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Reply to: Florida

November 8, 2011

Via US Mail and Facsimile (902) 284-6525

Ben H. Wortham, Superintendent
Clay County Schools
900 Walnut Street
Green Cove Springs,
Florida 32043

RE: Unconstitutional Demands of Freedom From Religion Foundation Regarding
Before-School Prayer

Dear Superintendent Wortham:

Liberty Counsel writes on behalf of citizens concerned over the practice of before-school prayer at flag-poles in the Clay County School District. Much misinformation has been put forth about this situation. Certain recommendations, if adopted, would violate the rights of students in the Clay County schools. Liberty Counsel stands ready to vindicate the First Amendment rights of students should violations take place, and further writes to clarify the law and offer pro bono representation should our recommendations be followed.

Liberty Counsel is an international public interest law firm with offices in Orlando, Florida; Virginia, Texas, and the District of Columbia, and in Jerusalem, Israel. We specialize in constitutional law, particularly free speech rights, religious freedom, and church-state matters. We have hundreds of affiliate attorneys across the nation. We have had particular success in vindicating the constitutional rights of students, parents, and members of the community in the context of religious liberty and the public schools.

I understand the following facts to be true. It has been the long-standing practice of both community members and students attending the Clay County schools to meet for prayer and devotions, once a week, at and around school flag-poles, prior to the official start of the school day at 8:30 AM. Pastor Ron Baker is one of these individuals, and he

has spearheaded these weekly meetings. Recently, Principal Larry Davis of Clay Hill Elementary mentioned the weekly prayer meetings in his "Friday Bark" newsletter, in which he discusses a variety of topics, including issues that affect the school, national politics, and in the newsletter issue in question, the existence of prayer meetings. Although the newsletter could be characterized as personal opinion or ruminations touching upon a variety of topics, the "school mission statement" and the majority of school content announcements make it possible that a reasonable observer could take it as being an official school publication. Had Principal Davis merely informed the intended audience of the existence of the before-school prayer and devotion meetings, it is certain that this information would have been perfectly fine, since he has made informational announcements in his newsletter of other activities taking place in the schools. It is perfectly constitutional (and constitutionally-required) for a school official to extend equal treatment to announcements of community religious events to the same extent he does so for all other events in the community. Nevertheless, he has admitted his mistake, he has since apologized, and he will doubtless make sure in the future to be quite clear that he is being informative vs. endorsing should a future announcement be made regarding prayer activity. Regardless of the propriety of any statements made by the principal in an apparent official capacity, students, members of the community, and school staff (including Principal Davis) retain their rights to participate in Free Speech activity, so long as actions are taken to ensure no impermissible endorsement takes place.

After Principal Davis's newsletter was sent to the teachers and staff of Clay Hill Elementary, someone forwarded it to the Freedom From Religion Foundation (FFRF), a well-known anti-religious organization. As a result of FFRF involvement, you asked that Pastor Baker cease pre-school-day prayer activities. Instead of the current practice of prayer before the official start of school hours for students, Board counsel, J. Bruce Bickner, has offered a "compromise" by asking Pastor Baker to show up and pray before 7:10 AM, before any school teachers are on duty to supervise students (and for that matter, before any students can conveniently arrive at school). Both actions are improper, and demonstrate not neutrality, but hostility toward religion. Pastor Baker has not violated any District policies by his actions, and his and others' involvement in before-school prayer is constitutionally protected First Amendment activity.

Using Principal Davis' letter as a springboard, FFRF commenced an overreaching effort to shut down constitutionally protected religious expression in the Clay County Schools. FFRF made statements in a letter to the Clay County School Board, and in further media reports has made statements to the effect that any "promotion" (defined in FFRF's worldview to mean "mentioning" or "allowing" or "equal treatment with secular activities") of the prayer event violates the "separation of church and state." Additionally, the FFRD stated that the pastor should not be permitted at on any public school campus at any time

because children are young and "impressionable." FFRF has demanded that flagpole prayer activities immediately cease and has stated that "it is grossly inappropriate for principals, teachers, other public school employees, or outside adults to actively participate in or promote student-run religious organizations and activities".

