



October 31, 2018

Todd Morrison, Superintendent
Honey Grove Independent School District
1206 North 17th Street
Honey Grove, Texas 75446
Via Email: btmorrison@honeygroveisd.net

Re: Honey Grove Middle School’s unlawful quarantine of praying students

Dear Superintendent Todd Morrison:

First Liberty Institute represents Carrie Allen on behalf of her daughter, Hannah Allen, who is an eighth-grade student at Honey Grove Middle School in Honey Grove ISD. This letter concerns Honey Grove Middle School’s policy on student prayer during non-instructional time. Please direct all communications for this matter to First Liberty Institute.

BACKGROUND

In early September, Hannah and a group of other students decided to pray for one of their former classmates who had recently been in an accident. During lunch, the students walked to an empty table at the other side of the cafeteria, held hands, and quietly prayed. Almost immediately afterwards, Principal Lee Frost approached the students and, in response to their prayer, instructed “y’all don’t do that again.”

The next day Principal Frost informed Hannah and the group of students that they could pray but had to do so behind the curtain of the cafeteria’s stage, outside of the school building, or in the gym while no one was present. In other words, the policy Principal Frost announced was that the students could not pray within sight of the other students. While we discuss this matter with you, Hannah and her friends are quietly praying every day during lunch either in the gym or outside, but Hannah and her friends would prefer to pray in the cafeteria and not be banished out of sight of their classmates. Since this student religious expression is protected by the First Amendment to the U.S. Constitution and fails to disrupt the educational environment of the school, it should be permitted.

LEGAL ANALYSIS

Students in Honey Grove ISD should be able to pray without quarantine or banishment

The right to pray is constitutionally protected activity. *Sause v. Bauer*, 138 S. Ct. 2561, 2562 (2018) (per curiam) (“There can be no doubt that the First Amendment protects the right to pray. Prayer unquestionably constitutes the exercise of religion.”). As a result, the First Amendment protects Hannah and the other students’ right to pray while at school. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000) (“[N]othing in the Constitution . . . prohibits any public school student from voluntarily praying at any time before, during, or after the school day.”); *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 506 (1969) (“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”).

By mandating that Hannah and the other students hide when they pray, Principal Frost sends a message to Hannah and all the other students in the school that prayer is illegitimate, disfavored, and should not occur in public. By quarantining the praying students as if to shield the other students from an infectious disease, Principal Frost acts with religious hostility impermissible under the Constitution and demeans the religious beliefs of Hannah and her friends. *See Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1731 (2018) (Government officials “cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices.”); *See also W. Va. State Bd. of Educ. v. Barnette*, 333 U.S. 442, 446 (1948) (“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.”).

Even Establishment Clause concerns cannot justify such treatment. Any perceived danger in students seeing their classmates praying is no greater than the danger in students seeing prayer banned from public view. *See Good News Club v. Milford Central School*, 533 U.S. 98, 119 (2001) (“[W]e cannot say the danger that children would misperceive the endorsement of religion is any greater than the danger that they would perceive a hostility toward the religious viewpoint”); *Santa Fe Indep. Sch. Dist.*, 530 U.S. at 302 (quoting *Board of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (plurality opinion)) (“There is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.”).

The Free Exercise Clause prohibits even “subtle departures from neutrality” on matters of religion. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1731 (2018) (quoting *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534 (1993)); *School District of Abington Township v. Schempp*, 374 U.S. 203, 225 (1963) (quoting *Zorach v. Clauson*, 343 U.S. 306, 314 (1952) (“[T]he State may not establish a ‘religion of secularism’ in the sense of affirmatively opposing or showing hostility to religion, thus ‘preferring those who believe in no religion over those who do believe.’”)). By forcing students to hide when they pray

but not when they engage in other private speech, Principal Frost lacks the requisite neutrality because he treats religious expression differently than secular expression.

Additionally, as a form of private speech, prayer is as fully protected under the Free Speech Clause as secular private expression. *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995). Indeed, the U.S. Department of Education’s Guidelines, announced in 2003, clearly explain that a student’s right to pray during noninstructional time is as protected as a student’s right to engage in other private expressive activities during noninstructional time. The guidelines state:

Students may pray when not engaged in school activities or instruction, subject to the same rules designed to prevent material disruption of the educational program that are applied to other privately initiated expressive activities. Among other things, students may read their Bibles or other scriptures, say grace before meals, and pray or study religious materials with fellow students during recess, the lunch hour, or other noninstructional time to the same extent that they may engage in nonreligious activities. While school authorities may impose rules of order and pedagogical restrictions on student activities, they may not discriminate against student prayer or religious speech in applying such rules and restrictions.¹

Furthermore, the Texas Association of School Boards acknowledges that the Texas Religious Viewpoint Antidiscrimination Act, Texas Education Code 25.151-153, prohibits public school districts from discriminating against student expression of religious beliefs.² This concept may be reflected in Honey Grove ISD’s written policies,³ but it is not being applied to the students at Honey Grove Middle School.

As explained above, students’ right to pray while at school is clearly established. Notwithstanding the fact that the Court of Appeals for the Fifth Circuit recognized this clearly established right, Principal Frost disregarded it and unlawfully discriminated against Hannah. *Morgan v. Swanson*, 659 F.3d 359, 412 (5th Cir. 2011) (holding that the First Amendment protects all students from viewpoint discrimination against private, non-disruptive, student-to-student speech).

There may be misunderstandings and even disagreement by school officials and other students who do not share Hannah’s religious convictions. But, as Judge Easterbrook observed, “Dealing with misunderstandings—here, educating the students in the meaning of the Constitution and the distinction between private speech and public endorsement—is, however, what schools are for.” *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1299 (7th Cir. 1993).

¹ Available at https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html.

² Available at https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Community/Religion-in-the-Public-Schools/documents/stud_religious_exp.aspx.

³ See Honey Grove ISD Policy on Student Expression of Religious Viewpoints (“The District shall treat a student’s voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the District treats a student’s voluntary expression of a secular or other viewpoint on an otherwise permissible subject and shall not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.”)

Finally, be advised that this letter serves as notice that the actions of Principal Frost in denying Hannah the right to pray in the lunch room is a substantial burden on Hannah's free exercise of religion in violation of the Texas Religious Freedom Restoration Act. *See* Tex. Civ. Prac. & Rem. Code §§ 110.006.

REQUEST

We request that Honey Grove ISD reject Principal Frost's policy concerning student prayer. We also request that Honey Grove ISD immediately allow Hannah and all its other students to pray openly. Finally, we extend an invitation to Honey Grove ISD to discuss this situation with us to achieve an amicable resolution.

Sincerely,



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