student organizations, it cannot prohibit a student religious club from meeting at the same time. *Donovan v Punxsutawney Area School Board*, 336 F3d 211 (CA 3, 2003).

Notwithstanding these comments, some of the concerns raised in your March 18, 2016 letter are valid. Consequently, the District is taking the following action:

1. The District will ensure that any staff members who are designated as adult supervisors participate only as monitors and on a non-participatory basis. They will be instructed to refrain from promoting the club or from engaging in any active participation in the religious club.
2. Outside persons, such as pastors and ministers, will be barred from attending religious clubs during school hours.
3. The District will not allow the religious club to meet during the lunch hour unless the District formally designates the lunch hour as a time that non-curriculum clubs will be allowed to meet.

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We believe that these measures will adequately address the concerns that you raised in your March 18, 2016 letter. We appreciate your bringing these matters to our attention. If you have any questions, please feel free to contact me.

Sincerely,

CLARK HILL PLC


Marshall W. Grate

MWG:mjz

cc: Al Cumings, Superintendent