



CRIMINAL DEFENSE
DIVORCE & FAMILY LAW
EDUCATION LAW
CIVIL LITIGATION
APPEALS

Neal A. Ramee

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April 26, 2016

Via E-Mail Only

Elliott Engstrom
Center for Law and Freedom
100 S. Harrington Street
Raleigh, North Carolina 27603
Elliot.Engstrom@nccivitas.org

Dear Mr. Engstrom:

This is in response to your letter dated April 21, 2016, posing follow-up questions to a prior public records request. In response to your most recent inquiries, the questions that I drafted for staff interviews were distributed to school principals on February 3, 2016, and responses were returned to central office on or before March 11, 2016. The original complaint referenced in my prior correspondence was received on December 26, 2014. A copy is enclosed with this letter.

As noted in the "Guidance for Staff Interviews" document – which appeared in the public domain and to which the questions themselves were attached – additional reports of staff praying with students were received after the initial complaint was filed, which lead to the distribution of my legal memorandum in March 2015 as well as additional fact-gathering in February and March of this year. These additional concerns were relayed to me in the context of attorney-client privileged communications and are not reflected in any public records.

As you may have noticed, the "Introduction" section to the Guidance document clearly explains that the information was being gathered in the context of attorney-client privilege, as does section 3.b of that document. Further, sections 3.a and 3.c reflect the administration's fair and accurate understanding of the constitutional rules governing religious activities in public schools, such as "the rights of all employees to have and express their own religious beliefs when acting in a purely personal capacity" and the fact that schools are not "religion free zones."

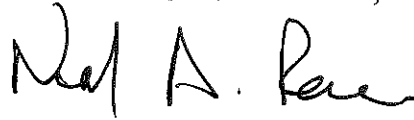
As for the secondary question of whether the completed "questionnaires" may also be protected under personnel privacy laws, please note that N.C. Gen. Stat. § 115C-325.3 provides that any "complaint . . . about a teacher's professional conduct" is a part of the teacher's personnel file and must be kept confidential. I am honestly not sure whether any of the completed "questionnaires" meet that definition, as they were collected for purposes of attorney-client consultation on legal liabilities and have been considered in that

light. Nevertheless, I mentioned in my March 29 email that some of the responses "may" implicate personnel privacy laws because of the quoted statute. I am not aware of any legal authority that states that a complaint about a teacher that is gathered in anticipation of litigation may be protected by attorney-client privilege or personnel privacy laws, but not both, though that would appear to be an abstract question we need not answer here.

I hope this additional information is helpful and would be happy to speak with you further if you have any questions or concerns.

Best Regards,

THARRINGTON SMITH, L.L.P.

A handwritten signature in black ink, appearing to read "Neal A. Ramee". The signature is written in a cursive style with a large initial "N" and "R".

Neal A. Ramee

encl.

FREEDOM FROM RELIGION *foundation*

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

December 26, 2014

SENT VIA MAIL & EMAIL TO:

superintendent@ncmcs.org

Dr. Robert Grimesey
Superintendent
Moore County Schools
PO Box 1180
Carthage, NC 28327

Re: Unconstitutional Prayers at Athletic Awards Banquet

Dear Dr. Grimesey:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding constitutional concerns over prayer at Moore County Schools (District) events. FFRF is a national nonprofit organization with more than 21,500 members across the country, including over 500 members in North Carolina. Our purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that Pinecrest High School held an awards banquet for the soccer team on December 2nd. We understand that the banquet was started with a prayer for all students and attendees. We were contacted by a parent who is concerned that prayers will continue at other school functions.

We write to request that Moore County Schools take immediate steps to ensure that prayers are not part of any future school-sponsored events at Pinecrest High School and other District schools.

It is illegal for a public school to organize or sponsor religious messages at any school-sponsored event. The Supreme Court has continually struck down school-sponsored prayer in public schools. *See, e.g., 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); *Engel v. Vitale*, 370 U.S. 421 (1962) (finding prayers in public schools unconstitutional); *Lee v. Weisman*, 505 U.S. 577 (1992) (ruling prayers at public school graduations an impermissible establishment of religion); *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"). In all of the aforementioned cases, the Supreme Court has struck down prayer in public schools because it constitutes a government advancement and endorsement of religion, which violates the Establishment Clause of the First Amendment.

Though acknowledging student athletic achievements is a commendable goal, including a religious message in the awards program gives the appearance that the school district endorses religion over nonreligion, and Christianity over all other faiths. The “[s]chool 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 accompanying message to adherents that they are insiders, favored members of the political community.’” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)).

The Supreme Court said it best: “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.*, 530 U.S. at 310 (quoting *Lee*, 505 U.S. at 589). Moreover, including prayer and endorsements of religion at a public school event is a divisive and isolating act. Including prayer in a school-sponsored event is particularly inappropriate given that almost 20% of the U.S. population identifies as non-religious. Younger Americans are the least religious population in the country: one-in-three persons aged 18-29 are not religious.¹ An awards banquet should be an inclusive, unifying event designed to strengthen bonds within the school community. Including prayer in the program does exactly the opposite, isolating non-Christian and nonreligious students, cheapening their participation by sending the message that they are outsiders in their own community.

The fact that students can “opt out” of attending the awards ceremony does not cure the constitutional violation. The Supreme Court recognizes that voluntariness does not remedy an Establishment Clause 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) (“Thus, the short, and to me sufficient, answer is that the availability of excusal or exemption simply has no relevance to the establishment question . . .”).

It is unlawful for any school-sponsored event, including an after school awards banquet, to open with prayer. FFRF requests that you take immediate action to ensure that future school events do not include prayer. Please inform us in writing of the steps Moore County Schools is taking so that we may notify our complainant.

Sincerely,



Patrick C. Elliott
Staff Attorney

¹ “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>