

January 11, 2018

VIA FAX AND EMAIL

Paul Keeney, Superintendent
Linton Public School
101 NE Third Street
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Linton, ND 58552
Fax: 701-254-4313
Email: paul.keeney@k12.nd.us

Re: Todd Becker Foundation events in Linton Public School

Dear Superintendent Keeney:

My name is Noah Smith-Drelich and I am a Staff Attorney for the American Civil Liberties Union (ACLU) of North Dakota. The ACLU learned that the Todd Becker Foundation, a Christian motivational speaking organization, was scheduled to present at assemblies yesterday, January 10, 2018, at Linton Public School during the school day and evening. As you are likely aware, these events pose special constitutional concerns vis-à-vis governmental promotion of religion. Because some public-school administrators are, understandably, confused by the law in this area, I am writing to clarify the District's legal obligations to ensure that the District avoids any future infringements of its students' constitutional rights. I am also writing to request additional information about these events.

The Establishment Clause of the First Amendment to the U.S. Constitution prohibits the government from promoting religious beliefs or exercise. *See, e.g., County of Allegheny v. ACLU*, 492 U.S. 573, 592 (1989). The federal courts "have been particularly vigilant in monitoring compliance with the Establishment Clause" in the public-school context, *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987), because "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools," *Lee v. Weisman*, 505 U.S. 577, 592 (1992). Accordingly, "[s]chool sponsorship of a religious message is impermissible."¹ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000).

¹ The Constitution's protection against school-sponsored religion extends beyond the walls of the public-school classroom to include all school-sponsored events, such as ceremonies, assemblies, athletic events, and extracurricular activities. *See e.g., Santa Fe*, 530 U.S. at 313 (football games); *Lee v. Weisman*, 505 U.S. 577, 586 (1992) (graduation ceremony); *Ingebretson v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 279-80 (5th Cir. 1996) (school assemblies); *Doe v. Duncanville Indep.*



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To comply with these constitutional principles, the District must ensure that none of its assemblies—including those sponsored by entities like the Todd Becker Foundation—contain any religious content, as the federal courts have made clear that public schools may not invite outsiders to proselytize students. *See, e.g., Lee*, 505 U.S. at 586 (public school could not invite clergy to deliver prayer at high-school graduation ceremony); *McCullum v. Bd. of Educ.*, 333 U.S. 203 (1948) (school district could not permit clergy and other representatives from local Council on Religious Education to teach religious classes to students on campus during the school day, even where students had parental permission to attend); *Doe v. Porter*, 370 F.3d 558 (6th Cir. 2004) (school district could not permit volunteer instructors from local Christian college to conduct Bible Education Ministry classes, which taught the Bible as truth, at elementary schools during school day); *Doe v. South Iron R-1 Sch. Dist.*, 498 F.3d 878 (8th Cir. 2007) (school could not permit Gideons to distribute Bibles to fifth-grade students on campus during school day); *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160 (7th Cir. 1993) (same). Although the Todd Becker Foundation claims to be “mindful of the boundaries that must be kept” in a public school, they also advertise that their in-school “Where is Your Life Headed” presentation is “based” on a bible verse (*Matthew 7:13*).

<http://administrators.toddbecker.org/documents/AssemblyBrochure.pdf>.²

Teaching from the Gospel of Matthew in a public-school assembly plainly constitutes an impermissible promotion of religious beliefs.



Furthermore, just as school officials could not themselves exploit a school-sponsored assembly to promote or encourage students to attend a religious event or activity, it is the District’s responsibility to ensure that its invited visitors do not use in-school assemblies to promote after-school worship events. For example, the Foundation reportedly uses its school-day assemblies to invite or exhort students to attend an evening event, which is a thoroughly religious affair.³ *See Rutan v. Republican Party of Ill.*, 497 U.S. 62, 77-78 (1990) (“What the First Amendment precludes the government from commanding directly, it also precludes the government from accomplishing indirectly.”); *Norwood v.*

Sch. Dist., 70 F.3d 402, 406-07 (5th Cir. 1995) (basketball games and practices); *Steele v. Van Buren Pub. Sch. Dist.*, 845 F.2d 1492, 1495 (8th Cir. 1988) (band practice and performances); *Collins v. Chandler Unified Sch. Dist.*, 644 F.2d 759, 760 (9th Cir. 1981) (school assemblies).

² The Foundation’s religious purpose is made explicit in its November 2016 newsletter, which prominently states: “America’s public schools are a battleground between truth and lies. The Todd Becker Foundation is going into these public schools, correcting the lies with biblical truth and rescuing lost souls to Jesus Christ.”

<https://supporters.toddbecker.org/newsletters/ie/November2016.pdf>.

³ According to its own “Assembly Brochure,” “[t]his evening event focuses primarily on the story of how Todd’s brother Keith, came to faith in Christ following his brother’s death. . . . [T]he evening event is largely a faith-based message.”

<http://administrators.toddbecker.org/documents/AssemblyBrochure.pdf>. A review of the Foundation’s website reinforces the view that the evening events, which are typically conducted in tandem with public-school assemblies, involve prayer, religious music, and proselytizing. *See* <https://toddbecker.org/>.



Harrison, 413 U.S. 455, 465 (1973) (“It is also axiomatic that a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish”); *Nat’l Black Police Ass’n, Inc. v. Velde*, 712 F.2d 569, 580 (D. D.C. 1983) (“Activities that the federal government could not constitutionally participate in directly cannot be supported indirectly through the provision of support for other persons engaged in such activity.”). If the District permitted the Foundation to announce an evening assembly and concert or invite students to attend as part of the in-school assembly presentation, the District placed its imprimatur on the religious event in violation of the Establishment Clause. *See Santa Fe*, 530 U.S. at 308 (holding student-led prayers at football games unconstitutional because a student would “unquestionably perceive the inevitable pregame prayer as stamped with her school’s seal of approval”).

Finally, the District may not provide any other support for after-school religious events, including advertising or other promotion and financial assistance. *See Walz v. Tax Comm’n*, 397 U.S. 664, 668 (1970) (Establishment Clause bars the government from engaging in “sponsorship, financial support, and active involvement . . . in religious activity”). Thus, although the District may permit organizations, like the Foundation, to hold religious evening events at the school, it may authorize such use only under the same terms and conditions applied to other groups that reserve the facility. For example, the events’ sponsors must be charged the same rental rate as other groups. To provide otherwise would amount to unconstitutional aid to religion. *Compare, e.g., DeStefano v. Emergency Hous. Group, Inc.*, 247 F.3d 397, 420-21 (2d Cir. 2001) (state’s rental of building to religious group for treatment program permissible where lease was “negotiated at arm’s length by the parties to the lease and apparently reflects the fair market rental value of the property”) *with Community House, Inc. v. City of Boise*, 490 F.3d 1041, 1060 (9th Cir. 2007) (holding that city’s leasing of homeless shelter to religious organization for \$1 likely constituted impermissible aid in violation of the Establishment Clause).

To further our investigation in this matter, we request that the District provide the following records pursuant to North Dakota’s Open Records Statute (NDCC 44-04-18 *et seq*):

- (1) All documents referring to, relating to, or reflecting communications (whether via mail, email, telephone, or fax) between the District and Keith Becker or the Todd Becker Foundation or Chye.
- (2) All documents referring to, relating to, or reflecting communications (whether via mail, email, telephone, or fax) between District officials or between the District and third parties involving Keith Becker, the Todd Becker Foundation, and/or any

of the assemblies sponsored or conducted by Keith Becker or the Todd Becker Foundation or Chye.

- (3) All written agreements, including but not limited to contracts and leases, referring or relating to any assembly, presentation, concert, or other event performed by Keith Becker or the Todd Becker Foundation or Chye.
- (4) All documents referring or relating to any assembly or concert presented by Keith Becker or the Todd Becker Foundation or Chye, including but not limited to written announcements, advertisements and other promotional materials (e.g., flyers, posters, etc.), invitations, etc.
- (5) All documents and other materials distributed or made available to students during any assembly, concert, or other event performed by Keith Becker or the Todd Becker Foundation or Chye at any District facility.
- (6) All audio and/or video recordings of any assembly, concert, or other event performed by Keith Becker or the Todd Becker Foundation or Chye.
- (7) All documents referring to, relating to, or evincing any payment or disbursement of District funds to Keith Becker or the Todd Becker Foundation or Chye, including but not limited to invoices, billing statements, copies of checks, requisition forms, etc.
- (8) All documents referring to, relating to, or evincing any payment or disbursement of funds from Keith Becker or the Todd Becker Foundation or Chye to the District including but not limited to invoices, billing statements, copies of checks, requisition forms, etc.
- (9) All policies, rules, or guidelines governing, referring to, or relating to use, rental, or lease of concert/assembly space or other District facilities by non-school persons or groups.
- (10) All policies, rules, or guidelines governing, referring to, or relating to on-campus visits, presentations, assemblies, or other activities by non-school persons or groups.
- (11) All policies, rules, or guidelines, governing, referring to, or relating to school officials' conduct of prayer, proselytization, or other religious activities.



In the above request, the term “District” means the Linton Public School District and/or the Linton Public School Board of Education, its agents, officers, employees, representatives, servants, attorneys or anyone acting on its behalf. Please respond promptly to this request. If you expect a significant delay in responding to or in fulfilling this request, please contact me with information about when I might expect copies or the ability to inspect the requested records.

I applaud the District’s efforts to educate students about the dangers of drunk driving. If the Foundation’s assembly was limited to that topic, it likely was successful from both an educational and constitutional standpoint. However, if the assembly was used as an opportunity to proselytize students or to recruit them for later events involving religious activities, it, without a doubt, ran afoul of the Establishment Clause, as would the District’s participation in an evening event beyond the role detailed above.

I hope this letter will assist you in avoiding future constitutional problems, which arise frequently in similar situations. I would be happy to provide further guidance on these issues if you have additional questions. Please do not hesitate to contact me if you need such assistance.



Sincerely,

A handwritten signature in black ink, appearing to read "NSD", written over a horizontal line.

Noah Smith-Drelich

Staff Attorney
ACLU of North Dakota

Cc: Jennifer Cook, Policy Director (by email)