

FREEDOM FROM RELIGION *foundation*

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

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SENT VIA EMAIL & U.S. MAIL
tom.gambrel@bell.kyschools.us

Tom Gambrel
Acting Superintendent
Bell County Schools
PO Box 340
Pineville KY 40977

Re: Unconstitutional teacher-led prayer

Dear Superintendent Gambrel:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Bell County Schools. FFRF is a national nonprofit organization with more than 30,000 members across the country, including hundreds of members in Kentucky, and a local chapter, FFRF Kentucky. 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 student contacted FFRF to report that [REDACTED] a teacher at Bell County High School, recently preached to his students about God and the Coronavirus. According to the complainant [REDACTED] told his class that “Coronavirus is in God's hands,” that students would have to pray if they wanted the virus to go away, and that if students had a problem with him telling them to pray they could go to the school board because he does not care.

Public school teachers may not lead their students in prayer, encourage students to pray, or otherwise endorse religion to students. The Supreme Court has continually struck down teacher or school-led prayer in public schools. *See, e.g., Engel v. Vitale*, 370 U.S. 421 (1962) (declaring prayers in public schools unconstitutional); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (declaring unconstitutional devotional Bible reading and recitation of the Lord's Prayer in public schools); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturning law requiring daily “period of silence not to exceed one minute . . . for meditation or daily prayer”).

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. S. Bend Comm. Sch. Corp.*, 93 F.3d 327 (7th Cir. 1993) (quoting *Bishop v. Arnov*, 926

F.2d 1066, 1077 (11th Cir. 1991)). The Supreme Court has recognized that “[f]amilies entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family.” *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).

Please note that it is not a violation of the free speech rights of teachers when a school district regulates what they teach to students while acting in their official capacities. Teachers have access to a captive audience of students due to their position as public educators. Therefore, the District has a duty to regulate religious proselytizing during school-sponsored activities. “Because the speech at issue owes its existence to [his] position as a teacher, [the School District] acted well within constitutional limits in ordering [the teacher] not to speak in a manner it did not desire.” *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 970 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1807 (2012) (upholding decision of school board to require a math teacher to remove two banners with historical quotes referencing “God”); *see also Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (“We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”).

There is no religious response to the pandemic, instructing students to pray will not equip them with the knowledge they need to stay healthy. Schools, if they are not shutting down to avoid the spread of Coronavirus, should be instructing students to wash their hands, avoid large gatherings, and take other steps known to protect against the spread of disease until the pandemic is over.

The District should make certain that none of its employees are unlawfully and inappropriately indoctrinating students in religious matters by leading prayer, encouraging them to pray, or setting aside time for prayer. We ask that the District immediately investigate this situation and ensure that [REDACTED] complies with the Establishment Clause. Please respond in writing, outlining the steps the District will take to end this constitutional violation.

Sincerely,



Dante CH Harootunian
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation