



**AMERICAN ATHEISTS**

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**Geoffrey T. Blackwell**  
*Litigation Counsel*

Via Cert. Mail & Email

Mark T. Mow  
Interim Superintendent  
Elkhart Community Schools  
J. C. Rice Educational Services Center  
2720 California Road  
Elkhart, IN 46514

Ed Windbigle  
Elkhart City Police Chief  
175 Waterfall Dr.  
Elkhart, IN 46516

**Re: School participation in “Meet Me at the Pole” event**

Dear Mr. Mow and Chief Windbigler:

The American Atheists Legal Center (AALC) and Northern Indiana Atheists received several reports from members of the Elkhart community concerning a recent “Meet Me at the Pole” event held at Elkhart Central High School (ECHS) on the morning of September 26, 2018. According to the reports, the event was led by Cody Skipper, the school resource officer assigned to the school by the Elkhart Police Department, and at least one member of ECHS faculty actively participated in the event. The Establishment Clause of the U.S. Constitution and the Equal Access Act (EAA) prohibit school officials from taking an active role in the activities of religious student groups and students’ exercise of their religious beliefs.

The AALC is part of American Atheists, Inc., a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the “wall of separation” between government and religion created by the First Amendment. We strive to create an environment where atheism and atheists are accepted as members of our nation’s communities and where casual bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists through education, outreach, and community-building and work to end the stigma associated with being an atheist in America. American Atheists is based in Cranford, New Jersey, and has more than 350,000 members and supporters across the country, including in Elkhart, Indiana.

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The Establishment Clause of the First Amendment of the U.S. Constitution requires that government make no law respecting an establishment of religion, a prohibition which extends to state and local governments via the Fourteenth Amendment.<sup>1</sup> When it comes to the education of our children, the government should be “particularly vigilant” in ensuring schools do not promote religious views that may conflict with the religious beliefs of students and their families.<sup>2</sup> “Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family.”<sup>3</sup> This includes laws or policies which permit school officials to direct students in prayers, songs, or recitations which espouse a sectarian point of view.<sup>4</sup>

Congress passed the Equal Access Act<sup>5</sup> (EAA) in order to ensure that school districts meet these obligations with regard to student groups. The EAA requires that:

1. Meetings be voluntary and student-initiated;
2. There is no sponsorship of the meeting by the school, the government, or its agents or employees;
3. Any teachers, employees or other school officials who attend the meetings for such a group may only observe the meeting. They cannot participate;
4. The meetings cannot disrupt the orderly conduct of educational activities within the school; and
5. No one from outside the school may direct, conduct, control, or regularly attend activities of student groups.<sup>6</sup>

These requirements are reflected in ECS Policy # 5730, which further directs that “[a] professional staff member may be assigned to attend a student-organized meeting in a custodial capacity *but shall not participate in the activity.*”<sup>7</sup>

According to the complainants, the “Meet Me at the Pole” event was organized by the student chapter of the Fellowship of Christian Athletes (FCA). ECS was notified at least once on a previous occasion that faculty and staff cannot actively participate in student group events such as FCA’s “Meet Me at the Pole.” Based on video and pictures documenting the event, Cory Skipper, an Elkhart City Police Department officer assigned to ECHS as the school resource officer, led the students in prayer during the event while

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(1) *School District of Abington Twp. v. Schempp*, 374 U.S. 203, 205 (1963).

(2) *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987); see also *Widmar v. Vincent*, 454 U.S. 263, 274, n.14 (1981).

(3) *Edwards*, 482 U.S. at 584.

(4) *Wallace v. Jaffree*, 472 U.S. 38, 44, n.23 (1985).

(5) 20 U.S.C. § 4071.

(6) 20 U.S.C. § 4071(c).

(7) Elkhart Community Schools, bylaws & Policies, Policy No. 5730, Equal Access for Noncorporation-sponsored, Student Clubs and Activities (2005) (emphasis added).

in uniform. A member of the ECHS faculty was photographed participating in the prayer. By taking an active role in the event, Officer Skipper and the faculty member violated the Establishment Clause and the Equal Access Act.

Neither American Atheists nor Northern Indiana Atheists have any objections to students voluntarily engaging in religious exercises independent of ECS and in a manner that does not disrupt the educational environment. However, the practice of permitting ECS personnel to participate in such meetings must cease. The AALC respectfully request that ECS institute policies to educate teachers and other personnel of their constitutional obligations and to enforce ECS Policy # 5730. Likewise, we request the Elkhart City Police Department take steps to ensure that its officers are aware of the special constitutional considerations that apply on school grounds. Please notify me within 10 business days of the steps ECS and the Elkhart City Police Department have taken, or intend to take, in order to remedy these violations and ensure that similar breaches of constitutional obligations do not occur in the future. If steps are not taken, the AALC will assist the complainants in this matter in recruiting local counsel and pursuing judicial remedies.

Thank you for your time and attention to this matter.

Sincerely,

/s/

Geoffrey T. Blackwell  
Litigation Counsel

CC: Karen S. Carter, ECS Board President-at-Large (via email)  
Frank Serge, ECHS Principal (via email)