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September 24, 2018

Patricia Lucas
Superintendent, Logan County Schools
506 Holly Avenue
Logan, WV 25601

Re: Prayer at Athletic Events and Religious Assemblies

Dear Superintendent Lucas:

I have the honor of serving as the Executive Director of the Congressional Prayer Caucus Foundation. The Foundation serves nearly 100 members of Congress who are part of the Congressional Prayer Caucus (the names of those members of Congress who serve on the Congressional Prayer Advisory Team are listed on the left).

In addition, the Foundation serves Legislative Prayer Caucuses in over 32 states which have over 1,000 state senators and state representatives as members. These leaders are working together to preserve the integrity of our Founding Principles and to protect First Amendment rights for all.

We understand that you recently received a letter from the Freedom from Religion Foundation ("FFRF"). This letter addressed a student giving a prayer before a high school football game. In addition, the letter complained of the distribution of religious literature and holding religious assemblies at Man Middle School. The following addresses each of these alleged constitutional violations.

Prayer Before Sporting Events

Prayer has been a part of our public life since our Nation's founding, and it remains a vital part of it today. The Supreme Court has noted, however, that students can be especially impressionable and confused between voluntary and school-sponsored speech and that public institutions must be evenhanded in making public forums available for speakers of different religions and view. In *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000), the school district's pre-football game invocation practice was narrowly (5-4) found to be

unconstitutional because the San Antonio schools did not have a policy that addressed this evenhandedness. However, if invocations at sporting events are undertaken consistently with a district policy that addresses these concerns, the practice would not suffer the same deficiencies that caused the San Antonio practice to be struck down.

CPCF strongly supports the efforts of your and other districts to provide an opportunity for voluntary prayer at sports events. Such prayer fosters good sportsmanship and safety. We encourage your district to draft a policy that addresses the deficiencies in the San Antonio model (e.g., adopt an evenhanded opportunity for volunteers like a drawing; set a time limit; have a short opening statement that this is the volunteer's statement, not the school's). CPCF has prepared such a model policy and it is attached to the conclusion of this letter.

Religious Assembly and Distribution

As you know, the Constitution does not require a government to be hostile to religion. As the U.S. Supreme Court stated well in *Zorach v. Clauson*, 343 U.S. 306, 314 (1952): "[W]e find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence." The religious community is just as much a part of your community as those who have no religious beliefs, and the religious members of a community cannot be treated as "outsiders" any more than their secular neighbors. Neutrality is the key, and that was precisely the response of former Superintendent Doty in response to the previous FFRF complaint.

As you undoubtedly know, Congress in 1984 passed the Equal Access Act, 20 U.S.C. § 4071, requiring federally funded secondary schools to allow religious clubs the same access to school facilities and communications as secular clubs. If the school permitted a chess club to meet at school and announced its meetings, it must do the same for Bible clubs.

The U.S. Department of Education in 2003 similarly emphasized the requirement in education that religious clubs be afforded the same opportunities as secular clubs. The Department provided the following guidance:

Students may organize prayer groups, religious clubs, and "see you at the pole" gatherings before school to the same extent that students are permitted to organize other non-curricular student activities groups. Such groups must be given the same access to school facilities for assembling as is given to other non-curricular groups, without discrimination because of the religious content of their expression. School authorities possess substantial discretion concerning whether to permit the use of school media for student advertising or announcements regarding non-curricular activities. However, where student groups that meet for nonreligious activities are permitted to advertise or

announce their meetings—for example, by advertising in a student newspaper, making announcements on a student activities bulletin board or public address system, or handing out leaflets—school authorities may not discriminate against groups who meet to pray. School authorities may disclaim sponsorship of non-curricular groups and events, provided they administer such disclaimers in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.¹

Compliance with DOE guidance, coupled with the Equal Access Act, all lead to the same conclusion – religious clubs and assemblies in school must be treated the same way as secular clubs and activities. If the school holds a secular assembly (a pep rally or a meeting to hear a secular speaker), it must similarly permit religious clubs and religious assemblies.

