

FREEDOM FROM RELIGION *foundation*

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

June 17, 2016

**SENT VIA FAX & U.S. Mail
(877) 726-2604**

Thomas J. Seeley, III
County Attorney
Post Office Box 555
Jonesborough, TN 37659

Re: Multiple Constitutional Violations

Dear Mr. Seeley:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding constitutional violations occurring in Washington County Schools. A concerned citizen contacted us about this matter. FFRF is a national nonprofit organization with nearly 24,000 members across the country, including over 300 members in Tennessee. FFRF's purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that a Christian club called FISH exists at David Crockett High School (DCHS). The school yearbook describes FISH as a club where students "learn more about God and His Word," and as a "place for students and teachers to share their testimonies, sing, and celebrate their faith." An employee at DCHS, Jerry Day, leads this group. After initially acting as the club's outside sponsor, Mr. Day became a substitute teacher (he is now an assistant teacher) at DCHS so that he would "have a better chance at building relationships with the students." Our complainant reports that FISH meets every Friday in the auxiliary gym during all four lunch periods. Community church members frequently attend these meetings, and they bring fast food to entice students to attend. FISH meetings include Christian songs, prayers, and other Christian content. The Spanish teacher, Aaron McLain, has delivered a devotion at a FISH meeting. Guest speakers, who bring food for students with them, from fourteen local churches often speak as well. Some of these churches include: New Victory Baptist Church, Telford United Methodist Church, Mount Zion Baptist Church, Liberty Freewill Baptist Church, and Jerry Day Ministries.

One student remarked about FISH that "[i]t's great for kids that are not able to go to church; they can just come to FISH." Another stated, "[m]oving from a Christian school, I didn't expect to have such an opportunity to openly worship and learn about Christ." Furthermore, students have complained that Jerry Day and the guest speakers use harsh language towards non-believers and others. For example, they have told students that they would go to hell if they received an abortion, identified as a member of the LGBT community, or supported gay marriage, a constitutional right. Enclosed are an example of a FISH flier, which hangs throughout the school, photos of FISH meetings, and descriptions of FISH from the school yearbook.

Our complainant informs us that several school officials, such as Principal Peggy Wright and Assistant Director of Schools Bill Flanary, are aware that constitutional violations are occurring, but allow the practices to continue.

Our complainant also informs us that members of a Christian group called Young Life frequently enter the school shortly before school starts in order to pass out fast food biscuits and proselytize to students. Part of Young Life's mission is "sharing the truth of God's love with adolescents."¹ We understand that the school did not vet any of these visiting adults, but Principal Wright still allows them among the students unsupervised.

Furthermore, there is a bible verse displayed on DCHS's website. The David Crockett Lady Softball team webpage includes the following: "Philippians 4:13 - I can do all things through him who gives me strength."²

Finally, our complainant reported an unconstitutional religious component to the chorus program, which we wrote to you about previously in November, 2015. We trust that you have taken the actions that you committed to in your April, 2016 response, and that Christian concerts will not recur in future years.

Unconstitutional Religious Club – FISH

FFRF has grave concerns about the FISH meetings at the high school. It is a well-settled principle of Establishment Clause jurisprudence that public schools may not advance, prefer, 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). It is unconstitutional for school staff to host, sponsor, lead, or promote a Christian club, or to have outside adults come in during the school day to lead religious teachings.

Public school districts must ensure that student religious groups are genuinely student-initiated and student-run, and that outside adults do not regularly participate in the clubs. No outside adults should be provided carte blanche access to minors – a captive audience – in a public school. This predatory conduct is inappropriate and should raise many red flags. Offering free lunch only to students who participate in FISH meetings is especially manipulative. If community church representatives, and Jerry Day, a school employee, have indeed been leading FISH meetings, then there is no claim that FISH is a bona fide student-initiated religious club, and it should be dissolved immediately.

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 Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203 (1948). The District may not allow adults from local churches to speak at FISH meetings.

