

**TESTIMONY OF NEW YORK CITY COMPTROLLER JOHN C. LIU
BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON EDUCATION
February 2, 2012**

Good morning Chairperson Jackson and the members of the Committee on Education. My name is Carlos Rodriguez and I am the Deputy Director for Public Affairs to New York City Comptroller John C. Liu. The Comptroller regrets that he is unable to deliver his testimony personally on this important topic. He thanks you for the opportunity to offer his comments about Resolution No. 1155 of 2011 – and thanks Council Member Cabrera for writing this important resolution – calling upon the New York State legislature to pass and the Governor to sign legislation amending the New York State Education Law to ensure equal access to school facilities.

We realize that this is a controversial issue – balancing the rights of religious organizations and the concept of the separation of church and state. These are very important issues. We do, however, oppose the Department of Education’s impending prohibition of religious organizations from utilizing public school space, during off-hours, for “worship” because:

- *It is impractical* for the DOE to enforce a “no worship” policy since the term “worship” is subjective in nature, difficult to define, and comes in many different forms;
- *This is about fairness.* Religious organizations should not be treated any differently from any other community organizations - they deserve the same level of equal access to public space;
- *Schools are recognized under state law as important community assets.* They should be maximized during off hours, and made equally available to community organizations, including sports teams, clubs, cultural groups, neighborhood associations, community boards and religious organizations;
- *The ban on “worship” will disproportionately impact certain communities* more than others and likely result in the displacement of many smaller or local organizations.

Large, more established organizations are able to obtain access to or buy properties for activities. There is also a possible loss of revenues – likely nominal – for the City. To estimate this financial impact, we have requested information from the DOE on previous “Extended Use Permits” for DOE space. The request is enclosed in this testimony;

- *The ban would be inconsistent with policies at another agency.* I am pleased to learn that NYCHA has extended its short-term agreements with current church groups while it completes a review of its rental agreements with all organizations. It is hard to make sense of the DOE’s “no worship” policy especially since another city agency has, we believe, correctly continued to allow organizations to use its facilities on a non-discriminatory basis.

Thank you again for this opportunity for the Comptroller to express his support for Resolution No. 1155 of 2011 to ensure equal access to school facilities.



Ari Hoffburg
DEPUTY COMPTROLLER
FOR PUBLIC AFFAIRS

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January 11, 2012

VIA FAX/REGULAR MAIL

Dennis M. Walcott
Chancellor
New York City Department of Education
52 Chambers Street
New York, NY 10007

RE: REQUEST FOR INFORMATION ON DOE SCHOOL SPACE EXTENDED USE PERMITS

Dear Chancellor Walcott:

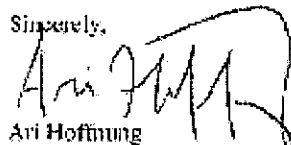
We would like to estimate the financial impact of the updated regulations prohibiting the "Extended Use" of New York City Department of Education (DOE) space "for the purpose of holding religious worship services, or otherwise using a school as a house of worship."

To this end, please provide information on previous Extended Use Permits for DOE space – both applied for and granted – from FY2009 through FY2011. Data should include, but not be limited to, the following fields from the "Extended Use Application":

- SECTION I ORGANIZATION INFORMATION: "Name of Applicant/Org"; "Permit Period"; "Description of Activities to be conducted" and "Anticipated Attendance."
- SECTION II PERMIT DETAIL INFORMATION: "Name/School"; "District" and "Space Usage."
- SECTION III PERMIT COST: "Total # of Permit Details" and "GRAND TOTAL."
- SECTION IV CUSTODIAN'S CONFIRMATION: "Take the Field Waiver Approved."
- SECTION V: "Principal Approval."
- SECTION VI: "ROC Approval."

Thank you for your prompt attention to this matter.

Sincerely,


Ari Hoffburg



New York State
**School Boards
Association**

Better School Boards Lead to Better Student Performance

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**TESTIMONY OF JAY WORONA, GENERAL COUNSEL
TO THE NEW YORK STATE SCHOOL BOARDS ASSOCIATION**

before

**THE NEW YORK CITY COUNCIL
EDUCATION COMMITTEE**

on

**RESOLUTION NO. 1155 CALLING UPON THE NEW YORK STATE LEGISLATURE TO PASS
AND THE GOVERNOR TO SIGN LEGISLATION AMENDING THE NEW YORK STATE
EDUCATION LAW TO AFFORD HOUSES OF WORSHIP MAXIMUM ACCESS TO SCHOOL
PROPERTY**

February 2, 2012

Introduction

The New York State School Boards Association submits the following testimony to provide a state-wide perspective to the New York City Council regarding the negative implications that will befall all school districts in the State of New York if the New York State Legislature adopts and the Governor signs legislation which is aimed at legislatively overruling the *Bronx Household of Faith* decision from the United States Court of Appeals for the Second Circuit decided on June 2, 2011. Accordingly, our state-wide organization urges the New York City Council to oppose Resolution No. 1155.

The New York State School Boards Association (NYSSBA) is a membership organization incorporated under the laws of the State of New York and is located just outside of our State Capitol in Albany, New York. Pursuant to New York Education Law, NYSSBA has a statutory responsibility for devising “practical ways and means for obtaining greater economy and efficiency in the administration of

school district affairs and projects” on behalf of public school districts of the State of New York. (N.Y. Education Law §1618). NYSSBA’s membership consists of approximately six hundred sixty-six (666) of the seven hundred thirty-four (734) public school districts in New York State, or approximately ninety-one percent (91%) of all New York public school districts. On behalf of its member school districts, the New York State School Boards Association takes positions on legislation or regulations to ensure that the educational interests of the students of New York State are furthered. In addition, the New York State School Boards Association involves itself in litigation before our courts and administrative agencies urging that such bodies interpret the provisions of New York State law in a manner which furthers good public policy. In the past, our organization was involved in a number of legal actions involving the interpretation of where to draw the line separating church and state as it affects the operation of public schools in the state and nation. In one of these actions, I had the honor to represent our organization’s interests by arguing a case in front of the United States Supreme Court.

Currently, before the New York State Legislature are two bills, namely Senate 6087-A and Assembly 8800-A which would prohibit the adoption of restrictions to exclude or limit speech, during non-school hours, including speech that expresses religious conduct or viewpoint. Our understanding is that Resolution No. 1155, if adopted, would place the City Council in the position of being supportive of both of these bills. For the foregoing reasons, we urge the Council to not support Resolution No. 1155.

Controlling New York State Law

Express provisions of New York State Education Law (§414) set forth the purposes for which school districts are permitted to grant outside groups access to school facilities after school hours. Well established decisions of our state and federal courts have interpreted these provisions of New York State law to provide that school districts are free to either preclude all outside groups from securing access to school facilities

outside of school hours or to permit groups to meet on a limited basis for the express purposes which are spelled out in the law.

Judicial Interpretations of New York State Law on Use of School Facilities by Outside Groups

One of the first challenges to Education Law Section 414 before our nation's highest court was in the case entitled, *Lamb's Chapel v. Center Moriches Union Free School Dist.*, (508 U.S.394 (1993)) in which the Court determined that under the free speech clause of the First Amendment, a school district in New York State that creates a limited public forum cannot exclude speech on a permissible subject (in this case, a discussion of family values) simply because of a group's religious viewpoint or perspective. In that case, since the school district had previously permitted other outside groups to meet for the purpose of conducting discussions on family life values, the district was not permitted to preclude an evangelical group from holding its own group meeting to discuss this topic from a religious perspective. It is important to note that the Court in *Lamb's Chapel* did not expand the purposes for which school district premises could be utilized by outside groups. Rather it simply indicated that school districts were not free to withhold access which would result in their engaging in viewpoint discriminatory behavior.

A few years later, in the case entitled, *Good News Club v. Milford Central School*, (533 U.S. 98 (2001)) the Supreme Court ruled that a school district in upstate New York violated an outside religious club's free speech rights when it barred the club from using school facilities after hours to teach students about the "good news" of the Lord Jesus Christ since the school district had previously granted access to other groups such as the Boy Scouts who began their meetings with an oath to God and Country. Precluding the Good News Club from meeting was thus determined to be an act of viewpoint discrimination since that organization, like the Boy Scouts, wished to utilize school district premises to "address a subject otherwise

permitted [in the school], the teaching of morals and character, from a religious standpoint.” In its decision, the Supreme Court did not reach the question of whether school districts were free to preclude all outside religious organizations from securing access to school facilities outside of school hours for the purpose of holding religious worship services since holding religious worship services is a separate purpose---not a religious viewpoint on matters already being addressed.

As this Council is well aware, for over sixteen years, the New York City public school district has argued that it should indeed have the authority to deny religious organizations the right to conduct religious worship services in their school buildings after hours. On June 2, 2011, in the case entitled, *Bronx Household of Faith v. Board of Education of the City of New York*, the United States Court of Appeals, with jurisdiction over all school districts in the State of New York agreed with the City’s long held legal position and upheld as constitutional, the New York City Department of Education’s (DOE) revised Standard Operating Procedure (SOP) which prohibits the use of school property for “religious worship services, or otherwise using a school as a house of worship.”

In its decision, the Court upheld the DOE’s revised SOP based upon its view that the rule does not exclude expressions of religious points of view or of religious devotion on the part of the Church, but rather, excludes the Church from access based upon “valid non-discriminatory reasons”, that is, only one “type” of activity, namely, the conduct of worship services. The Court found that the conduct of religious worship services is something quite different from free expression of a religious point of view, which the district does not prohibit. As such, according to the Court, the rule does not constitute viewpoint discrimination. The Court reasoned that because the school district was reasonably seeking to avoid violating its obligation to separate church and state, the district’s exclusion of religious worship services is a reasonable content-based restriction that does not violate the Church’s free speech rights. The Court was additionally concerned

that people might gain the viewpoint that the state was engaged in sponsoring religion by transforming its houses of learning into houses of worship. In addition, the Court was also concerned that since, the church conducted religious services in a manner which was not open to the general public by its exclusion of persons from fully participating in its services who are not baptized; who have been excommunicated or who advocate the Islamic religion, that separation of church and state implications were even more aggravated.

In reaching its decision, the Court did not find that previous decisions of the Supreme Court compelled it to rule in favor of the school district. Rather, the Court ruled that the district's policy was constitutionally valid and well-supported. Thus, school districts throughout New York State are not necessarily required to advance and enforce policies which exclude religious organizations from conducting religious services on school grounds. However, for those who do wish to advance such policies, the Court upheld their right to do so if they do so in accordance with the facts existing in this case.

On December 5, 2011, the United States Supreme Court denied the Bronx Household of Faith's request for it to hear its case thus leaving the Second Circuit's decision standing.

Expressed intent of both Senate 6087-A and Assembly 8800-A

The express intent of Senate 6087-A and Assembly 8800-A is to legislatively overrule the Court's decision by amending provisions of New York State law to prohibit the adoption of restrictions to exclude or limit speech, during non-school hours, including speech that expresses religious conduct or viewpoint.

State-wide concerns regarding Senate 6087-A and Assembly 8800-A

We at the New York State School Boards Association are indeed concerned that the proposed legislation as supported by Resolution No. 1155 would limit the very clear exercise of local control on the part of school districts that our federal appeals court provided regarding the purposes for which boards of

education can limit access to school facilities. We believe school districts should continue to have the individual right to determine the appropriate uses of their school facilities by outside groups. As the United States Court of Appeals acknowledged, the New York City Department of Education had a right to act upon its concern that people might gain the viewpoint that the school district was itself engaged in sponsoring religion by transforming its houses of learning into houses of worship

Even more problematic to our organization, however, is the language in both Senate 6087-A and Assembly 8800-A which would require school districts to permit outside groups from meeting for virtually any purpose. Although the proposed legislative language is clearly not intended to require school districts throughout the state to permit individuals to *secure* access to school facilities after school hours for the purpose of promoting hateful, discriminatory messages, that is indeed a very real unintended consequence which would ultimately contravene the legislative purpose of the Dignity for All Students Act enacted in 2010.

Conclusion

For this reason, and all others set forth above, we at the New York State School Boards Association urge the City Council to not support Resolution No. 1155 and join our organization, and the Mayor's Office of the City of New York in opposing both Senate 6087-A and Assembly 8800-A.

For the Record

Council Member Robert Jackson
Chairman, Education Committee of the New York City Council
Washington Heights
751 West 183rd Street
New York, NY 10033

February 2, 2012

Dear Council Member Jackson:

Thank you for the opportunity to present my views to you. I am sorry that the short notice of the hearing prevents me from being with you personally.

I write to urge the City Council to oppose A.8800A / S.6087A, a bill that would authorize the use of public school buildings for religious worship.

The Role of Religion in American Society: Finding Balance

I write to you as a person of faith. I believe in the American idea and I believe in the religious idea. From the beginning, the uniqueness of America rested on the friendship between the state and religion. We do not see each other as competitors; to the contrary, in America, religion and the state are partners in the pursuit and perpetuation of freedom.

There may be some who oppose this bill because they are antagonistic to religion. I am not one of them. I have dedicated the greater part of my professional life towards the strengthening of religious values. Even a casual glance at the daily headlines illustrates the importance of our work in healing society. America desperately needs the inspiration that only religion can provide. Perhaps there are some who would like to remove religion from the general marketplace of ideas. I am not one of them. Religion in America has always been in the heart of the public square.

The central principle articulated at the founding of America that has preserved most profoundly both democracy and religion has been the First Amendment principle that the state shall not establish a religion or favor one religion over another. This separation of church and state has been one of the keys to the American success story. It is precisely the wall separating religion and state that has protected religion from government control and helped ensure religious comity and civility, allowing religion in America to enjoy a status unequalled in any other advanced democracy. Indeed, in survey after survey, Americans regularly identify themselves as the most religious of all citizens of Western democracies.

It is important to emphasize that the separation of religion and state is good for religion. The greatest disservice we can do to both religion and American democracy is to allow a creeping annexation of government over religious institutions. While government subsidies may temporarily appear to benefit a church, synagogue, or mosque, in reality it is harmful to us. It ties us too closely to government and the strong political pressures

inherent in a political environment. We should also not forget that state subsidies come with a price; state rules, regulations, monitoring, audits, and control. While government promotion of a particular religious viewpoint or denomination might temporarily appear to benefit that denomination, in the long run it weakens it, because Americans do not want state-sponsored religion. We are not Britain, where the queen is also the head of the national church. Americans want government separated from religion.

As in most of the important decisions of our lives, personal and communal, we are asked to decide not between good and evil or black and white. Most of our decisions revolve around balancing social goods.

Both religion and democracy are social goods. The issue is not how to exclude one in favor of the other; it is how to balance these social goods in the healthiest way, consistent with the founding principles of American society.

The Bill Exceeds the Proper Constitutional Balance

In its blanket overruling of the Second Circuit Court of Appeals decision (*Bronx Household of Faith V. BOE [Bronx Household]*) the bill simply ignores the proper and legitimate constitutional concerns raised by the Court in *Bronx Household*.

It would be one thing if a synagogue, church, or mosque were to be in a temporary bind; if its sanctuary were damaged or if some other difficulty forced them out of their home. If the use of public space would alleviate this harm and offer that religious institution an opportunity to get back on its feet – in the spirit of good neighborliness alone, this might be contemplated.

However, if a religious institution were to meet indefinitely in a public building for prayer and worship, week after week, month after month and year after year, for all intents and purposes that public space becomes its spiritual home. Even if members of the particular institution do not see it that way, enough members of the community would, so as to give the appearance of government support. If it looks like a church, if it acts like a synagogue, if it speaks like a mosque – at some point, this is what it becomes in the eyes of the community.

The issue is not our view on religion, and certainly not antagonism towards religion. The issue is government sponsorship or the appearance of government sponsorship and the encroachment upon that very constitutional principle that is responsible for strengthening and preserving both religion and democracy.

The imbalance is compounded when the public institution is a school; first, because of the impressionable nature of children and second, because a school is considered by us to be the purest and most uncontroversial of our public institutions.

In addition, the issue is not only the appearance of government support, oftentimes it is real government subsidy. After all, if a religious community meets week after week, year after year, in a public school, its costs of operation are at least partially subsidized by the taxpaying public.

In *Bronx Household* the Court identified real constitutional concerns, of fact and appearance, not addressed by the bill. The Court upheld and validated the Department of Education's (DOE) own concerns about the appearance of religious endorsement. This bill would simply sweep away these concerns without due consideration or deference to the DOE's difficult job of upholding a proper constitutional balance.

Members of the City Council, we are many millions of New Yorkers of a wide variety of religious faiths. Some New Yorkers have no religious faith. Indeed, New York City is one of the most religiously and ethnically diverse cities on earth. At the heart of our self-image, and key to our economic, social, and political success is our religious tolerance and mutual respect. Our religious comity rests upon the principle that government does not choose what denominations it favors, what religions it will allow to rent or occupy public buildings, and what religious institutions it will endorse.

It is your job, the job of legislators who, of all public officials, are most attuned to public sentiment, to exercise proper discretion and sophistication in ensuring maximum communal harmony. We look to you to find the proper balance. It is not an easy task. It is much easier to articulate general principles than to implement these principles within the unique circumstances of every case. In some way, then, even after more than two centuries of practicing American democracy, we are all still apprentices in the art of freedom.

I want to assure the members of the City Council, to oppose the bill is not anti-religious. To the contrary, the bill's defeat would be helpful to us in the long run. We are immeasurably strengthened by the government keeping its proper distance.

Sincerely,

Rabbi Ammiel Hirsch
Senior Rabbi, Stephen Wise Free Synagogue

For the Record

**Testimony of Thomas S. Goodkind
For the
New York City Council Committee on Education
February 2, 2012 Hearing on Res. No. 1155**

Resolution No. 1155 - Resolution calling upon the New York State legislature to pass and the Governor to sign legislation amending the New York State Education Law to afford houses of worship maximum access to school property.

After 9/11, a church was planted full time at our local PS 89 in Battery Park City and an anti gay and lesbian church was planted at a nearby public school at the corner of Christopher Street in Greenwich Village. There were dozens of others as well in NYC.

I'm sure we agree that churches should be in churches, and public schools should be in schools. But since George W. Bush and 9/11 - it seems like these monied church planter groups now in Manhattan have been trying to convert we New York sinners by getting to our public school children. It's not like the schools are the only place the church groups can go...buildings are dying for tenants!

I live downtown across the street from the World Trade Center. On 9/11 my daughters and I ran for our lives. We have not escaped the illnesses associated with being caught in the dust cloud.

And then came the Christian right to our community and planted a church in my daughters' public school. At PS 89 we still have a division of the Los Angeles based church planter group named Mosaic. My main objection to Mosaic was that they played a big role in the September 2003 school welcome and gave out materials to the parents and kids stating that if you didn't believe that Christ is the savior, no matter how much great works you did for the community, you would go to hell. This really got me and other parents angry. I got Joel Klein to write to the Principal, trying to put a stop to this. In 2004, the Principal and I teamed up with the City officials to try to get Churches out of all NYC schools and failed in a court battle. It took years to get Mosaic, a wealthy Southern Baptist church planter's group here to convert locals after 9/11, to stop hanging the banners on the school. Their preacher would regularly be at lunch with our children of all faiths during the week preaching and confusing our students. My daughter would come home to me and ask "Daddy, is our school a church?" and "Daddy, is it all right to be Jewish?" Then Mosaic, in 2005 gave out candies to our children on the streets of lower Manhattan to try to get them into their children's worship program! My daughter, then 8 years old, told a Mosaic employee, "I'll take the candy, but does this mean I am now a part of your religion?" The leader of Mosaic would be present at PS 89 lunches, in hallways during school, and argued successfully to stop Halloween parties sighting that this was a demonic holiday.

I would defend to anyone their complete right to assemble and pray, but not inside my child's public school. America is and must remain secular. It is a founding principal. And I expect that principal to be held by my City Council. I can't imagine my City Council voting to put our children through this, especially the children of 9/11 who already have lived through enough.

Now our State Assembly is pushing forward a new law that will allow churches in schools. And the City Council tomorrow plans to back it? This is a remnant of the George W. Bush era, which needs to be pushed out. How do we stop this? My mom, when she was a kid on Long Island used to have to pray to Jesus in her public elementary school. Many of us worked hard for decades to make America fairer for people of all religions in this respect but now the Assembly (and our City Council) is showing that this may be a slippery slope.

In the name of what is good for the children of New York, I urge you all to maintain our separation of church and state.

Submitted by Tom Goodkind, father of two public school girls in downtown NYC

Resolution No. 1155 calls upon the New York State legislature to pass and the Governor to sign legislation amending the New York State Education Law. This action must be taken to remedy a flawed law which has egregious consequences for the religious community in New York City. The current administration of our beloved city has decided to evict religious groups from public schools if the Department of Education determines their activities constitute "worship" or the establishment of a "house of worship" in the school buildings. Although all the activities churches engage in inside the public schools are constitutionally allowed, according to a number of Supreme Court decisions, an employee of the New York City Department of Education can determine that a combination of these activities, or one constituent part, constitutes "worship" and therefore is forbidden. This is a dangerous and outrageous over-reach of governmental regulation and is a serious breach of the constitutionally erected wall of separation between church and state. If someone in the DOE can define "worship" and thereby exclude churches, there is no longer freedom of religion in the public square. For example, since a music concert, or a film on parenting, may include a public prayer and group singing, a Department of Education employee may determine that this is "worship" and reject the application to rent school facilities. However, the Supreme Court has ruled that those activities are permitted under the constitution and cannot be excluded from public schools. This kind of entanglement of the government into the affairs of religious groups is forbidden by the U.S. Constitution. It must not be allowed to continue.

