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February 1, 2016

**Via Email and U.S. Regular Mail**

Mr. Sam Grover  
Freedom from Religion Foundation  
P. O. Box 750  
Madison, WI 53701  
[sgrover@ffrf.org](mailto:sgrover@ffrf.org)

Re: Bible Distribution at West Orange-Stark Elementary School

Dear Mr. Grover:

I am David Hodgins, one of the school attorneys for West Orange-Cove Consolidated Independent School District. On October 10, 2014, I responded to previous letters dated July 2, 2014, and August 28, 2014 on this same topic. Your letter dated January 6, 2016 has also been forwarded to me for review.

Thank you for bringing this new information and concern to our attention. Upon receipt of your letter, we conducted an investigation, but we have been unable to confirm the factual allegation(s) you present. In addition, we respectfully disagree with some of your legal analysis and related interpretations.

Nevertheless, as a responsive action step, I have spoken directly with the new Superintendent regarding this matter and provided legal advice on the issue(s) you presented for Superintendent Harris and appropriate staff. In particular, I have provided legal advice regarding the precise legal and District policy requirements related to the distribution of nonschool materials, including religious materials. You will find these legal and policy requirements attached to this letter, titled GKDA(LEGAL) and GKDA(LOCAL) for your review and information.

We anticipate no further issues in the future. If you have any questions, please feel free to contact me.



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Very truly yours,

Thompson & Horton LLP

A handwritten signature in black ink, appearing to read 'David B. Hodgins', with a long horizontal flourish extending to the right.

David B. Hodgins

DBH/ec  
Enclosures  
703947\_2

cc: Rickie Harris  
Superintendent of Schools  
West Orange-Cove Consolidated ISD  
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*via e-mail*

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West Orange-Cove CISD  
181906

NONSCHOOL USE OF SCHOOL FACILITIES  
DISTRIBUTION OF NONSCHOOL LITERATURE

GKDA  
(LEGAL)

FORUM FOR  
COMMUNICATION

The District may create a public forum of a place or channel of communication for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects. Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 103 S. Ct. 948 (1983); Chiu v. Plano Indep. Sch. Dist., 260 F.3d 330 (5th Cir. 2001)

The District is not required to allow persons to engage in every type of speech when the District establishes a limited public forum; the District may be justified in reserving its forum for certain groups or for the discussion of certain topics. The District shall not discriminate against speech on the basis of viewpoint, and any restriction must be reasonable in light of the purpose served by the forum. Good News Club v. Milford Cent. Sch., 533 U.S. 98, 121 S. Ct. 2093 (2001); Lamb's Chapel v. Center Moriches Union Free Sch. Dist., 508 U.S. 384, 113 S. Ct. 2141 (1993)

DISTRIBUTION OF  
NONSCHOOL  
PUBLICATIONS

Activities such as distributing literature, displaying signs, petitioning for change, and disseminating information concerning issues of public concern are protected by the First Amendment. Schenck v. Pro-Choice Network, 519 U.S. 357, 117 S. Ct. 855 (1997) (recognizing leafletting and commenting on matters of public concern as protected speech); Boos v. Barry, 485 U.S. 312, 108 S. Ct. 1157 (1988) (recognizing public issue signs as protected speech); Meyer v. Grant, 486 U.S. 414, 108 S. Ct. 1886 (1988) (recognizing the solicitation of signatures for a petition drive as protected speech)

If the District creates a forum for the distribution of nonschool literature, the District may impose time, place, and manner regulations and may reserve its facilities for their intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view. Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 103 S. Ct. 948 (1983)

The District may not require prior review before permitting nondisruptive distribution of written materials on matters of public concern at a parents-only school-sponsored meeting after school hours. Chiu v. Plano Indep. Sch. Dist., 339 F.3d 273 (5th Cir. 2003)

USE OF DISTRICT  
MAIL SYSTEM

Unless it has been opened to the public, by policy or practice, a school mail system is not a public forum. The District may create a limited public forum in its campus mailboxes. Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 103 S. Ct. 948 (1983)

