

# FREEDOM FROM RELIGION *foundation*

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**SENT VIA U.S. MAIL AND EMAIL** [cgibson@deltaschools.com](mailto:cgibson@deltaschools.com) [peteblaircpa@yahoo.com](mailto:peteblaircpa@yahoo.com)

Superintendent Caryn Gibson  
Delta County School District 50J  
7655 2075 Rd.  
Delta, CO 81416

Re: Multiple First Amendment violations in Delta Middle School

Dear Superintendent Gibson and Board President Blair:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to urge you to investigate and discontinue several First Amendment violations occurring in Delta Schools. FFRF is a national nonprofit organization representing over 23,000 members across the country, including more than 650 members in Colorado with chapters in both Colorado Springs and Denver. We protect the constitutional principle of separation between state and church and educate about nontheism.

We have been alerted to at least four issues that raise concerns of state-church separation.

**1. Bible distributions in the public school are illegal. Open forums for literature distribution do not necessarily cure this defect and are bad policy.**

It is our understanding the DMS permitted bibles to be distributed, via a table in the library, to students on Friday December 18, 2015. We understand Delta Schools has a policy that it has cited as permitting the distribution of outside literature to students. We are also informed that in a January 2015 broadcast, KVNF radio reported that bibles were distributed at Paonia High School and Hotchkiss K-8 School.

There are three issues here. **First**, it is unconstitutional for public school districts to permit the Gideon's Interantional to distribute bibles as part of the public school day. Courts have held that the distribution of bibles to students at public schools during instructional time is prohibited. *See Berger v. Rensselaer Central Sch. Corp.*, 982 F.2d 1160 (7th Cir. 1993) (held that classroom distribution of Gideon bibles to fifth-graders violated the Establishment Clause of the First Amendment to the United States Constitution); *see also Tudor v. Bd. of Educ. of Rutherford*, 14 N.J. 31 (1953), *cert. denied*, 348 U.S. 816 (1954) (finding unconstitutional a school board resolution permitting the distribution of bibles by Gideons).

**Second**, even when distribution of religious material to students in school is done passively — from a table or some other fixed location — courts have ruled that that distribution may be unconstitutional. *See Roark v. South Iron R-1 Sch. Dist.*, 573 F.3d 556 (8th Cir. 2009).

**Third**, if Delta Schools maintains this passive distribution policy and continues to assert that it allows the Gideons to prey on other people's children, we formally request permission to distribute FFRF literature in Delta Schools this March. We will also contact other potentially interested

organizations, including the Satanic Temple, to alert them to this unique opportunity. *We already have local volunteers willing to set up the distribution.*

This same scenario played out in Orange County Schools, Florida. We alerted them to an illegal bible distribution and OCS claimed they had a distribution policy. We asked to distribute our literature and they censored it, so we sued, at which point they agreed to allow our distributions and others, including the Satanic Temple, to move forward before finally doing what FFRF asked in the first place: not allowing religious distributions under their policy. Delta Schools should heed this lesson and avoid the costly, obvious mistakes Orange County Schools made.

## **2. Schools cannot perform religious plays.**

We understand that in December 2014, the DMS drama club produced a play about the baby Jesus and required the entire school to watch. We understand at least one family complained and was told by school administrators that the play would never be performed in DMS ever again and the Christian bias at DMS would stop. Given recent events, it seems prudent to revisit this issue and the Delta Schools' commitment to the Constitution.

It is well settled that public schools, and by extension public school teachers, 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 Twshp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962). No public school employee may urge religious points of view on students.

Public school employees must remain neutral toward religion. Administrators have an obligation under the law to make certain that "teachers do not inculcate religion." *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971). "[A] school can direct a teacher to 'refrain from expressions of religious viewpoints in the classroom and like settings.'" *Helland v. South Bend Comm. Sch. Corp.*, 93 F.3d 327 (7th Cir. 1993)(quoting *Bishop v. Arnov*, 926 F.2d 1066, 1077 (11th Cir. 1991)). Delta Schools must make certain that its teachers are not unlawfully and inappropriately indoctrinating students in religious matters. All staff must be instructed to refrain from sharing their religious beliefs in the classroom.

In a similar case FFRF is litigating in Elkhart, Indiana a school had been hosting a nativity play for decades. FFRF wrote a letter, like this one, pointing out the illegality of that play. The school refused to stop the nativity so FFRF sued and won a preliminary injunction barring the school from performing the live nativity.

Even if children had been permitted to opt out, that would not solve this problem.

