

May 6, 2025

By Email

Dr. Gregg Slate, Superintendent
Davidson County Schools
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Lexington, NC 27292
c/o kerijohnston@davidson.k12.nc.us

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Davidson County Schools
250 County School Rd.
Lexington, NC 27292

Re: *Mandatory religious assembly*

Dear Dr. Slate and members of the Board of Education:

We have received a complaint regarding a religious assembly at Hasty Elementary School. The assembly was held during the school day on March 11, and featured the 3 Heath Brothers, a Christian worship group that used the assembly to perform religious music for the assembled students and to distribute a 104-page children's devotional and Bible study book.

We understand that complaining parents were told that the presentation was "misrepresented" as an anti-bullying assembly. This excuse is ridiculous. The *very first result* on a simple Google search for the 3 Heath Brothers returns their home page, the *very first line* of which is "The 3 Heath Brothers is a Christian band that has entertained audiences all across America." See 3 Heath Brothers, Homepage, <https://3heathbrothers.com/>. Directly under this opening paragraph is a picture about their "Public School Tour," and clicking it links to a GoFundMe page with a description that reads, "We have an incredible opportunity to double our impact in the lives of public school students . . . [s]haring Jesus in a place where it's needed most." See 3HB's 2025 Spring Semester Public School Fund, GoFundMe, at <https://tinyurl.com/yedu78tw>. A little further down the homepage, one learns that

they have recently partnered with another Christian group to produce devotional materials for youth (presumably the same devotional materials distributed to Hasty Elementary students). Even the simplest possible vetting of this group should have raised enough red-flags to prevent this from happening.

Moreover, we understand that at least one member of the Board of Education, Nick Jarvis, may have been present at the assembly and subsequently expressed support for the message presented. This is completely unacceptable. This assembly was a flagrant violation of the Establishment Clause of the First Amendment to the U.S. Constitution. We expect assurances from the district that students will not be exposed to religious assemblies in future, and that district personnel will receive training in their responsibilities under the Establishment Clause.

The Supreme Court has emphasized that “the Establishment Clause must be interpreted ‘by reference to historical practices and understandings,’” and that the “‘line’ . . . ‘between the permissible and the impermissible’ has to ‘accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers.’” *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (2022) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 577 (2014) (alterations in original)). The Supreme Court recently clarified that this kind of historical analysis does not “suggest a law trapped in amber” but instead requires “applying faithfully the balance struck by the founding generation to modern circumstances.” *U.S. v. Rahimi*, 144 S. Ct. 1889, 1897-98 (2024) (internal quotations omitted). Hosting a mandatory school assembly with religious proselytizing flies in the face of those historical understandings.

The Supreme Court explained in *Engel v. Vitale*, 370 U.S. 421, 432 (1962), that the Establishment Clause was in part based “upon an awareness of the historical fact that governmentally established religions and religious persecutions go hand in hand.” Our founding generation knew “from bitter personal experience, that one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government’s placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services.” *Id.* Accordingly, the Establishment Clause’s “first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion.” *Id.* at 431. “The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy to permit its ‘unhallowed perversion’ by a civil magistrate.” *Id.* at 431-32 (quoting *Memorial and Remonstrance against Religious Assessments*, II Writings of Madison, at 187).

The Establishment Clause therefore requires a “wholesome ‘neutrality’” with respect to religion, which “stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions,” which “the Establishment Clause prohibits.” *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 222 (1963). Specifically,

[g]overnment in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no[n]religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.

Epperson v. Arkansas, 393 U.S. 97, 103-04 (1968); accord *McCreary County v. ACLU of Kentucky*, 545 U.S. 844, 875-76 (2005) (reaffirming, based on history of religious conflict in England and the American colonies, that “the government may not favor one religion over another, or religion over irreligion”).

A mandatory school assembly where the invited speakers are allowed to proselytize the students flies in the face of history and the law. When a public school sponsors an event such as an assembly, the school is legally responsible for the message presented; hence the courts have repeatedly held that school activities and events must not be used as opportunities for school employees, students, or outsiders to proselytize or to distribute religious messages to students. See *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302-03 (2000) (striking down student-led prayers at athletic events where prayers were authorized by school policy); *Lee v. Weisman*, 505 U.S. 577, 587-90 (1992) (holding unconstitutional school’s selection and invitation of rabbi to deliver prayer at graduation); *McCullum v. Bd. of Educ.*, 333 U.S. 203, 209-12 (1948) (striking down religious classes taught in public school by private-school teachers); *Roark v. South Iron R-1 Sch. Dist.*, 573 F.3d 556, 560-61 (8th Cir. 2009) (prohibiting Bible distributions in public schools); *Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 983-85 (9th Cir. 2003) (holding that school could not constitutionally allow student to give proselytizing religious speech at graduation); *Nartowicz v. Clayton Cnty. Sch. Dist.*, 736 F.2d 646, 649-50 (11th Cir. 1984) (prohibiting school from allowing churches to announce church-sponsored activities over school public-address system).

It is clearly established law that the school district cannot legally use its authority to “aid any or all religious faiths or sects in the dissemination of their doctrines and ideals.” *McCullum*, 333 U.S. at 211. Nor could the district itself legally engage in the religious activities performed by the 3 Heath Brothers. Additionally, the district cannot contract with an outside organization to get around these legal restrictions. “Government cannot evade constitutional duties by delegating the responsibility to a private contractor.” *Andrews v. Federal Home Loan Bank of Atlanta*, 998 F.2d 214, 217 (4th Cir. 1993). A public school, therefore, violates the Constitution when it allows an invited speaker to deliver religious messages to students at an official school event.

What is more, coercion of students into attending a religious activity is also a flagrant violation of those students’ rights. The Establishment Clause prohibits

government from “coerc[ing] anyone to support or participate in religion or its exercise.” *Lee*, 505 U.S. at 587. Students were taken to a mandatory religious assembly. There can be no clearer example of unconstitutional coercion to participate in the exercise of religion.

Please ensure that no future proselytizing assemblies are held during the school day at schools within the district, that district students are never again coerced into religious activities, and that Davidson County Schools officials are educated in their constitutional responsibilities to ensure the separation of church and state. We would appreciate a response to this letter within thirty days that advises us how you plan to proceed. If you have questions, you may contact Ian Smith at (202) 466-3234 or *ismith@au.org*.

Sincerely,

A handwritten signature in blue ink that reads "Ian Smith". The signature is stylized with a large initial "I" and a cursive "S".

Ian Smith, Staff Attorney