A half-truth can be just as damaging as a whole lie. FFRF ignores the fact that all of the above-mentioned individuals have First Amendment rights, and all staff and teachers may exercise them when they are not "on the clock" or otherwise acting in their official capacity as representatives of the school district. This constitutionally includes participation in prayer activities on school property. Students do not exist in an adult free vacuum when it comes to protected First Amendment activity. Prayer around the flagpole is open to students, off-the-clock school employees, and members of the community alike. Under no circumstances is the school board empowered to prohibit prayer activity by teachers and staff when they are not acting in their official capacity as representatives of the District. The Supreme Court has explicitly stated that, "It is true that ordinarily religious speech by private persons cannot establish religion, even if it occurs in a public institution, such as a school." *Board of Education of Westside Community Schools vs. Mergens*, 406 U.S. 226, 250 (1990). This means, that as long as the speech or prayer that occurs at the flagpole events is characterized as private speech, it cannot establish a religion, and cannot lead to liability of the school district for violation of the Establishment Clause. Additionally, the Constitution "does not reject the possibility that some religious speech may be truly private even though it occurs in the schoolhouse. Nor does it hold that all religious speech is inherently coercive at a school event." *Chandler v. Siegelman* 230 F.3d 1313, 1316 (11th Cir. 2000). Prayer at school functions is only unconstitutional when it is endorsed, supported, or coerced by the school. See *Sante Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000) (stating that "nothing in the Constitution . . . prohibits any public school student from voluntarily praying at any time before, during, or after the school day). Furthermore, the Supreme Court has held that the FFRF's supposed "impressionable child" standard may not be used to prohibit protected speech activity. See *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 119 (2001) (declining to "employ Establishment Clause jurisprudence using a modified heckler's veto, in which a group's religious activity can be proscribed on the basis of what the youngest members of the audience might misperceive").

The School Board has enacted no policy prohibiting parents and other adult members of the community from coming onto school property for First Amendment related activity outside of school supervisory hours; were it to do so, it would be constitutionally suspect, and could itself subject the District to liability. There are ample resources available, both with Liberty Counsel, and other law firms, to vindicate the rights of parents, school staff, and members of the community should FFRF's advice be followed in that

regard.

Students have a constitutionally protected right to freedom of speech during noninstructional time, including before school. The United States Supreme Court has confirmed that students have free speech rights of expression “in the cafeteria” even when other students find their speech repulsive. *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969). Additionally, this constitutional protection also extends to teachers. “It can hardly be argued that students *or teachers* shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Id.* at 506. General fear of potential disturbance is not enough to overcome the right of freedom of expression. *Id.* at 508. Further, speech cannot be suppressed solely because it is religious, even in public schools. No forum analysis is required to determine whether students retain the right to free expression during non-instructional time – they *always* have it. *K.A. v. Pocono Mountain School District*, 2011 WL 5008358 No. 3:11–CV–417.

Any attempt to silence students gathering to pray would violate the free speech clause of the United States Constitution; moreover, such attempt would violate the specific policies of the United States Department of Education concerning school prayer. The Department’s Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools issued February 28, 2003, has two sections specifically discussing the situation presented at Heritage High School. Prayer During Noninstructional Time: “Among other things, students may read their Bibles or other scriptures, say grace before meals, and pray or study religious materials with fellow students during recess, the lunch hour, or other non-instructional time to the same extent that they may engage in nonreligious activities.” Organized Prayer Groups and Activities: “Students may organize prayer groups, religious clubs, and ‘see you at the pole’ gatherings before school to the same extent that students are permitted to organize other non-curricular student activities groups. . . . [S]chool authorities may not discriminate against groups who meet to pray.”

In addition to students, members of the community have the right to use school facilities during non-instructional time, where such use does not interfere with the use of the school. Community groups are free to apply for and use indoor facilities of the Clay County Schools; such use must be extended on equal terms to community groups, and may not be withheld on the basis that a group has a religious viewpoint. *See Good News Club v. Milord Cent. Sch.*, 533 U.S. 98 (2001). Outdoor facilities, including outdoor basketball courts and playgrounds, remain available to the public for use outside of school hours, in the absence of official policy prohibiting such use. School flagpole areas are no different, and have further been used for a number of years across the country for protected First Amendment activities such as that seen here. In the absence of an official policy, the flagpole at Clay Hill Elementary is no different than other outdoor facilities, and a

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protected First Amendment use may not be prohibited on the basis that it is religious, especially where there is otherwise no policy in place prohibiting all secular outdoor uses of Clay County Schools property. Creating a policy to single out prayer around the flagpole as requiring special permits and the like, where such restrictions are not applied and enforced to all other traditional outdoor, community uses could subject the District to unnecessary liability for violating the First Amendment rights of students and members of the community.

