

# FREEDOM FROM RELIGION *foundation*

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Sent via U.S. Mail and Email to: [brianreems@yahoo.com](mailto:brianreems@yahoo.com)

Mr. Brian Reems  
President, Board of Directors  
E.C. Reems Academy of Tech. and Arts  
8425 MacArthur Blvd.  
Oakland, CA 94605

Ms. Laura O'Neill  
Staff Attorney  
Office of the General Counsel  
Oakland Unified School District  
1000 Broadway, Suite 398,  
Oakland, CA 94607

Re: Unconstitutional religious assembly and T-shirts at E.C. Reems Academy

Dear Mr. Reems and Ms. O'Neill:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) and our local membership to object to the religious aspects of an assembly at E.C. Reems Academy intended to honor Jahi McMath. Please understand that we do not object to an assembly honoring a classmate, only to the religious, proselytizing bent of this particular assembly. Several area citizens alerted us to this event. The Freedom From Religion Foundation is a national nonprofit organization representing more than 20,000 members across the country, including more than 3,100 in California and a chapter in Sacramento. We protect the constitutional principle of separation between state and church.

The illegal religious aspects of the assembly, which included kindergarteners as young as four, were highlighted in a recent news report:<sup>1</sup>

Though a death certificate has been issued for Jahi McMath, many of the 13-year-old Oakland girl's classmates still believe the "quiet leader" who laughed at jokes that weren't funny will one day return to school — if they just pray hard enough.

"The school told us that she's not officially dead yet," said Dymond Allen, one of Jahi's friends at EC Reems Academy of Technology and Arts in East Oakland, a public charter school that serves mostly disadvantaged kids. "And we should keep her in our prayers. I still hope. And God has the last say-so."

The academy's chief operating officer Lisa Blair said she has tried to honor Jahi's family's wishes by telling students that their classmate may still be alive, even though doctors say she is legally and clinically dead. The students responded with an outpouring of faith.

"Most kids are Christian here," Blair said, "and they believe that if you continue praying, there's always a possibility. The students understand the debate. They're just choosing spirituality over science."

Blair visited Children's Hospital Oakland on Jan. 5, just after Jahi's family won a court battle to keep the girl on life support and transfer her elsewhere. Blair said she "saw something" on that visit that made her believe Jahi, a quiet student who was recently elected to be a judge on student council, was not truly dead.

On Thursday, about 250 of Blair's students donned purple T-shirts emblazoned with the words "#TeamJahi" and "Keep Calm, Pray On."

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<sup>1</sup> Lisa Fernandez, "Friends Believe Jahi McMath, 'Quiet Leader,' is Alive," *NBC Bay Area* (January 13, 2014) available at <http://www.nbcbayarea.com/news/local/Jahi-McMath-Brain-Death-Tonsillectomy-EC-Reems-Academy-Friends-Believe-Alive-239629891.html>

Parents were given the opportunity to have their child "opt out" of the event, but the vast majority did not, because most of them know her, Blair added.

What happened to Jahi is a terrible tragedy and all hearts go out to her suffering relatives and friends. No child's life should be cut short before it can truly begin. But such tragedies are not an excuse to violate the Constitution.

It is well settled that public schools may not advance or promote religion. *See generally, 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). In *Lee v. Weisman*, the Supreme Court extended the prohibition of school sponsored religious activities beyond the classroom to all school functions, holding prayers at public high school graduations an impermissible establishment of religion. Thus, featuring religious programming in a school assembly violates the Establishment Clause.

Public school employees cannot ask students to pray. Public school employees cannot tell students that, if only they pray hard enough to a particular god, their classmate will come back to life. Public school employees cannot force their personal religious beliefs on students. No matter how tragic the situation: "the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2001) (quoting *Lee v. Weisman*, 505 U.S. at 589).

Similarly, public school employees cannot distribute, ask students to wear, or themselves don religious T-shirts instructing everyone to "pray on." We understand these shirts were donated, but public school employees distributed them in a public school at a school function, and it is our understanding that those employees encouraged students to wear the shirts and set an example by wearing the shirts themselves.