¹ <https://uppereasttennessee.younglife.org/Pages/aboutyl.aspx>

² <http://www.wcde.org/education/sportszone/sportszone.php?sectionid=741>

FFRF litigated a case on this very issue in your state: 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 Tennessee, 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).

FISH may only lawfully exist if it is entirely student-initiated and student-led. 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)).

Furthermore, teacher participation in the group is problematic. The District may not allow teachers to use public schools to proselytize. It is well settled that “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 v. Weisman*, 505 U.S. at 589). Schools must ensure that “there is no sponsorship of [student meetings] by the school, the government, or its agents or employees,” and 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), (3). At least two teachers at David Crockett have spoken at FISH meetings, and Jerry Day appears to administer the club. As currently run, FISH creates the impression of school sponsorship or co-sponsorship.

Given the fact that the school allows FISH to be openly advertised on fliers and in the yearbook, and allows local church members to lead Christian devotionals during the school day, a reasonable student or parent will perceive this religious club as “stamped with her school’s seal of approval.” *Id.* at 307. This leads to the inevitable conclusion that the District impermissibly endorses religion over nonreligion, and specifically Christianity over all other faiths. “School sponsorship of a religious message is impermissible because it sends the ancillary message to . . . nonadherents ‘that they are outsiders, not full members of the political community and an accompanying message to adherents that they are insiders, favored members of the political community.’” *Id.* at 309-10.

Public school teachers may not lead, direct, or ask students to engage in prayer. The Supreme Court has continually struck down teacher or school-led prayer in public schools. *See, e.g., Santa Fe*, 530 U.S. at 290 (striking down a school policy that authorized students to vote on whether to hold a prayer at high school football games); *Lee*, 505 U.S. at 577 (ruling prayers at public high school graduations an impermissible establishment of religion); *Wallace*, 472 U.S. at 38 (overturning law requiring daily “period of silence not to exceed one minute . . . for meditation or daily prayer.”); *Schempp*, 374 U.S. at 203 (declaring unconstitutional devotional Bible reading and recitation of the Lord’s Prayer in public schools); *Engel*, 370 U.S. at 421 (declaring prayers in public schools unconstitutional). It is absolutely unlawful for teachers to deliver the “devotions” at FISH meetings.

The District 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. South Bend Comm. Sch. Corp.*, 93 F.3d 327 (7th Cir. 1993) (quoting *Bishop v. Arnov*, 926 F.2d 1066, 1077 (11th Cir. 1991)). The District must make certain that teachers in its schools are not unlawfully and inappropriately indoctrinating students in religious matters.

Unconstitutional School-Religious Organization – Young Life

It is unconstitutional for DCHS to allow Young Life members to proselytize to its students. The District cannot allow its schools to be used as recruiting grounds for religious institutions. It is well settled that public schools may not advance or promote religion. *See generally, Lee*, 505 U.S. at 577; *Wallace*, 472 U.S. at 38; *Epperson*, 393 U.S. at 97; *Schempp*, 374 U.S. at 203; *Engel*, 370 U.S. at 421; *McCullum*, 333 U.S. at 203. It is inappropriate and unconstitutional for the district to offer religious leaders unique access to its students on school property, which signals school endorsement of religion.

Courts have repeatedly struck down public school practices that affiliate public schools with religious groups and religious instruction. *See, e.g., Doe ex rel. Doe v. Beaumont Indep. Sch. Dist.*, 173 F.3d 274 (5th Cir. 1999) (ruling that school partnership with clergy for counseling purposes violated Establishment Clause); *HS v. Huntington Cnty. Cmty. Sch. Corp.*, 616 F. Supp. 2d 863 (N.D. Ind. 2009) (issuing preliminary injunction against school that allowed trailers on school property for religious instruction because to do so conveyed a message of support and endorsement of religion); *Doe by Doe v. Shenandoah Cnty. Sch. Bd.*, 737 F. Supp. 913 (W.D. Va. 1990) (issuing temporary restraining order against school finding that buses used for religious instruction parked in front of the school gave the appearance of school involvement and that school employees took part in recruitment efforts); *Doe v. Human*, 725 F. Supp. 1499 (W.D. Ark. 1989), *aff'd without opinion*, 923 F.2d 857 (8th Cir. 1990) (issuing preliminary injunction against school practice of having outsiders teach voluntary bible instruction in school).