This policy of the DOE is not neutral to religious groups, especially Christian churches; it is hostile to them. As such, this draconian and wrong-headed policy must be eliminated from the institutions created to protect religious freedom, not attack it. The City's administration claims impressionable children may conclude the schools are endorsing one religion if they see the churches use them on Sundays. Why are the schools closed on Saturday and Sunday, and not Thursday and Friday, and thus available for renting by religious groups worshipping those days? I ask you, are governmental offices – city, state, federal – and schools, going to remain open on Saturdays and Sundays so that the impression is not given that the Jewish and Christian days of worship receive special treatment? Even a casual reading of American history testifies to the obvious conclusion that the Judeo-Christian influence permeates our culture and to extricate that influence would require an upheaval of catastrophic proportions. Any religious group ought to be free to rent the public, tax-payer-financed school buildings whenever they are available for use. Churches should not be penalized because their day of worship is embedded in our cultural, socio-economic and historic infrastructure. I urge you to stand with the cause of civil liberty, the preservation of religious freedom. Support Resolution No. 1155.

Jack L. Roberts
Co-pastor, The Bronx Household of Faith
Bronx, New York

Statement to the NYC Council Education Committee on Resolution 1155. Thurs., Feb. 2, 2012
Good morning. My name is Jonathan Willner. I'm a resident of Brooklyn's 38th Council district.

In proposing this legislation (Resolution 1155), Councilman Cabrera has said that religious institutions are being discriminated against and that they just want to be treated like everyone else. I'm here to speak about another group of people who know a lot about being discriminated against and just want to be treated like everyone else. I'm talking about gay and transgender people; in particular, the gay and transgender children in our public schools. Many of these children face abuse at home, bullying and discrimination in school and condemnation in their houses of worship. And we are all aware of the wave of suicides among gay teens, who have been driven by despair to take their own lives. We also know that the primary opponents of equality and respect for gay people in this society are religious institutions. Indeed, whenever new legislation is proposed to extend legal protections to gay and transgender people, including LGBT-inclusive sex and HIV education and anti-bullying regulations, there is a loud and angry response from religious institutions to oppose equality and/or seek religious exemptions to these laws. In other words, to paraphrase Councilman Cabrera, religious groups do not want to 'treat gay and transgender people like everyone else'. They want to be free to discriminate against them.

The law may allow them to do so, but as a gay taxpayer, I am outraged at the idea of our public schools being used to preach intolerance and condemnation of, and especially to, our gay children. I am particularly shocked that gay members of the council and other progressive members who have supported gay rights would sponsor legislation that will allow this to happen in the schools. While I am opposed to this legislation, I am proposing a reasonable compromise: that any religious institution that is permitted to use the public schools be required to pledge to eliminate any anti-gay rhetoric, teaching or condemnation from its in-school services and activities, and to support equality and respect for gay and transgender children at home, in school, in religious practice and in the society as a whole. To do any less would be discriminatory. As Councilman Cabrera has stated: "We just want to be treated like everyone else." No one should have any objection to that.

Thank you.

Jonathan Willner

jwtraveler@yahoo.com

CARDOZO

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February 2, 2012

New York City Council
Committee on Education
250 Broadway
New York, NY 10007

RE: N.Y.C. Council Res. 1115-2011

Dear New York City Counsel Members:

Thank you for inviting me to testify regarding N.Y.C. Council Res. 1115-2011. By way of introduction, I hold the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University, where I specialize in church/state relations and constitutional law. I have published and lectured extensively in the field, as well as successfully litigated cutting-edge First Amendment issues. Before joining the faculty at Cardozo Law School, I clerked for Justice Sandra Day O'Connor at the United States Supreme Court.

The Supreme Court appropriately denied review in *Bronx Household of Faith v. New York Bd. of Education*, 650 F.3d 30 (2d. Cir. 2011), *cert denied* 132 S.Ct. 816 (2011), because the United States Court of Appeals for the Second Circuit decided the case correctly.

Bronx Household of Faith posed the question whether a church can make a public school its house of worship. The New York Board of Education and the Second Circuit said it could not and should not. The Second Circuit's reasoning was straightforward: the separation of church and state requires that even if public schools cannot exclude extracurricular clubs that are religious, they may not and need not operate as houses of worship.

The Facts of the Case

The parties to the case stipulated to the relevant facts: (1) The New York City Board of Education has a rule that prohibits the use of public schools for religious worship services. However, the Board allowed religious clubs and groups to use public schools, just as the Boy Scouts and other extracurricular clubs did, as long as the clubs'

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and groups' activities were open to the general public; (2) the Bronx Household of Faith has used the Anne Cross Mersereau Middle School (M.S. 206B) for weekly Christian worship services, followed by a "fellowship meal"; (3) the school district does not charge rent or impose a fee for utilities (e.g., electricity, gas, or air conditioning) upon any extracurricular clubs, religious or otherwise; (4) Bronx Household of Faith dominates the building with its religious use of the premises on Sundays; and (5) Bronx Household of Faith excludes from its services and post-service meals anyone who is not baptized, is excommunicated, and/or advocates the Islamic religion.

If the Establishment Clause stands for anything, it must stand for the notion that it is not suitable for public schools to be churches. The Second Circuit's decision persuasively concludes that public school districts will likely, if not inevitably, commit Establishment Clause violations if they permit their schools to be used as houses of worship.

That is, in part, because the intensity of the religious worship use undoubtedly leads students to believe that the church and its views are being endorsed by the school, and therefore to be confused regarding the connection between the religious group and the public school. **Bronx Household of Faith is not open to the general public. Its exclusionary practices, while fine for a religious organization occupying its own rented or purchased space, are intolerable in a public school.**

Religious groups are not being prevented from using the New York public schools. There is a commonsense, meaningful distinction between student clubs that are open to all comers, and houses of worship where only believers may attend and participate.

The opposition to the decision is misguided. First, as noted above, the Second Circuit has ruled that it is likely unconstitutional for New York public schools to offer space to exclusive religious groups for worship services. Thus, the pending legislation, N.Y.C. Council Res. 1115-2011, to overturn the decision is likely unconstitutional as well.

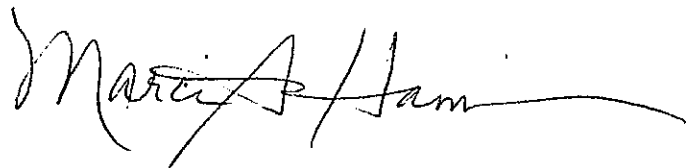
Second, and more importantly from the taxpayers' perspective, Res. 1115-2011 is an invitation to federal litigation, which could last years and cost millions. In this economy, why would any elected official seriously consider enacting a law that is so obviously going to be heavily litigated, only to be held unconstitutional?

Third, many constituents should be outraged by Res. 1115-2011 -- at least, if they can wade through all the misleading rhetoric: the bill endorses the use of public schools by groups that discriminate on the basis of religion and religious status, like the Bronx Household of Faith. The suggested bill, if passed, will open the door for white supremacist, misogynist, and anti-homosexual religious organizations to take up weekly residence in the public schools for the purpose of full-scale worship in gatherings actively engaging in discrimination. The Constitution would not permit the public schools to pick and choose between religious organizations seeking to make a public school their home.

Fourth, concerned New Yorkers need to understand that such a law is biased toward Christians, because the buildings are not going to be available on Fridays and Saturdays, but only on Sundays. So this is a Christian-friendly law, and New York is decidedly more diverse than that. The bill the Resolution supports violates the Establishment Clause and the Equal Protection Clause in two ways: first by opening public schools to gatherings that are discriminatory and not open to the public, and, second, by preferring only those religious groups that observe a Sunday Sabbath.

I urge the City Council to honor the United States Constitution and the lively diversity that makes New York the extraordinary city that it is. Res. 1115-2011 is unnecessary, unconstitutional, and unwise.

Sincerely,

A handwritten signature in black ink that reads "Marci A. Hamilton". The signature is fluid and cursive, with a long horizontal line extending to the right from the end of the name.

Marci A. Hamilton
hamilton02@aol.com
212-790-0215 (office)
(215) 353-8984 (cell)
215-493-1094 (facsimile)



*New Frontier Church: (PS 11, William T. Harris Elementary School)
320 West 21st Street, New York, NY 10011
Office: 29 W 30th St. #202 New York, NY 10001 / (212) 695-1651 / newfrontierchurch.net*

Testimony for Public Hearing

Hearing on Res. No. 1155
NYC council - Education Committee
February 2, 2012

RE: Support for Res. No. 1155

Dear New York City Education Committee members,
thank you for this opportunity to testify in support of Res. No. 1155

My name is Inhyun Ryu. I am the senior pastor in New Frontier Church, a 700 member Korean-American congregation. I would like to make a statement of our church's experience during our tenancy in P.S.11

First, throughout the duration of P.S.11, the NFC congregation has never approached the P.S.11 students and teachers for any religious purposes. Since the students and the teachers do not visit the school grounds on Sundays, they have never directly or indirectly seen the congregation gather for worship or Bible study. Moreover, our services are conducted in Korean.

Also, we are an avid supporter of the P.S.11 community. Over the years, NFC has built a lasting relationship with the principal, Mr. Robert Bender, as well as the custodian engineer, Mr. Albert Negrón. As a tenant, NFC has made structural improvements to the school, including the installation of 12 A/C units in the auditorium and the cafeteria. Also, in support of improving the quality of education at P.S.11, NFC has donated numerous computers and other educational equipment for the reading program. Our donation is from a genuine heart. We have never left any donor identification on the donated items.

We also reached out to the community. Every two months we go outside the walls of P.S.11 and serve the homeless in our community with clothing and hot meals. Our members love this community and embrace the cultural diversity this city offers. We would like to continue to invest in the P.S.11 community and the students.

Lastly, the ban on churches from worship in the public schools should be repealed based on following two reasons: (1) The U.S. Constitution guarantees its citizens the freedom of religion, the freedom of speech, the freedom of the press, the freedom of assembly and the freedom of petition. (2) As a nonprofit organization, NFC and 60-odd other churches who are gathering in the public schools are not causing any injury or harm to the public schools or their neighboring communities, but are helping the advancement and improvement of these communities. Quite often, public school spaces are rented by new churches. The establishment of many community-servicing churches in New York City can only help make New York become a healthier city and a role model for the rest of the world.

Here, I'd like to ask each one of you to support Res. #1155. I express my sincere gratitude and respect for your dedication and service to this great City of New York.

Thank you,
Inhyun Ryu, Senior Pastor of New Frontier Church

1 Thank you for the opportunity afforded me and others to address this matter with you. I
2 would like to tell you a bit about our church that worships in PS-101 in Forest Hills, Queens, and
3 in doing so dispel some misconceptions or commonly made but factually mistaken assertions
4 regarding houses of worship renting public schools. I hope to **encourage you to do the right**
5 **thing and support Resolution 1155.**

6 On Sunday mornings, we are one of three groups renting some portion of PS-101Q. There is
7 a basketball league that uses the gym. There is a Russian language and culture school that uses
8 the entire upper floor, and we use the auditorium and a handful of classrooms on the lower floor.
9 With simultaneous tenants, we do not “take over the building.” Our presence is not dominating
10 as some would have you believe must be the case when a house of worship rents to use a school
11 or a portion thereof.

12 And how do we interact with our fellow tenants and neighbors playing in the School’s
13 playground? I could bring them in here to tell you that we neither threaten nor bother them. We
14 know that in our present climate, when it comes to interacting with them, *we are boogeymen if*
15 *we do and we are also boogeymen if we don’t.* But let’s be clear. On one hand we absolutely do
16 not proselytize any children or adults that happen to be “around the building.” On the other hand
17 we welcome anyone who wants to join us. We do not exclude people from full participation in
18 our worship. Now there are words spoken to encourage people to consider whether they can
19 proceed with certain aspects of worship with integrity, but we leave them to self-screen. We do
20 not physically or forcibly restrain anyone from any part of our practice. Our message of grace is
21 attractive and people do want to come in to hear it, but we neither coerce them in nor force them
22 out.

1 This additional note might sound funny, but in our practice, we do not sprinkle holy water,
2 wave incense, or do anything *magical* that might be construed as sanctifying and converting the
3 building to a church. I am not aware of any such practice among renting houses of worship, but
4 maybe I lack exposure. Ours is the common thinking in Christian circles that the church is the
5 congregation and not the structure. So, the assertion that we convert the building in some
6 mystical way is a mysterious contention coming from attorneys. There are converted hearers in
7 the building, but assuredly we do not convert the building.

8 We are a Presbyterian congregation. Not all renting houses of worship are. I have enjoyed
9 meeting believers of many stripes since this policy has prompted us to action. But, I do not
10 understand where the idea of renting to houses of worship, even if mostly on Sundays, endorses
11 any one sect over another. As has been said, accommodation does not equate to endorsement.
12 We do not view our being allowed to rent a public school as preference for the sect to which we
13 belong. We do not view groups of other sects or faiths renting as being promoted above anyone
14 else. Nobody should see equitably renting to all groups, religious or non-religious, as a violation
15 of the anti-establishment clause.

16 What I do see as violation of the spirit of the anti-establishment clause is how *de facto* some
17 religious organizations are allowed their religious practice and others are not – simply based on
18 how one department defines worship. The city’s new policy, if executed in conjunction with the
19 arguments of the law department’s attorneys, essentially says, if you have ordained persons
20 leading, practice rites, or bar persons from the rites, you are worshiping and you can not rent.
21 But, if a religious group functions without ordained leadership and it does not have rites, then
22 they can rent. So, a yogi, who isn’t ordained, can lead a full meditation service, but our sect
23 cannot have our full-fledged worship service. The effect is privileging one religion over another

1 based on an arbitrary definition. The result for many of us, especially when we cannot afford to
2 rent equivalent commercial space, is to be blocked from having a church like ours, of our
3 practices, of our resources, in our own community. Over-extending the anti-establishment clause
4 via this policy comes at the expense of the free exercise clause.

5 I conclude by asking you to **do the right thing**. When it comes to service, we can all be
6 tempted to cave to certain pressures, but it probably is not doing the right thing, which, in the
7 final analysis, is the best thing for those whom we serve. Let's not let the city we love and serve
8 be found having the only policy among the 50 largest school districts that is narrowly considered
9 and seems ideologically driven. It is not becoming or inviting.

10 I serve in a church plant - those budding groups that often find themselves in their
11 development and life-cycle where they need to rent a facility like a public school for a time.
12 Church planters raise their own support. I raise 100 percent of my salary and allowances. In my
13 case it is all money that comes from outside New York City. I spend nearly all of it in our
14 community. So, economically speaking, bringing planters into the city is good for it. I do like to
15 think we offer the community more than just economic benefit. I have been here a year and a
16 half. I love this city. However, I doubt folks like me be coming if the city has a singularly
17 illiberal policy towards present and potential houses of worship. I ask you to keep our city a
18 place where folks want to come and serve it and its people alongside you and me. Thank you.

19
20 Very Respectfully,

21 Stephen Leung

22 Assistant Pastor, Ascension Church

23 Forest Hills, Queens

For the Record



(646) 961-3792
info@aunyc.org
www.aunyc.org

New York City Chapter
Post Office Box 1660
New York, New York 10163

Oppose Resolution 1155: Public Schools Are Not Proper Places For Worship

February 1, 2012

Education Committee
The New York City Council
250 Broadway
New York, New York 10007

Dear Council Members:

On behalf of its members, the New York City Chapter of Americans United for Separation of Church and State urges you to **oppose Resolution 1155**. This misguided resolution urges the New York State Assembly to pass Assembly Bill 8800, which would amend the Education Law to authorize religious worship in public schools. This resolution and the legislation pending in the Assembly directly conflict with the Board of Education's policy restricting such use. In addition, the Second Circuit Court of Appeals' recently determined¹ that because this restriction excludes an activity in a neutral manner, it is constitutionally permissible. Furthermore, the Court concluded that allowing public schools to house religious services – predominantly Christian services – could create a substantial risk of violating the Establishment Clause.

Under Current Policy, Houses of Worship Have Equal Access to Public Schools

Under the Board of Education's current policy, any group, including religiously-affiliated groups, can hold events in schools as long as those events are open to everyone. Sectarian groups are permitted to hold religious meetings and events, provided they are not during school hours. The current policy provides religious groups the *same equal access to public school property that is given to all other groups* without violating Constitutional commands.

The Board of Education Policy Does Not Engage In Viewpoint Discrimination

The Board of Education's policy that religious groups cannot hold services in public schools does not engage in viewpoint discrimination. *The policy does not exclude religious groups or their religious points of view, expressions, and speech from accessing public schools.* Indeed, it only excludes actually holding worship services, and does so in a nondiscriminatory manner. As the Second Circuit noted,² schools may regulate use of school property as long as the schools do not engage in viewpoint discrimination directed at speech otherwise allowed on their property. That the policy largely affects churches that were holding services in public schools does not turn a neutral, generally-applicable policy into one of viewpoint discrimination.

¹ See *Bronx Household of Faith v. Board of Education*, 650 F.3d 30, 51 (2d Cir. 2011).

² *Id.* at 42.

Allowing Religious Groups to Worship at Public Schools Risks Violating the Establishment Clause

The risk of violating the Establishment Clause is heightened when the government allows religious groups to convert schools into churches, rent-free and at the expense of taxpayers because this causes excessive government entanglement. Moreover, the available space is usually used for church worship services, at the exclusion of other groups contemporaneously, causing the public to identify the school as a church. Often, one church will continuously use the same school, creating the appearance of a special relationship between a particular church and school. One can easily imagine people viewing public schools as "state-sponsored Christian churches."³ It is even more likely that school-age children could mistake such a tangled relationship as the school's endorsement of a particular church or its faith.

In addition, public schools are mostly available to hold religious services on Sundays rather than any other day of the week. As such, this resolution would benefit Christian denominations over other religious groups. This is not an insignificant fact. Indeed, this proposed legislation could appear to be not only a government endorsement of religion, but also a bias toward Christian church services.⁴

Current Board Policy Is Not Hostile Toward Religion

As the Second Circuit noted in *Bronx Household of Faith v. Board of Education*, there is no secular analogue to religious services.⁵ The Board of Education's policy to remove worship from the public school arena does not demonstrate hostility to religion. Instead, arguments that religious worship is similar to other secular extracurricular activities actually demean the significance of worship. It is precisely a *respect for the power of religious services*, and the impression left on participants and non-participants, that should lead the City Council to view the Board of Education's policy accurately, and thus deny this resolution.

Once again, we urge you to **oppose Resolution 1155**. If you have any questions regarding Americans United's position on this bill, please contact Jason Stewart at (646) 961-3792 or jstewart@aunyc.org.

Sincerely,

Jason Stewart
President, New York City Chapter
Americans United for Separation of Church and State

³ See *Id.* at 42.

⁴ See *Id.* at 24-25.

⁵ See *Bronx Household of Faith v. Board of Education*, 127 F.3d 207, 221 (2d Cir. 1997).

OPPOSE NEW YORK CITY COUNCIL RES. 1155

PUBLIC SCHOOLS ARE NOT PROPER PLACES FOR WORSHIP

Background: NYC Resolution 1155 urges the New York State Assembly to pass Assembly Bill 8800, which would amend the Education Law to authorize religious worship in public schools. This is a direct response to the Board of Education's policy restricting such use and the Second Circuit Court of Appeals' decision, holding that public schools functioning for religious services – predominantly Christian services – would create a substantial risk of violating the Establishment Clause. Further, since the restriction excludes an activity in a neutral manner, it is constitutionally permissible.

Under Current Policy, Houses of Worship Have Equal Access to Public Schools

Any group, including religiously-affiliated groups, can hold events in schools as long as those events are open to everyone. Further, religious groups can hold religious meetings and events, provided they are not during school hours. **This means that religious groups are given the same equal access to public school property that is given to all other groups.**

The Board of Education Is Not Engaging In Viewpoint Discrimination

The New York City Board of Education's policy that religious groups could no longer hold services in public schools has nothing to do with viewpoint discrimination. The policy does not exclude religious groups or their religious points of view, expressions, and speech from accessing public schools. It only excludes actually holding worship services, and does so in a nondiscriminatory manner. **Schools may regulate use of school property, even if that use is religious in nature, as long as they do not engage in viewpoint discrimination directed at speech otherwise allowed on the school property.** The policy does not favor one group over another. That the policy largely affects churches that were holding services in public schools does not turn a neutral, generally-applicable policy into one of viewpoint discrimination. The same policy applies to all groups and all religions. Muslim groups cannot turn public schools into mosques one day a week, either.

Allowing Religious Groups to Worship at Public Schools Risks Violating the Establishment Clause

In fact, allowing public schools to operate as houses of worship risks violating the Establishment Clause. Allowing religious groups to convert schools into churches, rent-free and at the expense of taxpayers, causes excessive government and religious entanglement. Moreover, the school is usually used for church worship services, which causes the public to identify the school as a church. Often, one church will continuously use the same school, creating the appearance of a special relationship between a particular church and school. One could easily imagine people viewing public schools as "state-sponsored Christian churches."¹ It is especially likely that school-age children could mistake this relationship between church and school for endorsement.²

It Is Offensive to Characterize Religious Worship as a Benign Extracurricular Activity

There is no secular analogue to religious services.³ The Board of Education's policy to remove worship from the public school arena does not demonstrate hostility to religion. Instead, arguments that such activity is similar in kind to other secular, extracurricular activities actually demean the significance of worship. Respect for the power of religious services, and the impression left on participants and non-participants, should lead the City Council to deny the resolution.

Using Public Schools for Worship Activity Favors Christian Worship Services

It is not insignificant that public schools are more available on Sundays than other days of the week. It is axiomatic that this resolution would benefit Christians over other religious groups. Thus, this legislation could appear to be not only a government endorsement of religion, but also a bias toward church services.⁴

¹ See *Bronx Household of Faith v. Board of Education*, 650 F.3d 30, 42 (2d Cir. June 2, 2011).