Finally, teachers and school staff retain their First Amendment right to participate in prayer at the flagpole, where such participation does not occur on school time or in such an individual's official capacity as a representative of the District. In *Wigg v. Sioux Falls School District*, 382 F.3d 807 (8th Cir. 2004), the Court confirmed that public school teachers have the absolute constitutional free speech right to engage in private speech on campus after school by leading Good News Clubs. The same applies to voluntary flagpole prayer meetings. If the prayer activity takes place prior to supervisory time, participating teachers are free to pray without anyone's permission and have a cause of action should they be prohibited. Should the non-supervisory time be so early as to cause a hardship upon those wishing to participate, the Board could make a reasonable accommodation by enacting a policy to allow teachers who wished to participate to arrange to be "off the clock" during time when activities of this nature occurred, with time to be made up elsewhere in the week.

Prohibiting students, teachers, and members of the community from engaging in prayer around the flagpole during non-instructional time will unnecessarily expose the Clay County Schools to liability for civil rights violations. Liberty Counsel stands ready to vindicate the rights of the citizens and students of Clay County, but hopes no such action will be necessary. On the contrary, should the Board take action consistent with Liberty Counsel's advice, and enact policies relating to religious expression as set forth in the attached enclosures, Liberty Counsel extends with this letter an offer of *pro bono* representation to defend the Clay County Schools, should these policies ever be challenged.

Based on the legal authorities discussed in this letter, please respond on behalf of the District, in writing, by close of business on Friday, November 18, 2011 and confirm that the District will not enforce any policy to preclude individual or group prayer during noninstructional time. Liberty Counsel will need your timely response to forestall further action.

I look forward to you your prompt response.

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Sincerely,

LIBERTY COUNSEL



Horatio G. Mihet †

cc: attachments

Via Email

Mr. Frank Farrell, Clay County School Board, Chairman
Ms. Carol Studdard, Clay County School Board, Member
Mr. Charles Van Zant, Jr., Clay County School Board, Member
Ms. Lisa Graham, Clay County School Board, Member
Ms. Janice Kerekes, Clay County School Board, Member

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***See You At The Pole* Gatherings
and Other Student-Initiated Prayer on Public School Campuses**

by Mathew D. Staver, Esq.
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Students on public school campuses do not shed their constitutional rights to freedom of speech or freedom of religion when they enter the schoolhouse gate. During any noninstructional time, before or after school, in between classes, during the lunch hour, on the playing field, or during any other noninstructional time, students may express their opinions verbally or in writing. Prayer is a form of speech and therefore during noninstructional time, students do have the constitutional right to pray individually or in groups.

The annual *See You At The Pole* event is an example of the constitutional rights of students to pray in groups. Students do not lose the right to speak or pray simply because they enter the public school campus. Students may pray around a flagpole or on other public school grounds during noninstructional time. Schools may not prohibit students from praying in this manner. Students should not block sidewalks or driveways, nor should students use megaphones to announce their meeting or present their message if such would be disruptive to the ordinary operation of the school.

Events such as *See You at the Pole* do not have to be limited to an annual event. Students have the right to gather for prayer every month, every week, or even every day. Students may gather for prayer as part of their activity associated with their student-initiated clubs. Such clubs have the right to conduct student-initiated, student-led prayer meetings while using the public school facilities just like any secular student club has the right to use the public facilities for secular meetings. Furthermore, just as students have the right to verbally speak during noninstructional times, they have the right to distribute religious literature. Finally, student religious clubs have the same right to promote their

activities as other clubs. Thus, if secular clubs are permitted to hang posters or make announcements on the intercom system regarding club activities, then religious clubs must be given the same access to promote their activities.

