



Natalie Shapero*
Steven Gey Fellow

(202) 466-3234 x237
(202) 898-0955 (fax)
shapero@au.org

1301 K Street, NW
Suite 850, East Tower
Washington, DC 20005

March 12, 2012

By Email and First-Class Mail

Lenoir City Board of Education

Bobby Johnson

Rick Chadwick

Glenn McNish, Sr.

Rosemary Quillen

Mitch Ledbetter

Lenoir City Schools

2145 Harrison Avenue

Lenoir City, TN 37771

Wayne Miller, Superintendent

Lenoir City Schools

2145 Harrison Ave.

Lenoir City, TN 37771

waynemiller@lenoircityschools.com

Steven Millsaps, Principal

Lenoir City High School

1485 Old Highway 95

Lenoir City, TN 37771

smillsaps@lenoircityschools.com

Re: *Promotion of Religion at Lenoir City Schools*

Dear Superintendent Miller, Principal Millsaps, and Board members:

Recent media coverage of a controversy surrounding the student newspaper at Lenoir City High School has also illuminated what appears to be the ongoing promotion of religion by the school district. See Krystal Myers, *School Promotes Religion and Discrimination of Atheist Students*, (Feb. 26, 2012, 4:00 a.m.), <http://www.knoxnews.com/news/2012/feb/26/krystal-myers-school-promotes-religion-and-of>. Indeed, we have received complaints about the following practices: (1) Lenoir City Board of Education meetings regularly feature prayers, (2) Lenoir City High School permits an outside group to proselytize to students on school property during school hours, (3) at least one Lenoir City High School teacher encourages students to attend meetings of a religious group, reads to students from the Bible, and wears clothing featuring religious

imagery, and (4) prayers are regularly delivered at Lenoir City High School graduation ceremonies.

Each of these activities violates the Establishment Clause of the First Amendment to the U.S. Constitution, which forbids government entities from engaging in action that “has the purpose or effect of endorsing religion.” *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 592 (1989) (quotations omitted). Because young students are impressionable, the public schools present “heightened concerns with protecting freedom of conscience from subtle coercive pressure.” *Lee v. Weisman*, 505 U.S. 577, 592 (1992). We urge the school district stop these unlawful practices.

A. Prayer at board meetings.

We understand that meetings of the Lenoir City Board of Education regularly feature prayers. This practice is plainly unconstitutional. The U.S. Court of Appeals for the Sixth Circuit, whose decisions govern entities in Tennessee, has prohibited school boards from delivering or hosting prayers at their meetings, holding that “the school board’s involvement in promoting prayer cross[es] the line of constitutional infirmity.” *Coles ex rel. Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369, 386 (6th Cir. 1999). Other courts have reached the same conclusion. See, e.g., *Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 278 (3d Cir. 2011), cert. denied, No. 11-569, 80 U.S.L.W. 3309 (2012).

The practice, itself unlawful, also sets the tone for religious promotion in the schools themselves.

B. Proselytizing during the school day.

We understand that the school district permits members of a local youth ministry to enter school property for the purpose of distributing Biblical tracts, placed inside snack bags, to students during school hours. “When members of a group so closely affiliated with religious activity are seen on a regular basis in the halls of a school, a reasonable observer could conclude that the school endorsed the presence of those members in the school.” *Doe v. Wilson Cnty. Sch. Sys.*, 564 F. Supp. 2d 766, 797 (M.D. Tenn. 2008). As a result, federal courts consistently prohibit public-school officials from allowing outsiders to access the premises and distribute religious literature to students. See, e.g., *Roark v. South Iron R-1 Sch. Dist.*, 573 F.3d 556, 560–61 (8th Cir. 2009) (outside group may not distribute Bibles to students during the school day); *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160, 1170–71 (7th Cir. 1993) (same); *Chandler v. James*, 985 F. Supp. 1094, 1102 (M.D. Ala. 1997) (same).

Here, a reasonable observer would have an even stronger basis to conclude that the school district endorses the youth ministry’s message. Under school-district policy, “no other person shall enter onto the grounds or into the school buildings during the hours of student instruction except students assigned to that school, the staff of the school, parents of students, and other persons with lawful and valid business on school premises.” *Visitors to the Schools*, Lenoir City Board of Education, <http://www.boardpolicy.net/documents/detail.asp?iFile=6308&iType=1&iBoard=18> (last visited Mar. 9,

2012). The school district, then, appears to have made a specific decision to permit the youth ministry to visit the school and proselytize.