² *Id.*

³ See *Bronx Household of Faith v. Board of Education*, 127 F.3d 207, 221 (2d Cir. 1997).

⁴ See *Bronx Household*, 650 F.3d at 24-25.

Good morning/afternoon Education Committee of the New York City Council

A lack of representation seems to be a familiar problem in American history. It began with “no taxation without representation,” and is currently that public school students have had no voice on this issue or the legislation which directly affects them. That was, up until now.

We are regular public school students, like any other, we were all born and raised here and have spent our lives in public schools, and we represent the students who believe religious services don't belong in our schools.

The first thing we would like to do is clear up blatantly wrong information. The idea that schools are not in use on the weekends is false. Throughout the entire week, and the entire year, our school is being used by students like us working on theatrical productions that happen year-round, even in summer school. There are also various sports teams and clubs that stay late into the night and come early on the weekends. Whenever we walk into the building, whether it is during school hours or not, weekends, or even during a break, there are other people there and other activities happening. Right now, students are at our school every weekend from 9 a.m. until 3 or 3:30 p.m. working on an original musical production called S!NG. So, if you think worship services only occur when the school is not in use, you will have a very hard time finding a moment when our school is empty.

If there was a time when services could be possibly held without students being in the building, there is still a myriad of moral, ethical and constitutional issues with using a public school for this purpose. Legally, the government may not establish a religion. Using public money to fund a religion and its services is inherently endorsing that religion. There is already a court decision, the Bronx Household of Faith v. Board of Education of the City of New York, that upholds the Department of Education's policy, and this proposed law wants to overrule that decision. This violates the separation of powers, an underpinning of our government.

If we students cheat on a test but don't get caught, we are still cheating. If a husband is unfaithful to his wife but doesn't get caught, it's still infidelity. And if you hold worship services in a public school, even if the students aren't there, that school will still be a place of worship.

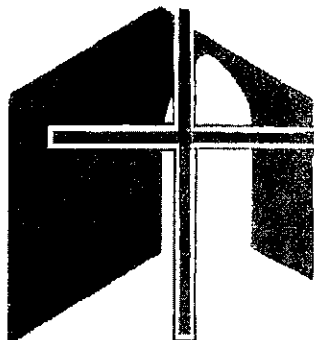
One of the greatest things about our country is that you are allowed to believe and practice religion however you want, or choose to not practice at all, and the Constitution protects that. We are not putting down any religion here. But, in a New York City public school,

excluding someone because of their beliefs, sexual orientation, or background would violate the Discipline Code and Bill of Student Rights and Responsibilities. Some religions exclude people on these bases alone. In a public school everyone is supposed to feel just as welcomed and safe as anyone else. No one is above the law, and in a public school, no one is above the Discipline Code.

Knowing that my school would become a place of worship every week goes against the idea of 'separation of church and State,' a phrase originally used by Thomas Jefferson. He wrote about "a wall of separation between church and state," this applies both in ideological teachings, and in physical standings. But, when you have a church operating in a school, there is no form of separation at all. Another fundamental principle this country was founded on would be violated.

Right now, in Rhode Island, a high school student no different than us has asked that a prayer displayed in her school's auditorium be taken down. She said seeing the Christian prayer on the wall made her feel like she didn't belong in her school. We understand how she feels, because knowing that worship services can happen in our schools makes us feel like outsiders. When a church moves into a school and holds services there, it becomes a school-sponsored worship service. It will make students feel like they don't belong in their own school. We all want and need to feel like we belong in our school, and we want all other students to feel the same way. Having a school host a worship service has the exact opposite effect. We do not believe religious services belong in our schools.

Thank you.



The Bronx Household of Faith

2235 University Ave., Bronx, New York 10453
(718) 220-3652 www.bhof.org bhof@bhof.org

Date: February 2, 2012

From: Robert G. Hall, ThM, Co-pastor of The Bronx Household of Faith

To: The honorable members of the Education Committee of the New York City Council

Subject: Support Resolution 1155

The Bronx Household of Faith is a community based Christian church of the historic Biblical persuasion. It has a 39 year commitment to the community in which it is located which includes P.S. 15/291 where it has been holding Sunday services.

To have to vacate the school premises would present a dilemma--a logistical or budgetary crisis. Either we return to our previous location which is too small or rent a newly constructed store-front which is too expensive. The cost of commercial rental would undermine our budget for a building currently under construction. This building is presently funded to 80% completion.

There is a much greater problem associated with the school policy. It is one that transcends The Bronx Household of Faith's need for a larger space to meet. The policy crosses a line of entanglement from the state to the church. It is one thing to ban all religious activity whatsoever but please note that the current school policy allows groups to rent the public school for religious purposes. Because of previous U.S. Supreme Court decisions, Lamb's Chapel (1993) and Good News Club (2001), the city was forced to rewrite its policy. It allows groups to rent schools for purposes of religious discussion or religious instruction *but not religious worship*. The school authority must breach the so-called wall of separation of church and state in order to determine whether separation of church and state has been breached. Let me explain.

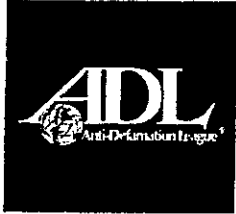
Should we rent the school for a Bible study or a prayer meeting, we must now ask the state to be in the position of theologian to interpret whether or not our religious activity crosses the border into the forbidden territory that is religious worship. This is not a hypothetical. Such an interchange has already taken place with an official in the Region One office of the Department of Education at One Fordham Plaza in The Bronx. To my handwritten description of activities required on the Extended Use form, the official had inserted the word, *worship*—a

word I had not used. When I called the official, I was instructed that prayer (part of our listed activity) *is* worship. Therefore the official took it upon herself to add the word *worship* to my description of activities. Separation of church and state, if anything, means that the state is religiously neutral. Therefore it is not competent to make such a determination but because of its policy we must ply to the school authority to make a religious judgment. This is a slippery slope.

There is another equally serious problem with the school policy. The major premise in its argument is that religious worship is a unique one of a kind activity for which there is “no secular analog.” Thus—so the reasoning goes—it is an activity that does not “pertain to the welfare of the community.” Therefore there is no viewpoint discrimination and no violation of the First Amendment. To marginalize religious worship to the fringes of society, in this manner, is not only an insult to religious people, it ignores the empirical observation of humanity throughout all of recorded history. Religious activity is universally embedded within the collective consciousness of humanity, not to mention that it antedates and transcends the state. Under the rubric of religious worship we are inspired and motivated to do justice, love mercy and walk humbly with our God. The specifics of charitable activity are too numerous to elucidate here but readily available for all to see. Religious worship most certainly pertains to the welfare of the community.

The school’s strongest argument, based on how frequently it is deployed, is actually its weakest. Impressionable children would confuse a school with a particular sect or religious denomination. This is yet to be proven beyond a mere handful of parental complaints out of one million children. Even if there was confusion, let us not insult the intelligence of children and their parents to correct the misunderstanding. Such an argument is nothing more than a heckler’s veto. Andrea Peyser (*New York Post*, 1/9/12) incisively quipped, “City schools are about to institute a graphic sex-education curriculum for all kids, starting in middle school. So promoting sex during school time is OK, but after-hours worship is too risky. Madness.”

Let the honorable members of this committee be reminded of the second phrase of the First Amendment of our U.S. Constitution, “Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof* [italics, mine].” We appeal to the New York City Council to pass resolution 1155 urging the New York State Legislature to pass bills **A8800** and **S6087** thereby relieving us of the impediments and hardships resulting from having to vacate the school premises.



January 31, 2012

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TO: Members of the New York City Council Committee on Education:

Thank you for inviting the Anti-Defamation League to provide testimony on New York City Resolution 1155. We write to express our opposition to this Resolution, which calls upon the New York State legislature to pass and the Governor to sign legislation amending the New York State Education Law to afford houses of worship maximum access to school property. As you undoubtedly know, this issue has been the subject of local litigation for many years, and despite several court decisions, we remain concerned over potential unconstitutional results from the suggested amendments to New York law.

The Anti-Defamation League (ADL), founded in 1913, is one of our nation's leading civil rights and human relations organizations. We are deeply committed to preserving and promoting religious rights and liberties for all Americans. We believe that the constitutionally mandated separation of church and state, as embodied in the First Amendment to our Constitution, safeguards religious liberty because it enables Americans to practice their various religions freely and boldly, without government interference, endorsement or support.

Our primary concern with Resolution 1155 is that it would effectively transform public schools into houses of worship during non-school hours. The current regulations, as upheld by the Second Circuit Court of Appeal, very clearly prohibit "worship services" in public schools, and therefore do not discriminate against any particular religious view point or belief. Consistent with the Constitution, New York City schools regularly host outside religious clubs after school hours; however, expanding access to religious houses of worship to include "meetings, services, and worship," represents a significant step toward crossing the line of government endorsement of religion.

On Sundays, when school buildings are used by churches, members often affix signs, distribute fliers and proselytize outside of school buildings. As the Court noted, "some schools effectively become churches" on Sunday. This is precisely the type of situation that the current regulations are designed to avoid and creates a confusing situation for the community, especially children.

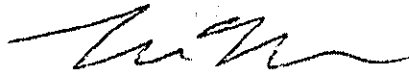
Certainly situations exist where religious accommodations are appropriate and the Second Circuit has acknowledged these limited circumstances. However, the Resolution and contemplated legislation goes too far. There is a significant distinction between allowing the *temporary* or limited use of public schools by religious organizations, and allowing a congregation to establish a *permanent* house of worship in a public school facility.

We share the Court's concern that when worship services are performed, "the nature of the site changes" and it is no longer simply a room in a school being used temporarily for some activity." This Resolution is a step toward changing the fundamental nature of our public schools by transforming them into part-time places of worship.

Finally, while we oppose the permanent use of school facilities by any religion, we note, as did the Second Circuit, that the majority of schools are only available on Sunday, the day of worship for Christians. As a result, Jews, Muslims and other faiths would not have the same opportunity to use school facilities for worship as Christians would. Although unintended, this creates a bias in favor of one faith over others which contributes to the public appearance of government endorsement of religion.

For the foregoing reasons, we urge the Education Committee to oppose Resolution No. 1155.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "Ron Meier", with a stylized flourish at the end.

Ron Meier, Director
New York Region

~~*~~ For the Record



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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212.607.3318
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NYCLU testimony on NYC Council Resolution 1155 (2011)]

Testimony of Donna Lieberman

regarding

New York City Council Resolution 1155 in support of state legislation that would give religious organizations “maximum access to school property”

February 2, 2012

My name is Donna Lieberman and I am the Executive Director of the New York Civil Liberties Union (“NYCLU”). I would like to thank the Committee on Education for inviting the NYCLU to provide testimony today on Resolution 1155 in support of state legislation that would give religious organizations “maximum access to school property.”

The NYCLU, the state affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with eight offices across the state, and nearly 50,000 members. The NYCLU’s mission is to defend and promote the fundamental principles, rights and constitutional values embodied in the Bill of Rights of the U.S. Constitution and the Constitution of the State of New York. This includes the right to religious freedom.

The issue before the City Council today – Resolution 1155 – speaks to the issue of church and state; specifically, to the role of government as it relates to the activity of religious organizations in public facilities.

It is an issue that generates strong feeling among some in our City. But as the issue has been joined in the legislative arena, it seems not to have generated much in the way of thoughtful, measured reflection and analysis.

And that is unfortunate, because the resolution before the Council – and the state legislation to which the resolution is addressed, A8800A/S.6087A– implicates fundamental issues of constitutional liberty.

A little context:

In June of 2011 the Second Circuit Court of Appeals ruled that the New York City Department of Education (then, the Board of Education) had acted reasonably – and consistent with constitutional principles – in adopting a policy that prohibits the use of public schools for “religious workshop services, or otherwise using a school as a house of worship.” Bronx Household of Faith v. Bd. of Education¹

A bill pending in the state legislature would, in effect, overrule the Second Circuit Court of Appeals – permitting the use of schools for religious worship services.

The resolution now before the Council (Res. 1155) endorses the state bill.

It is my view, and it is the position of the NYCLU, that the City Council must reject this resolution – as a matter of constitutional law, as a matter of religious freedom, and as a matter of sound public policy.

You did not mishear me: The Council must defeat Resolution 1155 in the interests of religious freedom.

The First Amendment to the U.S. Constitution articulates two principles related to religion. The first directs government to “make no law respecting an establishment of religion”; the second bars government from prohibiting the “free exercise” of one’s religious beliefs.

It is important to recognize that the first of these principles is in the service of the second: the prohibition upon government’s establishment of religion is protective of the right to practice one’s religion. Properly understood, the Establishment Clause rests upon the understanding, well-grounded in the history of sectarian strife, that religious freedom and the diversity of spiritual belief are rendered more secure if

¹ 650 F.3d 30 (2nd Cir. 2011).

government is prohibited from privileging one religion over others or even from favoring religious adherents, over non-religious persons.

This, I hope, is clear. Keeping government out of the business of endorsing or promoting religion promotes the great diversity of religious belief and practices that are a distinctive feature of the American tradition of religious tolerance.

It was this concern about the appearance of government endorsement of religion that led the New York City Department of Education to adopt a policy prohibiting the use of public schools for religious worship services.

And according to the Second Circuit Court of Appeals, the City's education officials had a sound basis for concluding that ". . . the regular, long-term conversion of schools into state subsidized churches on Sundays would violate the Establishment Clause by reason of public perception of endorsement."²

Now, I have heard proponents of the state legislation suggest that the concerns I raise today constitute much ado about very little; that the bill would allow otherwise empty schools to be used by local churches whose congregants are residents of the communities in which the schools are located.

I have heard it suggested that those who oppose this legislation are anti-religion.

As to the second point: The ACLU and its affiliates are champions of religious freedom – in the courts, and before legislative and policy-making bodies.

The NYCLU has, and will, defend and uphold the constitutional right of every individual to practice his or her religion. Thus, for example, a rabbi from a small congregation that could not afford to buy land and build a synagogue wanted to hold services in the rabbi's home and was told by local officials that he could not do so without violating the local zoning law. The NYCLU defended the rabbi's right to conduct services in his home.

As to the suggestion that by opposing the state legislation – and the City Council resolution – the NYCLU is making a constitutional matter out of a mole hill, let us consider the record before the court in Bronx Household.

² *Id.* at 42.

The Establishment Clause: separation of church and state

The Supreme Court has held that the Establishment Clause prohibits laws whose purpose is to promote religion; and those whose principal or primary effect is one that advances religion.³

The record in the matter of Bronx Household demonstrates that a policy allowing religious worship services in public schools fails the test established by the Supreme Court.

The performance of worship services is the defining event of an organized religion. As explained by Robert Hall, a pastor with the Bronx Household of Faith, the Sunday worship service is the “indispensable integration point for our church.” And the clearly stated purpose of this church is to treat as “God’s house” the schools where the church worship services took place.⁴

Pastor Jack Roberts, a named party in the Bronx Household case, stated the goal quite clearly: “. . . May there be a church . . . in every school in New York City and grow to a large size for the glory of God if that’s what he wants.”⁵

As the Court of Appeals observed in its ruling,

When worship services are performed in a place, the nature of the site changes. The site is no longer simply a room in a school being used temporarily for some activity. [Bronx Household of Faith] has made the school the place for the performance of its rites, and might well

³ *Lemon v. Kurtzman*, 403 U.S. 602, 612-613 (1971). In order to avoid the promotion or advancement of religion, government conduct (1) “must have a secular . . . purpose,” (2) must have a “principal or primary effect . . . that neither advances nor inhibits religion,” and (3) “must not foster ‘an excessive government entanglement with religion.’”

⁴ Record on Appeal at A544, *Bronx Household of Faith v. Board of Educ. of City of New York*, 400 F.Supp.2d 581 (S.D.N.Y. 2005) (No. 01 CIV. 8598 (LAP)), *vacated and remanded by* 492 F.3d 89 (2d Cir. 2007) (No. 06-0725-CV) [hereafter “Record on Appeal”]. This court document is on file with the Clerk of the Court at the U.S. District Court for the Southern District. It is also on file with the NYCLU.

⁵ This comment and other quotations from the court record cited in this statement (excepted as otherwise cited) appear in deposition transcripts and other court documents compiled in the litigation of *Bronx Household v. New York City Board of Education*, 226 F. Supp. 2d 401 (S.D.N.Y. 2002), *aff’d* 331 F.3d 334, 346 (2d Cir. 2003). These court documents are on file with the NYCLU.

appear to have *established* itself there. The place has, at least for a time, become the church.⁶

Other facts further reinforce the appearance in the mind of the community that the church and public education are one and that there is a strong evidence of an Establishment Clause violation.

Church domination of the school setting

The court observed that during worship services “the schools are dominated by church use.”⁷ Congregants “use the largest room, or multiple rooms, sometimes for the entire day.”⁸ In some instances the church is the only outside organization using space in a school. “Accordingly,” the court concluded, “on Sundays some schools effectively become churches.”⁹

Churches often have a long-term presence in schools. As of April 2005, thirteen congregations had been conducting regular worship services in the same school for more than a year.¹⁰ In the case of P.S. 15, the Second Circuit noted that Bronx Household of Faith had held its worship services at the school (and nowhere else) every Sunday for nine years.¹¹

What’s more the presence of churches in schools is widespread. As of October 2011 approximately 160 congregations in New York City had been granted permits for worship services the 2010-2011 school year.¹²

Promotion of religion

Bronx Household of Faith views its presence in schools as an opportunity to recruit congregants. Members of these churches distribute flyers and post signs; they proselytize outside school buildings.¹³ Congregations also advertise worship

⁶ *Bronx Household*, 650 F.3d at 41 (emphasis in original).

⁷ *Id.* at 42.

⁸ *Id.*

⁹ *Id.* .

¹⁰ Record on Appeal at A34, ¶ 58.

¹¹ *Bronx Household*, 650 F.3d at 42.

¹² *Bronx Household of Faith, et al. v. Board of Education of the City of New York, et al.*, Petition for Writ of Certiorari, Case No. 11-386 (2011), Brief in Opposition, fn.5.

¹³ *Bronx Household*, 650 F.3d at 42.

services at public schools using media advertisements, the Internet, and informal conversations with the public.¹⁴

An official with the church observed, in a court proceeding, that “church is God’s method of evangelism, and that’s why meeting in the schools is so important.”¹⁵ There has been at least one reported incident, which led to complaints, in which a congregation distributed religious materials to children who attended schools in which religious services took place.¹⁶

As a result, “both church congregants and members of the public identify the churches with schools.”¹⁷ The confusion created regarding institutions of church and state is most troubling as regards the impact on young people. Concerns regarding the state’s endorsement of religion become most acute when young, impressionable students are involved because they might easily mistake the consequence of a neutral policy for endorsement.¹⁸

Endorsement of one religion over another

New York City schools are not equally available to all faiths. For example, in 2004-2005 more than 800 of the City’s 1197 school buildings were reserved on Saturdays for school-sponsored activities – meaning these schools were unavailable for congregations that worship on that day.¹⁹

More than 450 school buildings were reserved for school-sponsored activities on Fridays after school or in the evening – making these schools unavailable for a religious congregation that worships at those times.²⁰ However fewer than 300 school buildings were reserved for school-sponsored activities on Sundays.²¹

¹⁴ Record on Appeal at A329; A776; A832; A697-698; A706-708; A713-714; A731-732; A737-739; and A745-749.

¹⁵ Record on Appeal at A557.

¹⁶ *Id.*; Record on Appeal at A701, ¶12; A330.

¹⁷ *Id.*

¹⁸ *Van Orden v. Perry*, 545 U.S. 677, 703 (2005) (Breyer, J., concurring).

¹⁹ Record on Appeal at A18; A238.

²⁰ *Id.*, A18.

²¹ *Id.*

What this means is that schools are far less likely to be available for Jews and Muslims on the days prescribed for their religious services.

School officials also become involved in promoting religion by housing religious services that exclude certain individuals from participating. Bronx Household of Faith, for example, excludes persons who are not baptized, those who have been excommunicated, as well as those who advocate the Islamic religion.²² This church also rejects New York State law recognizing same-sex marriages because it fails to recognize “the authority of God, creator and sovereign of the universe, as the authority above the state.”²³

Government subsidies to religious organizations

Bronx Household of Faith paid neither rent nor utility fees for the use of schools to conduct religious worship services. This led the Second Circuit to conclude that the “City . . . foots a major portion of the costs of the operation of a church.”²⁴

This fact also informed the determination of the Department of Education that to allow such activity in public schools would involve the government in subsidizing religion – and in so doing, would entangle the government with religion in a manner that violated the Establishment Clause of the Constitution.

The Bronx Household case describes a highly organized and well-planned effort to establish and grow evangelical churches – what is referred to by church officials as “church planting.”

The Southern Baptist Convention has identified New York as a “Strategic Focus City” for the location of new churches.²⁵

²² *Bronx Household* at 43; Record on Appeal at 483-489.

²³ Bronx Household of Faith, News & Updates, *Bronx Household of Faith Versus New York City Board of Education* (July 2011), available at <http://www.bhof.org/press.html>.

²⁴ *Bronx Household*, 650 F.3d at 41.

²⁵ Jeff K. Walters, *Embracing the City: A Brief Survey of the North American Mission Board's Engagement of America's Urban Centers*, Southern Baptist Theological Seminary (2008), available at <http://northamericanmissions.org/files/UrbanEngagement.Walters.revised.pdf>.

This effort is spearheaded by New Hope New York, which serves more than 213 churches in the metropolitan area. Many of these churches seek to grow their congregations by establishing churches in New York City schools.²⁶

I (and the NYCLU) would be the last to object to, or seek to constrain, aggressive advocacy on behalf of strongly held beliefs. Indeed, the courts have upheld the right of religious advocacy. They have properly recognized, as a general matter, that religious organizations have a right to engage in expression in public facilities that is equal to the right enjoyed by secular organizations.

