

February 1, 2018

VIA U.S. MAIL

Richard L. Mast, Jr.
Liberty Counsel
P.O. Box 540774
Orlando, FL 32854-0774

RE: Correspondence dated January 18, 2018

Dear Mr. Mast:

My Firm represents the Boone County School District. This is in response to your letter from January 18, 2018. In your letter, you alleged that two of the District's elementary schools, Stephens Elementary and Goodridge Elementary, impermissibly discriminated against your client, Child Evangelism Fellowship of Northern Kentucky ("CEF"). I appreciate you contacting the District in the hopes of resolving this matter without litigation. After investigating the allegations in your letter, I have concluded that there is no evidence that CEF was subject to any improper discrimination. This letter will explain my findings in detail.

Your letter alleges that CEF was treated differently than another outside group, Girls on the Run, which you allege was permitted to hold meetings directly after school at both Stephens and Goodridge. Because Girls on the Run, an outside non-profit, was permitted to hold such meetings, you contend, CEF should be permitted equal access under District Policy 5.3.

While I acknowledge that much of your legal analysis is accurate, the flaw in your letter is factual in nature. My investigation has confirmed that Girls on the Run has never applied to hold after school clubs at either Goodridge or Stephens Elementary or been permitted to do so. From your letter, it appears that you may have inferred that Girls on the Run was permitted access to these schools because they each have a running club listed on their school website.

In reality, however, neither running club at Stephens or Goodridge Elementary has any affiliation with the non-profit organization, Girls on the Run. Though the club at Stephens Elementary is entitled "Girls on the Run," it has no affiliation with the non-profit organization. The club at Goodridge Elementary, on the other hand, is merely entitled the "Goodridge Running Club." As its name suggests, it has no affiliation with Girls on the Run either.

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No evidence contradicting this was mentioned in your letter. Rather, the only evidence regarding the alleged access of the non-profit entity, Girls on the Run, to the Boone County School District's schools was its website. If you are aware of other facts indicating that Girls on the Run has, in fact, been permitted access to either Stephens or Goodridge, please identify those facts and I will review them and investigate further. At this time, however, I found no evidence that Girls on the Run had been permitted access to operate any clubs or programs at either Goodridge or Stephens Elementary.

Because neither running club at Goodridge or Stephens Elementary Schools is affiliated with the national non-profit organization, Girls on the Run, they are not subject to or created under Board Policy 5.3. As you indicate, that policy relates to requests from outside groups to use school facilities. Yet, in this instance, no outside group requested or was granted permission to conduct club meetings at either Goodridge or Stephens Elementary. In fact, my investigation concluded that no outside groups—Girls on the Run or any other—have been permitted to conduct after-school clubs at Goodridge or Stephens Elementary. My investigation further revealed that the site-based policies at both Goodridge and Stephens do not authorize clubs run and organized by outside groups and that is the reason that CEF's applications to those schools pursuant to Board Policy 5.3 were denied.

The denials of CEF's applications were reasonable, viewpoint, and content neutral and in furtherance of a generally applicable rule enforced at Goodridge and Stephens. I have found no evidence and discerned none identified in your letter to suggest otherwise.

I appreciate that your client reached out to staff at these schools for explanations of the denials and that they did not receive a response. Thus, in order to more fully explain the situation, I note that the clubs in existence at Goodridge and Stephens, including the two running clubs mentioned above, are all clubs created and sponsored by the respective schools. As such, they are authorized by District Policy 09.32111 and, pursuant to that policy, each have an assigned faculty member to sponsor and operate the club.

Therefore, while there is some truth to your suggestion that CEF was treated differently than the running clubs at Goodridge and Stephens, the different treatment is consistent with the different origins of the clubs. In other words, the distinction that exists is not between CEF, an outside religious group, and other outside, non-religious groups. Instead, it is between school-sponsored clubs and an outside group, CEF, that wishes to operate after-school clubs at Goodridge and Stephens. This distinction is not only enshrined in Board Policies 5.3 and 09.32111, but also reasonable and viewpoint and content neutral.

As a result, this situation is drastically different from each of the cases that you cited in your letter. In each of those cases, the districts at issue treated CEF differently than other

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outside groups. But here, CEF is being treated differently, with good reason, from school-sponsored clubs. None of the authority you cited indicates that the District has any obligation, under Kentucky law or the First Amendment, to treat CEF in the same manner that it treats school-sponsored clubs.

For these reasons, the District will not reverse the decisions made with respect to CEF's applications for use of school facilities at Goodridge or Stephens Elementary Schools. With that said, I understand that this may be the first explanation your client has received as to the denials of their applications. If, after reviewing this letter, you would like to discuss this further, I am more than willing to do so.

Sincerely,
ADAMS, STEPNER,
WOLTERMANN & DUSING, PLLC

/s/ Claire E. Parsons
Claire E. Parsons

CEP/tam

cc: Dr. Randy Poe, Superintendent (via email)
Eric McArtor, Deputy Superintendent, (via email)
Gerry F. Dusing, Esq. (via email)