ALLIANCE DEFENDING
FREEDOM
FOR FAITH. FOR JUSTICE.

March 15, 2013
VIA U.S. MAIL

[redacted]

Re: Field Trips to Timber-lee Christian Center

Dear [redacted]:

It has come to our attention that the Freedom from Religion Foundation ("FFRF") wrote letters to several public schools in your area asserting that field trips to Timber-lee Christian Center for students to participate in environmental and historical education, as well as outdoor and teambuilding activities, violates the Establishment Clause of the First Amendment to the United States Constitution. We write to inform you that utilizing the secular courses Timber-lee regularly offers to hundreds of public school students each year fully comports with the First Amendment and to correct several misrepresentations made in FFRF's letter.

By way of introduction, Alliance Defending Freedom is an alliance-building legal organization that advocates, among other things, for the right of religious, private groups to interact with public schools on an equal basis with their secular counterparts. Alliance Defending Freedom has been involved in over 500 cases nationwide, many of which involved the application of the United States Constitution in the educational context. For example, we represented the prevailing party in the United States Supreme Court's most recent decision related to standing to challenge the funding of religious schools under the Establishment Clause in *Arizona Christian School Tuition Organization v. Winn*, 131 S. Ct. 1436 (2011).

The Timber-lee Field Trip Program is Neutral Towards Religion

The First Amendment requires that government actors, including public school districts, neither favor nor disfavor religion but must instead remain religiously neutral. Indeed, the most important "factor in upholding governmental programs in the face of Establishment Clause attack is their neutrality towards religion." *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 114 (2001) (quotation omitted). This neutrality requires school districts to judge Timber-lee's secular, public-school program based on its educational merits, not—as FFRF suggests—on Timber-lee's religious identity. *See, e.g.*, *Bowen v. Kendrick*, 487 U.S. 589, 609 (1988) ("[T]his Court has never held that religious institutions are disabled by the First Amendment from

1000 Hurricane Shoals Rd. N.E. Suite D-1100, Lawrenceville GA 30043
Phone: 800.835.5233 Fax: 770.339.6744 AllianceDefendingFreedom.org

participating in publicly sponsored ... programs."). At present, the public school field-trip programs through which students visit Timber-lee are neutral towards religion. We urge you to ensure they remain that way.

Hundreds of public schools have chosen to bring students to Timber-lee over the last three decades not because it is owned by a church, but because it offers superior camp facilities, reasonable rental rates, and the best assortment of secular educational programs available to supplement the public school curriculum and help students learn the state standards it is designed to teach. Indeed, a review of the course descriptions listed on Timber-lee's website reveals a long list of options that teach factual information in a "hands-on" manner related to Biology, Chemistry, Geology, Astronomy, and other scientific subject matters that are of clear educational benefit to students.[1] It is notable, for instance, that FFRF does not mention a single course offered to public school students that ventures outside of scientific and into theological bounds.

Any impartial review of Timber-lee's public school course offerings puts this concern to rest. Timber-lee's "Creation Experience," as FFRF recognizes in its letter, is not made available to public school students.[2] Moreover, the "Talk with the Animals" course description makes quite clear that "[d]iscussion will include facts on each animal as well as spiritual truths that we can learn from each animal, when appropriate," *i.e.*, when the program is offered to religious, private schools or other private groups.[3] None of Timber-lee's other standard course offerings involve religious instruction, thus amply demonstrating the secular nature of the educational program offered to public school students.

The arguments made in FFRF's letter are based not on any of Timber-lee's actual course materials but on an old magazine article that discussed the offerings Timber-lee makes available to public *and private* school students. But the services Timber-lee offers to private, religious schools are of no constitutional concern. *See, e.g. Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 250 (1990) (plurality opinion) (recognizing the "crucial difference" between protected "*private* speech endorsing religion" and forbidden "*government* speech endorsing religion"). Indeed, public school districts' utilization of Timber-lee, a camp that offers religious education services to private parties on its own time, is of no greater constitutional significance than their employment of a teacher who engages in religious teaching—after the school day—at a rented public school facility. And the United States Court of Appeals for the Eighth Circuit has clearly held that such activity does not violate the Establishment Clause because it is not connected to "a school-sponsored event," does not "affiliate" religious views with the school, and students "participate[]" only as a result of "parental consent." *Wigg v. Sioux Falls Sch. Dist. 49-5*, 382 F.3d 807, 815 (8th Cir. 2004). Consequently, "no reasonable observer would perceive [this] private speech as a [public school's] endorsement of religion." *Id.*

---

[1] Descriptions of all of Timber-lee's course offerings are publicly accessible on its website at http://www.timber-lee.com/school-program.cfm/classes/class-options.

[2] *See* http://www.timber-lee.com/school-program.cfm/classes/class-options/environmental-education/creation-experience.

[3] *See* http://www.timber-lee.com/school-program.cfm/classes/class-options/talk-with-the-animals.