But this equal right of access is not absolute. It is not absolute for secular organizations and it is not absolute for religious organizations. In all instances, this right must yield to compelling countervailing interests where such interests are narrowly pursued by the government.

One such compelling interest is the need to refrain from an Establishment Clause violation. Accordingly, in this case, the right of “equal access” asserted by Bronx Household and others must yield to the compelling demands of the Establishment Clause.

When the state becomes involved in the endorsement of an organization’s religious mission, the First Amendment requires a line of separation between the government and that organization.

To some the use of schools by Bronx Household of Worship is not problematic – an exaggerated controversy.

I would respectfully submit that those who take this view underestimate how power (exercised with bias or prejudice) may influence the manner in which public officials may choose to allocate space for religious services.

. . . To offer space in a school, for example, to some but not others; to some *more* than others; perhaps to those who happen (for any number of reasons) to have greater influence with a local politician.

²⁶ James Dotson, *New Hope New York: Praying for the Light of Christ to Shine on the Big Apple*, Journal of the Southern Baptist Convention (Oct. 2003), available at <http://www.sbclife.org/Articles/2003/10/S1a4.asp>.

. . . Not to those without access; and perhaps *never* to those whose religious belief is contrary to more widely shared, or dominant, religious views.

In prohibiting the use of schools for religious worship services, the New York City Department of Education adopted the correct policy – it was the only option available in this circumstance that comports with principles of sound governance and a constitutional democracy.

The New York Legislature and the City Council are likewise bound by these principles. In a 1995 Supreme Court ruling, Justice Sandra Day O’Connor spoke to the duty and obligation of state officials in matters of church and state:

[The Establishment Clause] imposes affirmative obligations that may require a State, in some situations, to take steps to avoid being perceived as supporting or endorsing a private religious message. That is, the Establishment Clause forbids a State to hide behind the application of formally neutral criteria and remain studiously oblivious to the effects of its actions.

. . . Where the government’s operation of a public forum has the effect of endorsing religion, even if the governmental actor neither intends nor actively encourages that result . . . the Establishment Clause is violated.

This is so . . . because the State’s own actions . . . actually convey a message of endorsement.²⁷

The former Justice O’Connor speaks here to you – and I believe the members of the City Council are bound to follow her wise counsel by rejecting Resolution 1155.

²⁷ *Capitol Square Review & Advisory Board v. Pinette*, 515 U.S. 753, 777 (1995).

February 2, 2012
Testimony before the NY City Council Education Committee
By Jeremy Del Rio, Esq., Executive Director 646-334-3627
20/20 Vision for Schools

jeremy@2020schools.org

Chairman Jackson and honorable education committee members:

I am Jeremy Del Rio from 20/20 Vision for Schools, representing more than 100 organizations that have partnered with local public schools to improve educational outcomes for vulnerable students since 2008. Several of those partners are among the congregations threatened with eviction in ten days.

Others will testify to the discrimination, Constitutionality, and disparate impact of the Mayor's Unequal Access policy. I am here to speak to a second tragedy it exacerbates.

Last June, Mayor Bloomberg lauded a record graduation rate of 65%. One month later, the City disclosed that only 25% of those students graduated college or career ready.

After a decade of reform, the odds that graduates of New York public schools will finish equipped for life is still only one-in-four. Three out of every four students who believed us when we told them graduation is their ticket out of poverty were betrayed by empty promises. Remediation awaits the lucky ones.

New York City can do better. Indeed, we must do better.

Today I urge the City Council to elevate this conversation from solely a protest about space to a long-term strategy that partners local schools with community stakeholders who can invest in the sustainable reform of our City's schools.

Rather than evict congregations, mobilize them for the leverage they alone can provide in the fight for educational justice. Loving neighbors, pursuing justice, educating children – these are universal religious imperatives. Regardless of tradition, 70%-90% of the faithful are directly or indirectly connected to schools, positioned for impact.

Transformational change requires us to see beyond parochial interests and forge partnerships on behalf of 1.1 million students. Let's model for them how neighbors of all faiths can co-create a more just New York.

February 2, 2012
Testimony before the NY City Council Education Committee
By Rev. Richard Del Rio, Senior Pastor 646-257-9062
Abounding Grace Ministries

Chairman Jackson and honorable education committee members:

My name is Pastor Rick Del Rio, and the church I pastor, Abounding Grace Ministries in Manhattan's lower east side will be homeless in ten days if Mayor Bloomberg and Chancellor Walcott have their way.

It has been our privilege to partner with PS 34 on Avenue D for almost twenty years, even though we have only rented space there for three. PS 34 students primarily come from housing projects along Avenues D and C. It has been especially gratifying to serve those students – our shared students – in after school, sports, and performing arts programs; to beautify the school through paint and mural projects; to provide motivational speakers for graduations and assemblies; and to celebrate the school community through appreciation breakfasts, schoolyard festivals, and barbecues.

Seventeen months ago, Mayor Bloomberg declared:

We in New York are Jews and Christians and Muslims, and we always have been. And above all of that, we are Americans, each with an equal right to worship and pray where we choose. **There is nowhere in the five boroughs that is off limits to any religion.**

By affirming that basic idea, we will honor America's values, and we will **keep New York the most open, diverse, tolerant and free city in the world.**

He also boasted:

"Our doors are open to everyone – everyone with a dream and a willingness to work hard and play by the rules. ...

"Of all our precious freedoms, the most important may be the freedom to worship as we wish."

Now Mayor Michael Bloomberg has determined:

- That only some of our city's doors would actually remain open to everyone.
- That, as of February 12, schools would be off limits to religion, thereby denying us our constitutional right of Equal Access
- That the freedom to worship no longer applies

After admonishing New Yorker's to "do what is right, not what is easy" during the Ground Zero Mosque controversy, he now insults all of us, by telling us that we and our children could get confused and wouldn't be able to tell the difference between a mosque or a church that rents a school on weekends and the academic instruction that occurs in the same building Monday – Friday.

If for some reason an impressionable child cannot, it sure would be easy to explain our City's "most important" freedom to worship.



**Testimony of Jordan Lorence,
Senior Counsel, Alliance Defense Fund,
Before the New York City Council Education Committee,
February 2, 2012**

Thank you for this opportunity to speak to the Committee on Education in support of Resolution 1155. My name is Jordan Lorence. I am senior counsel with the Alliance Defense Fund, a nonprofit legal organization that works for religious liberty and freedom of speech. I have served as the lead counsel in the *Bronx Household of Faith* case since it began in 1995. That case challenged the Department of Education's policy prohibiting community groups from using the City's public schools for religious services during nonschool hours. In the summer of 2002, we successfully convinced the Honorable Loretta Preska, now Chief Judge of the federal district court in Manhattan, to enjoin the policy because it violated the Freedom of Speech Clause of the First Amendment. Churches and other religious groups began meeting in the schools for worship services at that time.

The U.S. Court of Appeals for the Second Circuit overturned that injunction nine years later in June 2011. The Second Circuit ruled that the Department of Education *may* have this policy, but that the Constitution does not *require* the exclusion of worship services from public school facilities. The Supreme Court declined to review the case on December 5, 2011. I would be happy to answer any questions the Committee members have about the lawsuit.

The Department of Education has stated that the churches and other religious groups meeting in the public schools for religious services must vacate the schools after Sunday, February 12, 2012. This imminent eviction of churches from the schools is why Resolution 1155 is now before this Committee.



I strongly support Resolution 1155 because it urges the state legislature to allow religious groups to meet in the public schools on the same terms and conditions as all other community groups, and require New York City to change its policy. New York City has opened its schools broadly to a wide range of community groups, for any purpose “pertaining to the welfare of the community.” The Department of Education allows approximately 10,000 users in its 1200 school buildings each year, including the Girl Scouts, the Boy Scouts, labor unions, music recitals, club meetings and even the filming of episodes of the television show *Law and Order*.

Others will talk about the many good works that churches and other religious groups do for the people in their neighborhoods because they are allowed to meet in the public schools. I find it regrettable that school officials strongly prefer empty school buildings to allowing them to be used by people with a strong desire to help the local communities where they meet.

The Department of Education has given a number of reasons to justify its policy denying equal access to religious groups. Rather than refute them one by one, I will point out one glaring fact: no other major school district in the United States has a policy banning private worship services from schools during nonschool hours. The Alliance Defense Fund prepared a memo for the Speaker’s office which examined the facility use policies of the top 50 school districts in the United States, in terms of student population. Of course, New York City is the largest school district in the nation. But it stands alone with its harsh policy denying access to religious groups. Every other school district in the top 50 largest school districts allows religious groups to meet for worship services in the public schools. Every other major school district has rejected the reasons New York City gives to justify its policy.



We also submitted a second memo to the Speaker's office to show that every other federal court outside of New York has struck down policies like the one in New York City. The Second Circuit's decision in *Bronx Household of Faith* was an anomaly. In fact, the court never said the City *must* exclude religious services, but only that it *could*. The City does not have to keep this policy and it should abandon it. The churches and religious groups meeting in the schools are a vital part of their local community and serve the city's residents not only through local and accessible weekly services, but through many other social outreach programs and services. This is demonstrated by the thousands of citizens from a wide variety of religions who have rallied in recent weeks, asking the City to repeal the policy and to protect their right to worship. If the Department of Education's policy remains in place, after February 12, many will no longer have a place to meet, and the churches will be forced to discontinue or scale back their mercy services that so many in the surrounding communities depend on.

We urge this Committee to support Resolution 1155 so that the City's schools no longer discriminate against religious groups, but instead show a strong commitment to diversity, freedom of speech and religious liberty by granting equal access to meet in the schools. Thank you.



Jordan W. Lorence
jlorence@telladf.org

January 13, 2012

Via E-mail to rnewman@council.nyc.gov

Mr. Robert Newman
Legislative Director
The New York City Council
City Hall
New York, New York 10007

*Re: New York City's Policy on Allowing Houses of Worship to Use Public Facilities
Community Use Policies of the Fifty Largest School Districts*

Dear Mr. Newman:

Thank you for the opportunity to provide you a summary of the community use policies currently in place at the fifty largest school districts in the nation. This letter concludes that New York City's policy, which prohibits worship in generally available public facilities, is a distinct outlier. It also outlines the research used in reaching this conclusion and supplies the relevant portions of these policies for your review. Simply put, of the fifty largest districts in the United States, only one—New York City—bans religious worship from its facilities.

DISCUSSION

I. Research Methods

In 2010, the U.S. Department of Education published a list of the largest school districts in the nation.¹ We located each district's community use policies on their websites and copied the portions discussing religious organizations into the appendix. Based on these policies, the districts fell into four broad categories:

1. *Bans Worship*: The district (*i.e.*, New York City) prohibits organizations from using its facilities for religious worship.
2. *Allows Worship (Conditionally)*: The district allows worship, but it places some conditions on religious groups' access to its facilities, as discussed below.
3. *Allows Worship (Implicitly)*: The district does not distinguish between religious and non-religious community organizations.
4. *Allows Worship (Expressly)*: The district includes express policy language

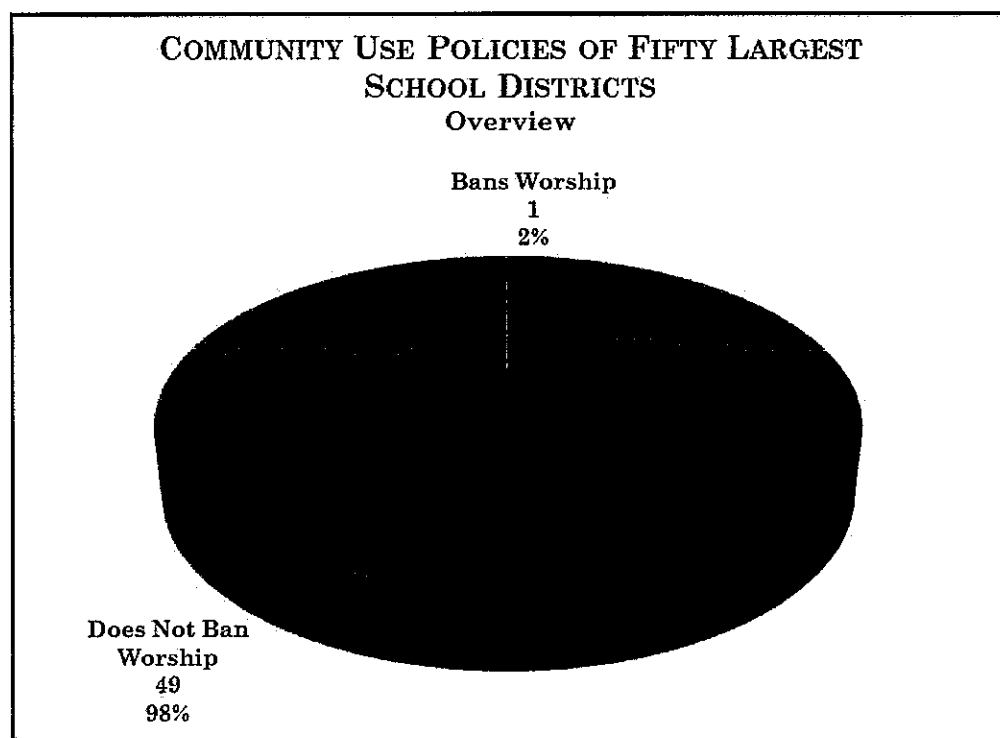
¹ See U.S. Dep't. of Educ., Nat'l Ctr. for Educ. Statistics, DIGEST OF EDUCATION STATISTICS 159-61 (2010), available at <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2011015> (last visited Jan. 12, 2012).

that either allows religious groups to access its facilities or indicates that these groups can utilize those facilities.

The second category—“allows worship (conditionally)”—merits some explanation. Some districts limit how long a church or religious organization may rent their facilities.² Others require school board approval before religious groups can use their buildings.³ Still others require churches and religious groups to show that they are attempting to build or locate another meeting place.⁴ As each of these policies fails to apply the same conditions to secular community groups, they are likely unconstitutional. Regardless, none of them completely prohibit religious organizations from using school facilities for worship.

II. Research Findings

Our research vividly demonstrates that New York City’s prohibition is a distinct outlier. Indeed, it is the only school district among the fifty largest in the country to ban religious worship from its facilities.

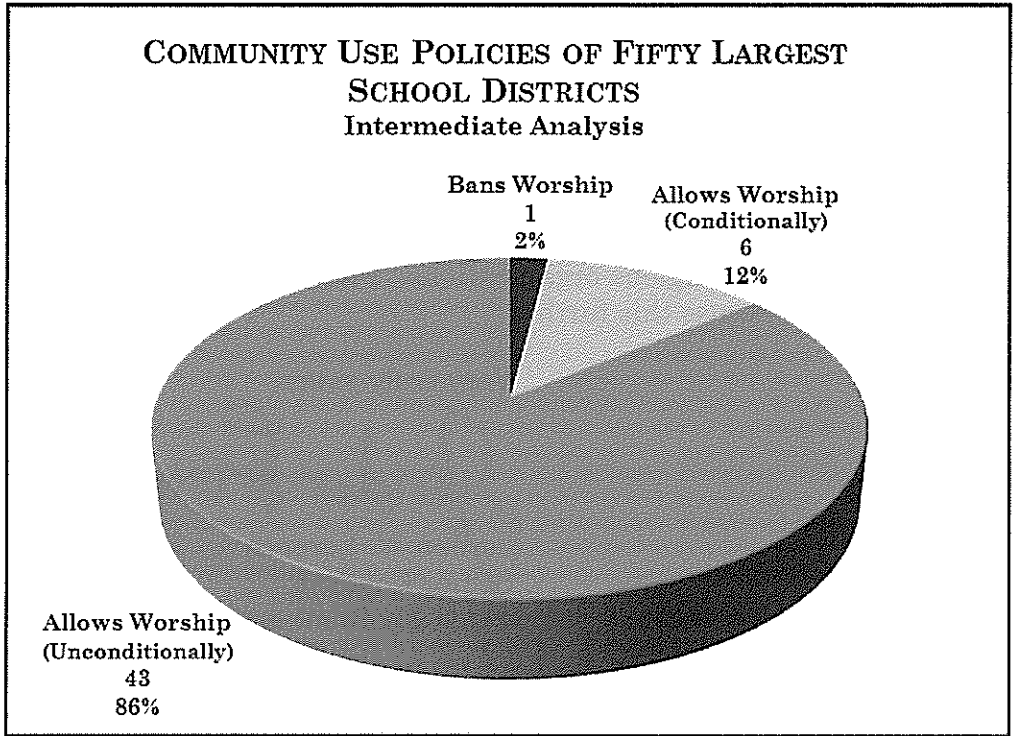


At a slightly more in depth level of analysis, the vast majority of school districts allow religious worship in their facilities without any restrictions. Few impose minor—albeit unconstitutional—conditions on religious groups, as mentioned above.

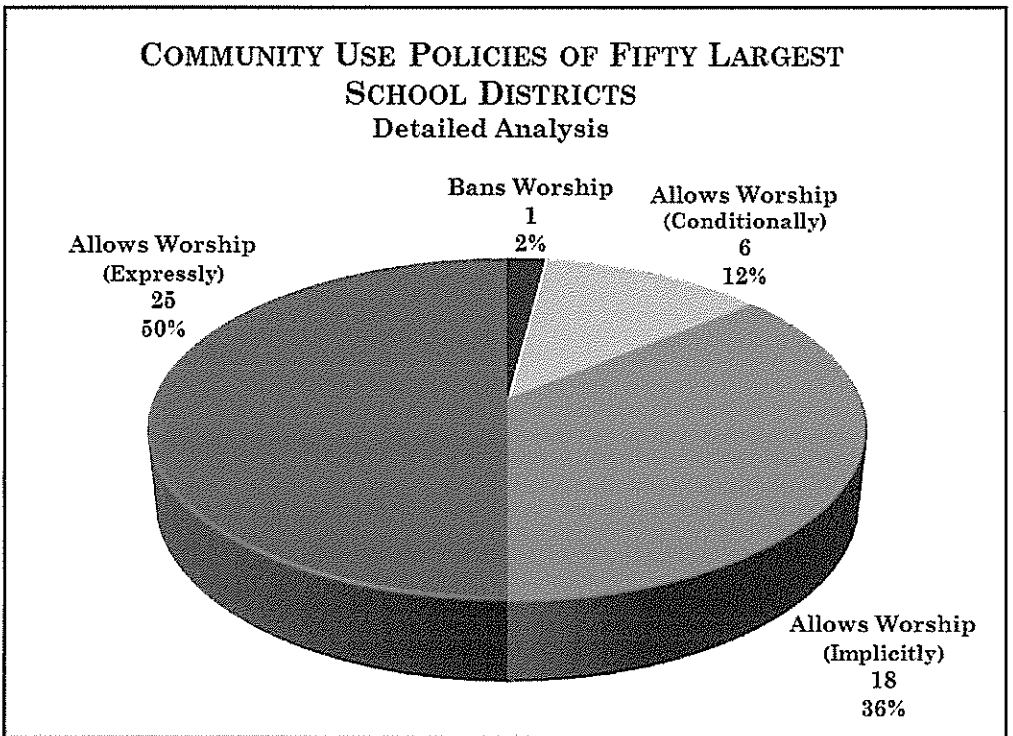
² L.A. Unified Sch. Dist., Cal.; Long Beach Unified Sch. Dist., Cal..

³ San Diego Unified Sch. Dist., Cal.

⁴ Northside Indep. Sch. Dist., Tex.; Va. Beach City Pub. Schs., Va., Greenville Cnty. Schs., S.C.



To be most precise, half of these districts expressly allow religious groups to worship in their facilities. And over a third implicitly do so by giving them the same access as non-religious community organizations.

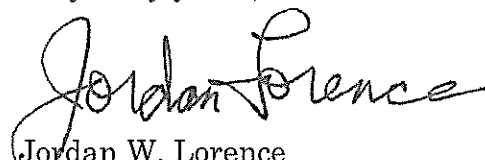


Mr. Robert Newman
January 13, 2012
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CONCLUSION

In short, the overwhelming majority of this nation's largest school districts allow religious organizations to utilize school buildings, buildings that are after all community resources. No matter how these fifty policies are analyzed, New York City is alone in prohibiting religious worship, and it could cease being such an anomaly if it permitted houses of worship to use generally available public facilities on the same terms as non-religious organizations. Please do not hesitate to contact me if you would like to discuss this further.

Very truly yours,



Jordan W. Lorence
Senior Counsel
ALLIANCE DEFENSE FUND

JWL/tcb



APPENDIX

COMMUNITY USE POLICIES OF THE FIFTY LARGEST SCHOOL DISTRICTS IN THE UNITED STATES REGARDING WORSHIP AND RELIGIOUS ORGANIZATIONS

1. New York City Department of Education, N.Y.—Bans Worship

EXTENDED USE OF SCHOOL BUILDINGS

....

The Department of Education (“DOE”) encourages the use of its public schools for purposes consistent with this Extended Use policy. . . .

....

Q. No permit shall be granted for the purpose of holding religious worship services, or otherwise using a school as a house of worship. . . .

Regulations of the Chancellor of the N.Y. City Dep’t of Educ., Regulation D-180, *available at <http://schools.nyc.gov/RulesPolicies/ChancellorsRegulations/default.htm>*.

2. Los Angeles Unified School District, Cal.—Allows Worship (Conditionally)

USE OF SCHOOL PROPERTY: STATEMENT OF PURPOSE

....

The District may grant the use of school facilities or grounds as a civic center upon the terms and conditions, subject to the limitations, requirements, and restrictions set forth herein, for any of the following purposes:

....

