



December 11, 2019

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Re: Unlawful Religious Discrimination by Bozeman High School

Dear Gentlemen:

We write on behalf of Jon Wheeler, Bridger Wilkes, Mackenzie Hebner, and the Bozeman High School (BHS) huddle of Fellowship of Christian Athletes (BHS FCA) which seeks to regain its rightful status as a school-sponsored student club. On November 21, 2019, you met with members of BHS FCA and unlawfully revoked their status as a school-sponsored club at BHS. You now treat them as an off-campus business or organization, require that their flyers bear a yellow sticker (highlighting their non-school-sponsored status), and refuse to allow them to make schoolwide announcements. These actions are a blatant violation of BHS FCA's rights under the U.S. Constitution and the Equal Access Act. Your actions also contradict the very policies upon which you base the rationale for your decision.

BHS has established a forum for student speech through the creation and recognition of extracurricular clubs. BHS currently recognizes at least 34 student clubs which promote and advocate for a wide variety of various interests, including Environmental Awareness Club,

Sexuality and Gender Alliance, Human Rights Club, Key Club, Leo Club, Partners Club, Project X²⁺, SpeakOUT/Leadership, Sticker Club, and Youth Legislature. Being a school-sponsored club provides a number of benefits, including the right to meet on campus during non-instructional hours, post flyers with a green sticker (denoting school-sponsored status), and make school-wide announcements. BHS FCA had been a recognized club at BHS for at least five years. However, on November 21, you informed BHS FCA that BHS had de-recognized them because of their religious beliefs. As a result, BHS FCA has been deprived of the aforementioned benefits of all other school-sponsored clubs.

As justification for your discrimination against BHS FCA, you cite to school district Policies 2150, 2332, 3210, and 3233. None of these policies validates your actions against BHS FCA. To the contrary, Policy 2332 explicitly protects the students' rights to "organize clubs to discuss or promote religion, subject to the *same constitutionally acceptable restrictions the District imposes on other student-organized clubs.*" (Emphasis added). The portion of 2332 addressing religious literature also recognizes that students have the right to distribute religious literature on the same basis as "other non-school literature." And yet, you require BHS FCA to use yellow stickers on their flyers, a requirement not imposed on non-school literature distributed by other clubs such as Sexuality and Gender Alliance, Human Rights Club, and Project X²⁺.

Similarly, you are violating Policy 3210. In your attempt to single out BHS FCA for disparate treatment, you deny students the "educational opportunities" of associating together as a club because you disagree with their "creed, religion, [] or political beliefs." Moreover, BHS FCA is indistinguishable from other authorized "activities" within the district "Co-Curricular Program" found in Policy 2150. The group focuses on "service" and "athletics" in the "social area" while promoting "carry-over values into lifetime and/or leisure activities." Policy 2150 makes clear that student-involvement in BHS FCA must be treated no differently from other "co-curricular" activities and "without regard to [] creed[.]"

By de-recognizing FCA because of its religious beliefs, BHS has also violated BHS FCA's rights both under the Equal Access Act and the First Amendment. The Equal Access Act makes it unlawful for BHS "to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings." 20 U.S.C. § 4071(a). Accordingly, the Equal Access Act requires BHS to officially recognize FCA and to give it the exact same rights, benefits, and privileges that all other non-curricular clubs receive. As the U.S. Supreme Court held in *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 236 (1990), "if a public secondary school allows only one 'noncurriculum related student group' to meet, the Act's obligations are triggered and the school may not deny other clubs, on the basis of the content of their speech, equal access to meet on school premises during noninstructional time." The slightest deviation from this treatment violates the Equal Access Act and the First Amendment. *Prince v. Jacoby*, 303 F.3d 1074, 1077 (9th Cir. 2002) ("[W]e hold that the School District violated either the [EAA] or Prince's First Amendment rights by denying her Bible club the same rights and benefits as other School District student clubs and by refusing to allow the Bible club equal access to school facilities on a religion-neutral basis.").

To the extent that you believe BHS violates the Montana Constitution or the Establishment Clause of the United States Constitution by giving BHS FCA the same privileges as other noncurricular student groups, you are mistaken. Reading Article X, Section 7, of the Montana

Constitution to require a secular litmus test for all noncurricular, school-sponsored clubs contradicts the First Amendment and Supreme Court precedent. BHS's sponsorship of BHS FCA does not "advocate sectarian tenets" any more than sponsorship of Sticker Club advocates for the use of more stickers. BHS FCA must simply be granted the same privileges that sponsorship affords to other clubs. Your reliance on Policy 3233 implies that simply allowing BHS FCA to hold meetings on school grounds satisfies equal access. It does not. The students in *Mergens* sought "equal access in the form of official recognition by the school" including "access to the school newspaper, bulletin boards, the public address system, and the annual Club Fair." *Mergens*, 496 U.S. at 247. The Supreme Court agreed that equal access demanded those privileges and it rejected the argument that granting official status to a religious club violates the Establishment Clause. *Mergens*, 496 U.S. at 247-48.

Accordingly, your actions violate federal law under the Equal Access Act and ignore 30-year Supreme Court precedent protecting the rights of religious student clubs to be treated equally with other student clubs. Refusing to recognize FCA as a school-sponsored club because of its religious mission and denying it the same privileges as other non-curricular clubs is illegal.

Based on the foregoing, Mr. Wheeler, Mr. Wilkes, Ms. Hebner, and BHS FCA hereby request that, no later than December 18, 2019, you inform me in writing that you have reinstated FCA as an official school-sponsored club and that it will receive the same rights, benefits, and privileges as other non-curricular student clubs at BHS.

If you fail to grant this request, we will have no option but to advise our client of other avenues for vindicating their rights. In compliance with the above, please immediately place a litigation hold on all e-mail accounts, document collections, social media accounts, and all other sources of information (including electronically stored information) that reference in any way FCA, or FCA's request to retain its school-sponsored status.

Sincerely,

Jonathan M. Larcomb

Jonathan M. Larcomb
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Center for Academic Freedom