



May 14, 2009  
*By U.S. mail and facsimile*

Diane Coleman, Member  
Ed Gray III, Member  
JoAnn Simpson, Member  
Diane Scott, Member  
Hugh Winkles, Member  
SANTA ROSA COUNTY SCHOOL BOARD  
5086 Canal Street  
Milton, Florida 32570

Tim Wyrosdick, Superintendent  
SANTA ROSA COUNTY SCHOOL DISTRICT  
5086 Canal Street  
Milton, Florida 32570

Dale Westmoreland, Principal  
JAY HIGH SCHOOL  
13863 Alabama St.  
Jay, Florida 32565

Dear Board Members, Superintendent Wyrosdick, and Principal Westmoreland:

Julie Newberry, on behalf of her three sons enrolled at Jay High School – Drew, Quinten, and Justice – has asked the Alliance Defense Fund to notify you about unlawful discrimination by District officials against their student clubs, Fellowship of Christian Athletes (“FCA”) and Christian World Order (“CWO”). Please send all correspondence about this matter to my attention.

As we understand the facts, District officials permit Jay High School student clubs to meet during the “planning period” time of their assigned faculty sponsor. Clubs are given access to a variety of communicative channels, including publicizing events and activities through daily public address system announcements and displaying posters throughout the school. Clubs are also permitted to take field trips.

Unfortunately, District officials are denying FCA and CWO the same rights and benefits given to other student clubs all because of the religious nature of their speech. Since January, District officials have prohibited the FCA and CWO clubs from meeting during planning period time despite allowing other, nonreligious clubs, to meet. The District’s position, evidently, is that in

accordance with District Policy 4.50, all student clubs must have a faculty sponsor in order to meet, but because FCA and CWO are religious in nature, they cannot be assigned a faculty member to oversee club meetings because doing so would somehow violate the First Amendment's Establishment Clause.

This very argument, however, has been rejected by the United States Supreme Court. In the landmark decision *Board of Educ. of the Westside Community Schools v. Mergens*, 496 U.S. 226 (1990), the Court examined a school's argument that so-called "separation of church and state" fears stemming from assigning a faculty member to oversee a religious student club justified discriminatory treatment of that club. *See id.* at 252. ("The proposed club, [the school] urge[s], would be required to have a faculty sponsor who would be charged with actively directing the activities of the group, guiding its leaders, and ensuring balance in the presentation of controversial ideas"). Evidently, in that particular school's eyes (as here) the best way to avoid any illicit sponsorship was to simply deny the club the ability to meet. The *Mergens* Court rejected this reasoning, pointing out that under the federal Equal Access Act, offering to the student club a school employee for "custodial oversight of the . . . religious group, merely to ensure order and good behavior" was not impermissible sponsorship. *Id.*, citing 20 U.S.C. § 4072(2). According to the Court, such oversight would not "impermissibly entangle government in the day-to-day surveillance or administration of religious activities." *Mergens*, 496 U.S. at 253.

That should be the District's position here. Rather than denying FCA and CWO the right to conduct meetings by wrongly believing that they cannot legally have access to a sponsor, the District should allow them to immediately begin meeting again under the custodial oversight of a faculty member. This is not a complicated proposition, as *Mergens* shows.

In the same vein, the District also cannot deny communication and field trip privileges to FCA and CWO when it freely grants such benefits and privileges to other student clubs. The Equal Access Act and the First Amendment of the United States Constitution require the District to provide these two clubs with the exact same rights, benefits, and privileges that all other clubs receive. The slightest deviation in treatment violates Drew, Quinten, and Justice's rights. Unfortunately, deviation is exactly what's occurring here. The District is censoring the speech of FCA and CWO members in ways that it is not censoring other student groups and their members.

While we appreciate the District's concern for abiding by the recent Consent Order filed in *Doe v. School Board for Santa Rosa County*, No. 08-cv-361 (M.D.Fla. 2008), treating FCA and CWO equally with other student clubs in no way violates this Order. And if it did, the Order itself would be unconstitutional under *Mergens* and the many other lower federal court decisions on point.

In closing, decades after Congress passed the Equal Access Act and the Supreme Court definitively interpreted it in *Mergens*, the District lacks any basis through which to single out the FCA and CWO clubs for disparate treatment. Please respond to this letter in writing by Tuesday, May 19, 2009 and provide assurances that District officials will immediately cease from:

- denying FCA and CWO an opportunity to meet during planning period time under the oversight of an assigned faculty custodian;

- denying FCA and CWO to communicative channels provided to other student clubs, including, but not limited to, daily public address announcements and displaying posters;
- denying FCA and CWO the ability to take field trips; and
- denying access to any other benefits provided to other student clubs.

If you choose not to provide such assurances, please provide a written explanation of your decision by the date above, along with copies of the District policy(ies) upon which your decision is based.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Cortman", with a long horizontal flourish extending to the right.

David A. Cortman  
Senior Legal Counsel

cc: Julie Newberry