It is beyond question that public school students have a First Amendment right to participate in *See You At The Pole* and other prayer gatherings. The Supreme Court has unequivocally stated that students have a First Amendment right to pray before, during or after the school day.

The United States Department of Education's "Guidelines on Religious Expression in Public Schools" also point out that students have the right to participate in SYATP as a protected act of religious expression.

School officials have an affirmative duty to educate themselves regarding the First Amendment rights of students, rather than acting out of bigotry, religious bias or ignorance of the law. If students encounter resistance from school officials about *See You At The Pole*, they should contact Liberty Counsel immediately. Parents and teachers who have questions about student-initiated prayer in public schools should also contact Liberty Counsel.

School Board Policy Regarding Religion

Symbols, Music, Art, Drama, and Literature

- A. It is the intent of this policy to promote tolerance and understanding among students, faculty and staff. It is further the intent of this policy to neither promote nor to denigrate religion or religious practices. Students and staff members should be excused from participating in practices which are contrary to their religious beliefs unless there are compelling reasons that would prevent excusal.
1. The several holidays throughout the year which have a religious and secular basis may be observed in the public schools.
 2. The historical and contemporary values and the origin of religious holidays may be explained in an unbiased and objective manner without sectarian indoctrination.
 3. Music, art, drama, and literature having religious themes or bases are permitted as part of the curriculum for school-sponsored activities and programs if presented in a prudent and objective manner and as a traditional part of the cultural and religious heritage of the particular holiday.
 4. The use of religious symbols such as a cross, menorah, crescent, Star of David, crèche, symbols of Native American religions, or other symbols that are part of a religious holiday are permitted as a teaching aid or resource provided such symbols are displayed as an example of the cultural and religious heritage of the holiday and are temporary in nature. Among these holidays are included Christmas, Easter, Passover, Hanukkah, St. Valentine's Day, St. Patrick's Day, Thanksgiving and Halloween.
 5. The district's calendar should be prepared so as to minimize conflicts with religious holidays of all faiths.
- B. Religious institutions and orientations are central to human experience, past and present. An education excluding such a significant aspect would be incomplete. It is essential that the teaching about and not of religion be conducted in a factual, objective and respectful manner.
1. The School Board supports the inclusion of religious literature, music, drama, and the arts in the curriculum and in school activities provided it is intrinsic to the learning experience in the various fields of study and is presented objectively. The Bible or other religious literature may be used as an appropriate study of history, civilization, ethics, or comparative religions so long as it is presented in an objective manner without promoting belief or nonbelief.
 2. The emphasis on religious themes in the arts, literature and history should be only as extensive as necessary for a balanced and comprehensive study of these areas. Such studies should never foster any particular religious tenets or demean any religious beliefs.
 3. Student-initiated expressions to questions or assignments which reflect their beliefs or non-beliefs about a religious theme shall be accommodated. Students are free to express religious belief or nonbelief in compositions, art forms, music, speech and debate.

Speech, Literature Distribution and Clothing

- C. It is the intent of this policy to recognize the free speech rights of students in

public school. Students on public school campuses have the right to express their ideas verbally and through the distribution of literature so long as their speech does not disrupt the ordinary operation of the school.

1. Students may verbally express their ideas during class so long as their verbal expressions are consistent with the subject matter being taught.
2. Students may verbally express their ideas to other students during noninstructional time so long as their speech is not disruptive to the ordinary operation of the school and does not infringe on the rights of other students.
3. Students may distribute literature during noninstructional time so long as the distribution is not disruptive to the ordinary operation of the school and does not infringe on the rights of other students.
4. Students may wear symbols or articles of clothing which contain written or symbolic expressions so long as such symbols or clothing is not obscene and does not infringe on the rights of other students.
5. As used in this section, the term "noninstructional time" means before or after school hours, between classes, during lunch or recess times.
6. As used in this section, the term "does not disrupt the ordinary operation of the school" means that the speaker be the initiator and cause of disruption. It does not mean that other students must agree with the speaker. Disruption by other students in response to the student's expressions should not be construed to mean that the speaker is causing disruption. "Disruptive to the ordinary operation of the school" includes littering, forcing other students to listen by shouting or preventing passage, and engaging in speech activities during instructional time which is not consistent with the subject matter being taught.
7. As used in this section, the term "infringe on the rights of other students" means defamatory expressions against another student.