Also relevant is the U.S. Supreme Court’s decision in *Good News Club v. Milford Central School*, 553 U.S. 98 (2001). This case involved a private Christian organization for children aged 6 to 12. *Id.* at 103. When submitting its application for use of the elementary school cafeteria after hours once a week, the organization listed the proposed use as a “fun time of singing songs, hearing a Bible lesson and memorizing scripture.” *Id.* Since the local school district had a community use policy that prohibited use “by any individual or organization for religious purposes,” and the use was deemed for “religious purposes,” the application was denied.

When the case reached the Supreme Court, the principal issue was whether the school had created a limited speech forum and, if so, whether it had engaged in viewpoint discrimination. The Supreme Court ruled that the school district by allowing other organizations to use its facilities had created a limited speech forum, and that in denying use to the Good News Club, the school had committed viewpoint discrimination. That is, permitting use of the school facility for discussions on child rearing and teaching children moral values through Aesop’s Fables, and allowing Boy Scouts to meet and influence a boy’s character development, but not allowing religious organizations to teach morals through a religious perspective resulted in religious viewpoint discrimination. As noted by the Court, “What matters for purposes of the Free Speech Clause is that we can see no logical difference in kind between the invocation of Christianity by the Club and the invocation of teamwork, loyalty, or patriotism by other associations to provide a foundation for their lessons.” *Id.* at 111.

As is evident in the *Good News Club* case and the DOE compliance guidelines, and in direct contravention from the threatening letter you received from FFRF, school faculties must ensure an even-handed approach to student religious activities so that they are treated in the

¹ U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, “Applying the Governing Principles in Particular Contexts – Organized Prayer Groups and Activities,” (Feb. 7, 2003), available at https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html

same manner as nonreligious activities -- just as you undoubtedly are doing, which includes such things as newsletter announcements, permission forms, leaflets, and use of facilities.

The school system would, in our opinion, pose a greater constitutional risk if it yielded to the Freedom From Religion Foundation's demands. Such action would have the primary effect of showing hostility to religion, something the U.S. Supreme Court forbids. Indeed, we want children to adhere to good moral values that result from the "effective scope of religious influence" and that will promote good citizenship as they mature into adulthood.

We hope that you will not yield to threats to rob you, your students, and your community of your rights and heritage. If we can be of any further service to you on this issue, feel free to contact us. We have First Amendment lawyers on staff who will work with you, without charge, if you need their services. We are encouraged that you know your rights under the U.S. Constitution and that you will not allow threats of this nature to rob your community of your rights and heritage. To protect our freedom, we must exercise that freedom.

Sincerely,



Lea Carawan

Executive Director

Congressional Prayer Caucus Foundation

ADMINISTRATIVE GUIDELINE ON PROVIDING LIMITED OPEN FORUM FOR INVOCATIONS AT SCHOOL EVENTS

Purpose

This policy sets administrative guidelines for providing a limited open forum for invocations at school events. It balances three important interests.

First, many in our school community, including students, teachers, administrators, parents, and other community attendees at school sporting events, believe it is beneficial to remind participants and spectators (a) of the need for good sportsmanship, (b) that winning at all costs is not an appropriate goal, and (c) that there is an overriding concern for the safety of all the participants in the event. We agree that these are suitable purposes, consistent with the traditions of our schools and community. Such reminders may be done by a welcoming statement, followed by moment of silence; a student-led prayer; or some other means of reinforcing the reminder by means of an invocation.

Second, it is important that our schools do not sponsor or endorse any particular religion or show favoritism to any religious belief or non-belief. We are conversant with the Supreme Court's decisions in this regard, including *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), as well as other applicable court decisions, and have prepared this policy with the intent to act consistently with those court decisions. We do not read those decisions as prohibiting all prayer at school sporting events, but as requiring that it be conducted with appropriate safeguards, which this policy puts in place. We do not accept the notion that permitting an opportunity for voluntary public prayer by individuals and groups at school athletic events always amounts to an unconstitutional endorsement of whatever the speaker says or that members of our community cannot distinguish between voluntary speech and school-endorsed messages.