- C. The conduct of religious services for temporary periods, on a one time renewable basis, by any church or religious organization which has no suitable meeting place for the conduct of the services, provided the church or religious organization using the school facilities or grounds be charged a fair rental value fee as established by the Leasing Section of the Real Estate Branch.^[1]

¹ The Los Angeles Unified School District allows churches and religious organizations to use its



L.A. Unified Sch. Dist. Bd. of Educ., *Rules of the Board of Education*, at 65 Board Rule 1301, available at <http://www.laschoolboard.org/sites/default/files/BoardRules06-14-11.pdf>.

See generally L.A. Unified Sch. Dist. Bd. of Educ., available at <http://laschoolboard.org/>.

3. Chicago Public Schools, Ill.—Allows Worship (Expressly)

USE OF SCHOOL BUILDINGS AFTER REGULAR HOURS OF BUILDING OPERATION

....

V. Community and other Non-School Affiliated Groups

Community and other groups whose mission is unrelated to the Chicago Public Schools may use the school facilities for free, as determined by the principal, for free public lectures, concerts or other education and social interests, when school is not in session, subject to the reasonable restrictions on the time, place and manner of such usage imposed by the principal.

As determined by the LSC, community and other groups whose mission is unrelated to the Chicago Public Schools may use the school facilities for a reasonable cost for public lectures, concerts or other educational and social interest, when school is not in session, subject to the reasonable restrictions on the time, place and manner of such use imposed by the principal.

....

VII. No Viewpoint Discrimination Permitted

No group or organization may be discriminated against due to the content or focus of their group or organization. If the school permits one group from categories III, IV, V or VI listed above to sue its facilities, it must allow other organizations with a similar mission or purpose to use its facilities on the same terms and conditions.

No religiously-oriented clubs may be barred from meeting at the school if another group that focuses on similar topics and ideals is permitted to assemble there.

....

Rules of Bd. of Educ. of City of Chi., Sec. 6-25, available at

facilities for worship services subject to a one time renewal. Religious organizations have successfully challenged such restrictions in individual cases where school districts fail to apply the same conditions to secular community groups. See, e.g., *Fairfax Covenant Church v. Fairfax Cnty. Sch. Bd.*, 17 F.3d 703, 704 (4th Cir. 1994) (holding the Fairfax County School Board’s policy of subjecting only churches to a progressively escalating rental rate violated the First Amendment).



[http://www.cps.edu/About CPS/The Board of Education/Pages/BoardRules.aspx](http://www.cps.edu/About_CPS/The_Board_of_Education/Pages/BoardRules.aspx).

4. Miami-Dade County Public Schools, Fla.—Allows Worship (Expressly)

USE OF DISTRICT FACILITIES

District grounds and facilities should be made available for community purposes, provided the use does not infringe on the original and necessary purpose of the property or interfere with the educational program. Temporary use of these facilities for non-school educational, civic, cultural, recreational, artistic, or charitable programs may be approved by the administrative staff. . . .

General Conduct Policies

Organizations using school facilities must comply with the following general conduct policies:

....

N. When filling in the information “Hour Building Will be Needed” and “Hour Building Will Be Vacated,” users should allow ample time for such things as the following:

....

6. placing kneelers, prayer books, hymnals, etc.:

7. setting up altar

....

Sch. Bd. of Miami-Dade Cnty., *Bylaws & Policies*, Policy 7510, available at <http://www.neola.com/miamidade-fl/>.

5. Clark County School District, Nev.—Allows Worship (Implicitly)

USE OF DISTRICT BUILDINGS, GROUNDS, AND EQUIPMENT BY NON-SCHOOL GROUPS

I. General Guidelines

A. Primary Use

The primary use of all resources of the Clark County School District shall be for the support of the basic instructional program. Outside groups requesting use of District property should be directed by principals to city or county



agencies that have facilities supported by non-school related taxes such as the Parks and Recreation Department. If no facilities are available, District property may be used for community outreach and generation of additional revenue as long as the benefit exceeds all associated costs and all other sections of this regulation are followed.

....

II. Restrictions

....

B. District facilities may not be used:

- 1. To further any program or movement, the purpose of which is to accomplish the overthrow of the Government of the United States or any state by force, violence, or other unlawful means.
2. For unlawful activities.
3. In a manner which is disruptive or disorderly, or which would cause others to be disruptive or disorderly.
4. For parties or celebrations that are essentially private in nature...
5. For dormitory purposes by any outside groups.
6. For non-Clark County School District activities involving public renditions of music...

Clark Cnty. Sch. Dist. Bd. of Trs., Board Policies & Regulations, Policy R-3613, available at http://ccsd.net/directory/pol-reg/?page=4.

6. Broward County Public Schools, Fla.—Allows Worship (Implicitly)

USE OF BROWARD COUNTY SCHOOL FACILITIES FOR NON-SCHOOL PURPOSES

The rental or use of public school facilities shall be permitted when not in conflict with the regular or extracurricular school program.

....



RULES

....

Public school facilities may be used for Non-School Purposes in accordance with the following provisions:

....

5. The following four (4) categories shall be used to describe applicants for the use of public school facilities for Non-School Purposes. The Fee Schedule (appended to this policy as Exhibit 1) shall be reviewed periodically (no less than annually) by the Superintendent for changes to be recommended to the School Board for approval.

a. **School-Allied Groups** . . .

b. **Government Organizations** . . .

c. **Not-for-Profit Section 501(c)(3) Organizations** A Not-for-Profit Section 501(c)(3) Organization shall fulfill Application requirements, all insurance requirements set forth in this Policy, and provide a copy of its approved IRS Section 501(c)(3) certificate for each and every use of public school facilities.

1. On School Days, Not-for-Profit Section 501(c)(3) Organization shall pay nominal charges for electricity and administrative costs, as listed in the Fee Schedule, and Personnel Costs, as incurred including security, but shall be exempt from payment of Rental Fees and Custodial Costs.

2. During After School Hours or on Non-School Days, Not-for-Profit Section 501(c)(3) Organizations shall also pay Custodial Costs, Utilities Costs and Personnel costs, as incurred including, without limitation, any required security.

....

Policies of the School Board of Broward County Public Schools, Policy 1341, *available at*, <http://www.broward.k12.fl.us/sbbcpolicies/index.asp?sortby=number>.

7. *Houston Independent School District, Tex.—Allows Worship (Expressly)*

COMMUNITY RELATIONS: NONSCHOOL USE OF SCHOOL FACILITIES

USE OF DISTRICT PROPERTY: District facilities and school playgrounds shall be available for use by the students and patrons of the respective communities in ac-



cordance with established procedures. Availability shall be subject to the needs and convenience of the District.

....

RENTAL OF SCHOOL FACILITIES: District facilities may be rented to educational, religious, and civic groups and to other organizations. The availability of facilities for functions other than the District's own activities, however, shall depend on the needs and convenience of the District. [See PRIORITIES, below]

....

Houston Indep. Sch. Dist., *Board Policy Manual*, Policy GKD (Local), available at [http://www.tasb.org/policy/pol/private/101912/pol.cfm?DisplayPage=GKD\(LOCAL\).pdf](http://www.tasb.org/policy/pol/private/101912/pol.cfm?DisplayPage=GKD(LOCAL).pdf).

See generally Houston Indep. Sch. Dist., *Board Policy Manual*, available at <http://www.tasb.org/policy/pol/private/101912/>.

8. Hillsborough County Public Schools, Fla.—Allows Worship (Implicitly)

USE OF DISTRICT FACILITIES

The Board believes that the grounds and facilities of this District should be made available for community purposes provided that such use does not infringe on the original and necessary purpose of the property or interfere with the educational program of the schools and is harmonious with the purposes of this District. Full use of these facilities for educational, civic, cultural, recreational, artistic, or charitable programs is encouraged by the Board with appropriate compensation to the Board associated with use.

....

Use by Nonschool-Oriented Organizations and Groups

There shall be a charge for the use of school facilities and equipment to groups and organizations not directly school related and/or oriented. Usage charges shall be established by the Superintendent and shall be based upon the facilities being used. Payment shall be made in advance by check payable to the Board. A representative of the school shall be on the school grounds during the hours of use of facilities. Custodial services are included in the basic facility usage fee except when additional services are needed and/or when the use of the facility occurs outside normal hours when a representative of the District is not on the school campus. Charges made for extra custodial services described above shall be the hourly rate, including applicable fringe benefits, of the employee assigned. . . .

Sch. Bd. of Hillsborough Cnty., *Bylaws & Policies*, Policy 7510, available at <http://www.neola.com/hillsborough-fl/>.



9. Hawaii State Department of Education, Haw.—Allows Worship (Expressly)

USE OF SCHOOL BUILDINGS, FACILITIES, AND GROUNDS

§ 8-39-1 General rule. All public school buildings, facilities, and grounds shall be available for general recreational purposes and for public and community use whenever these activities do not interfere with the normal and usual activities of the school and its pupils as provided by law. This general rule shall be carried out within the policy of the department of education that no available public school building, facility, or grounds shall be denied for use by the public and community on the grounds of race, color, religion, sex, age, national origin, or disability. . . .

§8-39-3 Categories of use. Use of school buildings, facilities, or grounds shall be classified as follows:

- (1) Type I. Department of education, school sponsored and school-related activities.
- (2) Type II. Governmental agencies, not for profit community educational or recreational activities, youth clubs, athletic teams, labor organizations or service clubs conducting general recreational activities, community affairs, or public hearings for which no admission charge is made, collection taken or offering received during the use of school facilities. Student child-care activities conducted by non-profit organizations who have received tax exemption from the State department of taxation shall be classified as Type II use even if there is a charge.
- (3) Type III. Governmental agencies, community groups, churches, business enterprises, labor unions or individuals who:
 - (A) Charge participants a fee, tuition, collect donations, contributions or offerings; or
 - (B) Conduct fund raising activities, or meetings or services to promote a business, product, or religion; or
 - (C) Do not meet the criteria as a Type I or Type II user. . . .

Hawaii Admin. Rules §§ 8-39-1, 8-39-3, available at <http://lilinode.k12.hi.us/PUBLIC/ADMINR1.NSF/85255a0a0010ae82852555340060479d/df9758f22ef405090a25676a000c4f0c?OpenDocument>.

10. Orange County Public Schools, Fla.—Allows Worship (Expressly)

USE OF FACILITIES

POLICY: The principal or building administrator may approve the use of school board property, facilities and equipment for any group provided herein. The use of



school board property, facilities, and equipment shall not interfere with the educational program of the district or school. . . .

....

(2) Use of Facilities with a Rental Charge—The principal or building administrator may permit the use of school board facilities by a civic, religious, business or community organization for nonschool activities on a specific, temporary or short-term basis.

Orange Cnty. Pub. Schs., *School Board Policies*, Policy KF, available at https://www.ocps.net/sb/Superintendent%20Documents/KF%20Public%20Use%20of%20School%20Board%20Facilities%2011_17_08.pdf.

See generally Orange Cnty. Pub. Schs., *School Board Policies*, available at <https://www.ocps.net/sb/Superintendent/Pages/SuperintendentsDocuments.aspx>.

11. The School District of Palm Beach County, Fla.—Allows Worship (Expressly)

COMMUNITY USE OF SCHOOL FACILITIES

1. Definitions.

a. Non-profit Organizations—shall include civic, religious, or community organizations that qualify as non-profit entities under the Internal Revenue Service Code and/or are Florida not for profit corporations and/or governmental entities. . . .

....

2. Qualification and Fee Structure

a. All qualified Community Organizations (refer to above definitions A, B and C), excluding those under an Interlocal Agreement as stated below in Paragraph V, shall be required to complete a lease agreement form. No lease is required for School-Based Organizations that maintain their funds in a school’s internal account.

....

Rules of Sch. Bd. of Palm Beach Cnty., Fla., Policy 7.18, available at <http://www.palmbeachschools.org/policies/>.



12. Fairfax County Public Schools, Va.—Allows Worship (Expressly)

COMMUNITY USE OF SCHOOL FACILITIES

A. Application for Facilities Use

- 1. A group or individual, “user”, wanting to use school facilities must apply as an Organization Event Coordinator (OEC) first through our online system by accessing our website at www.fcps.edu/fts/comuse. . . .

....

B. Priority for Use of Facilities

The priority for community use of facilities is assigned in the following order:

....

- 4. Others, when space is available at times that do not interfere with the previously stated priorities, such as youth groups (e.g., scouts, 4-H), Fairfax County employee organizations, cultural and civic groups, colleges and universities, religious organizations, state and federal agencies, private organizations and individuals, and commercial entities.

....

L. Religious and Cultural Organizations

- 1. Religious and cultural organizations serving Fairfax County citizens may be granted use of school facilities. A religious or cultural organization wanting to establish a long-term use (other than one-time use) must meet with the coordinator, Community Use Section, for an orientation on procedures.
- 2. Cultural organizations will be required to show proof of non-profit status by providing proper Internal Revenue Service (IRS) documentation. Those religious organizations that cannot provide documentation from the IRS can submit an affidavit provided by the Community Use Section.
- 3. Only one religious/cultural organization may have a contract for continuing use of a single school during any school year. Exceptions can be made with approval of the requested school and the Community Use Section.
- 4. Copies of the Procedures for Long-Term Use by Religious/Cultural Organizations may be obtained from the Community Use Section.
- 5. Principals may approve one-time uses after consultation with the coordinator, Community Use Section.
- 6. No religious organization will be discriminated against in the application of



this regulation, and each religious organization will be treated in the same manner as any cultural organization.

Fairfax Cnty. Sch. Bd., *Policies, Notices, and Regulations*, Regulation 8420.7, available at [http://www.boarddocs.com/vsba/fairfax/Board.nsf/files/8NHHV54A47B9/\\$file/R8420.pdf](http://www.boarddocs.com/vsba/fairfax/Board.nsf/files/8NHHV54A47B9/$file/R8420.pdf).

See generally Fairfax Cnty. Sch. Bd., *Policies, Notices, and Regulations*, available at <http://www.fcps.edu/Directives.shtml>, and <http://www.boarddocs.com/vsba/fairfax/Board.nsf/goto?open&id=867SUS2AB1AF#>.

13. The School District of Philadelphia, Pa.—Allows Worship (Implicitly)

USE OF SCHOOL FACILITIES

The School District of Philadelphia shall make full use of its facilities for the education of its students and, where legally and economically possible, for community advancement.

....

Persons, Groups or Organizations Who May Use School Facilities

1. Any non-profit group or organization may use available school facilities, provided that the group or organization does not illegally restrict its membership, attendance, or leadership by reason of race, color, religion, creed, ancestry, age, sex, sexual orientation, physical handicap or national origin.
1. Non-profit organization shall mean any community, civic, cultural, charitable, athletic, educational, parent, youth, service or school organization, or any governing authority, corporate or politic, or any governmental body or any alumni association, which desires to use school facilities for social, recreational or other purposes.

....

Sch. Dist. of Phil., *Board Policies*, Policy 707, available at <http://www.phila.k12.pa.us/offices/administration/policies/707.html>.

See generally Sch. Dist. of Phil., *Board Policies*, available at <http://www.phila.k12.pa.us/offices/administration/policies/>.

14. Dallas Independent School District, Tex.—Allows Worship (Expressly)

COMMUNITY RELATIONS: NONSCHOOL USE OF SCHOOL FACILITIES

....



Organizations that may use, rent, or lease District facilities shall include, but are not limited to, political, civic, community, and religious groups.

....

Dallas Indep. Sch. Dist., *Board Policy Manual*, Policy GKD (Local), available at [http://www.tasb.org/policy/pol/private/057905/pol.cfm?DisplayPage=GKD\(LOCAL\).pdf](http://www.tasb.org/policy/pol/private/057905/pol.cfm?DisplayPage=GKD(LOCAL).pdf).

COMMUNITY RELATIONS: NONSCHOOL USE OF SCHOOL FACILITIES

PROHIBITED ACTS: An officer or employee of the District who is acting or purporting to act in an official capacity may not, because of a person's race, religion, color, sex, or national origin:

1. Refuse to permit the person to use facilities open to the public and owned, operated, or managed by or on behalf of the District;
2. Refuse to permit the person to participate in a program owned, operated, or managed by or on behalf of the District;
3. Refuse to grant a benefit to the person; or
4. Impose an unreasonable burden on the person.

....

FORUM FOR COMMUNICATION: The District shall not discriminate against speech on the basis of viewpoint, and any restriction must be reasonable in light of the purpose served by the forum. *Good News Club v. Milford Cent. Sch*, 533 U.S. 98 (2001); *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993)

....

Dallas Indep. Sch. Dist., *Board Policy Manual*, Policy GKD (Legal), available at [http://www.tasb.org/policy/pol/private/057905/pol.cfm?DisplayPage=GKD\(LEGAL\).pdf](http://www.tasb.org/policy/pol/private/057905/pol.cfm?DisplayPage=GKD(LEGAL).pdf).

15. Gwinnett County Public Schools, Ga.—Allows Worship (Expressly)

USE OF FACILITIES

. . . . As a service to the people of the school district, the Board may permit use of school facilities by non-school groups during non-school hours for the purpose of legal assembly and purposes consistent with the community and joint school use agreement with county government.

....

Beyond these standards, the Board will adhere to court rulings which mandate that a group's access to school facilities cannot be denied because of the group's philoso-



phies or the content of the group’s speeches and beliefs. Accordingly, authorization for use of school facilities is not and should not be considered an endorsement of or approval of the activity, group or organization, nor the purposes they represent.

Gwinnett Cnty. Pub. Schs., *Board Approved Policies*, Policy KG, available at <http://www.gwinnett.k12.ga.us/polproc.nsf/GCPS%20Board%20Approved%20Policies/CE6BC98E7B34085B85256D240073DA48?Opendocument>

16. Montgomery County Public Schools, Md.—Allows Worship (Expressly)

COMMUNITY USE OF PUBLIC SCHOOLS

....

Public agencies and nonprofit organizations, including nonprofit groups, citizens organizations within or outside the County, and commercial/business enterprises, may use school facilities. Schools are available to almost everyone who wishes to sponsor or conduct a community oriented activity.

....

III.F.4. There will be no temporary or permanent signs, banners, pennants, or the like placed in or on school buildings or on school grounds by any group except those associated with activities sponsored by the school or school PTA with the following two exceptions:

....

(b) Other groups, such as churches, which use schools, may place temporary identification signs on school grounds only during the actual hours the school is used. At the conclusion of the use of the school the group must remove the signs.

Montgomery Cnty. Pub. Schs., *MCPS Policies & Regulations Handbook*, Regulation KGARA, available at <http://www.montgomeryschoolsmd.org/departments/policy/pdf/kgara.pdf>.

See generally Montgomery Cnty. Pub. Schs., *MCPS Policies & Regulations Handbook*, available at <http://www.montgomeryschoolsmd.org/departments/policy/>.

17. Wake County Public School System, N.C.—Allows Worship (Implicitly)

COMMUNITY USE OF SCHOOL FACILITIES

The Wake County Board of Education endorses community use of school facilities for appropriate purposes. Since school facilities represent an investment of the



citizenry for the education of students and for the general benefit of the community and its citizens, their proper use and enjoyment shall be encouraged and permitted when such use does not interfere with school activities.

The Superintendent and the director of community services or his/her designee are authorized to enter into facility-use agreements, memorandums of understanding, and joint-use agreements for community use of school facilities. All joint-use agreements shall be reviewed and approved by the school attorney as to form. The Board shall be informed at its next regularly scheduled meeting of the execution of any such lease. The board shall approve all joint-use agreements. Agreements for facility use that extend beyond one year shall be approved in advance by the board as provided by state law.

Wake Cnty. Pub. Sch. Sys., *Board Policy*, Policy 7400, available at <http://www.wcpss.net/policy-files/series/policies/7400-bp.html>.

See generally Wake Cnty. Pub. Sch. Sys., *Board Policy*, available at <http://www.wcpss.net/policy-files/index.html>.

18. Charlotte-Mecklenburg Schools, N.C.—Allows Worship (Expressly)

COMMUNITY USE OF FACILITIES

....

II. Groups Permitted to Use School Facilities

....

B. Non-profit Groups

1. **“Non-profit Group” Defined.** The term “Non-profit Group” shall mean any civic, service, political, fraternal, governmental, religious, charitable, or recreational agency, association, organization, corporation, or partnership which is not engaged in a business or enterprise to produce income or a financial gain. This definition is not intended to preclude a non-profit organization from engaging in fund-raising activities or charging fees for services simply to defray the organization’s costs or for charitable purposes. “Non-profit Groups” include, but are not necessarily limited to:

....

- c. Churches and religious organizations;

....



- 2. **Available Facilities.** Non-profit Groups are permitted to use school auditoriums, media centers, gymnasiums, classrooms, grounds, or any other facilities at reasonable times and places as deemed appropriate and approved by the Community Use Assistant and/or the Principal. In no event shall any approved use interfere in any manner with the operation of the school or endanger school personnel, students, or the public at large.

....

Charlotte-Mecklenburg Schs., *School Board Policies*, Regulation KF-R, available at http://policy.microscribepub.com/cgi-bin/om_isapi.dll?clientID=317607557&depth=2&infobase=charmeck.nfo&record={1F9A}&softpage=PL frame.

See generally Charlotte-Mecklenburg Schs., *School Board Policies*, available at http://policy.microscribepub.com/cgi-bin/om_isapi.dll?clientID=317607557&depth=2&infobase=charmeck.nfo&record={2}&softpage=PL frame.

19. San Diego Unified School District, Cal.—Allows Worship (Conditionally)

USE OF FACILITIES

Board of Education policy permits organizations, clubs, and associations formed for recreational, educational, political, economic, artistic, or moral purposes to use school buildings and grounds. Regular school district programs shall have first priority on use of district facilities.

....