Graduation Ceremonies

- D. It is the intent of this policy to recognize the solemnity of graduation ceremonies. It is also the intent to recognize the delicate balance between free speech rights and establishment of religion concerns.
1. School officials shall not invite a clergyman for the specific purpose to pray at graduation, place the prayer on the agenda, and give the clergyman guidelines for saying the prayer.
 2. School officials may use secular criteria to invite a speaker for the graduation ceremony, and if the speaker voluntarily chooses to pray, school officials should not prevent the prayer.
 3. Schools may rent out their facilities to outside organizations to conduct graduation at which a clergyman or other person is invited to pray and where prayer is placed on the agenda so long as school officials do not organize, conduct, promote or prescribe the content of the graduation ceremony.
 4. Schools may turn over part or all of the graduation ceremony to a parent and/or student committee to organize part or all of the ceremony at which the inclusion of prayer

shall rest within the discretion of the graduating senior class. The prayer, if used, shall be given by a student or other person who is not an employee of the school.

Alternative Section Regarding Graduation Ceremonies

1. The use of a brief opening and/or closing message, not to exceed two minutes, at high school graduation exercises shall rest within the discretion of the graduating senior class.
2. The opening and/or closing message shall be given by a student volunteer, in the graduating senior class, chosen by the graduating senior class as a whole.
3. If the graduating senior class chooses to use an opening and/or closing message, the content of that message shall be prepared by the student volunteer and shall not be monitored or otherwise reviewed by the school board, its officers, or employees.

Student Clubs

E. It is the intent of this policy to recognize noncurriculum-related student clubs as being a traditional and vital part of a student's educational process within the public school system. It is further the intent to provide nondiscriminatory guidelines for the continued operation of student-initiated clubs.

1. Any public secondary school which receives federal financial assistance and which has a limited open forum shall not 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 the content of the speech at such meetings.
2. A public secondary school is a limited open forum whenever such school grants an offering to or opportunity for one or more noncurriculum-related student groups to meet on school premises during noninstructional time.
3. Schools shall be deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum if such school uniformly provides that—
 - (a) the meeting is voluntary and student-initiated;
 - (b) there is no sponsorship of the meeting by the school, the government, or its agents or employees;
 - (c) employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity;
 - (d) the meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and
 - (e) nonschool persons may not direct, conduct, control, or regularly attend activities of student groups.
4. Nothing in this section shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the

well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.

5. The term "sponsorship" includes the act of promoting, leading, or participating in a meeting. The assignment of a teacher, administrator, or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting.
6. The term "meeting" includes those activities of student groups which are permitted under a school's limited open forum and are not directly related to the school curriculum.
7. The term "noninstructional time" means time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.

Release Time

F. It is the intent of this policy to recognize that schools may offer a release time for students to leave the public school facilities for off-site instruction, including religious instruction.

1. Any school may provide a designated time during the school week for students to leave the public school facilities in order to obtain off-site instruction, which may include religious instruction.
2. Students shall not be required to attend off-site religious instruction, nor may students be required to leave the public school facilities during the designated time of this off-site instruction.
3. Any religious instruction that occurs during the release time shall not be on school premises, shall not be conducted by school personnel, and no academic credit shall be given for such instruction.

Use of School Facilities

G. It is the intent of this policy to recognize that school facilities are often made available for noncurriculum-related purposes to students as well as to nonstudents, and it is further the intent of this policy that such use shall be offered on an equal and nondiscriminatory basis.

1. Any school which makes available use of its facilities to any nonstudent as a meeting place before or after the official school day shall offer use of the school facilities on an equal and nondiscriminatory basis without regard to the content of the requested meeting.
2. Any school which offers use of its facilities to any nonstudent may charge a rental or use fee so long as such rental or use fee is required for any meeting requested by any nonstudent on an equal and nondiscriminatory basis without regard to the content of the requested meeting.
3. Notwithstanding any use made available to any nonstudent, the school may prohibit continued use of the school as a meeting place to any nonstudent if there is particularized evidence to show that the nonstudent user has and will continue to cause disruption or violence to the ordinary operation of the school.
4. In the request made by a student to use school facilities as a meeting place during school hours shall be governed by Section E of this policy relating to Student Clubs.

