FREEDOM FROM RELIGION *foundation*

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SENT VIA EMAIL & U.S. MAIL: stparamo@goarrows.org

Superintendent Steven Paramore
Ashland City School District
1407 Claremont Avenue P.O. Box 160
Ashland, OH 44805

Re: Unconstitutional promotion of release time

Dear Superintendent Paramore:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in the Ashland City School District. FFRF is a national nonprofit organization with over 40,000 members across the country, including 1,000 members and several chapters in Ohio. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

We have been informed that you have promoted release-time activities in your official capacity as superintendent of Ashland City School District. Specifically, you testified in favor of Ohio HB 445 which would require school districts to give students credit for release-time programs like LifeWise Academy. You testified that "in a Nation that was built on God and his forgiveness, this release time allows us to get back to this foundation. It allows us to meet the social and spiritual needs of these students beyond what is currently permissible in a public classroom." You went on to even suggest that there should be "a **mandatory time in a school day to celebrate God's love** of his people and our duty to serve our neighbors."

You are one of the few people who made a statement representing an organization.[1] The other organizations testifying were LifeWise Academy, First Liberty, Ohio Christian Education Network, and the Brightside Project, all of which are Christian non-profits. Then there is Ashland City School District, a public school district.

Public schools cannot promote or otherwise suggest release-time religious instruction beyond mere allowance. Your official-capacity testimony did just that. Therefore, we ask you to cease further *official-capacity* promotion.

While the Supreme Court has upheld the constitutionality of release time classes, this doesn't permit schools to promote or encourage participation in these programs. *See Zorach v. Clauson*, 343 U.S. 306, 312 (1952). In *Zorach*, the Supreme Court held that released time is acceptable if school authorities "do no more than release students whose parents so request." *Id.* at 311. This means the school district cannot:

[1] https://ohiohouse.gov/legislation/135/hb445/committee.

- **Encourage or promote participation in the program**
- Expend public school funds and resources for the program
- Treat the program as an official school elective
- Use public school facilities or resources during school hours for released time programs, including allowing a bus, trailer, or other vehicle to be parked on school grounds for the program
- Punish students who do not attend the program, either by failing to provide adequate alternative instruction or requiring they complete additional homework
- Allow released time representatives to solicit student participation during school hours or at school-sponsored events.

A public school violates the Constitution by promoting and encouraging students to participate in religious release-time classes. *See, e.g., Doe v. Porter*, 370 F.3d 558 (6th Cir. 2004) (striking down school's allowance of private group to provide bible instruction in case brought by FFRF); *H.S. v. Huntington Cnty. Cmty. Sch.Corp.*, 616 F.Supp.2d 863 (N.D. Ind. 2009) (issuing preliminary injunction against school that allowed trailers on school property for religious instruction because to do so violated the Establishment Clause); *Doe by Doe v. Shenandoah Cnty. Sch. Bd.*, 737 F. Supp. 913 (W.D. Va. 1990) (issuing temporary restraining order against school finding that allowing buses used for religious instruction to be parked in front of the school violated the Establishment Clause). By submitting testimony in your official capacity, you encouraged and promoted participation in religious release-time programs. You also only promoted release-time for what appears to be only Christians. Your promotion of optional release-time religious instruction was unconstitutional.

But you went beyond optional religious release-time instruction and promoted "**mandatory** time in a school day to celebrate God's love…." That suggested requirement is unconstitutional. *McCollum v. Bd. of Educ*., 333 U.S. 203 (1948). Public schools may not provide religious instruction. In *McCollum*—the seminal case on this issue—the Supreme Court held that bible classes in public schools are unconstitutional. 333 U.S. 203 (1948). The district in *McCollum* allowed religious teachers, employed by private religious groups, to teach students a regular bible class. The Court held, "here not only are the state's tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state's compulsory public school machinery. This is not separation of Church and State." *Id.* at 212.

Please note that your free speech rights are not implicated when you speak in your official capacity. Therefore, the District has a duty to regulate religious release-time promotion by its officials when acting in the scope of their official duties, like you were when testifying in favor of HB 445. "Because the speech at issue owes its existence to [his] position as a teacher, [the School District] acted well within constitutional limits in ordering [the teacher] not to speak in a manner it did not desire." *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 970 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1807 (2012) (upholding decision of school board to require a math teacher to remove two banners with historical quotes referencing "God"); *see also Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) ("We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment

purposes, and the Constitution does not insulate their communications from employer discipline."). Courts have upheld the termination of teachers who violate the principle of separation between church and state. *See, e.g.*, *Grossman v. S. Shore Pub. Sch. Dist.*, 507 F.3d 1097 (7th Cir. 2007) (upholding termination of guidance counselor who prayed with students). The Sixth Circuit Court of Appeals, which has jurisdiction over Ohio, has upheld the termination of a teacher who assigned religious material to students. *Evans-Marshall v. Bd. of Educ.*, 624 F.3d 332 (6th Cir. 2010) *aff'd by Meriwether v. Hartop*, 992 F.3d 492, 505 fn1 (6th Cir. 2021).

The Supreme Court's decision in *Kennedy v. Bremerton School District*, did not change the law or overrule any of the above cases. 597 U.S. 507 (2022). The *Kennedy* court repeatedly stressed the private nature of Kennedy's prayer and that it occurred when he was not on duty. *Id.* at 513-14. Not so here; you made it clear you were speaking in your official capacity and thus acted within the scope of your official public duties. Thus *Kennedy* is inapplicable.

To respect the First Amendment rights of District students, please refrain from further promoting release-time religious instruction in your official capacity. Please respond in writing with the steps the District will take to comply with the First Amendment.

Sincerely,

Hirsh M. Joshi
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation