FREEDOM FROM RELIGION *foundation*

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

August 24, 2015

SENT VIA MAIL & EMAIL TO: Harold.Jeffcoat@vbsd.us

Mr. Harold Jeffcoat
Superintendent
Van Buren School District
2221 Pointer Trail East
Van Buren, AR 72956

Re: Prayer at School Events, Religious Displays, and Equal Access Act Violation

Dear Superintendent Jeffcoat:

I am writing again on behalf of the Freedom From Religion Foundation (FFRF) to alert you to constitutional violations occurring in the Van Buren School District (VBSD). Last year, we wrote to the previous superintendent regarding prayer and proselytizing taking place at Central Elementary School. FFRF is a national nonprofit organization with 22,700 members across the country, including many members in Arkansas. Our purpose is to protect the constitutional principle of separation between state and church.

A complainant contacted us regarding multiple constitutional violations that occurred at Van Buren High School (VBHS). These violations include: religious displays in classrooms, including a prayer in the 2015 VBHS awards banquet, and violating the Equal Access Act by discontinuing the Secular Student Alliance club at the school.

Religious displays

We understand that some teachers' classrooms at VBHS include religious displays. For instance, we understand that Paige Hammond displays a Christian cross in her room at VBHS. The cross is made of wood pieces and assembled in such a way as to unmistakably form a Christian cross. The cross sits in plain view of anyone entering or sitting in the classroom.

It is well settled that public schools may not advance, prefer, or promote religion. *See 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). Latin crosses affixed to a school wall send a message of District endorsement of Christianity, in violation of this constitutional principle.

The religious significance of the Latin cross is unambiguous and indisputable. "The Latin cross . . . is the principal symbol of Christianity around the world, and display of the cross alone could not reasonably be taken to have any secular point." *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 792 (1995) (Souter, J., concurring). An overwhelming majority of federal courts agree that the Latin cross universally represents the Christian religion, and only the Christian religion. *See, e.g., Separation of Church and State Comm. v. City of Eugene*, 93 F.3d 617, 620 (9th Cir. 1996) ("There is no question that the Latin cross is a symbol of Christianity, and that its placement on public land . . . violates the Establishment Clause"); *Harris v. City of Zion*, 927 F.2d 1401, 1412 (7th Cir. 1991), *cert. denied*, 505

U.S. 1218 (1992) ("[A] Latin cross . . . endorses or promotes a particular religious faith. It expresses an unambiguous choice in favor of Christianity").

VBSD may not display religious images or symbols on school property. *See, e.g., Stone v. Graham*, 449 U.S. 39 (1980) (ruling that the Ten Commandments may not be displayed on classroom walls); *Lee v. York Cnty.*, 484 F.3d 689 (4th Cir. 2007) (ruling that a teacher may be barred from displaying religious messages on classroom bulletin boards); *Washegesic v. Bloomingdale Pub. Schs.*, 33 F.3d 679 (6th Cir. 1994) (ruling that a picture of Jesus may not be displayed in a public school).

Prayer at school events

We understand that each year an awards banquet is held at VBHS to reward VBSD students based on their academic achievements and to recognize teachers for their efforts in their positions as teachers. We understand that these banquets traditionally did not include a prayer, but in 2015, a prayer was given "in Jesus' name..." and included references to Jesus as our savior.

It is unconstitutional and inappropriate for there to be school-sponsored religious activity at public school events. The Supreme Court has continually held that public schools may not advance or promote religion, including through religious exercise such as prayer. *See Lee*, 505 U.S. at 577 (declaring unconstitutional school-sponsored prayers at a public school graduation); *see also Jaffree*, 472 U.S. at 38; *Epperson*, 393 U.S. at 97; *Schempp*, 374 U.S. at 203; *Engel*, 370 U.S. at 421. School officials may not invite a student, teacher, faculty member, or clergy to give any type of prayer, invocation, or benediction at a public school event. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (holding that a school's policy allowing student-delivered prayers at high school football games violates the Establishment Clause). The Supreme Court has settled this matter—school events must be secular to protect the freedom of conscience of all students.