In short, FFRF cites no evidence that the programs Timber-lee offers to public schools involve religious teachings, or that your school district or teachers—as government actors—chose to utilize Timber-lee's facilities "with the purpose of aiding a religious cause." *Rosenberger*, 515 U.S. at 840. Consequently, the Timber-lee field trip program is neutral towards religion and constitutional under the First Amendment.[4]

Timber-lee Does Not Require Public Schools to Agree with Its Religious Beliefs

It is clearly disingenuous for FFRF to suggest that Timber-lee requires that public school districts that use its facilities or participate in its programs agree with its religious beliefs. The contract on Timber-lee's website clearly states that "[t]he fact that Timber-lee allows any particular group to hold a retreat at [its] facilities *does not imply* an endorsement of any group or any particular beliefs or practices."[5] This section clearly recognizes that Timber-lee and some guests, like public school districts, may have differing philosophies on important issues. Timber-lee merely asks that all invited guests "show respect for [its] mission ... staff, facilities, equipment, and grounds."[6]

Public Schools May Constitutionally Use Timber-lee's Facilities

FFRF relies on the United States Court of Appeals for the Seventh Circuit's decision in *Doe v. Elmbrook*, 687 F.3d 840 (7th Cir. 2012) (en banc), a decision the United States Supreme Court may choose to review later this month, *see id.* (petition for *certiorari* filed Dec. 20, 2012, distributed for conference of Mar. 22, 2013), in arguing that Timber-lee is too "overtly religious" to host public school students. But the Seventh Circuit's decision in *Elmbrook* does not universally ban public school districts from using private facilities owned by a religious organization for any conceivable secular purpose. *See id.* at 843 ("[This] ruling should not be construed as a broad statement about the propriety of government use of church-owned facilities.").

The Court's reasoning in *Elmbrook* was unambiguously tied to the "important civil ceremonies," *id.* at 844, at issue in that case, *i.e.*, "public school graduation ceremonies." *Id.* at 843. According to the *Elmbrook* Court, "[h]igh school graduations enjoy an iconic place in American life." *Id.* at 853. Holding such "ceremonies ... in the sanctuary of a non-denominational Christian church," in the Seventh Circuit's view, "violated the Constitution." *Id.* 843. But no similar activities take place at Timber-lee. And the *Elmbrook* Court, in outlining the scope of its decision, indicated only that "[t]he same result should obtain when administrators bring *seminal schoolhouse events* to a church—at least to one with the proselytizing elements present in this case." *Id.* at 850 (emphasis added).

---

[4] Although FFRF suggests in passing that public funds cannot be used to pay for field trips to Timber-lee, it fails to elaborate on this point presumably because no First Amendment issue is presented by a school district's monetary payment for wholly secular camp services.

[5] http://www.timber-lee.com/cm/pdfs/refine-contract.pdf (emphasis added).

[6] http://www.timber-lee.com/school-program.cfm/policies-and-forms/camp-expectations.

Of course, Timber-lee is a camp, not a church. And no "important civil ceremonies" or "seminal schoolhouse events" are implicated by its use. Public school districts bring students to Timber-lee's camp on entirely voluntary field trips that supplement the science education they receive at school. Students visiting Timber-lee accordingly spend most of their time in the field, away from the minimal religious symbolism present on site. Indeed, Timber-lee's campground consists of some 600 acres, few of which contain any buildings or other structures. Moreover, the private nature of Timber-lee's camp, which students travel from out-of-town to attend, is apparent for all to see. And there is no possibility of confusion on this point because public schools do not hold important ceremonies at the camp that would require Timber-lee's facilities to be "draped in [public] schools' decorations" that would "mix[] in with [any] religious décor." *Id.* at 853.

The Seventh Circuit's decision in *Elmbrook* is thus readily distinguishable from the present case. No court considering Timber-lee's 600 acre campus would describe its facilities as "pervasively religious." FFRF's suggestion to the contrary simply reflects its long history of hostility toward private religious expression. Although FFRF, as a private organization, is free to hold this view, "[t]he Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities." *Board of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 248 (1990) (plurality opinion) (quoting *McDaniel v. Paty*, 435 U.S. 618, 641 (1978) (Brennan, J., concurring in the judgment)). Public school districts should therefore treat Timber-lee like any other private camp, using its secular facilities and programs as an effective educational tool available at a reasonable price.

Conclusion

Timber-lee's superb facilities, dedicated staff, and impressive variety of "hands on" educational programming have provided great educational benefit to your students over the years. We hope that you will act in your students' best academic interests and assess future trips to Timber-lee based on facts, not on FFRF's inaccurate assertions. Timber-lee would undoubtedly be happy to answer any questions you might have. And we are available to speak with you or your counsel about any related legal questions.

Sincerely,

David A. Cortman, Senior Counsel
Jeremy D. Tedesco, Senior Legal Counsel
Rory T. Gray, Litigation Counsel