Third, the U.S. Congress has required the U.S. Secretary of Education to issue guidance on constitutionally protected prayer in public elementary and secondary schools pursuant to § 9524 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. The U.S. Secretary of Education issued such guidance in 2003. A "local education agency" (LEA), which _____ is, risks losing funding if it is not able to certify that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools. This current policy is designed to ensure that _____ is able to make such certification.

Limited Public Forum for Invocations

A school in this district is permitted to provide an opportunity at the beginning of a school or sporting event for an invocation to be given using the public-address loud speaker system otherwise provided at the event, provided the following guidelines are satisfied.

1. A school may, but is not required to, restrict those allowed to lead in an invocation to students. However, it must give all members of whatever group is selected equal opportunity to participate. Selecting the individuals by vote is not permissible, as this may restrict the selection to the majority of the group. The approved method of selection is a blind drawing of all individuals who have volunteered. Any other method of selection must be approved in advance by the school district's SUPERINTENDENT OR HIS/HER DESIGNEE.
2. A school may publicize the opportunity for an individual to provide an invocation before a school sporting event, but must select such individual on content-neutral grounds and must not require participation by anyone.
3. A school may limit the timing and place of the invocation and should monitor the public proceeding to assure that its guidelines are not being violated. For example, the school may turn off the public-address system if a speaker exceeds the time limit.
4. Speakers of invocations are to be informed of the purposes as stated in the "Purpose" section of this policy and provided a time limit not to exceed one minute. The school will not provide a text to be used by any speaker.
5. At the beginning of any invocation, the following statement will be read by a school representative: "[Name of school] is pleased to have [name and position] lead us in a short invocation today. S/he is doing so as a volunteer and is not sponsored by the school. We request your civility, but do not require your participation."

Group Prayer by Students

6. Some students desire to lead their team in prayer consistent with the interests stated in the "Purpose" section of this policy. Sometimes members of both teams gather after a game for community-building, often including prayer. Such practices are not prohibited, but they should be conducted consistently with this policy.
7. Coaches must clearly inform all students that they are not required to engage in communal prayer led by teammates.
8. Coaches must not discriminate in any way against a student based on whether that student decides to participate in communal prayer, including by making negative or sarcastic comments about any such decision.

9. Coaches must take prompt and appropriate action against any student who exhibits negative behavior against another student based on whether that other student decides to participate in communal prayer, including by making negative or sarcastic comments about any such decision.
10. Coaches may attend and monitor student-led gatherings, but they may not organize, sponsor, or verbally participate in them.

Reporting Potential Violations

11. Potential violations of this policy may be reported to any teacher or administrator. When a teacher or administrator is so informed or otherwise becomes aware of a potential violation, the potential violation must be reported to the school district's SUPERINTENDENT OR HIS/HER DESIGNEE.
12. The school district's SUPERINTENDENT OR HIS/HER DESIGNEE will review every report of a potential violation to determine (a) if there has been a violation, (b) if remedial action is appropriate, and (c) if additional training or instruction is appropriate to minimize the potential for future violations of this policy.

In-person Training

13. Within 30 days of the adoption of this policy, or prior to the beginning of the school year, whichever is earlier, the school district's SUPERINTENDENT OR HIS/HER DESIGNEE will be responsible for providing in-person training on this policy to all school administrators and coaches.

Proactive Amendment of This Policy

14. The school district's SUPERINTENDENT OR HIS/HER DESIGNEE and counsel will keep apprised of any legal developments in this area and revise this policy as appropriate to be consistent with controlling law.
15. Any amendment of this policy will be transmitted promptly to all school administrators and coaches. Consideration will be given to whether in-person training would be desirable to discuss any such amendment.