C. Promotion of religion in classes and extracurricular activities.

We understand that during classes and school sporting events, physical education teacher Kelly Herron has encouraged students to attend meetings of the Fellowship of Christian Athletes, has read to students from the Bible, and has worn clothing depicting a crucifix. The federal courts have repeatedly held that teachers may not promote religion during classes and school activities. *See, e.g., Lee v. York Cnty. Sch. Div.*, 484 F.3d 687, 697–98 (4th Cir. 2007) (school appropriately prohibited teacher from displaying religious messages on bulletin board); *Doe v. Porter*, 370 F.3d 558, 563 (6th Cir. 2004) (Establishment Clause prohibits Bible-focused lesson plans, which “send a clear message of state endorsement of religion”); *Marchi v. Bd. of Cooperative Educ. Servs.*, 173 F.3d 469, 477 (2d Cir. 1999) (school appropriately restricted teacher’s use of religious language in communications with students’ families); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 406 (5th Cir. 1995) (basketball coach may not pray with students at games and practices); *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994) (Establishment Clause prohibits teacher from “discuss[ing] his religious beliefs with students during school time on school grounds”); *Roberts v. Madigan*, 921 F.2d 1047, 1057 (10th Cir. 1990) (teacher violated the Establishment Clause by displaying a religious poster and a Bible in his classroom); *Joki v. Bd. of Educ.*, 745 F. Supp. 823, 831–32 (N.D.N.Y. 1990) (Establishment Clause prohibits public school from display of painting of Crucifixion). Each of Ms. Herron’s actions violates these prohibitions.

D. Prayer at graduations.

We also understand that students regularly deliver prayers during Lenoir City High School graduation ceremonies and football games. Under the decisions of the U.S. Supreme Court, when students deliver prayers “on government property at government-sponsored school-related events” and they are “broadcast over the school’s public address system, which remains subject to the control of school officials,” the audience will perceive them to be “delivered with the approval of the school administration.” *Santa Fe*, 530 U.S. at 308.

As a result, courts have regularly held that the Constitution requires schools to ensure that graduation speakers do not deliver prayers. *See, e.g., Corder v. Lewis Palmer Sch. Dist. No. 38*, 566 F.3d 1219, 1229 (10th Cir. 2009) (public-school student’s remarks at graduation ceremony was school-sponsored speech); *Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 983–85 (9th Cir. 2003) (Establishment Clause prohibits a public school from including religious student speeches in a graduation ceremony); *ACLU of N.J. v. Black Horse Pike Reg’l Bd. of Educ.*, 84 F.3d 1471, 1479 (3d Cir. 1996) (en banc) (same); *Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 279–80 (5th Cir. 1996) (statute allowing student-initiated prayer at non-compulsory school events violated Establishment Clause); *Jager v. Douglas Cnty. Sch. Dist.*, 862 F.2d 824, 831 (11th Cir. 1989) (invocations at public-school football games violated the Establishment Clause); *A.M. ex rel. McKay v. Taconic Hills Central Sch.*

Dist., No. 1:10-cv-20 (GLS / RFT), 2012 WL 177954, at *4–5 (N.D.N.Y. Jan. 23, 2012) (prayer at public-school graduation ceremony violated the Establishment Clause); *Appenheimer v. Sch. Bd. 308*, No. 01-1226, 2001 WL 1885834, at *6 (C.D. Ill. May 24, 2001) (same). The school district’s practice of permitting prayers at Lenoir City High School graduation ceremonies violates these prohibitions.

* * *

We ask that the Lenoir City Schools take the following steps to ensure compliance with the Establishment Clause: (1) suspend delivery of prayers at board meetings, (2) prohibit distribution of religious literature and messages during the school day, including by outside ministries, (3) prohibit teachers from promoting religion during their classes, and (4) eliminate prayers from graduation ceremonies and other school events.

Because of the seriousness of this matter, we would appreciate a response within ten days. If you have any questions or would like to discuss this issue further, please contact Natalie Shapero at (202) 466-3234 or shapero@au.org.

Sincerely,



Gregory M. Lipper, Senior Litigation Counsel
Natalie Shapero, Steven Gey Fellow*

**Admitted in Pennsylvania only. Supervised by
Gregory M. Lipper, a member of the D.C. bar.*