Appignani Humanist Legal Center

1777 T Street NW, Washington DC 20009-7125 | T 800.837.3792 202.238.9088 | F 202.238.9003 | legal@americanhumanist.org | www.humanistlegalcenter.org

August 27, 2014

Via Email
Phillip L. Hartley
Harben, Hartley & Hawkins, LLP
djackson@hhhlawyers.com

Will Schofield – Superintendent
Hall County Schools
will.schofield@hallco.org

RE: Establishment Clause Violations

Dear Mr. Hartley,

Thank you for your response to our August 12, 2014, letter. We appreciate that Superintendent Schofield states he is committed to complying with the Establishment Clause and we are aware of the email he sent to school officials on or about August 19, providing, *inter alia*: "Teachers, coaches, administrators, and other school employees may live out their faith in a variety of ways; however, they must not be leading students in prayer during school or school-sponsored activities, nor may they require or pressure students to participate in religious activities." While this informal communication to faculty is a good first step, it is important to understand that this does not fully resolve the issues we set forth in our letter.

As an initial matter, you are incorrect in asserting that all of the incidents we complained of happened over a year ago. Although at least one of the coaches is no longer with the School District, the School District's policy, practice and custom of permitting coaches to lead and participate in prayers with students is ongoing. In fact, it appears that coaches continued to pray with students after our letter was received by the School District. It is our understanding that the following photograph was taken on or around August 15, 2014, which depicts several coaches participating in prayer with students at a football scrimmage between North Hall High School (a School District school) and Gilmer High School:

After last nights scrimmage game the players of North Hall & Gilmer High Schools came together at the 50 yard line to PRAY. And they prayed to God. That's what the people of North Georgia believe. No one was forced. They did this of their own choice. The American Humanist Association needs to keep their noses out of our peoples business.

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Becky Tilley Givans Love it.
August 16 at 8:17am

Marlis Cook Hopefully those who wanted to pray to Allah poor Moses felt free to do so as well
August 16 at 8:30am

Bill Kokaly We do not make people pray any specific way or even pray at all. Nor do we try to keep anyone from practicing their beliefs or non belief.
August 16 at 8:42am · 1

Marlis Cook ^^sweet.
August 16 at 8:48am

Tena Riley Amen boys!
August 16 at 8:50am

Annette Robinson Good for them !!
August 16 at 9:35am

Since we sent the letter, we have received numerous emails from current and former students in the School District confirming that these practices have been ongoing, pervasive, and longstanding. One student informed us that a high school wrestling coach often led group prayers with students and would tell the students "religious stories" disguised as motivational speeches. Another student reported that a Christian-themed prayer was almost always included before the Chestatee High School marching band performances, usually prompted by the band director. At least one of the drummers in the band reportedly was a Muslim. The marching band student informed us of the following:

> [T]he entire school was very religious, heavily biased towards Christianity. . . . My sister who does not associate with the Christian religion either actually pretended to be Christian for a good year for fear of being ostracized by her friends. . . . As part of the marching band, I often felt very out of place. The Christian religion was heavily seeded into the program and bothered me from the start. There would always be a prayer before each performance, usually led by a student, but often prompted by our band director. Chaplain actually became a leadership role one could be elected to in the band's student leadership.

The student, like many others, thanked the AHA for trying to make "Chestatee High School a place where people who are non-religious like myself and those who associate with other religions can feel more comfortable and open about their beliefs."

Our second concern is that Mr. Schofield's email made no mention of faculty *participation* in prayer with students – it merely stated that teachers are not to "lead" such prayers. However, the cases make clear that faculty (including coaches) must neither lead *nor participate* in prayers with students. *See Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1981), *aff'd,* 455 U.S. 913 (1982) (statute permitting teacher-led prayers upon the request of students held unconstitutional); *Borden v. Sch. Dist.*, 523 F.3d 153, 174-76 (3rd Cir. 2008), *cert. denied*, 555 U.S. 1212 (2009) (coach silently bowing head and kneeling while team prayed violated Establishment Clause); *Holloman v. Harland*, 370 F.3d 1252, 1285 (11th Cir. 2004) (teacher's practice of initiating silent prayer with her students with "let us pray" and ending it with "amen" violated Establishment Clause); *Doe v. Duncanville Indep. Sch. Dist*., 70 F.3d 402 (5th Cir. 1995) (school's practice of allowing coaches to participate in student prayers during athletic events violated Establishment Clause); *Doe v. Duncanville Indep. Sch. Dist.*, 994 F.2d 160, 163 (5th Cir. 1993) (*Duncanville I*) (school officials' supervision of student-initiated and student-led prayers preceding basketball games violated Establishment Clause).

In *Duncanville*, the Fifth Circuit explicitly held that high school basketball coaches' mere participation in the Lord's Prayer with players during practices and after games was "an unconstitutional endorsement of religion." 70 F.3d at 406. In rejecting the school's argument that it could not "prevent its employees from participating in student prayers without violating their employees' rights to the free exercise of religion, to association, and to free speech and academic freedom," the Fifth Circuit explained that the "prayers take place during school-controlled, curriculum-related activities . . . During these activities DISD *coaches and other school employees are present as representatives of the school and their actions are representative of DISD policies*." *Id.* (emphasis added). As such, and relying on numerous Supreme Court precedents, the court ruled: "DISD representatives' *participation* in these prayers improperly entangles it in religion and signals an unconstitutional endorsement of religion." *Id.* (emphasis added).

Likewise, in *Borden*, the Third Circuit recently held that a high school football coach was in violation of the Establishment Clause when he bowed his head and took a knee while his team prayed.

523 F.3d 153. The court stressed that "joining hands in prayer or demonstrating some approval of or solidarity with students' prayer" is unconstitutional. *Id.* at 167.

Finally, the School District has not taken any steps to resolve the unconstitutional promotion of Christianity through the placement of biblical verses in football team documents and promotional materials. These actions are equally unconstitutional, especially in the context of a school culture that is already pervasively and inappropriately religious. *See Stone v. Graham*, 449 U.S. 39, 41 (1980) ("The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature. The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths"); *Washegesic v. Bloomingdale Pub. Sch*., 33 F.3d 679 (6th Cir. 1994), *cert. denied*, 514 U.S. 1095 (1995) (ruling that portrait of Jesus Christ in public school hallway was unconstitutional).[1]

The "effect prong asks whether, irrespective of government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval [of religion]." *Wallace v. Jaffree*, 472 U.S. 38, 56 n.42 (1985) (quotation marks omitted). The "advancement need not be material or tangible. An implicit symbolic benefit is enough." *Friedman v. Board of County Comm'rs*, 781 F.2d 777, 781 (10th Cir. 1985).[2] By way of example, in *Granzeier v. Middleton*, 955 F. Supp. 741, 746-47 (E.D. Ky. 1997), *aff'd*, 173 F.3d 568 (6th Cir. 1999), the court held that a government sign depicting a small (4-inch) "clip art" cross violated the Establishment Clause reasoning, "the sign could be, and was in fact, perceived by reasonably informed observers, to be a government endorsement of the Christian religion. The court accepts that this apparent endorsement was not intended, but this made no difference in the observer's perception."

Holding that a portrait of Jesus Christ displayed in a public school hallway violated the Establishment Clause, the Sixth Circuit in *Washegesic* explained: "Christ is central only to Christianity, and his portrait has a proselytizing, affirming effect that some non-believers find deeply offensive. . . . [I]t [i]s a governmental statement favoring one religious group and downplaying others. It is the rights of these few [non-adherents] that the Establishment Clause protects." 33 F.3d at 684.