The partnership between Young Life and DCHS impermissibly advances religion, communicates a message of school district endorsement of religion and is marked by excessive entanglement between the school district and the organization. Public schools have an obligation to stay separate from religion because “the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Lee*, 505 U.S. at 589.

Unconstitutional Religious Message on Website

The placement of a bible verse on the school’s website is unconstitutional. Courts have continually held that school districts may not display religious messages or iconography in public schools. *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 County*, 484 F.3d 689 (4th Cir. 2007) (ruling that a teacher may be barred from displaying religious messages on classroom bulletin boards); *Washegesic v. Bloomingdale Pub. Schs.*, 33 F. 3d 679 (6th Cir. 1994) (ruling that a picture of Jesus may not be displayed in a public school).

Conclusion

We request that you investigate these matters immediately. Staff should be informed that school-sponsored religious activity violates the Constitution as well as the rights of conscience of the students and their parents, who have the right to direct the religious or non-religious upbringing of their children. Outside adults must not attend any meetings of student-initiated religious clubs. Teachers must be instructed to refrain from sponsoring or leading religious activities in the public school setting, and from suggesting or encouraging students to attend religious clubs or other religious activities. Furthermore, the District must dissociate David Crockett High School from Young Life. Finally, in recognition of the District's constitutional obligation to remain neutral toward religion, we request that the district remove the bible verse from its website. Please ensure that the district does not display religious messages in the future.

Please inform us in writing of the steps the District is taking to investigate these matters and take appropriate action.

Sincerely,



Rebecca S. Markert
Staff Attorney

RSM:anz

Enclosures

FISH • ers of men share faith

The FISH program offered a welcoming and enriching environment for those students who wanted to learn more about God and His Word. Meeting on most Fridays during lunch, the group provided a place for place for students and teachers to share their testimonies, sing, and celebrate their faith. Jacob Martinez (12) bravely shared his testimony, and said, "I chose to speak at FISH because I felt someone who was or is going through the same thing I did[might hear], and maybe, just maybe, I could share God's love and help."

FISH was sponsored by fourteen rotating churches that provided food for the ministry each week. Jerry Day, a club sponsor, left his job earlier in the year and became a substitute at Crockett. When asked why he did this, Day said, "I felt like that if I could be here on a full-time basis, I'd have a better chance at building relationships with the students." Several students spoke about how Day had helped them through difficult situations through his prayers and words of encouragement. FISH inspired every student that attended throughout the year.



What does *FISH* Mean to You?

"FISH is great for the students and even the teachers. They get to hear about God and learn more every week. It's great for kids who are not able to go to church; they can just come to FISH."

Rachel Saylor (9)



"FISH means getting to hear the Word of God with each other."



Caitlyn France (10)

"Moving from a Christian school, I didn't expect to have such an opportunity to openly worship and learn about Christ. Although I don't have the weekly Friday chapel anymore, I get to attend and experience FISH. It's such a blessing to have the exposure to this ministry in a public school."

Bethany Elliott (11)



"FISH means the word of God being spread to young teens that truly need it."



Heather Tesnear (12)



Performing special music in FISH, Katie Verble (12) and Emmaline Hulse (9) share their faith through song. FISH served as a platform for students to showcase their vocal and instrumental talents as they encouraged others.



Handing out pizza to students attending FISH, a volunteer makes sure that all of the students receive food.

Listening attentively, the students soak up the lesson being presented by one of the FISH volunteers.





**Meets every Friday, all 4 lunches
@ DCHS in the auxillary gym.**



Come and invite your friends • Student testimonies & singing