

FREEDOM FROM RELIGION *foundation*

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Craig Pallister
President
Hays USD 489 Board of Education
323 West 12th Street
Hays, KS 67601

Re: Dress Code Religious Discrimination

Dear President Pallister and Board of Education members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding an egregious constitutional violation occurring in Hays USD 489. FFRF is a national nonprofit organization with more than 38,000 members, including members in Kansas. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

It is our understanding that the dress codes for several schools in the District discriminate against minority religions. We understand that Hays Middle School and several elementary schools prohibit clothing with “direct or indirect references to...Satanism.” Several of the District’s school handbooks single out this religious belief and equate it with sex, profanity, drugs, and gang affiliation. We understand that this issue has been brought to the Board’s attention, but that it recently voted 5-2 to continue violating the constitutional rights of its students.¹

Satanism is a religion,² and students cannot be singled out for punishment or ridicule for expressing religious or non-religious viewpoints in their public schools. The District impermissibly discriminates on the basis of religion, and violates the free speech rights of its students, when it prohibits expression of certain religious viewpoints.

The current dress code’s ban on “direct or indirect references to...Satanism” acts as a prior restraint on student speech. The Supreme Court has firmly established that regardless of whether a rule has actually been enforced, the codified threat of punishment, coupled with unfettered discretion for enforcement by a government actor, is itself a constitutional violation. “[T]he mere existence of the licensor’s unfettered discretion, coupled with the power of prior restraint,

¹ Hays school board votes to prohibit satanism in dress code. *See* <https://hayspost.com/posts/232ef2ef-ffa2-4666-9afa-3fe0993b01bb>

² In Arizona, a court found that The Satanic Temple constitutes a religion. *See* <https://theconversation.com/what-the-satanic-temple-is-and-why-its-opening-a-debate-about-religion-131283>.

intimidates parties into censoring their own speech, even if the discretion and power are never actually abused.” *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 757 (1988). The mere threat of enforcement violates students’ constitutional rights: “It is not merely the sporadic abuse of power by the censor *but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion.*” *Id.* (quoting *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940)) (emphasis added by Brennan, J.).

The District’s dress code is additionally unconstitutional because it isolates a specific viewpoint, a specific religion, for threatened censorship. Viewpoint discrimination is an especially potent concern animating free speech jurisprudence. *See, e.g., Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (“Viewpoint discrimination is thus an egregious form of content discrimination...The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”). And regardless of the majority of the community’s views on satanism, it constitutes a religion for First Amendment purposes; the First Amendment requires more than mere unpopularity to regulate or ban student expression. *See, e.g., Tinker v. Des Moines Ind. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969) (forbidding school censorship of expression for the mere fact that the expression is unpopular).

It is no defense to claim that the community is uncomfortable with Satanic messages or symbols. Community feelings do not give the government the right to “prescribe what shall be orthodox in . . . religion, or other matters of opinion” *W. V. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 633–34 (1943) (Murphy, J., concurring). “The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.” *Barnette*, 319 U.S. at 638. Put another way, “fundamental rights may not be submitted to vote; they depend on the outcome of no elections.” *Id.*

Students are free to be part of whatever religious or nonreligious groups they like, and public schools cannot censor or favor some over others. The dress code must be modified so as to not express a preference for, or intolerance of, expression of any religious viewpoint. Changing this policy will cost the District nothing, while continuing to have it on the books exposes the District to significant legal liability from any district student or parent who chooses to take legal action. We request a written response detailing the actions the District will take to address this constitutional violation. Thank you for your time and attention to this matter.

Sincerely,



Christopher Line
Staff Attorney
Freedom From Religion Foundation