Orange County Public Schools

445 W. Amelia Street · Orlando, Florida 32801 · (407) 317-3200 · www.ocps.net

September 23, 2025

Via Email Liberty@LC.org and
U.S. First Class Mail

Richard Mast, Esquire
Liberty Counsel
PO Box 540774
Orlando, FL 32854

Re: Your Letter dated September 18, 2025 regarding Student Religious Speech & Opt-Out Rights

Dear Mr. Mast:

I am in receipt of your letter dated September 18, 2025, regarding "Witchy Wednesday" on the morning announcements at West Orange High School.

We have reviewed the segment in question and confirmed that it did take place. We have since instructed the school to cease "Witchy Wednesday" segments from the morning announcements. No further segments of this nature will take place.

In your letter, you referred to "Witchy Wednesday" as "religious instruction (whether delivered by the school as purported government speech, or by a student as religious speech)." We have decided to stop the "Witchy Wednesday" segment based upon the rulings in two Supreme Court decisions.

The first is Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000). In that case, the Supreme Court analyzed the practice of a school district allowing invocations over the loudspeaker before football games. Under the policy of the School District in Santa Fe, "the district's high school students voted to determine whether a student would deliver prayers at varsity football games. The students chose to allow a student to say a prayer at football games. A week later, in a separate election, they selected a student to deliver a prayer at varsity football games." Id. at 297.

The Court then held as follows: "We granted the District's petition for certiorari, limited to the following question: 'Whether petitioner's policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause.' We conclude, as did the Court of Appeals, that it does." Id. at 301.

In so holding, the Supreme Court explained its reasoning:

> "School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents 'that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.' The delivery of such a message—over the school's public address system, by a speaker representing the student body, under the supervision of school faculty, and pursuant to a school policy that explicitly and implicitly encourages public prayer—is not properly characterized as 'private" speech.'" Id. at 309-310.

In the same way that the prayer over the loudspeaker at the football game was found to be government speech, the "Witchy Wednesday" segment would be considered government speech. The segment was delivered over the school's television system, on the school's morning announcements under the supervision of school faculty. As such, we cannot constitutionally allow such a segment to continue to take place in the future.

Also, as the Supreme Court held in Santa Fe, school sponsorship of a religious message is impermissible "because it sends the ancillary message to members of the audience who are nonadherents that they are outsiders, not full members of the political community." Your letter affirms that such sentiments are indeed felt by the members of the West Orange High School community you represent:

> "**However, many OCPS students have sincere Christian religious beliefs that prohibit them from lending their imprimatur to religious instruction** (whether delivered by the school as purported government speech, or by a student as religious speech) on spells, witchcraft, magic, moon worship ('honor this phase'); 'energy;' 'releasing rituals;' tips on witchcraft including casting 'a spell for enlightenment' seeking 'the Light of Insight' whose purpose is to invite (but not from God or his Son Jesus Christ) 'clarity, wisdom and light' into one's life. **Other sincere Christian religious beliefs would prohibit students' presence for instruction in religious rituals** like burning candles; burning incense; and burning written words on paper 'fold[ed] three times' to 'have your intention released into the universe;' or 'cleans[ing] the space…once more to finalize your spell.' There are a number of Bible teachings and commonly held Christian religious beliefs that contradict the 'Witchy Wednesday' religious instructions." (September 18, 2025 letter, page 2; emphasis added)

Consistent with the Supreme Court's ruling in Santa Fe, we do not want any student, whether Christian or non-Christian, to feel like they are outsiders and not full members of the political community at West Orange High School. As such, we can no longer allow the segment in question

to continue.

The other Supreme Court case allowing us to cease broadcasting the segment is Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988). In that case, students sued the school district for deletion of two pages of articles from the May 13, 1983 edition of the school newspaper. The school newspaper was funded by allocated funds from the budget of the Board of Education. Supplies were paid for by the Board. The newspaper was produced as part of the school's Journalism class. Id. at 262-263.

The class teacher delivered page proofs to the principal three days before publication. The principal objected to two articles scheduled to appear in the edition. One described students' experience with pregnancy. The other discussed the impact of divorce on students at the school. The principal made the decision to delete the two pages from the paper and publish a four-page newspaper rather than a six-page newspaper. The students sued, claiming their First Amendment rights had been violated. Id. at 263-264.