[See CPAB for use of the District's internal mail system]

DATE ISSUED: 12/16/2003  
UPDATE 72  
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NONSCHOOL USE OF SCHOOL FACILITIES  
DISTRIBUTION OF NONSCHOOL LITERATURE

GKDA  
(LOCAL)

DISTRIBUTION OF  
NONSCHOOL  
LITERATURE  
PERMITTED

Written or printed materials, handbills, photographs, pictures, films, tapes, or other visual or auditory materials not sponsored by the District or by a District-affiliated school-support organization shall not be sold, circulated, distributed, or posted on any District premises by any District employee or by persons or groups not associated with the District, except in accordance with this policy.

The District shall not be responsible for, nor shall the District endorse, the contents of any nonschool literature distributed on any District premises.

[See CPAB regarding use of the District's internal mail system and FNAA regarding distribution of nonschool literature by students]

LIMITATIONS ON  
CONTENT

Nonschool literature shall not be distributed on District property if:

1. The materials are obscene, vulgar, or otherwise inappropriate for the age and maturity of the audience.
2. The materials endorse actions endangering the health or safety of students.
3. The materials promote illegal use of drugs, alcohol, or other controlled substances.
4. The distribution of such materials would violate the intellectual property rights, privacy rights, or other rights of another person.
5. The materials contain defamatory statements about public figures or others.
6. The materials advocate imminent lawless or disruptive action and are likely to incite or produce such action.
7. The materials are hate literature or similar publications that scurrilously attack ethnic, religious, or racial groups or contain content aimed at creating hostility and violence, and the materials would materially and substantially interfere with school activities or the rights of others.
8. There is reasonable cause to believe that distribution of the nonschool literature would result in material and substantial interference with school activities or the rights of others.

PRIOR REVIEW

All nonschool literature intended for distribution on school campuses or other District premises under this policy shall be submitted to the Superintendent for prior review in accordance with the following:

1. Materials shall include the name of the person or organization sponsoring the distribution.

NONSCHOOL USE OF SCHOOL FACILITIES  
DISTRIBUTION OF NONSCHOOL LITERATURE

GKDA  
(LOCAL)

2. Using the standards found in this policy at LIMITATIONS ON CONTENT, the Superintendent shall approve or reject submitted materials within two school days of the time the materials were received.

EXCEPTIONS TO  
PRIOR REVIEW

Prior review shall not be required for distribution of nonschool literature in the following circumstances:

1. Distribution of materials by an attendee to other attendees at a school-sponsored meeting intended for adults and held after school hours;
2. Distribution of materials by an attendee to other attendees at a community group meeting held in accordance with GKD(LOCAL) or a noncurriculum-related student group meeting held in accordance with FNAB(LOCAL); or
3. Distribution for electioneering purposes during the time a school facility is being used as a polling place in accordance with state law [see BBB].

All nonschool literature distributed under these exceptions shall be removed from District property immediately following the event at which the materials were distributed.

Even when prior review is not required, all other provisions of this policy shall apply.

TIME, PLACE,  
AND MANNER  
RESTRICTIONS

Each campus principal shall designate times, locations, and means by which nonschool literature that is appropriate for distribution, as provided in this policy, may be made available or distributed to students or others at the principal's campus.

The Superintendent shall designate times, locations, and means for distribution of nonschool literature at District facilities other than school campuses, in accordance with this policy.

VIOLATIONS OF  
POLICY

Failure to comply with this policy regarding distribution of nonschool literature shall result in appropriate administrative action, including but not limited to confiscation of nonconforming materials and/or suspension of use of District facilities. Appropriate law enforcement officials may be called if a person refuses to comply with this policy or fails to leave the premises when asked. [See GKA]

APPEALS

Decisions made by the administration in accordance with this policy may be appealed in accordance with the appropriate District complaint policy. [See DGBA or GF]