## **3. Teachers and chaperones harassing students for their religion or lack thereof is discrimination that the school has a responsibility to halt immediately.**

In December 2014, Mrs. Charlesworth reportedly told her students that she was Christian and that "people who aren't Christians are the bombers." After a student protested, Charlesworth "said she felt it was her duty to teach the class about Christianity and harassed a student because of her non Christian belief." Apparently Charlesworth ridiculed the child in front of the entire class. We understand the school investigated, concluded that the teacher didn't do anything wrong, but immediately moved the student to another class.

However, we also understand that such harassment has continued. We are told that last Spring, this family was also concerned with the school's choice to take children to see the play, Joseph and the

Technicolor Dreamcoat. Leaving aside the propriety of taking students to that play, we are told that in response to the family's concerns the drama teacher, Mr. Dunham yelled at the child whose parents objected. The child, choosing to attend the trip, reports that a female chaperone and Mr. Dunham harassed her for being an atheist.

If children observe their teachers ridiculing nonconforming children students are likely to imitate the teacher. This is precisely public schools cannot sponsor religion. The Supreme Court has stated several times that one of the major reasons the founders chose to keep our government separate from religion is because religion is divisive: "The Framers and the citizens of their time intended to guard ... against the civic divisiveness that follows when the government weighs in on one side of religious debate; nothing does a better job of roiling society," and "the divisiveness of religion in current public life is inescapable." *McCreary County, Ky. v. American Civil Liberties Union of Ky.*, 876, 881 (2005). In fact, the "purposes of the First Amendment's Religion Clauses [are] to assure the fullest possible scope of religious liberty and tolerance for all, to avoid the religious divisiveness that promotes social conflict, and to maintain the separation of church and state." *Van Orden v. Perry*, 545 U.S. 677, 678 (2005).

Schools that fail to adequately address student harassment can be liable for damages students suffer. Federal law allows suits for private damages against school for acting with deliberate indifference to known acts of student-on-student sexual harassment. See *Davis Next Friend LaShonda D. v. Monroe County Bd. of Educ.*, 526 U.S. 629, 633 (1999). Other school districts have been sued for failing to address bullying of LGBTQ students. See e.g., <http://www.splcenter.org/get-informed/case-docket/anoka-hennepin-school-district>. While it is true that these two cases were based on discrimination because of sex and sexual orientation, 42 U.S.C. §1983 would allow a similar suit for the denial of Equal Protection on the basis of religion or lack thereof.

In other words, by not acting to halt the harassment of nonreligious students, the district itself can be held liable. Removing victims of harassment from the reach of their harassers is a temporary solution at best. Harassers, not victims ought to be removed.

#### **4. Teachers leading students in prayer in classrooms is illegal, even if done before students are required to be in school.**

Finally, we understand that two Delta Middle School teachers, Mr. Dunham, who runs or ran the "Children's Ministry" at the Thunder Mountain Church of Christ in Delta, and another teacher lead the students in prayer in one of the classrooms every Wednesday morning. They apparently ply the children with doughnuts.

It is unconstitutional for public school employees to participate in the religious activities of their students. See, e.g., *Borden v. Sch. Dist. of the Twp. of East Brunswick*, 523 F.3d 153 (3rd Cir. 2008), cert. denied, 129 S.Ct. 1524 (2009) (declaring a coach's organizing, participating in, and leading student prayers unconstitutional); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995) (declaring coach's participation in student prayer circles an unconstitutional endorsement of religion).

Claiming that this is an outside or student club does not legitimize the teachers' praying with students. According the United States Department of Education's [\*Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools\*](#), with which public schools must comply with to receive some federal funding:

When acting in their official capacities as representatives of the state, teachers, school administrators, and other school employees are prohibited by the Establishment Clause from encouraging or discouraging prayer, and from actively participating in such activity with students. Teachers may, however, take part in religious activities where the overall context makes clear that they are not participating in their official capacities.

The context of these prayers is anything but clear. Students will and do think teachers are participating in their official capacity. The teachers are present on campus as part of their government employment. *See, e.g., May v. Evansville-Vanderburgh Sch. Corp.*, 787 F.2d 1105 (7th Cir.1986) (denying teacher's claim of a First Amendment right to hold prayer meetings on school property before school, explaining, "the workplace is for working and not, unless the employer consents, for holding meetings at which employees can discuss matters of great importance to themselves").

Just because these prayers occur before class does not mean it occurs before teachers are contractually required to be on campus. Even if they are technically on their own time, immediately after the prayer group, they begin teaching students. They are there on official business, not their own time. They cannot participate in students' religious activities.

If true, these allegations mean that the district and district staff are violating the Constitution. This letter ought to impress upon Delta Schools the seriousness of these offenses and the need for action. I look forward to reading your prompt written responses detailing how these violations will be corrected and prevented from happening in the future.

Sincerely,



Andrew L. Seidel  
Staff Attorney  
Freedom From Religion Foundation