The Court ruled that the students First Amendment rights had not been violated because the school had the right to control the publication that was created as part of the school's curriculum:

> "The question whether the First Amendment requires a school to tolerate particular student speech—the question that we addressed in *Tinker*—is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The former question addresses educators' ability to silence a student's personal expression that happens to occur on the school premises. The latter question concerns educators' authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school. These activities may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences. Educators are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, **and that the views of the individual speaker are not erroneously attributed to the school. Hence, a school may in its capacity as publisher of a school newspaper or producer of a school play 'disassociate itself,'** *Fraser,* 478 U.S., at 685, 106 S.Ct., at 3165, **not only from speech that would 'substantially interfere with [its] work ... or impinge upon the rights of other students**,' *Tinker,* 393 U.S., at 509, 89 S.Ct., at 738, but also from speech that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences." Id. at 270-271. (Emphasis added)

Clearly, OCPS has the right to control school-sponsored publications made as part of its curriculum with regard to speech and other expressive activities that students, parents, and members of the community might reasonably perceive to bear the imprimatur of the school. The persons in the West Orange High School community that your organization represents clearly viewed the "Witchy Wednesday" segment on the school morning announcements as bearing the imprimatur of West Orange High School. (See your letter on page 2: "However, many OCPS students have sincere Christian religious beliefs that prohibit them from lending their imprimatur to religious instruction (**whether delivered by the school as purported government speech**, or by a student as religious speech)…")

As such, given the concerns about having speech on the morning announcements, which could be seen as being in violation of the Establishment Clause of the First Amendment as interpreted in Santa Fe, we have exercised the right to control future publications during the West Orange High School morning announcements. See also School Board Policy JICE, which allows school principals and the District to control the content of publications published by students as part of the curriculum at our schools:

> "The principal shall be responsible for supervising the publication of newspapers, magazines, yearbooks and programs and for ensuring that these publications do not impede or otherwise interfere with the educational purpose of the school. Publications shall conform with school board rules relating to communications with the public. **The principal shall retain full editorial control over the style and content of all publications published by his/her school or over any publication which bears the imprimatur of his/her school**." (Emphasis added)

Because West Orange did not open the morning announcements to indiscriminate use by students, but instead reserved the forum for its intended purpose, as a supervised learning experience for students, school officials are entitled to regulate the content of the morning announcements in any reasonable manner. See Hazelwood, 484 U.S. at 270.

In addition, there is no legal requirement for us to allow the segment to continue into the future. The courts have made it clear that there is no requirement to keep a forum open. See Perry Education Association v. Perry Local Educators Association, 460 U.S. 37, 46 (1983), which applied to designated public fora:

> "Although a state is not required to indefinitely retain the open character of the facility, as long as it does so it is bound by the same standards as apply in a traditional public forum. Reasonable time, place and manner regulations are permissible, and a content-based prohibition must be narrowly drawn to effectuate a compelling state interest."

See also McDonough v. Garcia, 116 F.4th 1319, 1323 (11th Cir. 2024), holding that designated public fora such as university meeting facilities, school board meetings and municipal theaters and "others like them need not be held open indefinitely for public speech." For as long as a governmental entity keeps a forum open, it has to ensure there is no viewpoint discrimination. Id.

To the extent there is no legal requirement for a governmental entity to keep a designated public forum open, there certainly isn't a requirement to keep a nonpublic forum, such as the morning announcements at a high school, open indefinitely. See Hazelwood, 484 U.S. at 267 holding that schools are not typically public fora. "Hence, public school facilities may be deemed to be public forums only if school authorities have 'by policy or practice' opened those facilities 'for indiscriminate use by the general public,' or by some segment of the public, such as student organizations."

Because we are no longer allowing publication of the segment, the question raised in your letter regarding the Supreme Court's recent decision of Mahmoud v. Taylor, 606 U.S. --, 145 S.Ct. 2332 (2025), concerning parental opt-outs of instruction which conflicts with their sincerely held religious beliefs is rendered moot. While I am not certain that a student presentation during morning announcements would equate to the presentation of storybooks in class by teachers as part of the curriculum without the ability of parents to opt-out as analyzed in Mahmoud, since the segment in question will not occur in the future, the issue is no longer pending.

Finally, I must express my disappointment with how this matter has been handled. Your letter was sent to me on September 18, 2025, and requested a response by September 30, 2025. (See page 5 of the letter: "We are requesting a written response to Liberty Counsel by September 30, 2025.")

Yet, prior to your requested deadline to respond, your letter was obtained by local media outlets (WESH 2 and *The Orlando Sentinel*.) I also understand that your organization issued a press release regarding the matter. Furthermore, the front page of lc.org has the following headline "Florida High School Promotes Witchcraft," along with a link to a copy of your letter.

The manner in which this matter was handled was surprising, given that both our organizations share the same goal to ensure that all students have their First Amendment free exercise rights respected.

Sincerely,

John C. Palmerini, B.C.S.
General Counsel

JCP/cv