Religion is a divisive force in public schools. The Supreme Court has repeatedly noted, "School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents 'that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.'" *Santa Fe Indep. Sch. Dist.*, 530 U.S. at 309 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)). Schoolchildren already feel significant peer pressure. They must not be subjected to similar pressure from public school staff, especially to wear religious messages because their teacher asked them to, or because their teacher convinced all their classmates to wear the messages.

The religious aspects of this assembly also violate California law and Oakland USD policies. As you know, "a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations." Cal. Educ. Code § 47605(d)(1).

These actions violate several policies including AR 6141.2 ("When school programs and exhibits are in any way related to instruction about religion or religious holidays, the following guidelines shall be observed: The principal or designee shall ensure that school-sponsored programs are not, or do not have the effect of being, religiously oriented or a religious celebration.") and BP 6145.8 ("Assemblies may express seasonal themes that are not religious in nature." ).

These actions also raise serious concerns under the policies regarding professional standards for staff. Staff "[s]hall not intentionally expose the student to embarrassment or disparagement." E 4119.2. Despite Principal Blair's callous and irrelevant comment that "most kids" at E.C. Reems "are Christian," fully



32% of Americans under the age of 30 are not religious.<sup>2</sup> Religion is not a situation in which majority rules. Our Bill of Rights exists to protect the minority against the tyranny of the majority. Principal Blair's assembly excluded nonreligious students in their own school. They were pressured to wear T-shirts proclaiming a religious message or otherwise out themselves as different from the majority. What could be more embarrassing or disparaging than being forced to openly differ with their principal and peers, or to violate their freedom of conscience because of the pressure exerted by the school administration? Even worse, in this instance, a student uncomfortable with the religious and antiscientific proceedings could be perceived as uncaring about a classmate's tragic demise.

We understand that this assembly was technically "voluntary." But this is factually disingenuous and legally insignificant. First, it is sophistry to suggest that an assembly to honor the life of a classmate is somehow voluntary. Second, courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *See generally, Lee*, 505 U.S. at 596 ("It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice."); *Schempp*, 374 U.S. at 288 (Brennan, J., concurring) ("... the availability of excusal or exemption simply has no relevance to the establishment question..."). Finally, to suggest that it is voluntary is to prove the constitutional violation. Why would opting out of an assembly to honor a classmate even be an option if not for the overt religious aspect of the assembly?

The desire for Jahi's life to continue is understandable, but desire does not dictate truth. Indoctrinating public school children that if they want something badly enough, and ask an imaginary friend in the sky properly, their wish will come true, is appropriate for Sunday school, not public school. It is not only unscientific, but unethical and irresponsible to suggest to a captive audience of young, impressionable, grieving students, that wishful thinking can suspend natural laws — and even raise the dead.

The school is inflicting trauma upon tragedy, bordering on mental child abuse, by suggesting that it is within the power of Jahi's classmates to resuscitate her. What happens when reality betrays this as a false hope? Will the children blame themselves for not praying hard enough or for not praying to the right god? How long will they carry the guilt of not resurrecting their classmate as their public school implied was possible?

We ask for an investigation and appropriate disciplinary action to be taken against Principal Blair, and that this complaint be formally considered when the charter school application is examined for renewal under Cal. Educ. Code § 47607. We ask for assurances that the religious beliefs of school staff will not be further injected in the public school and that the T-shirts be confiscated from staff or that staff not wear them during instructional hours. We believe this complaint merits immediate attention.

Sincerely,



Andrew L. Seidel  
Staff Attorney

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Ms. Lisa Blair, Principal, E.C. Reems Academy of Tech. and Arts, 8425 MacArthur Blvd., Oakland, CA 94605

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<sup>2</sup> "Nones on the Rise: One-in-Five Adults Have No Religious Affiliation," Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012) available at <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>

