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Reply to: Florida

October 14, 2016

## **Via Email Only**

Superintendent Bill Motsenbocker  
Cascade School District  
330 Evans St.  
Leavenworth, WA 98826  
bmotsenbocker@cascadesd.org

RE: Unconstitutional treatment of Good News Club

Dear Superintendent Motsenbocker:

By way of brief introduction, Liberty Counsel is an international legal, media and policy organization with an emphasis on First Amendment liberties. As part of our work in the public interest, Liberty Counsel provides *pro bono* representation to individuals, organizations, and government entities, including among our many clients both school districts and Child Evangelism Fellowship.

I am writing in follow-up to your October 7, 2016 letter to Starlene McDaniel and Child Evangelism Fellowship, in which you state that a parent complained that the Good News Club flyers distributed to K-5 students on October 3, 2016 were “using the public school system to promote religion,” despite the flyers’ clear disclaimer stating that the GNC is privately sponsored, and is not sponsored by the District. Based on this complaint, and on Cascade School Board Policy 2340(F), further Good News Club flyer distribution requests have been prohibited as a violation of School Board policy. Per your suggestion, Ms. McDaniel addressed the Cascade School Board on October 10, 2016, requesting relief from this decision. This letter is Liberty Counsel’s official position on the issue.

Both the prohibition and the section of Board Policy (“BP”) 2340 supporting it violate the First Amendment and are unconstitutional. The decision should be reversed, and Section F of this policy, and any others making unconstitutional distinctions regarding religion, should be discarded so as to avoid unnecessary liability for civil rights violations.

As you may recall, Liberty Counsel corresponded with the Cascade School District (“the District”) in 2015 regarding Child Evangelism Fellowship (“CEF”) Good News Club

("GNC") flyers, and the District's reliance upon the outdated and unconstitutional Board Procedure 4030P as the basis for its denial of distribution permission for CEF's flyers as "religious" or "proselytizing" in nature. That correspondence is attached below, for your ready reference. After Liberty Counsel brought this to the District's attention, your office permitted the flyers for distribution, notwithstanding BP 2340. Liberty Counsel had also requested that BP 4030P be changed to remove the unconstitutional language found in Section F of that procedure, to avoid future instances like the current one, but this was not done.

Per BP 4030P, the District permits "Girl Scouts, Boy Scouts, Camp Fire, YMCA, YWCA" and "various nonprofit youth organizations" to directly distribute take-home flyers to K-5 students in the District. GNCs teach many of the same values that are taught by organizations like the Boy Scouts and Campfire Girls, but from a religious perspective. The Supreme Court has determined that GNCs must be granted the same access to public school sites as other youth groups engaged in moral and character development such as the Boy Scouts, notwithstanding any religious viewpoint. See *Good News Club v. Milford Central School District*, 533 U.S. 98 (2001). A rule of denying flyers deemed to be "proselytizing or disparaging religious beliefs," or flyers deemed to be "material and/or announcements promoting religion" is a de facto "secular materials only" rule, which the Supreme Court and lower federal courts have rejected, including the 9th Circuit Court of Appeals, which has jurisdiction over Washington. See *Hills v. Scottsdale Unified School District*, 329 F. 3d 1044 (9th Cir. 2003), as well as *Child Evangelism Fellowship of New Jersey Inc. v. Stafford Township School District*, 386 F.3d 514 (3d Cir. 2004).

Moreover, the District may not give effect to an unconstitutional "heckler's veto" by individuals who call for the District to suppress the protected speech of youth-oriented clubs, simply because those clubs hold a religious viewpoint. The prototypical heckler's veto case is one in which the government silences particular speech or a particular speaker "due to an anticipated...reaction of the audience." *Rosenbaum v. City & Cnty. of S.F.*, 484 F.3d 1142, 1158 (9th Cir.2007). Under *Santa Monica Nativity Scenes Comm. v. City of Santa Monica*, 784 F.3d 1286, 1293 (9th Cir. 2015), a "heckler's veto claim would thus have some force" if, in response to complaints, a government entity decides "that no *religious* displays could henceforth be erected," or, as here, no *religious* flyers could henceforth be distributed.

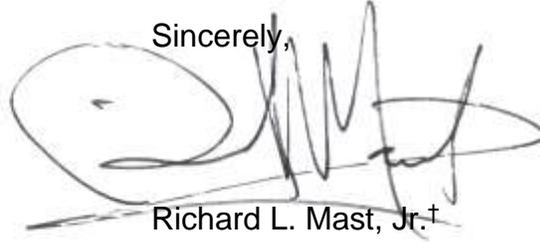
The instant matter underscores the importance of constitutional policies for the guidance of District decisions. With unconstitutional policies, unconstitutional decisions result in the violation of well-established civil rights. Therefore, I appeal to the District to 1) reverse the prohibition on future GNC flyer distribution, and 2) excise the unconstitutional provisions of BP 4030P and BP 2340, specifically removing BP 4030P "f. Proselytizing or disparaging religious beliefs;" and BP 2340 F "Material and/or announcements promoting religion may not be distributed by non-students or on behalf of groups or individuals who are not students."

CEF and Ms. McDaniel value the otherwise good working relationship with the District, which is why she addressed the Board to bring this matter to its attention. However,

CEF and Ms. McDaniel also value the principle of equal treatment under law. Liberty Counsel therefore adds its voice in appealing to the District to comply with the law.

Since the District has had over a year to consider and make these changes, it is not unreasonable to request a resolution of this matter by November 15, 2016. If this matter is not resolved by that date, I will unfortunately conclude that the District is indifferent to the concerns expressed herein, and Liberty Counsel will take further action to prevent irreparable harm to the liberties of our clients.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Mast, Jr.", written over a horizontal line.

Richard L. Mast, Jr.<sup>†</sup>

**CC VIA EMAIL ONLY**

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RLM/ajr