A prayer taking place at a "regularly scheduled school-sponsored function conducted on school property" would lead an objective observer to perceive it as state endorsement of religion. *Id.* at 308. The Court stated that in this context, "[r]egardless of the listener's support for, or objection to, the message, an objective [high school] student will unquestionably perceive the inevitable pregame prayer as stamped with her school's seal of approval." *Id.*

Equal Access Act

Under the Equal Access Act, public secondary schools receiving federal funds cannot discriminate against student groups based on their religious, political, philosophical, or other beliefs. *Bd. of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 235 (1990). Specifically, the Equal Access Act (EAA) states that:

> It shall be unlawful for any public secondary school . . . to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting . . . on the basis of the religious, political, philosophical, or other content of the speech at such meetings.

20 U.S.C. § 4071(a). The EAA provides: "A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time." § 4071(b). The school cannot deny a Secular Student Alliance club the same treatment as other noncurricular student clubs.

Our complainant reports that the Secular Student Alliance at VBHS has faced discrimination and bullying since it was created. Club members have had their signs torn down and now it appears as though their group has been removed despite students actively trying to find a volunteer sponsor.

In situations like this, compliance with the Equal Access Act requires the administration to assign a faculty advisor or for an administrator, such as the principal, to take on the role of an advisor. The Equal Access Act recognizes this solution: "The assignment of a teacher, administrator, or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting." 20 U.S.C.A. § 4072 (2).

Either an administrator must take on the role of faculty advisor or assign that role to a faculty member. This is not an onerous requirement. Under the EAA, faculty advisors are only allowed to be present at such "meetings in a nonparticipatory capacity." 20 U.S.C.A. § 4071 (c)(3). Both the EAA and the students require nothing more than a chaperone. Because the school has, of its own choice, required an advisor, and because the EAA provides broad protections, the school must assign an advisor if none volunteer.

The Constitution similarly prohibits the school from limiting student free expression with the "unbridled discretion" that the advisor requirement grants. By allowing every potential advisor to decline for any reason or no reason at all, VBSD effectively bans unpopular speech *simply because the viewpoint expressed may be unpopular among the faculty*. Even in the school context, the First Amendment requires more than mere unpopularity to regulate or ban student expression. *See, e.g., Tinker v. Des Moines Ind. Community School Dist.*, 393 U.S. 503, 509 (1969) (forbidding school censorship of expression for the mere fact that the expression is unpopular). Viewpoint discrimination is an especially potent concern animating Free Speech jurisprudence. *See, e.g., R.A.V. v. City of St. Paul*, 505 U.S. 377, 430-31 (1991) (J. Stevens, concurring) (citing several cases and noting that viewpoint discrimination is "particularly pernicious").

We are very concerned about the unequal treatment that the Secular Student Alliance club has received in your school district. Our complainant reports that one teacher went so far as to denigrate a student in front of his peers, expressing that she was disappointed in the student for attending the SSA meeting. We are unaware of any action taken by the school to stop discrimination against secular students or any disciplinary action taken against those who have destroyed SSA property or harassed SSA students.

Our complainant informs us that much of the unequal treatment of the SSA involves VBHS teacher, Teddy McMurray. As we understand it, Mr. McMurray is in charge of all the announcements at the school as well as the school's clubs. From what we have gathered he seems to be unaware of the pertinent aspects of the Equal Access Act and has not treated the Secular Student Alliance the same as other clubs.

We request that you investigate these matters and ensure that VBSD meets its requirements under the Constitution. VBSD must remove unconstitutional religious displays from classrooms, cease prayer at school events, and ensure that non-religious student groups are receiving the same treatment as other school clubs. Please promptly inform us in writing of the steps VBSD will take to resolve these constitutional concerns so that we may notify our complainant.

Sincerely,

Patrick Elliott
Staff Attorney

PCE:cal