In *Ahlquist v. City of Cranston*, 840 F. Supp. 2d 507 (D. R.I. 2012), the court held that a prayer affixed to the wall of the auditorium in one of the City of Cranston's public high schools was unconstitutional. Similarly, in *Doe v. Aldine Independent School Dist*., 563 F. Supp. 883, 884 (S.D. Tex. 1982), the court held that a prayer posted "in raised block letters on the wall over the entrance to the gymnasium at Aldine Senior High School" violated the Establishment Clause. The prayer was also recited and sung by students at athletic contests, pep rallies and graduation ceremonies. The court explained that "[e]ach of these practices, under the circumstances of this case, is proscribed by the first amendment." *Id.* at 885 n.2. Notably, the court suggested that the printed prayer was even more unconstitutional than the recitation and singing of the prayer, explaining: "Though the act of posting the prayer on the gymnasium wall is distinct from the initiation of its singing and recitation, the court

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[1] *See also Robinson v. City of Edmond*, 68 F.3d 1226, 1228 (10th Cir. 1995) (holding that a city seal that contained four quadrants, only one of which depicted a Latin cross had the unconstitutional effect of endorsing religion); *Ellis v. La Mesa*, 990 F.2d 1518, 1525 (9th Cir. 1993), *cert. denied,* 512 U.S. 1220 (1994) (cross on city seal unconstitutional); *Harris v. City of Zion*, 927 F.2d 1401, 1414 (7th Cir. 1991), *cert. denied*, 505 U.S. 1218 (1992) (same); *ACLU v. City of Stow*, 29 F. Supp. 2d 845 (N.D. Ohio 1998) (same).

[2] *See Larkin v. Grendel's Den*, 459 U.S. 116, 125-26 (1982) ("The *mere appearance* of a joint exercise of legislative authority by Church and State provides a significant symbolic benefit to religion in the minds of some by reason of the power conferred. It does not strain our prior holdings to say that the statute can be seen as having a 'primary' and 'principal' effect of advancing religion.") (emphasis added).

proceeds with the analysis as though both acts are part of the same religious practice. It would seem, however, that the posting of the words alone is unconstitutional in light of *Stone v. Graham*[.]" *Id.*

Importantly, while we appreciate the assurances of the School District, we are concerned that there is absolutely no acknowledgement that a strongly pro-Christian culture exists within the school, and little concern or respect for the rights of nonbelievers and other religious minorities. After our letter was sent, numerous Hall County citizens contacted us to thank us and confirm the extent of the problem there, but many also relayed a sense of being terrified of being discovered – actual concern for their physical well-being. We are not suggesting that this problem is unique to Hall County, but neither do we believe that leaders within the community can shrug off responsibility by saying the cultural problem is out of their control. The superintendent and the School District have a responsibility to ensure a safe and welcoming environment for *all* religious views, with no favoritism toward the majority, but the superintendant's email to staff did little to further this goal and in fact pandered somewhat to the outraged majority by ensuring that religious freedom within the school is "almost unlimited." In fact, in a school environment there are many restrictions that apply, and in the context of this situation such a statement does little to address, or even acknowledge, the underlying problem.

In sum, we appreciate the initial steps the School District has taken to rectify the constitutional violations discussed in our letter but we feel more is needed to ensure compliance with the Establishment Clause. As we pointed out in our letter, we feel these issues can easily be resolved without resort to litigation. While we prefer to leave it up to school administrators to determine the steps it will take to correct Establishment Clause violations, we offer the following steps that, if implemented, would prevent the School District from being sued in federal court:

1. Adopt a written policy prohibiting teachers, coaches and other school officials from leading, endorsing, facilitating, and participating in prayer with students;

2. Eliminate all religious references from official team documents and promotional materials and adopt a written policy prohibiting the same;

3. Enforce said written policies by monitoring games and practices and by sanctioning school officials for non-compliance with the penalties assessed for similar school code violations.

In addition to the above steps that we believe are necessary for the School District to adopt to avoid litigation, we feel that the School District can and should go further to ensure the rights of the minority are protected to the same degree as the majority. For instance, we encourage the district to implement sensitivity training at the beginning of each school year.

Once again, we ask that you please respond to us promptly in writing regarding the School District's decision on these issues. We earnestly wish to work with the School District on reaching an amicable yet effective resolution and truly believe that this is possible.

Sincerely,
Monica Miller, Esq.