

# Lipson|Neilson

COLE, SELTZER, GARIN, P.C.

*Attorneys and Counselors at Law*

9900 COVINGTON CROSS DRIVE, SUITE 120  
LAS VEGAS, NEVADA 89144

---

TELEPHONE (702) 382-1500

TELEFAX (702) 382-1512

[www.lipsonneilson.com](http://www.lipsonneilson.com)

E-MAIL: [awilliams@lipsonneilson.com](mailto:awilliams@lipsonneilson.com)

Board of Trustees  
Lyon County School District  
25 East Goldfield Avenue  
Yerington, Nevada 89447

Superintendent Wayne Workman  
Lyon County School District  
25 East Goldfield Avenue  
Yerington, Nevada 89447

November 28, 2017

**Re: Unconstitutional Censorship of Religious Viewpoints**

Dear Superintendent Workman and Board of Trustees:

The law offices of Lipson, Neilson, Cole, Seltzer, Garin, P.C., along with First Liberty Institute, represent Calvary Chapel Dayton Valley ("Calvary Chapel"), a Christian church located in Dayton, Nevada.

We write in regard to Lyon County School District's recently adopted policy discriminating against religious viewpoints in the distribution of community organizations' flyers, numbered Board Policy KA. We were informed that, pursuant to the policy, schools within the district have rejected several flyers from Calvary Chapel because they convey that the event advertised would be presented from a religious (Christian) viewpoint. We write to inform you about the legal rights of our client and the legal responsibilities of the School District. A copy of the policy and email correspondence in question are attached hereto for your convenience.

## **FACTUAL BACKGROUND**

For years, the Lyon County School District's flyer distribution practice has allowed external community organizations from a variety of viewpoints to inform parents of local extracurricular events and activities.

However, in response to a parent complaint about the religious viewpoint of one of Calvary Chapel's flyers in Spring 2017, Deputy Superintendent Alan Reeder distributed an email to all school Principals within the district, specifically instructing them to no longer allow the distribution of flyers of a religious nature.

On or around April 4, 2017, Calvary Chapel sought to distribute a flyer about its upcoming "Youth Nights." The front of the flyer, included hereto as Attachment A, gave a bullet list of activities for the event, including "Free Food," "Games/Activities," and "Good News," along with the date, time, and location. The back of the flyer had an event description as part of the "Event Permission and Medical Release Form." The description plainly explained that the event would include "games" and "activities" such as foosball, air hockey, basketball, and ping pong, along with "live worship music, devotion, free food and a snack bar."

Two schools, Dayton Elementary School and Dayton Intermediate School, acting pursuant to the Deputy Superintendent's direction to specifically exclude religious flyers, refused to distribute the "Youth Night" flyer because of its religious viewpoint (e.g. "live worship music" and "devotion").

### **A. Adoption of the Official Flyer Policy**

On or around June 27, 2017, Superintendent Wayne Workman, Deputy Superintendent Reeder, and Public Information Officer Erika Garcia recommended that the Board of Trustees approve Board Policy KA, entitled "Distribution of Flyers and Announcements by External Organizations."

On July 25, 2017, the Lyon County School Board adopted the policy. In paragraph number 10 of the policy, the School Board specifically targets protected religious speech: "Flyers/announcements intended to promote a partisan political cause/candidate, promote a religious opinion/belief, are propagandistic or proselytizing, will not be distributed." The policy also requires all flyers to include a disclaimer explaining that the school district does not endorse the organization or activity represented in the flyer. The policy is enclosed at Attachment B.

## **B. Calvary Chapel's Youth Night and Meal Program Flyers**

On July 2, 2017, before the flyer policy was adopted on July 25, 2017, Calvary Chapel submitted a flyer to Dayton Elementary School for another upcoming Youth Night along with a separate flyer for a United States Department of Agriculture ("USDA") sponsored meal program taking place at the church over the summer. The flyers are enclosed as Attachments C and D.

After receiving no response for weeks, Calvary Chapel's Assistant Pastor Dennis Hubbard emailed Dayton Elementary School Principal Leslie Peters about the status of the flyers on July 11, 2017. Principal Peters responded that she was awaiting direction from the district office.

Calvary Chapel received no substantive response until July 31, when Principal Peters sent the following email: "The policy regarding flyers was approved at the last board meeting. I also heard from my supervisor that the flyer regarding the food distribution would be acceptable based on board policy to hand out but the youth night flyer had some language that talked about live worship music, devotional and good news which does not align with the district's flyer policy. Our summer school session is no longer in. Students return to school on August 31."

Thus, the School District delayed responding to Calvary Chapel until the summer program activities had passed and additionally explained that the Youth Night flyer would be rejected under the newly adopted district policy due to "some language" that was religious in nature. This email exchange is enclosed as Attachment E.

## **C. Calvary Chapel's Outdoor Excursions and Harvest Party Flyers**

In Fall 2017, Calvary Chapel again attempted to submit two new flyers for distribution, involving a Harvest Party taking place at the end of October and an Outdoor Excursions program which involves outdoor activities and Christian mentorship. Both flyers included the required disclaimer explaining that the school does not endorse the activities. The flyers are enclosed as Attachment F and G.

However, Public Information Officer Garcia informed Calvary Chapel through emails and an in-person meeting that the flyers would only be accepted *if—and only if—* all language or images indicating a religious viewpoint were removed. For instance, she wrote that the "Christ-centered discipleship/mentoring program" language on the Outdoor Excursions flyer must be changed to "'mentoring program' without the 'Christ-centered discipleship' description." She also wrote that the cross images and Proverbs



quote must be removed from the Harvest Party flyer. Additionally, Garcia indicated during the in person meeting that the required disclaimer must be located on the front of Calvary Chapel's flyers, rather than on the back. The written flyer policy does not specify a location for the disclaimer. The email exchange is enclosed as Attachment H.

It is our understanding that other external organizations have been permitted to distribute flyers involving substantially similar activities or events because they are not presented from a religious viewpoint. For instance, sports organizations and Boys and Girls Clubs have been permitted to distribute flyers providing information about similar community events or activities, whereas Calvary Chapel's Outdoor Excursions and Youth Night flyers have been excluded due to their viewpoint. Similarly, flyers promoting Halloween parties and activities have been permitted, whereas the church's similar Harvest Festival flyer has been excluded. Finally, some community flyers have been distributed that do not display the required disclaimer anywhere on the flyer, even though Calvary Chapel was told that, not only must it display the disclaimer, but it must do so prominently on the front of its flyers.

#### LEGAL ANALYSIS

It is unlawful for the Lyon County School District to censor or discriminate against private religious speech in its flyer distribution program. Such actions constitute unlawful viewpoint discrimination, prohibited under the Free Speech clause of the United States Constitution.

The Supreme Court of the United States has made clear that viewpoint discrimination is strictly prohibited. *See Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 811 (1985); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983). The school district violates the law when it suppresses or excludes private speech simply because the speech expresses a religious viewpoint. *See Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981). The Supreme Court of the United States has characterized viewpoint discrimination as "an egregious form of content discrimination." *Rosenberger*, 515 U.S. at 829; *see also id.* at 828, 829; *Cornelius*, 473 U.S. at 806; *Perry Educ. Ass'n*, 460 U.S. at 46. School employees like all government actors, are required to remain neutral with respect to private religious speech. *See Rosenberger*, 515 U.S. at 839. Therefore, because the Lyon County School District distributes substantially similar flyers from a secular perspective, the school is required to treat flyers from a religious perspective in the same manner.

Moreover, the Ninth Circuit has specifically affirmed that school districts are not permitted to discriminate against religious viewpoints in the distribution of community flyers. The court held, “if the District permits the distribution of similar secular programs by other non-profit organizations, then the District cannot refuse to distribute literature advertising an off-campus summer program because it is taught from a Christian perspective.” *Hills v. Scottsdale Unified Sch. Dist.*, 329 F.3d 1044, 1053 (9th Cir. 2003). The court specifically found fault with the school for excising all religious symbols and descriptions of religious activity that indicated that the activity would be conducted from a religious viewpoint. *Id.* at 1052. Here, with respect to the Youth Night, Outdoor Excursions, and Harvest Party flyers, the school district refused to allow any religious symbols, Bible verses, mentions of worship music or Christian discipleship, or anything intended to inform parents that the event would be conducted from a Christian perspective. This action violates the standard set forth in *Hills*.<sup>1</sup> See also *Rusk v. Crestview Local Sch. Dist.*, 379 F.3d 418, 421 (6th Cir. 2004); *Child Evangelism Fellowship of N.J., Inc. v. Stafford Twp. Sch. Dist.*, 386 F.3d 514, 528 (3d Cir. 2004).

The Supreme Court of the United States has repeatedly protected private, religious speech at public facilities. See, e.g., *Capital Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (“Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.”). “When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.” *Rosenberger*, 515 U.S. at 829. The First Amendment “does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities.” *Bd. of Educ. v. Mergens*, 496 U.S. 226, 248 (1990) (quoting *McDaniel v. Paty*, 435 U.S. 618, 641 (1978)).

The Lyon County School District policy unconstitutionally discriminates against expressions of private religious viewpoints. Calvary Chapel requests an acknowledgement in writing from the school district that its flyers will be treated on equal terms as other similar flyers and will not be excluded due to the church’s religious viewpoint or identifiers on their flyers disclosing its religious viewpoint. Additionally, Paragraph 10 of Board Policy KA must be removed or revised to eliminate its requirement of discrimination against religious viewpoints.

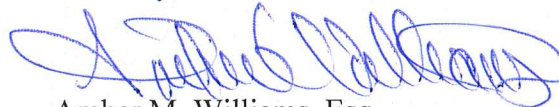
---

<sup>1</sup> The Ninth Circuit has also indicated that it would be unconstitutional to close a forum in order to effectuate an impermissible purpose, such as in order to censor a disfavored viewpoint. See *United States v. Griefen*, 200 F.3d 1256, 1262 (9th Cir. 2000); *Menotti v. City of Seattle*, 409 F.3d 1113, 1143 (9th Cir. 2005).

We trust this information clarifies the rights and responsibilities of the Lyon County School District. We respectfully request a response to this letter by no later than December 12, 2017. Should you deny these requests or fail to respond to this letter by that date, we are prepared to pursue all available legal remedies.

Thank you for your prompt attention to this matter. We look forward to hearing from you.

Sincerely,



Amber M. Williams, Esq.

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

cc: Stephanie N. Taub, Esq.  
FIRST LIBERTY INSTITUTE