Severability

- H. If any provision of this policy or the application thereof to any person or circumstances is judicially determined to be invalid, the provisions of the remainder of the section and the application to other persons or circumstances shall not be affected thereby.

SIGNIFICANT CASES SUPPORTING SCHOOL BOARD POLICY REGARDING RELIGION

Symbols, Music, Art, Drama, and Literature

Sections A and B of the policy are taken verbatim from the Eighth Circuit Court of Appeals case of *Florey v. Sioux Falls School District 49-5*, 619 F.2d 1311 (8th Cir.), *cert. denied*, 449 U.S. 987 (1980). This Eighth Circuit Court of Appeals case found that the policy as outlined in Sections A and B was constitutional. The United States Supreme Court denied review and therefore this case establishes the most authoritative ruling on this policy regarding symbols, music, art, drama, and literature. Sections A and B are also supported by the United States Supreme Court decision in *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963).

Speech, Literature Distribution, and Clothing

Section C is supported by several cases. Foremost is the United States Supreme Court decision in *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969). This was the landmark decision regarding free speech rights on public school campuses. The test for limiting student free speech is taken almost verbatim from the *Tinker* case and is outlined in Section C2. As it relates to the distribution of religious literature, several federal court cases have been used to outline this portion of the policy. *Rivera v. East Otero School District R-1*, 721 F. Supp. 1189 (D. Colo. 1989) and *Burch v. Barker*, 861 F.2d 1149 (9th Cir. 1988).

Graduation Ceremonies

Section D pertaining to graduation ceremonies is based upon the United States Supreme Court ruling in *Lee v. Weisman*, 112 S. Ct. 2649 (1992). Section D1 essentially states the ruling of the *Lee* decision. The remainder of Section D is based upon the Fifth Circuit Court of Appeals decision in *Jones v. Clear Creek Independent Schools*, 977 F.2d 963 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 2950 (1993). This case cites *Lee v. Weisman* and outlines an exception as it relates to student prayer. Section D also utilizes the case of *Verbena United Methodist Church v. Chilton County Board of Education*, 765 F. Supp. 704 (M.D. Ala. 1991). In this particular case involving the rental of school facilities to outside organization for the purpose of conducting graduation services, there would be no constitutional concerns as raised in *Lee v. Weisman*. To prohibit such activities could be construed as a violation of free speech rights. The alternative section regarding graduation ceremonies is based on the cases of *Harris v. Joint School District No. 241*, 821 Supp. 638 (D. Idaho 1993) and *Adler v. Duval County School Board*, 851 F. Supp. 446 (M.D. Fla. 1994).

Student Clubs

Section E deals with the federal law known as the Equal Access Act found at 20 U.S.C. §§ 4071-74. The Equal Access Act was upheld by the United States Supreme Court in *Board of Education v. Mergens*, 110 S. Ct. 2356 (1990).

Release Time

Section F pertaining to release time is governed by the United States Supreme Court decision in *Zorach v. Clauson*, 343 U.S. 306 (1952). Other cases used for this section include *Lanner v. Wimmer*, 662 F.2d 1349 (10th Cir. 1981), *Doe v. Shenandoah County School Board*, 737 F. Supp. 913 (W.D. Va. 1990), and *Minnesota Federation of Teachers v. Nelson*, 740 F. Supp. 694 (D. Minn. 1990).

Use of School Facilities

Section G pertaining to use of public school facilities is governed by the United States Supreme Court decision in *Lamb's Chapel v. Center Moriches Union Free School District*, 113 S. Ct. 2141 (1993). This is the landmark United States Supreme Court case holding that use of school facilities must be offered on a nondiscriminatory basis even if the requester is a religious organization. The section dealing with rental value is governed by *Fairfax Covenant Church v. Fairfax County School Board*, 811 F. Supp. 1137 (E.D. Va. 1993), which ruled that a school may not require higher rent of a religious organization for use of its school facilities than as required of secular organizations.