



AMERICAN ATHEISTS

KENTUCKY STATE DIRECTOR

August 1, 2018

Dear School Administrator:

As the school year begins, I would like to extend my sincere hopes for a productive and safe start to the academic year for you, your staff, and your students. As the Kentucky state director for American Atheists, a national organization with more than 350,000 members and supporters across the country and thousands here in Kentucky, I would like to highlight a number of issues that have been previously brought to my attention regarding the constitutional and legal obligations of public school employees and administrators as they relate to religious freedom and the rights of students.

As a foundational matter, students “[do not] shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”¹ With respect to religious neutrality issues, the U.S. Supreme Court has been clear that when it comes to the education of our children, the government should be “particularly vigilant” in ensuring schools do not promote religious views that may conflict with the religious beliefs of students and their families.²

Of particular concern in our area, school- or teacher-organized trips to the nearby Ark Encounter and Creation Museum are unconstitutional violations of the Establishment Clause of the First Amendment. The Supreme Court has repeatedly held that the teaching of creationism or so-called “intelligent design” in public schools is unconstitutional.³ The teaching of creationism or intelligent design “alter[s] the science curriculum to reflect endorsement of a religious view that is antagonistic to the theory of evolution.”⁴ Courts throughout the country have cited the Supreme Court’s holding in *Edwards* when striking down attempts to inject, in one way or another, religious doctrine into the public school science curriculum.⁵

In addition, school staff, teachers, and administrators should be reminded that it is unconstitutional for them to lead, direct, or endorse religious activities like prayer. *Students* are free to pray or engage in religious activities themselves, but the Supreme Court has also concluded that school-organized prayers on school grounds prior to sporting events, *whether staff- or student-led*, constitute an impermissible government establishment of religion.⁶ Events such as “See You at the Flag Pole” must be student-led, student-run, and student-initiated. Teachers, administrators, or other school employees may *attend* such

¹ *Tinker v. Des Moines*, 393 US 503 (1969)

² *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987); see also *Widmar v. Vincent*, 454 U.S. 263, 274, n.14 (1981).

³ *Edwards v. Aguillard*, 482 U.S. 578 (1987); see also *Kitzmiller v. Dover*, 400 F. Supp. 2d 707, 736 (M.D. Pa. 2005).

⁴ *Id.*

⁵ See *Kitzmiller v. Dover*, 400 F. Supp. 2d 707, 736 (M.D. Pa. 2005); *Selman v. Cobb County Sch. Dist.*, 390 F. Supp. 2d 1286 (N.D. Ga. Jan. 13, 2005); *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337 (5th Cir. 1999).

⁶ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 311-12 (2000).

events and observe, but cannot sponsor, endorse, lead, or participate in them without running afoul of the law and the Constitution.⁷

Finally, students who choose to abstain from participation in the Pledge of Allegiance, national anthem, or any other "patriotic" exercise cannot be disciplined or in any way face retaliation for their constitutionally protected conduct, whether in the classroom or on the athletic field. Students' right to engage in peaceful, non-disruptive protest is a cornerstone of our free society and has been recognized and forcefully protected by the Supreme Court for more than 75 years. The right of students to abstain from such "patriotic" exercises for religious reasons (including atheists who sit out the Pledge due to objections to the religious content), to protest police brutality, or any other reason, are equally protected and is among the most clearly settled issues the courts have addressed.⁸

Federal appeals courts have indicated that the right of students to abstain, in a non-disruptive manner, from participating in patriotic displays is "so clearly established" that teachers and administrators who infringe on that right are not entitled to immunity from civil liability and may be held personally liable for their violations of the rights of students.⁹ It is no defense that the message conveyed by the student caused animosity or upset in those who observed it.¹⁰

With all of this in mind, it is my hope that your school will maintain its focus on your students and their educational attainment in a way that is consistent with your obligation to ensure compliance with the Constitution's guarantee of religious neutrality. As government officials, school administrators must not simply "tolerate" viewpoints different from their own, but actively protect the rights of students to express them.

If you have any questions about these matters, please do not hesitate to contact me directly by email at jpik@atheists.org and I am available as a resource to assist your school in fully protecting the rights of students and ensuring access to a high quality educational experience for all.

Most Sincerely,

Johnny Pike
Kentucky State Director
American Atheists

⁷ Good News Club v. Milford Cent. Sch., 533 U.S. 98 (2001)

⁸ W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 641-42 (1943).

⁹ Morgan v. Swanson, 755 U.S. F. 3d 757, 760 (5th Cir. 2014)

¹⁰ Coates v. Cincinnati, 402 U.S. 611, 615 (1971)