
MEMORANDUM

TO: SCHOOL DISTRICTS
FROM: ADVOCATES FOR FAITH AND FREEDOM
SUBJECT: SEE YOU AT THE POLE
DATE: 8/17/09

SEE YOU AT THE POLE

As you might know, the fourth Wednesday in September 23 is national See You at the Pole (SYTP) day. SYATP is a student-initiated, student-led event where students around the world gather around their school flagpoles before school starts to pray. The purpose of this memo is to inform you of the legal rights of students who desire to participate in SYATP this year.

First, public schools may not disallow students from using school facilities during non-curricular times because of the students' religious viewpoint. *See Good News Club v. Milford Central School*, 533 U.S. 98, 120-121 (2001). Further, under *Morse v. Frederick*, 127 U.S 2618, 2620-2621 (2007), students have a right to express their faith on campus so long as it does not "materially and substantially disrupt the work and discipline of the school," and as long as the school officials do not have a compelling interest to prohibit the speech, such as discouraging drug use. While the Supreme Court did hold that student-led public prayer over a football game speaker system violated the Establishment Clause because the prayer occurred publicly at a school-sponsored game and could be viewed as school endorsement of religion, "there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Santa Fe Independent Sch. Dist.*, 530 U.S. 313, 302 (2000). Since SYATP is not occurring over the loudspeaker of a school-sponsored activity like a school football game, since SYATP is entirely student-sponsored and student-led, and since students participating in SYATP gather to express pure speech during the non-curricular time of 7:00 AM and are not promoting a harmful activity such as drug use, the students have a right to gather for SYATP.

Second, students have a right to tell other students about SYATP by word of mouth during school hours. This right may not be infringed unless the student is "materially and substantially disrupt[s] the work and discipline of the school," such as a student using speech to promote drug use. *Morse v. Frederick*, 127 U.S 2618, 2620 (2007). Further, schools may only put time manner and place restrictions on students advertising SYATP to the extent that they restrict other students' secular advertisements. *See Good News Club v. Milford Central School*, 533 U.S. 98, 120-121 (2001).

This means that if a school allows secular groups to advertise by using the school-wide announcement system, school bulletin boards, or other school facilities, the school must give students advertising for SYATP access to the same facilities. If the school refuses to give students seeking to advertise SYATP equal access to their facilities, the school commits viewpoint discrimination and violates the Constitution.

At Advocates for Faith & Freedom, we aggressively defend our fundamental right to religious freedom and seek to ensure that public school students enjoy this right. Please contact us with any questions you might have at:

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Very Truly Yours,

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