

FREEDOM FROM RELIGION *foundation*

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March 31, 2022

SENT VIA EMAIL & U.S. MAIL: jhaney@union.k12.sc.us

Joey L. Haney
Superintendent
Union County Schools
130 West Main Street
Union, SC 29379

Re: Multiple Constitutional Violations

Dear Superintendent Haney:

I am writing once again on behalf of the Freedom From Religion Foundation (FFRF) regarding multiple constitutional violations in Union County Schools. FFRF is a national nonprofit organization with more than 39,000 members across the country, including hundreds of members in South Carolina. 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 member has reported multiple constitutional violations occurring within the District. Our complainant reports that the District allowed Ken Freeman, a Christian motivational speaker, to hold an assembly in the gym during school hours where he was allowed to speak about God and invite students to attend his religious revival where he is providing “FREE Pizza and drinks.” Please see the enclosed screenshot. Freeman will do “whatever it takes” to “reach lost people.”¹ Our complainant also reports that teachers and staff members in the District are actively involved in running and promoting Good News Clubs at several district schools, and that high school football games begin with prayer broadcast over the loudspeaker.

We write to request that you immediately investigate these violations and ensure that they do not recur or continue.

It is well settled 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). Government-sponsored prayer and religious activity “has the improper effect of coercing those present to participate in an act of religious worship.” *Santa Fe*, at 312. Yet, favoritism and coercion are exactly what a public school district accomplishes when it allows Christian evangelists to recruit children in its school, allows teachers to use their influence to convince students to join and participate in religious Good News Clubs, and opens school-sponsored events with prayer over the loudspeaker.

¹ <https://kenfreeman.com/>

1. It is unconstitutional to allow outside adults to preach to students during the school day

The Establishment Clause of the First Amendment prohibits public schools from coercing participation in any type of religious practices. *See Lee*, at 590. Allowing a religious speaker like Ken Freeman even one-time access to preach to students and attempt to convert them to his own religious beliefs violates the Establishment Clause and students' rights to be free from indoctrination within their own public schools. On behalf of parents and students, FFRF has taken action against school systems for similar violations. *See Mays v. Cabell Cnty Bd. of Educ.*, No. 3:22-cv-00085 (S.D. W.Va., filed Feb. 17, 2022).

Mr. Freeman's religious message delivered during the school day demonstrates an unlawful preference for religion over non-religion and, specifically, Christianity over all other faiths. This assembly sent the message that the District not only favors students and community members who are Christian, but that it specifically prefers those who subscribe to his particular brand of Christianity. This needlessly alienates the District students and families belonging to the 37% of Americans who are non-Christian, including the almost 30% who are nonreligious.

2. It is unconstitutional for public school teachers to run or promote religious clubs

It is inappropriate and unconstitutional for public schools to allow teachers to organize, lead, or encourage student participation in a religious club, or to use school resources to promote participation in a religious organization renting school facilities. The Equal Access Act, which allows religious student clubs to form, requires 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). Students in secondary schools may organize religious clubs but these must be entirely student-initiated and student-led and take place outside of instruction time. *See Bd. of Educ. of the Westside Cty. Sch. v. Mergens*, 496 U.S. 226, 253 (1990) (holding the Equal Access Act constitutional). The Supreme Court prohibits participation of public school staff and outsider involvement in the religious activities of students. "Under the [Equal Access] Act . . . faculty monitors may not participate in any religious meetings, and nonschool persons may not direct, control or regularly attend activities of student groups." *Id.* at 253 (citing 20 U.S.C. §§ 4071(c)(3) and (5)). Any school religious clubs must be bona fide student clubs that are both student-initiated and student-run.

Good News Clubs are not usually operated as student clubs, but instead operate by renting school facilities after school hours. Any Good News Clubs renting district buildings must satisfy the rules and regulations for rental of school property. *See generally Good News Club v. Milford Central School*, 533 U.S. 98 (2001). Even if the Clubs are properly renting district schools for their meetings, schools and teachers cannot promote these religious clubs or allow the clubs to use school resources to promote themselves.

3. It is unconstitutional for public schools to broadcast prayer over the loudspeaker before events, including sporting events and football games

The Supreme Court has specifically struck down invocations given over the loudspeaker at public school athletic events, even when student-led. *Santa Fe Indep. Sch. Dist.*, 530 U.S. 290 (striking down a school policy that authorized students to vote on whether to have a prayer at high school football games). The Court reasoned that because the football game was a school-sponsored event, hosting prayer was a constitutional violation. *Id.* at 307. Even if student-led, the Court said prayers at a "regularly scheduled school-sponsored function conducted on school property" would lead an objective observer to perceive it as state advancement of religion. *Id.* at 308.

Like the prayer practices in *Santa Fe*, the prayers delivered at District football games are also inappropriate and unconstitutional. Not only is the District showing favoritism towards religion and coercing participation in these prayers by allotting time for them at the start of games, but it is also providing the prayer-giver with the public address system needed to impose these prayers on all students and community members at games. Public school events must be secular to protect the freedom of conscience of all students. A reasonable District student would certainly perceive the prayers “as stamped with her school’s seal of approval.” *Id.* Government-sponsored prayer “has the improper effect of coercing those present to participate in an act of religious worship.” *Id.* at 312.

It is important to note that this situation differs significantly from the Supreme Court’s recent decision in *Kennedy v. Bremerton School District*, holding that a high school football coach’s silent, private post-game prayer was constitutional. 142 S.Ct. 2407 (2022). The ruling in *Kennedy v. Bremerton Sch. Dist.* has not changed the law regarding what school districts can or cannot do over the loudspeaker at high school football games. Throughout its opinion, the Court repeatedly stressed that the coach silently prayed alone. *Id.* at 2415–16. (the coach “offered his prayers quietly while his students were otherwise occupied.”). The prayers “were not publicly broadcast or recited to a captive audience. Students were not required or expected to participate.” *Id.* at 2432. The Court explicitly distinguished the circumstances in *Bremerton* from those in *Santa Fe*:

[T]his case looks very different from those in which this Court has found prayer involving public school students to be problematically coercive...In *Santa Fe Independent School Dist. v. Doe*, the Court held that a school district violated the Establishment Clause by broadcasting a prayer “over the public address system” before each football game. 530 U.S. 290, 294 (2000).

Id. at 2431. The District cannot require those in attendance at athletic events to participate in a religious practice by holding public prayers broadcast over the loudspeaker, even if the prayers are delivered by a student.

We ask that Union County Schools commence an immediate investigation into the above complaints. Please inform us in writing of the steps you are taking to remedy these constitutional violations and ensure they do not continue or recur.

Sincerely,



Christopher Line
Staff Attorney
Freedom From Religion Foundation

Enclosure



Todd Davis

Sep 12 · 🌐

Need to give a huge shout out to Dr. Haney and the Union County School District for allowing Ken Freeman into the schools to talk to all our 6th-12th grade students about choices. Everyone is only 1 choice away from having a totally different life.

All 6th-12th grades students throughout Union County were also invited to come out to the fairgrounds at 6pm this evening for FREE Pizza and drinks. At 6:45pm we walk over the Stadium to listen to Ken Freeman talk about 3 enemies in our life.

Please bring your children or encourage your children to attend. They get enough bad in the world, give them something good! See you there!

