



December 4, 2015
VIA EMAIL, FAX, & U.S. MAIL

Dennis Fischer, Superintendent
1350 Oak Street
Wheatland, WY 82201
Facsimile: 307-322-2084
dfisch@platte1.k12.wy.us.

Stanetta Twiford, Principal
1350 Oak Street
Wheatland, WY 82201
Facsimile: 307-735-4220
Stanetta.Twiford@platte1.org

Ray Hunkins, School District Attorney
Hunkins Newton Law Firm
P.O. Box 345
Cheyenne, WY 82003
Facsimile: 307-778-7496
rhunkins@wyoming.com

Platte County School Board Members
Chuck Ruwart III
P.O. Box 784
Wheatland, WY 82201
chr3@laramiepeakmotors.com

Greg Meyer
355 Antelope Gap Road
Wheatland, WY 82201
gmeyer@wyomingwisp.com

Shawn Shepard
301 10th Street
Wheatland, WY 82201
southernsherp@yahoo.com

Beth Shepard-Hendon
P.O. Box 545
102 Drake Road
Wheatland, WY 82201
bethshendon@gmail.com

Robert Catchpole
1103 14th Street
Wheatland, WY 82201
bscatch@gmail.com

Travis Lockman
705 Circle Drive
Wheatland, WY 82201
tlockman@hotmail.com

Douglas Wiggins
94 Goodrich Road
Wheatland, WY 82201
doug.wiggins@ymail.com

Re: Unlawful Ban on Student Prayer at Glendo High School

Dear Mr. Fischer, Ms. Twiford, Mr. Hunkins, and School Board Members:

Marty Roark recently contacted Alliance Defending Freedom about the attempt of his two children (C. Roark and J. Roark) and his foster child (K. Perrine) to pray at Glendo High School. These three students recently formed a circle with a few others in the back of the Glendo cafeteria during lunch, they bowed their heads, and one student prayed over their meal. District officials soon ordered them to stop. In light of that order, ADF now demands that you immediately allow these students to resume their prayer activities in the cafeteria.

These are the relevant facts. On October 15, 2015, the two Roarks, K. Perrine, and a few other students went to the back of the lunchroom, formed a small circle, and one student prayed over their meal. No teacher initiated, encouraged, or participated in this prayer. The student who prayed did not even pray loudly. The student only prayed in way so that the other students in the circle could hear. After the short prayer, the students then sat down and ate their lunch. The prayer did not create any disruptions or cause any problems in the noisy cafeteria.

After the lunch period, Principal Twiford confronted K. Perrine and told her that the students were not allowed to pray during lunch because they were pushing their religion on other students. According to Twiford, if the students wanted to pray, they had to receive permission and then go into the gym or hall away from other students. A short time later, the social studies teacher Joel McKee reiterated this quarantine order. McKee told C. Roark that the students could not pray in the cafeteria because this was a case of separation of church and state. Then toward the end of the day, Principal Twiford pulled K. Perrine out of class and blamed her for pushing her religion onto others. Twiford reiterated that the students could not pray in the cafeteria during lunchtime or they would suffer severe consequences.

Frustrated, the Roark children and K. Perrine told Mr. Roark what happened, and he went to see Principal Twiford about the matter. Because Principal Twiford was unavailable, Mr. Roark left her information explaining that his children could legally pray in the cafeteria. A few days later, Mr. Roark saw Principal Twiford at a school basketball game and asked if his children would be allowed to pray. Principal Twiford said no. According to Twiford, it was illegal for the students to pray in the cafeteria because other students in the cafeteria were a captive audience.

Mr. Roark then called and left messages for Superintendent Fischer about the matter. Superintendent Fischer responded by sending an email to Principal Twiford who eventually forwarded that email to the Roarks. This email relied on

information from the ACLU and confirmed the cafeteria prayer ban. According to this email, Principal Twiford correctly stopped the cafeteria prayer because “the right to engage in voluntary prayer does not include, for example, the right to have a captive audience listen or to compel other students to participate.” In effect, the School District has mandated that the Glendo cafeteria become a prayer-free zone because students may be offended at seeing other students pray.

Confused by this line of thinking, Mr. Roark called Superintendent Fischer. Fischer reiterated the cafeteria prayer ban because others in the cafeteria were a captive audience. Fischer said that the ACLU had proven this point again and again and if Mr. Roark wanted to change the law, Roark needed to take it to the Supreme Court because Fischer was tired of talking about this issue. Mr. Roark tried to correct Superintendent Fischer’s misunderstanding about the law, but he refused to remove the prayer ban.

We write to inform you that this cafeteria prayer ban violates the First Amendment. The First Amendment requires schools to allow student speech so long as that speech is not materially and substantially disruptive. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969). And there is no evidence that the cafeteria prayer created any disruption. Indeed, the quiet prayer could not create a disruption in a busy and loud cafeteria where so many other students are talking and bustling about.

Nor does this analysis change because the students prayed in the cafeteria in the presence of others. School cafeterias are not religion-free zones and they certainly do not involve captive audiences. Students in the cafeteria are not captive audiences because they can leave at any time or turn away from the quiet prayer in the corner. *See Smith v. Mount Pleasant Pub. Sch.*, 285 F. Supp. 2d 987, 996 (E.D. Mich. 2003). “[A]lthough the statement was read in the cafeteria to a gathering of students who presumably were required by law to be in school that day, no serious argument is made that the listeners remained part of a captive audience....”

Further, students in the cafeteria are no more a captive audience than students in the hallway or students on a playground. The location does not change the analysis. Neither does the presence of other students. So long as non-disruptive speech occurs during non-instructional time, schools must allow that speech. The Supreme Court has already confirmed this very point: “A student’s rights, therefore, do not embrace merely the classroom hours. When he is **in the cafeteria**, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without ‘materially and substantially interfer(ing) with the requirements of appropriate discipline in the operation of the school’ and without colliding with the rights of others.” *Tinker*, 393 U.S. at 512-13 (emphasis added).

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Contrary to the ACLU's analysis, high school students can indeed pray in the cafeteria in the presence of others, and praying students need not be shuffled off to broom closets. The First Amendment protects the right to pray not just in private but in public too. For this reason, by silencing non-disruptive prayer in the cafeteria, the District has violated the First Amendment.

Because the District has and continues to violate the Roarks' and K. Perrine's constitutional rights, we demand that you notify us in writing – **no later than two weeks from the date of this letter** – that you will allow the Roarks to pray in the cafeteria as they did on October 15, 2015. If we do not hear from you before the specified deadline, we can only assume that the District will continue to ban non-disruptive prayers in the cafeteria during lunch. Under that scenario, we may be forced to take legal action to protect the Roarks' and K. Perrine's First Amendment freedoms.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Scruggs". The signature is stylized with overlapping loops and a long horizontal stroke at the end.

Jonathan Scruggs
Legal Counsel