San Diego Unified School District, *District Policies* at 135, Policy K-4000, available at <http://www.sandi.net/cms/lib/CA01001235/Centricity/Domain/33/documents/policymanual.pdf>.

USE OF FACILITIES

It is the policy of the Board of Education that unauthorized uses of district property include:

- a. Aiding any religious purpose or any denominational doctrine or instruction; *except that* temporary use may be granted upon such terms and conditions as the Board of Education deems proper, including a charge to offset the district's cost for such use.^[2]

² The San Diego Unified School District allows churches and religious organizations to use its facilities temporarily for worship services subject to the Board's approval. Religious organizations



San Diego Unified School District, *District Policies* at 135, Policy K-4010, available at <http://www.sandi.net/cms/lib/CA01001235/Centricity/Domain/33/documents/policymanual.pdf>.

20. Prince George’s County Public Schools, Md.—Allows Worship (Expressly)

COMMUNITY USE OF SCHOOL FACILITIES

General

Community groups shall be permitted to use school facilities when such uses will not interfere with the program of the school. The use of school facilities shall be available to community groups on application in the prescribed manner and shall be subject to school law. The Prince George’s County public school system does not discriminate on the basis of age, race, sex, national origin, religion, or handicapping condition.

....

Prince George’s Cnty. Pub. Schs. Bd. of Educ., *Board of Education Policy*, Policy No. 1330, available at <http://www1.pgcps.org/WorkArea/DownloadAsset.aspx?id=125504>.

See generally Prince George’s Cnty. Pub. Schs. Bd. of Educ., *Board of Education Policy*, <http://www1.pgcps.org/generalcounsel/boardpolicies/bp0000.aspx>.

21. Duval County Public Schools, Fla.—Allows Worship (Implicitly)

USE OF FACILITIES AND GROUNDS

The School Board considers school buildings and grounds as community centers which shall be available for any legal assembly which is open to the general public for public, literary, scientific, recreational, educational, or public agency meetings or for the discussion of matters of general or public interest. The Superintendent or designee shall approve the use of all School Board facilities. The use of school property, facilities, and equipment shall not interfere with the educational program of the school.

Duval Cnty. Sch. Bd., *School Board Policy Manual*, Policy 9.30, available at http://www.duvalschools.org/static/aboutdcps/schoolboard/downloads/Chapter_9.pdf.

See generally Duval Cnty. Sch. Bd., *School Board Policy Manual*, available at <http://www.duvalschools.org/static/aboutdcps/schoolboard/policy.asp>.

have successfully challenged such restrictions in individual cases where school districts fail to apply the same conditions to secular community groups. See, e.g., *Fairfax Covenant Church v. Fairfax Cnty. Sch. Bd.*, 17 F.3d 703, 704 (4th Cir. 1994) (holding the Fairfax County School Board’s policy of subjecting only churches to a progressively escalating rental rate violated the First Amendment).



22. Memphis City Schools, Tenn.—Allows Worship (Implicitly)

COMMUNITY USE OF DISTRICT-OWNED REAL ESTATE

....

The district supports community use of district-owned real estate when it is not being used and/or when there is no foreseeable use by the school system. Such use shall be in the best interest of the district and the community that the district serves. School or school-related activities shall be given priority in the use of all facilities except in the case of an extreme emergency, as authorized by the Superintendent or her/his designee.

....

Memphis City Schs. Bd. of Comm’rs, *Administrative Rules and Regulations*, Policy 3.2053, available at [http://www.mcsk12.net/policies/3.2053\(R\)%20Community%20Use%20of%20District-Owned%20Real%20Estate.pdf](http://www.mcsk12.net/policies/3.2053(R)%20Community%20Use%20of%20District-Owned%20Real%20Estate.pdf).

See generally Memphis City Schs. Bd. of Comm’rs, *Board Policies*, available at <http://www.mcsk12.net/policy/policy.asp?t=1>.

23. Cobb County School District, Ga.—Allows Worship (Expressly)

USE OF SCHOOL FACILITIES

C. COMMUNITY USE:

Community Use includes all use that is not encompassed by Section A, School Use. Individuals or groups that desire to use a District facility must submit a completed Form KF-2 (Community Users Application for Facility Use) to the District Facility Use Office. The following apply:

1. Requirements for Community Use, In General:

....

h. No fees, charges or donations may be collected which are associated with participation in events in the facility or on the fields contracted with the following exceptions:

....

(5) Organizations who have contracted to use school facilities as temporary locations for religious services may collect offerings, donations,



and contributions during the time of their regularly scheduled use of school facilities;

....

Cobb Cnty. Bd. of Educ., *Board Policies & Administrative Rules*, Administrative Rule KF, available at http://www.cobbk12.org/centraloffice/adminrules/K_Rules/Rule_KF.pdf.

See generally Cobb Cnty. Bd. of Educ., *Board Policies and Administrative Rules*, available at <http://www.cobbk12.org/centraloffice/adminrules/>.

24. Pinellas County Schools, Fla.—Allows Worship (Expressly)

FACILITY LEASING

....

D. "Community" is a classification used for lessees or lease activities that do not fall within the classifications above, including, but not limited to, financial seminars, religious groups, dance recitals, homeowner associations, businesses, and others that desire to use school facilities. A facility lease is required, and standard rates apply.

- 1. Community groups are permitted to lease school facilities under the following conditions, unless provided elsewhere by policy:
 - a. The lease does not occur during school hours, unless the use is of an area of the site with no use by students.
 - b. The group is using the school facility for temporary use.

Sch. Bd. of Pinellas Cnty., *Bylaws & Policies* at 624, Policy 7511, available at https://www.pcsb.org/images/stories/Leadership-Main/Board_Policy/NewBoardPolicy_Entire.pdf.

25. Baltimore County Public Schools, Md.—Allows Worship (Implicitly)

COMMUNITY RELATIONS: USE OF SCHOOL FACILITIES

I. Philosophy

A. . . . The use of Baltimore County Public Schools (BCPS) buildings and grounds for cultural, civic, educational, recreational, and charitable purposes is a long-standing practice. The use of BCPS facilities should only be prohibited when such use interferes with the efficient administration of the educa-



tional program and/or may reasonably be anticipated to cause damage to school property.

....

Bd. of Educ. of Baltimore Cnty., *Manual of Policies and Regulations*, Policy 1300, available at http://www.bcps.org/system/policies_rules/policies/1000Series/POL1300.PDF

COMMUNITY RELATIONS: USE OF SCHOOL FACILITIES

....

II. Use of School Facilities and/or Grounds by Groups and Organizations

- A. Space in BCPS facilities and/or grounds may be used by the Baltimore County Department of Recreation and Parks (DRP) pursuant to the Joint Use Agreement between BCPS and DRP; the Community College of Baltimore County (CCBC); Parent-Teacher (Student) Associations (PTSA); other county, state, and federal agencies; and other groups and organizations, either profit or nonprofit.

....

Bd. of Educ. of Baltimore Cnty., *Manual of Policies and Regulations*, Rule 1300, available at http://www.bcps.org/system/policies_rules/rules/1000Series/RULE1300.PDF.

See generally Bd. of Educ. of Baltimore Cnty., *Manual of Policies and Regulations*, available at http://www.bcps.org/system/policies_rules/.

26. Cypress-Fairbanks Independent School District, Tex.—Allows Worship (Implicitly)

COMMUNITY RELATIONS: NONSCHOOL USE OF SCHOOL FACILITIES

SCOPE OF USE: The District shall permit nonschool use of designated District facilities for educational, recreational, civic, or social activities when these activities do not conflict with school use or with this policy. Such activities must be conducted by organizations located within the District and which serve students and/or the community, and which meet the community expectations for District schools.

....

REPEATED USE: The District shall permit repeated use of District facilities (i.e., weekly intervals) by any group or organization for nonschool purposes for no longer than three years.



The group’s plan for providing a permanent facility must be presented to the district in writing within six months of initial use and annually thereafter throughout the three-year period of use. A fourth year of use at a different campus may be granted, provided the District receives sufficient plans for the group’s permanent relocation. No further extensions shall be granted. . . .

....

CATEGORY II: COMMUNITY/CIVIC SERVICE ACTIVITIES: School facilities shall be available to community service-oriented or civic-minded groups with IRS nonprofit status. Facilities usage fees shall be paid by the group at the prevailing rate, in accordance with administrative regulations and the established use fee schedule.

....

Cypress-Fairbanks Indep. Sch. Dist., *Board Policy Manual*, Policy GKD (Local), available at <http://www.tasb.org/policy/pol/private/101907/pol.cfm?DisplayPage=GKD%28LOCAL%29.pdf>.

See generally Cypress-Fairbanks Indep. Sch. Dist., *Board Policy Manual*, available at <http://www.tasb.org/policy/pol/private/101907/>.

27. DeKalb County School System, Ga.—Allows Worship (Expressly)

USE OF SCHOOL FACILITIES

....

The Board of Education . . . recognizes that school facilities represent a significant investment on the part of the District’s residents. The Board therefore encourages community use of school facilities when such use will not interfere with the District’s educational mission.

Only the following outside organizations shall be eligible to apply for use of school facilities:

- 1. Non-profit organizations that are based in the District and whose members are mostly District residents. . . .

....

Use of school facilities shall not be denied on the basis of an organization’s religious, political or philosophical views or expressive activity. . . .

DeKalb Cnty. Sch. Sys. Bd. of Educ., Policy KG, available at <https://eboard.eboardsolutions.com/epolicy/policy.aspx?PC=KG&Sch=4054&S=4054&RevNo=1.51&C=K&Z=P>.



See generally DeKalb Cnty. Sch. Sys. Bd. of Educ., *Policy Overview*, available at <https://eboard.eboardsolutions.com/ePolicy/PolicyOverview.aspx?S=4054&Sch=4054>.

28. Jefferson County Public Schools, Ky.—Allows Worship (Implicitly)

COMMUNITY USE OF SCHOOL FACILITIES

The board of education shall encourage the use of school buildings by school-related groups, Parent-Teacher-Student Associations, or other parent groups whose purpose is to serve or benefit the school program. Regular rental fees shall not be charged to school-related groups. Such groups shall reimburse the school district for any additional personnel costs.

Other non-profit organizations, governmental agencies and individuals may use school buildings or facilities for lawful public assemblies. For-profit organizations may use school buildings or facilities for the purpose of providing before or after school enrichment and other educational programs for the benefit of students in attendance at the school. Use of facilities shall not interfere with school functions and operations. Groups shall obtain necessary approvals and pay appropriate fees and costs prior to the usage.

The superintendent shall establish procedures for the use of school facilities. Such procedures shall include the provision that the use of tobacco products in board-owned buildings is prohibited.

Bd. of Educ. of Jefferson Cnty, *Policy Manual* at 237 (Policy K8.000), available at <http://www.jefferson.k12.ky.us/Departments/GeneralCounsel/boardpolicy0702.pdf>.

RELATIONS WITH COMMUNITY ORGANIZATIONS

The board of education, the superintendent, and employees of the board shall make every effort to cooperate with community organizations. While the board of education shall maintain complete autonomy at all times, it shall work cooperatively with the agencies in the community in cases where the board deems it in the best interest of the youth and taxpayers of the district.

Bd. of Educ. of Jefferson Cnty, *Policy Manual* at 242 (Policy L5.000), available at <http://www.jefferson.k12.ky.us/Departments/GeneralCounsel/boardpolicy0702.pdf>.

See generally Bd. of Educ. of Jefferson Cnty, *What are the Board's Policies?*, available at <http://www.jefferson.k12.ky.us/Board/Index.html#policies>.



29. Detroit Public Schools, Mich.—Allows Worship (Implicitly)

COMMUNITY USE OF SCHOOL FACILITIES

1.0 Policy

The Detroit Public Schools may allow the use of public school buildings and facilities by responsible public agencies and community organizations during periods which will not interfere with the instructional program of the District. Application, consideration, approval or rejection and use of any of the District's facilities or equipment will be made according to objective criteria consistently applied and according to all applicable laws.

In addition to the following guidelines, the General Superintendent shall develop regulations and procedures for the community use of school facilities which effectuate the provisions of this policy as well as federal, state, and/or local laws and regulations.

1.1 LEGAL GUIDELINES TO BE INCORPORATED INTO DISTRICT PROCEDURES

1.1.1 Detroit Public Schools' facilities are "limited open forums", meaning that the District cannot prohibit speech in its facilities, but may regulate such speech with rules that are consistent with the District's educational and community- and family-oriented purpose. Such rules must not regulate the view of content of one's speech (i.e., view opposing the District or its employees), but may regulate types of speech (i.e., pro-violence).

1.1.2 Procedures must be content-neutral and objectively and consistently applied.

....

Detroit Bd. of Pub. Educ., *Board Policy Documents*, Policy 6.19, available at <http://detroitk12.org/board/resources/files/Community%20Use%20of%20School%20Facilities.pdf>.

See generally Detroit Bd. of Pub. Educ., *Board Policy Documents*, available at <http://detroitk12.org/board/resources/documents/index/policy/1/all/all/all/>.

30. Albuquerque Public Schools, N.M.—Allows Worship (Expressly)

COMMUNITY USE OF BUILDINGS, GROUNDS AND EQUIPMENT

The public investment in school plants and sites and the general community welfare justify the use of school buildings and grounds by local citizen groups for educational, cultural, civic, and recreational purposes outside of school hours or when such use will not conflict or interfere with the school program. Application for such use of school facilities will be made and approved well in advance of proposed use.



Non-political, non-sectarian, and non-commercial activities may be granted use of school facilities free of charge, at the discretion of the Superintendent. The Superintendent will set up a schedule of charges for the commonly used facilities. Such charges will cover normal use and will assess a reasonable charge to cover utility, maintenance, and replacement costs. As the occasion demands, a reasonable charge will be assessed to cover all other facilities and unusual wear or breakage.

....

Albuquerque Pub. Schs., *Policies and Procedural Directives*, Policy K.03, available at <http://www.aps.edu/about-us/policies-and-procedural-directives/policies/k.-school-community-home-relations/k.03-community-use-of-buildings-grounds-and-equipment> .

BUILDINGS AND GROUNDS: NON-SCHOOL USE OF ALBUQUERQUE PUBLIC SCHOOL FACILITIES

Priority of Use

Authorization of use of Albuquerque Public Schools facilities for non-school purposes shall be prioritized in the following order:

....

CATEGORY 5—Recreational, Religious, Political, and other Non-Profit Groups

Fifth priority for usage of district facilities shall be granted to groups whose purpose if for the best interest of the group itself rather than the benefit of the general public. Recreational, religious and political groups shall be placed in this category, as well as groups formed for appreciation and enjoyment of the arts. This category also shall include private schools and private school groups.

Albuquerque Pub. Schs., *Policies and Procedural Directives*, Procedural Directive K. School-Community-Home Relations, available at <http://www.aps.edu/about-us/policies-and-procedural-directives/procedural-directives/k.-school-community-home-relations/buildings-and-grounds-non-school-use-of-school-facilities>.

31. Polk County Public Schools, Fla.—Allows Worship (Implicitly)

COMMUNITY USE OF SCHOOL FACILITIES

In accordance with Florida Statutes, the School Board permits the use of school facilities and grounds for any legal assembly, for community use centers, or for use as voting places.

- I. Procedures: The Superintendent shall recommend procedures for the use of school facilities for Board approval and may grant approval for use of facili-



ties under these established procedures.

II. Insurance: The Board must be protected against any damages which may accrue as a result of use of school facilities by outside organizations, and organizations shall be required to acquire and furnish evidence of insurance in amounts required by law to protect the Board's interest.

III. Supervision, Custodial Services and Utilities: Satisfactory arrangements must be made concerning supervision, custodial services and utilities.

IV. Costs incurred: Payment must be made to cover costs incurred as a result of the use of facilities by outside organizations.

Sch. Bd. of Polk Cnty., Fla., Board Policy, Policy 6.007, available at <http://www.polk-fl.net/districtinfo/boardmembers/documents/6007.pdf>.

See generally Sch. Bd. of Polk Cnty., Fla., Board Policy, available at <http://www.polk-fl.net/districtinfo/boardmembers/boardpolicy.htm>.

32. Northside Independent School District, Tex.—Allows Worship (Conditionally)

COMMUNITY RELATIONS: NONSCHOOL USE OF SCHOOL FACILITIES

SCOPE OF USE: The District shall permit nonschool use of designated District facilities for educational, recreational, civic, or social activities when these activities do not conflict with school use or with this policy.

....

ELIGIBLE USERS: Governmental agencies, employee organizations, parent-teacher organizations, booster clubs, churches, and other nonprofit organizations in the community, especially those serving the children and youth of Northside (e.g., Boy Scouts, Campfire Girls, YMCA), shall be eligible to request the use of school facilities under terms of this policy.

....

EXTENDED USE: Extended use is defined as continued use beyond a single, one-time use. The Board ordinarily shall not grant permission for continued use of facilities beyond a six-month period.

Exceptions to the six-month limit are as follows:

- 1. Community organizations serving children and youth as indicated in the section of this policy permitting waiver of fees may operate these programs on a



continuing basis.

2. Churches in the community that have initiated a building program, or for which normal assembly areas are unavailable, may be granted on extension for up to six additional months upon approval of the Superintendent. Due to the District's energy conservation procedures, which restricts use of facilities during summer months, exceptions to these procedures may be granted upon approval of the Superintendent or designee. Churches may be granted four additional extensions of up to six months each, upon approval of the Board, if they can demonstrate satisfactory progress in their building program. In no instance may the total rental period exceed three years.

To qualify for extended use, a church must provide a roster listing at least 20 resident member families. As an alternative, churches in the formation stage may provide a letter of sponsorship from another congregation, a denominational body, or similar agency that includes an agreement to underwrite all costs associated with such rental. Campuses available for such use shall depend on availability.³

....

Northside Indep. Sch. Dist. Bd., *Board Policy Manual*, Policy GKD (Local), available at [http://www.tasb.org/policy/pol/private/015915/pol.cfm?DisplayPage=GKD\(LOCAL\).pdf](http://www.tasb.org/policy/pol/private/015915/pol.cfm?DisplayPage=GKD(LOCAL).pdf).

COMMUNITY RELATIONS: NONSCHOOL USE OF SCHOOL FACILITIES

PROHIBITED ACTS: An officer or employee of the District who is acting or purporting to act in an official capacity may not, because of a person's race, religion, color, sex, or national origin:

1. Refuse to permit the person to use facilities open to the public and owned, operated, or managed by or on behalf of the District;
2. Refuse to permit the person to participate in a program owned, operated, or managed by or on behalf of the District;
3. Refuse to grant a benefit to the person; or
4. Impose an unreasonable burden on the person.

³ The Northside Independent School District allows churches and religious organizations to use its facilities temporarily for worship services subject to various construction-related requirements. Religious organizations have successfully challenged such restrictions in individual cases where school districts fail to apply the same conditions to secular community groups. *See, e.g., Fairfax Covenant Church v. Fairfax Cnty. Sch. Bd.*, 17 F.3d 703, 704 (4th Cir. 1994) (holding the Fairfax County School Board's policy of subjecting only churches to a progressively escalating rental rate violated the First Amendment).



....

FORUM FOR COMMUNICATION: The District shall not discriminate against speech on the basis of viewpoint, and any restriction must be reasonable in light of the purpose served by the forum. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993)

Northside Indep. Sch. Dist. Bd., *Board Policy Manual*, Policy GKD (Legal), available at [http://www.tasb.org/policy/pol/private/015915/pol.cfm?DisplayPage=GKD\(LEGAL\).pdf](http://www.tasb.org/policy/pol/private/015915/pol.cfm?DisplayPage=GKD(LEGAL).pdf)

See generally Northside Indep. Sch. Dist. Bd., *Board Policy Manual*, available at <http://www.tasb.org/policy/pol/private/015915/>.

33. Fulton County School System, Ga.—Allows Worship (Implicitly)

USE OF SCHOOL FACILITIES

The primary purpose of our school facilities is to provide a suitable setting in which to educate the students of Fulton County. Therefore, a school's curricular and extra-curricular needs and other school-sponsored activities, as determined by the principal, shall have first priority for the use of school facilities. School-related support groups, such as PTAs, booster clubs, employee organizations, etc., shall have second priority.

At the same time, the Board of Education recognizes that school facilities represent a significant investment on the part of the District's residents. Therefore, the Board encourages community use of school facilities when such use will not interfere with the School System's educational mission.

The following outside organizations shall be eligible to apply for use of school facilities: (1) business partners of the System's schools; (2) non-profit organizations that are based in the District and whose members are mostly District residents; (3) governmental agencies located in the District or serving District residents; (4) businesses located in the District, but only for non-commercial, community oriented purposes; and (5) organizations that are currently approved by the Georgia State Board of Education to serve as Supplemental Educational Services providers to System students and are currently under contract with the System to provide Supplemental Educational Services to eligible System students, but only for the purpose of providing Supplemental Educational Services to eligible System students. Individuals are not eligible to apply for use of school facilities.

....

Fulton Cnty. Bd. of Educ., *Policies and Procedures*, Policy KG, available at <http://www.boarddocs.com/ga/fcss/Board.nsf/goto?open&id=7DF46DD9D62C73EC852570580040F789>.





USE OF SCHOOL FACILITIES

....

A. Allowable Uses of School Facilities

....

4. Outside Organizations

“Outside organizations” means those organizations other than the System’s schools, school-related support groups and employee organizations that are eligible under Board policy to request use of school facilities. These organizations are: . . . (2) non-profit organizations that are based in the System and whose members are mostly System residents; (e.g. recreational sports organizations including developmental teams)

Outside organizations are welcome to use school facilities when such use is consistent with the Board’s policies and administrative procedures and does not interfere with the activities of our schools or school-related support groups, as determined by the principal. Outside youth organizations or groups whose members are mostly students who reside in the System shall have first priority (over other outside organizations) for use of school facilities. Outside organizations should apply through the facilities services department. Business partners should obtain approval of the school principal prior to submitting an application to the facilities services department. Outside organizations seeking a one-time use of school facilities may not reserve a school facility more than three months in advance.

