

FREEDOM FROM RELIGION *foundation*

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

July 31, 2023

SENT VIA EMAIL & U.S. MAIL: dmonogue@mcpasd.k12.wi.us

Dana Monogue
Superintendent
Middleton-Cross Plains Area School District
7106 South Ave
Middleton, WI 53562

Re: Unconstitutional religious favoritism & records request

Dear Superintendent Monogue:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in the Middleton-Cross Plains Area School District (the District). FFRF is a national nonprofit organization with over 40,000 members across the country, including more than 1,700 members and our national headquarters in Wisconsin. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned District parent reported that parents and students were recently informed that the Middleton High School Girls Swim and Dive team will not be allowed to compete in a significant invitational competition held at Waukesha High School on Saturday, September 16, 2023 because the invitational falls in the middle of the Jewish holiday, Rosh Hashanah. It is our understanding that the Middleton HS Girls Swim and Dive team coach cited the District's Religious Accommodations policy, Policy 323.2 (the Policy), which apparently prevents district athletic teams from scheduling events during certain religious holidays pre-selected by the District.

The Policy states:

The District's commitment to multicultural education and the appreciation of diversity requires sensitivity in planning the District's calendar of school activities. Students may be absent from school for religious reasons. Also, any student with a conflict between an academic requirement and any religious observance must be given an alternative means of meeting the academic requirement. **Teachers and administrators will not schedule assessments, reviews or special events (field trips, assembly programs, athletic contests, after-school activities, open houses) on the following holy days that may fall on school days: Eid al-Fitr, Rosh Hashanah, Yom Kippur, Passover (first two days and last two days) , Christmas and Easter.** This policy provides the

opportunity for all students to participate in school activities without compromising their religious beliefs. The District will accommodate requests related to holidays other than those listed above on an as-needed basis. Athletic contests missed due to religious observances do not affect the student's ability to earn a varsity letter or receive post-season awards. Students will not be penalized for missing an event or practice due to a religious observance listed above.¹

We write to request that the District consider revising the Policy so it cannot be applied to prohibit entire athletic teams, including non-observant students, from participating in events not scheduled by the District that happen to fall on the seven religious holidays that the District has selected.

It is a basic principle of the First Amendment that public schools may not show favoritism towards or coerce belief or participation in religion. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *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); *McCollum v Bd. of Ed.*, 333 U.S. 203 (1948). When a public school district restricts participation in extra-curricular activities for *all* students for the purpose of accommodating students that may observe certain religious holidays, it violates the Constitution. Further, the District's Policy favors three selected religions—Christianity, Judaism, and Islam—by specifically seeking to schedule all district events around certain holidays from only these three faiths.

While the District's intentions in creating the Policy were clearly to further its goals of multicultural diversity and inclusion, this application of the Policy has the opposite effect. Students, like our complainant's child, who do not observe any of the selected holy days are nevertheless prohibited from participating in the invitational swim competition simply because it falls on a holiday that only some of the District's students celebrate. Our complainant and their child do not celebrate Rosh Hashanah, but the District's policy is effectively coercing our complainant's child to observe this religious holiday by forbidding them and the entire swim team to participate in the invitational. Further, our complainant's child will be forced to miss an opportunity to compete in front of college recruiters, gain experience at and knowledge of the Waukesha High School swim facilities, improve their personal performance, and potentially place. This opportunity is invaluable to a serious high school athlete and being forced to miss it causes real harm.

The District surely serves students belonging to a variety of minority religions, but these students are not treated fairly under the problematic portion of the Policy either. This Policy excludes and alienates those students who are a part of the 49 percent of Generation Z who are religiously unaffiliated.² Moreover, the Policy already accounts for and accommodates individual students who need to be excused from school events, including athletic competitions, due to a religious

¹ Middleton-Cross Plains Area School District, *District Policies*, <https://www.mcpasd.k12.wi.us/page/annual-notice>, (emphasis added).

² 2022 Cooperative Election Study of 60,000 respondents, analyzed by Ryan P. Burge www.religioninpublic.blog/2023/04/03/gen-z-and-religion-in-2022/.

observance. Any students who observe Rosh Hashanah can receive an excused absence from the invitational competition, so there is no need to prevent the entire team from competing.

We ask that the District revise the Policy to eliminate the prohibition against entire athletic teams, and any other student co-curriculars, participating in events that happen to fall on the seven favored holidays that the District has selected. Please respond in writing with the steps the District is taking to address this matter.

Open Records Request

Additionally, pursuant to Wis. Stat. §§19.31–19.39, I request a copy of the following records:

1. Any communications, including emails, sent or received by District administrators, school board members, or any District employee regarding the creation and adoption of the Policy;
2. Any communications, including emails, sent or received by District administrators, school board members, or any District employee regarding how the selection of the seven religious holidays recognized in the Policy; and,
3. Any communications, including emails, sent or received by any District employee regarding the MHS Girls' Swim and Dive program's decision to not participate in the Waukesha Invitational on September 16, 2023.

If any part of this request is denied, please provide a written statement of the grounds for the denial.

If any records are available in electronic format, they may be emailed to records@ffrf.org. If I can provide any clarification that will help expedite attention to this request, I may be contacted at (608) 256-8900 or slawrence@ffrf.org.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Samantha F. Lawrence". The signature is written in a cursive style with a large initial 'S'.

Samantha F. Lawrence
Anne Nicol Gaylor Legal Fellow
Freedom From Religion Foundation