

February 11, 2014

SENT VIA U.S. MAIL AND EMAIL TO: anne@haywood.k12.nc.us

Dr. Anne Garrett
Superintendent
Haywood County Schools
1230 North Main Street
Waynesville, NC 28786

Re: Secular student group not permitted to form at Pisgah High School

Dear Superintendent Garrett:

We are writing on behalf of the Freedom From Religion Foundation (“FFRF”) and the American Civil Liberties Union of North Carolina to alert you to another violation of federal law occurring within Haywood County Schools (“HCS”). FFRF was contacted by a concerned parent of a Pisgah High School student and by members of the Secular Student Alliance (“SSA”). Previously Mr. Smathers directed FFRF to contact you directly regarding its concerns with HCS.

It is our understanding that in October, 2013 an eager Pisgah High School student attempted to start an SSA affiliate group at the school. Pisgah High has more than thirty student groups, many of which are “non-curricular” as defined by the Equal Access Act, including at least two religious clubs: the Fellowship of Christian Athletes and Key Club. Our complainant informs us that the student first met with Assistant Principal Connie Weeks seeking permission to start an SSA group at Pisgah High on October 23, 2013. We further understand that after subsequently meeting with Ms. Weeks on October 29 and again on November 4 in an effort to form the group, the student was eventually told by Ms. Weeks that there were no staff sponsors available and that it was too late in the year to start a club. On November 6, Andrew Cheadle-Ford of the SSA sent a letter to Principal Bailey requesting that the school reconsider its decision and that the principal contact him to discuss the matter. We understand that the SSA never received a reply to its letter, a copy of which is enclosed. As of January, 2014, another student has taken up the effort to start an SSA group at Pisgah High.

Whatever the stated reasons for denying the request to form an SSA group at Pisgah High, this result is unacceptable. HCS has a legal responsibility to ensure that student groups wishing to form under the Equal Access Act may do so. If the faculty refuses to sponsor the group, the administration itself must act as sponsor or must assign a faculty member to monitor the group. Allowing the SSA to meet also would make Pisgah High School a more welcoming place for all of its students.

Scope of the Equal Access Act

Under the Equal Access Act, public secondary schools receiving federal funds cannot discriminate against student groups based on their religious, political, philosophical, or other beliefs. *Bd. of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 235 (1990). Specifically, the Equal Access Act (EAA) states that:

It shall be unlawful for any public secondary school . . . to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting . . . on the basis of the religious, political, philosophical, or other content of the speech at such meetings.

20 U.S.C. § 4071(a). The EAA provides: “A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time.” § 4071(b). Many Pisgah High student groups, like the Fellowship of Christian Athletes, are noncurriculum-related groups. The school cannot deny the SSA the same treatment as these other groups.

Courts have interpreted the EAA as requiring equal treatment of student groups in a variety of settings. In *Mergens*, the Supreme Court held that a school’s denial of a student request to form a Christian club denied them equal access under the EAA. 496 U.S. at 247. The Supreme Court found that denial of official recognition violated the law because school recognition allowed student clubs privileges, such as access to school resources and information channels. *Id.* at 246. *See also Prince v. Jacoby*, 303 F.3d 1074 (9th Cir. 2001), cert denied, 540 U.S. 813 (2003).

The plain language of the EAA lends itself to broad construction, as “[t]he disjunctive prohibition renders the denial of equal access *or* fair opportunity *or* discrimination unlawful.” *Prince*, 303 F.3d at 1080 (emphasis in original). The law contains not one single prohibition, but multiple prohibitions. Students must be given equal access, *and* a fair opportunity to meet, *and* not be discriminated against, or else the law has been violated.

Faculty Advisor Requirement Cannot Serve to Bar Student Group from Meeting

We understand that Pisgah High has said student groups must find a faculty advisor, but that requirement cannot be a backdoor veto to forming a group. Granting this much power to school staff entirely defeats the purpose of the EAA and renders all minority groups subject to dissolution at the staff’s whim.

In situations like this, compliance with the EAA requires the administration to assign a faculty monitor or for an administrator, such as the principal, to take on the role. This is not an onerous requirement. Under the EAA, faculty monitors are only allowed to be present at such meetings “in a nonparticipatory capacity.” 20 U.S.C.A. § 4071 (c)(3). Both the EAA and the students require nothing more than a chaperone. Because the school has, of its own choice, required a monitor, and because the EAA provides broad protections, the school must assign a monitor if none volunteer.

The Constitution similarly prohibits the school from limiting student’s free expression with the “unbridled discretion” that the monitor requirement grants. By allowing every potential monitor to decline for any reason or no reason at all, Pisgah High effectively bans unpopular speech *simply because the viewpoint expressed may be unpopular among the faculty*. Even in the school

context, the First Amendment requires more than mere unpopularity to regulate or ban student expression. *See, e.g., Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969) (forbidding school censorship of expression for the mere fact that the expression is unpopular). Viewpoint discrimination is an especially potent concern animating free speech jurisprudence. *See Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995).

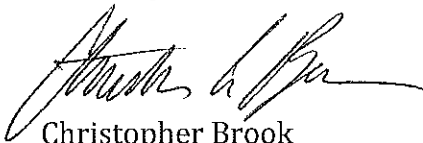
Denying access to a student group, even if only because there are no faculty monitors, is impermissible under both the EAA and the First Amendment. The best solution is to appoint a Pisgah High staffer to supervise any group lacking a monitor.

Denying Equal Access to SSA is also Bad Policy

Preventing Pisgah High students from forming an SSA group not only violates the law but is also bad policy. Nonreligious and non-Christian students within Pisgah High should have an equal opportunity to make their school a better place for themselves and their classmates. If students want to build a community as a nonreligious minority, they should be allowed to do so. Too often, students who identify as nonreligious or as a member of a religious minority encounter resistance, harassment, and bullying in their schools. Having an active SSA group would provide a safe space for these students to gather to address these issues.

Thank you for your attention to this matter. Please let us know if you question any of the information contained in this letter. And do not hesitate to be in touch with any questions. We look forward to working with you to promptly ensure compliance with the Equal Access Act and a welcoming environment at Pisgah High for all of its students.

Sincerely,



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Enclosure

PCE:stg

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