....

I. Fundraising by Outside Organizations

- 1. The only outside organizations that may conduct fund-raising activities at school facilities are non-profit organizations recognized as tax-exempt under section 501(c)(3).

....

Fulton Cnty. Bd. of Educ., *Policies and Procedures*, District Procedure KG, available at <http://www.boarddocs.com/ga/fcss/Board.nsf/goto?open&id=9D6C19C35307925C852570590052B9AD>.

See generally Fulton Cnty. Bd. of Educ., *Policies and Procedures*, available at <http://www.boarddocs.com/ga/fcss/Board.nsf/Public>



34. Long Beach Unified School District, Cal.—Allows Worship (Conditionally)

RULES, REGULATIONS, AND POLICIES OF THE LONG BEACH UNIFIED SCHOOL DISTRICT
REGARDING THE USE OF SCHOOL FACILITIES

....

- 4. Sections 38130–38139 of the Education Code of California are the basis for these rules and are hereby incorporated in this application, even though not herein duplicated.
- 5. No use may legally be granted if school facilities are needed for school purposes. Final approval for use of school facilities shall normally not be granted more than six (6) months in advance, nor for more than a 6-month period.

Long Beach Unified Sch. Dist., Office of Cmty. Use of Sch. Facilities, *Rules, Regulations, and Policies of the Long Beach Unified School District Regarding the Use of School Facilities*, available at <http://www.lbschools.net/Main Offices/Business Services/Purchasing and Contracts/pdf/Permit School Facilities 8-08.pdf>.

See also Long Beach Unified Sch. Dist., *Facilities Use*, available at <http://www.lbschools.net/Main Offices/Business Services/Purchasing and Contracts/facilities.cfm>.

EDUCATION CODE

§ 38131. (a) There is a civic center at each and every public school facility and grounds within the state where the citizens, parent teacher associations, Camp Fire girls, Boy Scout troops, veterans' organizations, farmers' organizations, school-community advisory councils, senior citizens' organizations, clubs, and associations formed for recreational, educational, political, economic, artistic, or moral activities of the public school districts may engage in supervised recreational activities, and where they may meet and discuss, from time to time, as they may desire, any subjects and questions that in their judgment pertain to the educational, political, economic, artistic, and moral interests of the citizens of the communities in which they reside. . . .

(b) The governing board of any school district may grant the use of school facilities or grounds as a civic center upon the terms and conditions the board deems proper, subject to the limitations, requirements, and restrictions set forth in this article, for any of the following purposes:

....

- (3) The conduct of religious services for temporary periods, on a one-time or renewable basis, by any church or religious organization that has no suitable meeting place for the conduct of the services, provided the governing board



charges the church or religious organization using the school facilities or grounds a fee as specified in subdivision (d) of Section 38134.^[4]

....

§ 38134. (a) The governing board of any school district shall authorize the use of any school facilities or grounds under its control, when an alternative location is not available, to nonprofit organizations, and clubs or associations organized to promote youth and school activities, including, but not limited to:

- (1) Girl Scouts, Boy Scouts, Camp Fire, Inc.
- (2) Parent-teachers' associations.
- (3) School-community advisory councils.

....

(d) The governing board of any school district that authorizes the use of school facilities or grounds for the purpose specified in paragraph (3) of subdivision (b) of Section 38131 shall charge the church or religious denomination an amount at least equal to the district's direct costs.

....

CAL. EDUC. CODE §§ 38130–38139, available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=edc&group=38001-39000&file=38130-38139>.

35. Jefferson County Public Schools, Colo.—Allows Worship (Expressly)

COMMUNITY USE OF SCHOOL FACILITIES

It is district policy to make district buildings and facilities available to the community when not in use for school activities.

....

Permission for use of district facilities shall not constitute a district endorsement of any organization, the beliefs of an organization or group, nor the expression of any opinion regarding the nomination, retention, election or defeat of any candidate, nor

⁴ The Long Beach Unified School District allows churches and religious organizations to use its facilities for worship services subject to a one time renewal. Religious organizations have successfully challenged such restrictions in individual cases where school districts fail to apply the same conditions to secular community groups. See, e.g., *Fairfax Covenant Church v. Fairfax Cnty. Sch. Bd.*, 17 F.3d 703, 704 (4th Cir. 1994) (holding the Fairfax County School Board's policy of subjecting only churches to a progressively escalating rental rate violated the First Amendment).



the expression of any opinion as to the passage or defeat of any issue.

.....

Jefferson Cnty. Bd. of Educ., *Board and District Policy*, District Policy KF, available at <http://www.boarddocs.com/co/jeffco/Board.nsf/Public#>.

USE OF SCHOOL GROUNDS AND FACILITIES BY RELIGIOUS ORGANIZATIONS

Places

Religious organizations may use school grounds and facilities before or after school hours and on an equal basis with other organizations, including payment of rent. Use of school facilities or grounds does not constitute endorsement. Note: Religious organizations who wish to rent school facilities for religious purposes refer to Policy KF, Community Use of School Facilities.

Communication

Religious groups and organizations may announce their meetings on designated public bulletin board(s) provided they meet school restrictions (i.e., card size, including the name of the group or organization, the activity, the date, place, time, and person and phone number to call for further information).

Jefferson Cnty. Bd. of Educ., *Board and District Policy*, District Policy KF, available at <http://www.boarddocs.com/co/jeffco/Board.nsf/Public#>.

See generally Jefferson Cnty. Bd. of Educ., available at <http://www.jeffcopublicschools.org/board/index.html>.

36. Milwaukee Public Schools, Wis.—Allows Worship (Expressly)

5.02: USE OF SCHOOL FACILITIES

(3) USE BY COMMUNITY

(a) General Provisions

1. Individuals and groups in the community shall have third priority in the use of school facilities. The use of school facilities shall be granted regardless of the philosophical, political, or religious viewpoint of the individuals or groups requesting the use of school facilities. In addition, groups may request the use of school facilities for speaker, panel, round-table, debate, or discussion programs of the forum type on economic, social, and political subjects upon petition and in conjunction with the following provisions.
2. The following provisions apply to school facility use by the community:



- a. The use of school facilities shall be granted on a first-come, first-served basis as requests for use are received. No individual or group shall be allowed exclusive rights to the use of any school facility or portion thereof in any given school year.
- b.
- c. The Administration may not refuse to issue a permit for school facility use unless the requested use conflicts with the interests of the district. Conflicts upon which community use may be denied include, but are not limited to:
 - Interference with use of the facility for school or district purposes or school-related functions
 - Lack of appropriate space or facilities
 - Lack of necessary personnel
 - Safety concerns
 - Insufficient insurance coverage
 - Failure to abide by Board rules, policies, or procedures
 - Failure to keep current on monies owed to the district
 - Use that constitutes illegal activity.

.

Administrative Policies of the Milwaukee Public Schools, Policy 5:02, *available at* http://www2.milwaukee.k12.wi.us/governance/pages/policyManual/adminPolicies/CH05/5_02.pdf.

Administrative Policies of the Milwaukee Public Schools, *available at* <http://www2.milwaukee.k12.wi.us/governance/policyManual.php?kind=AP>.

37. Austin Independent School District, Tex.—Allows Worship (Expressly)

COMMUNITY RELATIONS: NONSCHOOL USE OF SCHOOL FACILITIES

GENERAL STATEMENT: School facilities belong to the school community. Therefore, school facilities shall be available to community groups and organizations whose purposes and objectives contribute to development of the school program and community.

.

Costs involved in nonschool use of facilities will result in charges being made so that tax money will not be used in support of nonschool activities.

.

USE BY RELIGIOUS CONGREGATIONS: School facilities may be made available to regularly organized religious congregations for the same fee charged to other nonprofit organizations.

Austin Indep. Sch. Dist., *Board Policy Manual*, District Policy GKD (Regulation), *available at*



[http://www.tasb.org/policy/pol/private/227901/pol.cfm?DisplayPage=GKD\(REGULATION\).pdf](http://www.tasb.org/policy/pol/private/227901/pol.cfm?DisplayPage=GKD(REGULATION).pdf).

COMMUNITY RELATIONS: NONSCHOOL USE OF SCHOOL FACILITIES

SCOPE OF USE: The District shall permit nonschool use of designated District facilities for educational, recreational, civic, or social activities, when these activities do not conflict with school use or with this policy.

....

APPROVAL OF USE: The principal is authorized to approve use of facilities on his or her campus. The director of athletics is authorized to approve use of central athletics facilities. The Superintendent or designee is authorized to approve use of other District facilities. Written application to the appropriate administrator shall be made at least ten days in advance.

PRIORITIES: Priorities for scheduling the use of school and central athletics facilities shall be as follows:

1. The regularly scheduled educational program, including instructional activities; meetings, practices, and performances of school-sponsored groups; staff meetings related to official school business; and regularly scheduled maintenance.
2. Meetings and other activities of school-support groups organized for the sole purpose of supporting the schools or school-sponsored activities [see GE].
3. Meetings and other activities of groups made up primarily of school-aged children.
4. Meetings of employee organizations [see DGA].
5. Meetings and activities of other groups on a first-come, first-served basis.

COMMUNITY ORGANIZATIONS: The following provisions shall govern use of school facilities by community organizations:

....

3. School facilities may be rented by religious groups for religious purposes. The rental agreement shall be renewable annually.

Austin Indep. Sch. Dist., *Board Policy Manual*, District Policy GKD (Local), available at [http://www.tasb.org/policy/pol/private/227901/pol.cfm?DisplayPage=GKD\(LOCAL\).pdf](http://www.tasb.org/policy/pol/private/227901/pol.cfm?DisplayPage=GKD(LOCAL).pdf)

COMMUNITY RELATIONS: NONSCHOOL USE OF SCHOOL FACILITIES

PROHIBITED ACTS: An officer or employee of the District who is acting or purporting to act in an official capacity may not, because of a person's race, religion, color, sex, or national origin:

1. Refuse to permit the person to use facilities open to the public and owned, operated, or managed by or on behalf of the District;



- 2. Refuse to permit the person to participate in a program owned, operated, or managed by or on behalf of the District;
- 3. Refuse to grant a benefit to the person; or
- 4. Impose an unreasonable burden on the person.

FORUM FOR COMMUNICATION: The District shall not discriminate against speech on the basis of viewpoint, and any restriction must be reasonable in light of the purpose served by the forum. *Good News Club v. Milford Cent. Sch*, 533 U.S. 98 (2001); *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993)

. . . .

Austin Indep. Sch. Dist., *Board Policy Manual*, District Policy GKD (Legal), available at [http://www.tasb.org/policy/pol/private/227901/pol.cfm?DisplayPage=GKD\(LEGAL\).pdf](http://www.tasb.org/policy/pol/private/227901/pol.cfm?DisplayPage=GKD(LEGAL).pdf)

See generally Austin Indep. Sch. Dist., *Board Policy Manual*, available at <http://archive.austinisd.org/inside/policy/>.

38. Baltimore City Public Schools, Md.—Allows Worship (Implicitly)

GENERAL POLICIES: BUILDING USE PERMITS

School facilities may be used for other purposes relating to education and community welfare by a person or association to whom permission is granted and a permit or approval letter is issued for each occasion for which the facilities are to be used.

The principal has the authority and responsibility to determine whether the permit request is appropriate and should be approved. The principal should consult with the Office of Business Services whenever a request is received that is considered unusual or raises a concern. Both the principal and the Chief Executive Officer or his/her designee reserve the right to deny or revoke any permit, provided reasonable notice is given. Permits may be immediately revoked as a result of inclement weather, or if the need arises for the use of the facility for school activities or educational purposes. Permits may be immediately revoked if rules are violated concerning no gambling, alcohol, drugs, obscene or abusive language, or smoking. Cancellation by the permit applicant requires at least seventy two (72) hours notice to the school. Failure of the permit applicant to comply with this cancellation notice requirement will result in future permit applications being denied and will also result in the full compliment of fees set forth in the contract being assessed.

Baltimore City Bd. of Sch. Comm'rs, *Board Policies and Regulations*, Rule 801.04, available at <http://www.boarddocs.com/mabe/bcpss/board.nsf/public>.

GENERAL POLICIES: PURPOSES FOR WHICH FACILITIES MAY BE USED

Responsible persons or associations may request permits to use school facilities or



areas for public, civic, community, or educational meetings and events. School facilities are not available for private fund raising purposes. The principal has the first right of approval in determining the availability of the school facility for the permit request. The principal must consult with the Office of Business Services whenever a request is received that is considered unusual or raises a concern. The Chief Executive Officer or his/her designee reserves the right to determine the appropriateness of the request, and will automatically deny a request if it appears likely to provoke or add to a public disturbance or if it presents a clear and present danger to the peace and welfare of the community.

Baltimore City Bd. of Sch. Comm'rs, *Board Policies and Regulations*, Rule 801.05, available at <http://www.boarddocs.com/mabe/bcpss/board.nsf/public>.

See also Baltimore City Bd. of Sch. Comm'rs, *Board Policies and Regulations*, Rule 801.06, available at <http://www.boarddocs.com/mabe/bcpss/board.nsf/public>.

See generally Baltimore City Bd. of Sch. Comm'rs, *Board Policies and Regulations*, available at <http://www.boarddocs.com/mabe/bcpss/board.nsf/public>.

39. Jordan School District, Utah—Allows Worship (Implicitly)

USE OF PUBLIC SCHOOL BUILDINGS AND GROUNDS AS CIVIC CENTERS

I. Board Policy

In accordance with Utah State Code Sections 53A-3-413, the Board authorizes, on condition, for the use of school buildings and grounds as civic centers, for other than school purposes. The Board recognizes that these civic centers shall be established and maintained as limited public forums to District residents for supervised recreational activities and meetings. It is further understood that use of property for civic center purposes may not interfere with a school function or purpose.

Under Utah State Code 53A-3-414 the Board shall manage, direct, and control the use of school buildings and grounds when used as civic centers. The Board shall charge a reasonable fee for the use of school facilities as civic centers so the District incurs no expense for that use. The Board shall also ensure that school administrators are trained and properly implement District policy according to Utah Code.

II. Administration Policy

The Board authorizes the Administration to establish the facility rental guidelines, a fee schedule, and personnel necessary to manage the rental and use of school buildings and grounds for other than school purposes. The Board will review and approve the facility rental guidelines and fee schedule as needed. The Administrator of Auxiliary Services shall administer the rules and guidelines and see that all schools follow established procedures.



Jordan School District, Policy Manual, Policy DA151, available at <http://policymanual.jordandistrict.org/policies/da151.html>.

FACILITY USE & RENTAL

Facility Use

All activities will be scheduled through the District Facilities Scheduler. The District Facilities Scheduler is responsible for coordination of all school rentals and after-hour facility use. Schools are given first priority when a schedule is submitted to the District Facilities Scheduler by July 1 of each year. Requests made after July 1 will be scheduled on a time and space available basis.

Authorized Facility Use By Category

- **Category I:** School or District Educational Use
- **Category II:** Municipalities and other tax-supported agencies for single-use such as for town meetings, Meet the Candidate Nights, etc.
- **Category III:** Extended use of facilities by municipalities or tax-supported agencies for plays, productions, or multiple night events, not charging fees.
- **Category IV:** Charitable or non-commercial organizations from within Jordan School District boundaries charging fees, including county and municipal recreation programs.
- **Category V:** Charitable or non-commercial organizations from outside Jordan School District boundaries.
- **Category VI:** Commercial organizations.

Facility Rental Guidelines

....

Charitable Use

Those wishing to rent the facilities under this category must provide evidence of their non-profit status. Category IV or V fees according to the fee schedule will be charged to recoup building expenses, provide necessary custodial supplies, and for personnel time.

As per Utah Code 53A-3-414, prices should be set at a rate to cover all costs including administration, supervision/technician, custodian(s), supplies, and utilities.

....

Jordan Sch. Dist., *Facility Use & Rental*, available at <http://www.jordandistrict.org/resources/facilities/>.

40. Lee County Public Schools, Fla.—Allows Worship (Implicitly)

USE OF FACILITIES

School plants and facilities are intended primarily for educational purposes and for



the benefit of students. The use of school plants and facilities shall be subject to the approval of the principal and based on the following priorities:

- 1. The requirements of the school program shall receive consideration in the use of school facilities.
2. The Adult Education Program shall take precedence over non-educational programs, second only to the regular school program.
3. School-related organizations.
4. School sponsored groups.
5. Any request for the use of a school facility by a non-school related individual or group shall be made in writing on the form provided by the Superintendent. The request shall be submitted first to the school principal who shall forward the request to the Superintendent or designee with a recommendation for approval or disapproval. Fee charges shall be in accordance with a schedule of charges provided by the Superintendent and approved by the Board. The Superintendent or designee is authorized to waive the fee when the organization using the facility will provide some benefit to the School District through or as a result of the activity conducted during use of the facility.

....

Sch. Bd. of Lee Cnty., Board Policies, Policy 9.05, available at http://www.leeschools.net/board/policies/chapter9/905 UseofFacilities.pdf.

See generally Sch. Bd. of Lee Cnty., Board Policies, available at http://www.leeschools.net/board/policies/.

41. Fort Worth Independent School District, Tex.—Allows Worship (Expressly)

COMMUNITY RELATIONS: NONSCHOOL USE OF SCHOOL FACILITIES

GENERAL PURPOSE: School buildings and property under control of the Board are provided primarily for the instruction of students under the direction of regularly employed teachers, and for the accompanying educational program of the respective schools. No other use shall be granted if such use interferes with regular school work, or with the activities during nonschool hours associated with the regular school program. The District, however, recognizes its obligations as a governmental, tax-supported organization to make its facilities available for public purposes to not-for-profit organizations.

APPROVAL OF USE: The principal is authorized to approve use of facilities on his or her campus in accordance with this policy. The Superintendent is authorized to approve use of District facilities. The Superintendent may authorize the use of facilities in the case of emergencies or disaster. Leases in excess of one fiscal year shall require Board approval.



.....

PRIORITIES: Priorities for scheduling the use of school facilities shall be as follows:

1. The regularly scheduled educational program, including instructional activities; meetings, practices, and performances of school-sponsored groups; and staff meetings related to official school business.
2. Meetings and other activities of school-support groups organized for the sole purpose of supporting the schools or school-sponsored activities [see GE].
3. Meetings and other activities of groups made up primarily of school-aged children.
4. Meetings of employee organizations [see DGA].
5. Meetings of governmental agencies.
6. Meetings of neighborhood associations.
7. Meetings and other activities of not-for-profit organizations on a first-come, first-served basis.

.....

NONSCHOOL USE GENERAL: Persons or organizations listed in 3, 5, 6, and 7 above desiring the use of any auditorium, gymnasium, or cafeteria in any public school building, or desiring the use of school grounds or other outdoor campus facilities, shall make application at least 15 business days prior to the activity through the business office. The business office shall forward the request to the principal to determine the availability of such spaces.

The principal has the responsibility to determine the personnel (custodial, administrative, or others) necessary to facilitate the use of the building and/or grounds.

PERSONNEL, UTILITY, AND RENTAL FEES: . . . Organizations listed in groups 5 and 7 above shall be charged rental fees in accordance with a rental fee schedule published by the division of business and finance. . . .

.....

PROHIBITED ACTIVITIES: No meeting or activity shall be permitted in a school building or on school grounds that is in any way contrary to the purpose of the District. Doctrines or theories that are subversive to the Constitution or laws of the state of Texas or of the United States of America shall not be advanced. Social or political change by violence shall not be advanced. Private, profit-making enterprises shall not be promoted. Lectures, musical comedies, theatrical productions, or any other assemblies that are, in the judgment of the Superintendent or designee, of a questionable nature shall not be permitted.

Fort Worth Indep. Sch. Dist., *Board Policy Manual*, Policy GKD (Local), available at [http://www.tasb.org/policy/pol/private/220905/pol.cfm?DisplayPage=GKD\(LOCAL\).pdf](http://www.tasb.org/policy/pol/private/220905/pol.cfm?DisplayPage=GKD(LOCAL).pdf).

COMMUNITY RELATIONS: NONSCHOOL USE OF SCHOOL FACILITIES

PROHIBITED ACTS: An officer or employee of the District who is acting or purporting



to act in an official capacity may not, because of a person's race, religion, color, sex, or national origin:

- 1. Refuse to permit the person to use facilities open to the public and owned, operated, or managed by or on behalf of the District;
2. Refuse to permit the person to participate in a program owned, operated, or managed by or on behalf of the District;
3. Refuse to grant a benefit to the person; or
4. Impose an unreasonable burden on the person.

....

FORUM FOR COMMUNICATION: The District shall not discriminate against speech on the basis of viewpoint, and any restriction must be reasonable in light of the purpose served by the forum. Good News Club v. Milford Cent. Sch, 533 U.S. 98 (2001); Lamb's Chapel v. Center Moriches Union Free Sch. Dist., 508 U.S. 384 (1993)

....

Fort Worth Indep. Sch. Dist., Board Policy Manual, Policy GKD (Legal), available at http://www.tasb.org/policy/pol/private/220905/pol.cfm?DisplayPage=GKD(LEGAL).pdf.

See generally Forth Worth Indep. Sch. Dist. Bd. of Educ., available at http://www.fwisd.org/boe/Pages/default.aspx.

See generally Fort Worth Indep. Sch. Dist., Board Policy Manual, available at http://www.tasb.org/policy/pol/private/220905/.

42. Fresno Unified School District, Cal.—Allows Worship (Implicitly)

COMMUNITY RELATIONS

The Governing Board recognizes that district facilities are a community resource whose primary purpose is to be used for school programs and activities. The Board authorizes the use of school facilities by community groups for purposes provided for in the Civic Center Act when such use does not interfere with school activities. The Board grants the use of school facilities for activities of an educational, cultural, civic, social, recreational, governmental and general political nature in accordance with Board policy and administrative regulations.

All school-related activities (clubs, class events, etc.) shall be given priority in the use of facilities under the Civic Center Act. Thereafter, the use of facilities shall be on a first-come, first-served basis.

The Board shall not grant the use of school facilities for any of the following activities:

- 1. Any use by an individual or group for the commission of any crime or any act



- prohibited by law.
2. Any use of school facilities or grounds which is inconsistent with their use for school purposes or which interferes with the regular conduct of school or school work.
 3. Any use which is discriminatory in the legal sense.
 4. Any use which involves the possession, consumption, or sale of alcoholic beverages or any restricted substances on school property.

The Superintendent or designee is authorized to approve and arrange for scheduling the use of school facilities in accordance with the Education Code, Board policy and administrative regulations.

Fees for Use of School Facilities

The Board shall grant the use of school facilities without charge to school-related organizations whose activities are directly related to or for the benefit of district schools. Other groups requesting the use of school facilities under the Civic Center Act shall be charged direct costs or fair rental

1. **Free Use:** Should a school-related organization prefer to use school facilities at a time when custodial services are not normally available, the district may charge a fee. The principal or designee shall first ensure the availability of other times during the week when the facility could be provided without charge, and this availability shall be pointed out to the free-use group.
2. **Direct-Costs Fee:** Activities other than those specified for free use or fair rental value shall be charged a fee not to exceed direct costs to the district. Direct costs include supplies, utilities, janitorial services, services of other district employees and salaries paid to district employees necessitated by the organization's use of school facilities.
3. **Fair-Rental-Value Fee:** Groups shall be charged fair rental value when using school facilities or grounds for entertainment or meetings where admission is charged or contributions solicited and net receipts are not to be expended for charitable purposes or for the welfare of the district's students. (Education Code 38134)

....

Application for Use of Facilities

The Superintendent or designee shall maintain application procedures and regulations for the use of school facilities designed to:

1. Provide encouragement and assistance for authorized activities.
2. Preserve order in school buildings and on school grounds, and protect school facilities. If necessary, a person may be designated to supervise this task.
3. Ensure that the use of facilities or grounds under this policy is not inconsistent with the use of the school facilities or grounds for school purposes and



does not interfere with the regular conduct of school work.

Persons or organizations applying for the use of school facilities also shall submit a statement of information indicating that the organization upholds the state and federal constitutions.

....

Legal Reference:

....

UNITED STATES CODE, TITLE 20
7905 Equal access to public school facilities

COURT DECISIONS
Good News Club v. Milford Central School, (2001) 533 U.S. 98
Lamb’s Chapel v. Center Moriches Union Free School District, (1993) 508 U.S. 384

....

Fresno Unified Sch. Dist., *Board Policies*, BP 1330, available at <http://www.fresnounified.org/board/policies/Policies/fusd/displaypolicy/143975/1.htm>.

COMMUNITY RELATIONS: RULES AND REGULATIONS

....

Prohibited Activities

The following activities are prohibited on school grounds unless prior written authorization has been obtained: animals, motorized vehicles or cycles, skateboards go-carts, rockets, powered airplane models and golf practice.

Fresno Unified Sch. Dist., *Board Policies*, BP 1330, available at <http://www.fresnounified.org/board/policies/Policies/fusd/displaypolicy/255002/1.htm>.

See generally Fresno Unified Sch. Dist., *Board Policies*, available at <http://www.fresnounified.org/board/policies/Pages/default.aspx>.

43. Metropolitan Nashville Public Schools, Tenn.—Allows Worship (Expressly)

FACILITY USE

The Board has delegated to the MNPS administration the authority to consent to the use of school property.



School property may normally be used for the following purposes:

....

- Religious services

....

Metro. Nashville Pub. Schs., Policy FM 2.118, available at <http://policy.mnps.org/AssetFactory.aspx?did=47179>.

See also Metro. Nashville Pub. Schs., Standard Operating Procedure FMP 2.118, available at <http://policy.mnps.org/AssetFactory.aspx?did=47848>.

See also Metro. Nashville Pub. Schs., Facilities & Use, available at <http://www.mnps.org/Page58416.aspx>.

See also Metro. Nashville Pub. Schs., Facility Use Information Sheet, available at <http://www.mnps.org/AssetFactory.aspx?did=53757>.

See also Metro. Nashville Pub. Schs., Facility Request Form, available at <http://www.mnps.org/AssetFactory.aspx?did=26377>.

44. Denver Public Schools, Colo.—Allows Worship (Expressly)

COMMUNITY USE OF SCHOOL FACILITIES

Denver Public Schools shall make its buildings and facilities available to the community for the use of responsible organizations or groups of citizens when school is not in session.

Such permission and use shall not constitute an endorsement by the school district of any organization or group nor of the program, philosophies, goals or beliefs of any such organizations or groups or the expression of opinion regarding the nomination, retention, election or defeat of any candidate nor the expression of any opinion as to the passage or defeat of any issue.

Denver Public Sch. Bd. of Educ., *Policies and Procedures*, Policy KF, available at <http://www.dpsk12.org/policies/Policy.aspx?-db=policy.fp3&-format=detail.html&-lay=policyview&-sortfield=File&-op=eq&Section=K&-recid=32978&-find=>

COMMUNITY USE OF SCHOOL FACILITIES PROCEDURES

I. INTRODUCTION

The Board of Education recognizes:



1. That the District facilities belong to the school community;

....

3. That school district facilities may be made available to the community when not in use for school activities;

....

II. GENERAL TERMS AND CONDITIONS OF SCHOOL FACILITY USE

Denver Public Schools shall make its buildings and facilities available to the community for the use of responsible organizations or groups of citizens when school is not in session. Such permission and use shall not constitute an endorsement by the school district of any organization or group nor of the program, philosophies, goals or beliefs of any such organizations or groups or the expression of opinion regarding the nomination, retention, election or defeat of any candidate nor the expression of any opinion as to the passage or defeat of any issue.

....

III. COMMUNITY USE CATEGORIES

The following facility user categories are identified for the purpose of determining rental rates, which are listed in the Appendix.

For all categories appropriate costs will be charged. These costs may include: any application fee, facility rental fee, labor, and repair of damage incurred by the District.

....

Category B—Community Not-for-Profit Rental (Rental Fee, Application Fee, Labor Charges as Appropriate)

- Religious organizations/activities.
- Adult recreational groups (exc. Parks and Rec.).
- Political groups, including caucuses.
- Social organizations.
- Support groups.
- Colleges.
- Universities.
- Private schools.
- Charter schools.

....



IV. APPLICATION FOR COMMUNITY USE

....

Priority for facility use will be given to: I. DPS Schools and school sponsored organizations, II. DPS Community School Programs, III. Denver Parks & Recreation Programs, in the above order.

All other use of facilities will be processed on a first come, first served basis determined by the time and date the completed application was received in the Office of Community Use of Facilities.

....

Church and Religious Activities

- Facilities may be used for religious activities under the following conditions:
- Church services and religious activities must be conducted at times when school is not in session.
- Religious objects and symbols must be removed after each use.
- Facilities may be used by church sponsored groups for non-religious activities such as, but not limited to, youth athletics and social gatherings.
- Fees will be assessed according to the current applicable rates.

....

Rules regarding use of school facilities shall include at least the following requirements:

....

- n) **Religious Activities.** Church services and other religious activities shall be conducted at times when school is not in session. Religious objects and symbols are to be removed after each use.

....

Denver Public Sch. Bd. of Educ., *Policies and Procedures*, Policy KF-R, available at <http://www.dpsk12.org/policies/Policy.aspx?-db=policy.fp3&-format=detail.html&-lay=policyview&-sortfield=File&-op=eq&Section=K&-recid=32995&-find=>.

45. Prince William County Public Schools, Va.—Allows Worship (Implicitly)

COMMUNITY RELATIONS: COMMUNITY USE OF SCHOOL FACILITIES

The Prince William County School Board encourages the use of school buildings and grounds by departments and agencies of the Prince William County government and



the community for educational, recreational, civic, and cultural activities, in conformance with applicable law.

....

When space is available at times that do not interfere with these priorities, school facilities may be reserved for use by the County and community as provided in Regulation 930-1, Community Use of School Facilities,⁵ and the Prince William County Public Schools Community Use Manual.

Prince William Cnty. Sch. Bd., *Policies and Regulations*, Policy 930, available at <http://pwcs.schoolfusion.us/modules/groups/homepagefiles/cms/493839/File/Policies/p930.pdf?sessionId=55f8203cb1c79bf075327302f8a661cf>.

See generally Prince William Cnty. Sch. Bd., *Policies and Regulations*, available at <http://pwcs.schoolfusion.us/modules/cms/pages.phtml?pageid=149502&sessionId=3e6873da698aed59b8e71860db9b9b3d&sessionId=3e6873da698aed59b8e71860db9b9b3d>.

See generally Prince William Cnty. Pub. Schs., *Community Use of Schools and Facilities*, available at <http://pwcs.riskmanagement.schoolfusion.us/modules/cms/pages.phtml?pageid=136142&sessionId=3e6873da698aed59b8e71860db9b9b3d&t>.

See generally Prince William Cnty. Pub. Schs., *Community Use Outside Requester Manual*, available at http://pwcs.riskmanagement.schoolfusion.us/modules/groups/homepagefiles/cms/1007131/File/CommunityUse_FILES/CUDirectionsToExternalUsers.pdf?sessionId=3e6873da698aed59b8e71860db9b9b3d.

See generally Prince William Cnty. Pub. Schs., *Community Use of Schools Rental Form*, available at http://pwcs.riskmanagement.schoolfusion.us/modules/groups/homepagefiles/cms/1007131/File/CommunityUse_FILES/AttachmentA-ApplicationForCU.pdf?sessionId=3e6873da698aed59b8e71860db9b9b3d.

46. Anne Arundel County Public Schools, Md.—Allows Worship (Expressly)

USE OF SCHOOL FACILITIES

....

The Board of Education will encourage the use of school facilities by school and community organizations for civic, religious, social, and recreational activities, which do not interfere with the use of these facilities for instructional purposes.

⁵ The *Policies and Regulations* website no longer seems to feature this regulation.



....

Bd. of Educ. of Anne Arundel Cnty., *Board Policies and Administrative Regulations*, Policy KC, available at http://www.aacps.org/aacps/boe/board/newpolicy/Sections/section_500/policy502.pdf.

USE OF SCHOOL FACILITIES

....

C. PROCEDURE FOR USE

1. General Provisions

....

- e. Any use of grounds is prohibited for commercial or religious activities without the approval of the Superintendent or designee.

....

4. Rental and Service Charges

- a. The following individuals, groups, and organizations will be charged for the use of school facilities according to a fee structure adopted by the Board. The fee for use of school facilities is set forth in the Community Use of School Facilities Manual.

- (1) Religious organizations using school facilities for religious services.

....

....

Bd. of Educ. of Anne Arundel Cnty., *Board Policies and Administrative Regulations*, Regulation KC-RA, available at http://www.aacps.org/aacps/boe/board/newpolicy/Sections/section_500/adminreg502.pdf.

See generally Bd. of Educ. of Anne Arundel Cnty., *Board Policies and Administrative Regulations*, available at <http://www.aacps.org/aacps/boe/board/newpolicy/Policies.asp>.

47. Brevard Public Schools, Fla.—Allows Worship (Expressly)

USE OF DISTRICT FACILITIES

The Board believes that the grounds and facilities of this District should be made available for community purposes, provided that such use does not infringe on the



original and necessary purpose of the property or interfere with the educational program of the schools and is harmonious with the purposes of this District.

Sch. Bd. of Brevard Cnty., Fla., *Bylaws & Policies*, Policy 7510, available at <http://www.neola.com/brevardco-fl/search/policies/po7510.htm/>.

USE OF DISTRICT FACILITIES

Use by School-Oriented Organizations and Nonschool-Oriented Groups

....

Category III

Governmental agencies (non-student related use), community groups, churches, not-for-profit/non-youth clubs or organizations, for-profit business enterprises, non-school related labor unions, or individuals who:

....

- B. conduct fund raising activities, or meetings or services to promote a business, product, religion, or ideology . . .

These groups shall complete a facility use agreement form and submit a certificate of insurance or in the case of governmental organizations evidence that they self-insure their exposures per F.S. 768.28. These groups are responsible for paying all facility use charges, utility expenses as well as school personnel and/or any additional clean-up costs.

....

Sch. Bd. of Brevard Cnty., Fla., *Bylaws & Policies*, Administrative Procedure 7510, available at <http://www.neola.com/brevardco-fl/search/AP/AP7510.htm>.

See generally Sch. Bd. of Brevard Cnty., Fla. *Bylaws & Policies*, available at <http://www.neola.com/brevardco-fl/>.

48. Guilford County Schools, N.C.—Allows Worship (Expressly)

COMMUNITY USE OF SCHOOL FACILITIES

.... The Guilford County School System supports the use of public school facilities for civic, cultural, educational, recreational or other use outside the school day provided these activities meet federal and state law, and appropriate local ordinances....



Guilford Cnty. Bd. of Educ., *Policies and Administrative Procedures*, Policy KG, available at <http://schoolcenter.gcsnc.com/education/components/scrapbook/default.php?sectiondetailid=305351>.

COMMUNITY USE OF SCHOOL FACILITIES

3. Organizations Not Exempt from Paying Facility Use Charges

....

Community-Based Organizations

Groups, including but not limited to colleges and universities, sponsoring activities other than educational activities, adult fraternities/sororities, professional and occupational groups, and church and religious groups may use school facilities but must pay facility usage, custodial supply fees and personnel(custodial/cafeteria) fees based on rates outlined in the Fee Schedule.

Guilford Cnty. Bd. of Educ., *Policies and Administrative Procedures*, Policy KG, available at <http://schoolcenter.gcsnc.com/education/components/scrapbook/default.php?sectiondetailid=305352>.

49. Virginia Beach City Public Schools, Va.—Allows Worship (Conditionally)

COMMUNITY RELATIONS

Organizations Eligible to Use School Facilities

....

B. Use by Religious Groups

Religious groups may apply for permission to use facilities for religious services over an extended period of time with the following conditions:

1. Contracts will be reviewed and renewed annually.
2. A custodian will be required on school premises during church services.
3. The applicant must have definite building plans, i.e., own land, have blueprints, and/or a building fund.⁶

⁶ Virginia Beach City Public Schools allows churches and religious organizations to use its facilities temporarily for worship services subject to various construction-related requirements. Religious organizations have successfully challenged such restrictions in individual cases where school districts fail to apply the same conditions to secular community groups. See, e.g., *Fairfax Covenant*



....

Sch. Bd. of City of Va. Beach, *Policies and Regulations*, Policy 7-49, available at http://www.vbschools.com/policies/7-49_p.asp.

50. Greenville County Schools, S.C.—Allows Worship (Conditionally)

USE OF SCHOOL FACILITIES

The buildings and properties of the school district shall be available for community use, including partisan political events, under those conditions prescribed or permitted by law and in accordance with this policy.

....

- 3. School buildings are available to church groups for worship services while their facilities are under construction. Those church groups involved in a building restoration program and those in the formative stage must produce documentary evidence that they are actually going through with such plans without undue delay. Property deeds, building contracts, financial reserves on hand and arranged for, etc. will constitute such evidence.^[7]

....

Bd. of Trs. of Greenville Cnty. Schs., *School Board Policy Manual*, Policy KG, available at <http://www.boarddocs.com/sc/greenville/Board.nsf/Public#>.

Church v. Fairfax Cnty. Sch. Bd., 17 F.3d 703, 704 (4th Cir. 1994) (holding the Fairfax County School Board’s policy of subjecting only churches to a progressively escalating rental rate violated the First Amendment).

⁷ Greenville County Schools allows churches and religious organizations to use its facilities temporarily for worship services subject to various construction-related requirements. Religious organizations have successfully challenged such restrictions in individual cases where school districts fail to apply the same conditions to secular community groups. See, e.g., *Fairfax Covenant Church v. Fairfax Cnty. Sch. Bd.*, 17 F.3d 703, 704 (4th Cir. 1994) (holding the Fairfax County School Board’s policy of subjecting only churches to a progressively escalating rental rate violated the First Amendment).



Jordan W. Lorence
jlorence@telladf.org

January 10, 2012

Robert Newman
Legislative Director
The New York City Council
City Hall
New York, New York 10007
Via E-mail to rnewman@council.nyc.gov

Re: New York City's Policy on Allowing Houses of Worship to Use Public Facilities
Equal Access Case Law Outside the Second Circuit that Involved Worship

Dear Mr. Newman:

Thank you for the opportunity to provide you with a summary of equal access cases involving government prohibitions on worship in neutrally available public facilities. The letter concludes that the Second Circuit's decision in *Bronx Household of Faith v. Board of Education of City of New York*, 650 F.3d 30 (2d Cir. 2011), is an outlier among equal access precedent. Every other federal court of appeals and district court to address the issue of permitting worship in a neutral speech forum has found that the government violates the First Amendment by banning such speech.

DISCUSSION

I. The Federal Courts of Appeals Agree that Banning Worship from a Neutrally Available Forum is Unconstitutional.

The United States Courts of Appeals for the First, Third, Fourth, Fifth, Seventh, Eighth, and Tenth Circuits have held that the government violates the First Amendment when it bans worship from a public forum neutrally available to all speakers. Most recently, in *Badger Catholic, Inc. v. Walsh*, 620 F.3d 775, 776-77, 781 (7th Cir. 2010), cert. denied 131 S. Ct. 1604 (2011), the Seventh Circuit held that a public university's exclusion of worship, proselytizing, or religious instruction from a speech forum available to students violated the First Amendment. *Id.* at 776-77. A Catholic student group applied for student activity fee funding from the University of Wisconsin-Madison. Some of the group's proposed activities involved the celebration of Catholic mass. *Id.* at 777. The Seventh Circuit found that the university's policy

and associated rejection of the student group's funding application was unconstitutional viewpoint discrimination because the university permitted other student groups to engage in secular activities that were similar to worship. Moreover, the court noted the difficulty of applying the university's rule even-handedly:

Quakers view communal silence as religious devotion, and a discussion leading to consensus as a religious exercise. Adherents to Islam and Buddhism deny that there is any divide between religion and daily life; they see elements of worship in everything a person does.... [A] constitutional rule must be general enough to handle all sorts of religion

Id. at 781. Thus, the student group was permitted to receive student activity fee funding, even for worship.

In *Church on the Rock v. City of Albuquerque*, 84 F.3d 1273, 1279 (10th Cir. 1996), the Tenth Circuit ruled that the City of Albuquerque violated the First Amendment by enforcing a policy that excluded "religious worship" and "sectarian instruction" from a designated public forum. The city permitted the use of senior centers for activities "of interest to senior citizens." *Id.* at 1277. But when a local church applied to show a film that encouraged people to convert to the Christian faith, the city denied the application because city policy prohibited the use of senior centers "for sectarian instruction or as a place for religious worship." *Id.* The Tenth Circuit ruled that the city's policy was viewpoint discriminatory because the policy permitted groups to discuss God, but not worship him. *Id.* at 1279.

The Fourth Circuit has likewise struck down a policy that treated religious worship differently than secular speech. In *Fairfax Covenant Church v. Fairfax County School Board*, 17 F.3d 703, 704-05 (4th Cir. 1994), the Fourth Circuit declared unconstitutional a school district's policy that required churches conducting worship services to pay more than nonreligious groups renting school buildings for their expression. The school opened its facilities to a "wide array of private, community, religious, and cultural organizations, both commercial and nonprofit." *Id.* The Fourth Circuit held that the policy was an unconstitutional content-based restriction on speech unjustified by the government's asserted interest in avoiding an Establishment Clause violation. *Id.* at 707.

In *Grace Bible Fellowship v. Maine School Administrative District No. 5*, 941 F.2d 45, 46 (1st Cir. 1991), a school district opened its buildings for meetings by youth groups, community, civic, and service organizations, government agencies, educational programs, and cultural events. But district policy prohibited the use of its facilities "for the direct advancement of religion." *Id.* A church applied to use the district's facilities for a free Christmas dinner that included singing and religious teaching. The district rejected the application based on fear of violating the Establishment Clause. *Id.* The First Circuit struck down the district's policy as an unconstitutional content-based exclusion of religious speech in a neutral forum. *Id.* at 48.

In *Gregoire v. Centennial School District*, 907 F.2d 1366, 1369, 1373 (3d Cir. 1990), a school district permitted meetings by civic groups, cultural activities, resident service

Mr. Robert Newman
January 10, 2012
Page 3 of 6

organizations, adult education classes and labor unions, but prohibited “religious services, instruction and/or religious activities,” including “the invocation of, worship to, prayer to, or adoration of a diety [sic].” A religious organization sought permission to use a high school auditorium for a one-time evening event involving an evangelistic presentation. *Id.* at 1369. The district rejected the organization’s application pursuant to its ban on religious services, instruction and/or religious activities. *Id.* The Third Circuit held that the district discriminated based on content in violation of the First Amendment and struck down its policy banning religious speech and religious worship. *Id.* at 1381-82.

In *Chess v. Widmar*, 635 F.2d 1310, 1312 (8th Cir. 1980), *aff’d* 454 U.S. 263 (1981), a public university permitted students to hold meetings on campus for “political, cultural, educational, social and recreational events,” but barred religious worship services. A Christian student organization sought permission to use the student union for its weekly meetings, which involved prayer, singing hymns, reading scripture, testimonies, and Bible commentary. *Id.* at 1313. Although the students had met in the union for years, the university denied their request in 1977. The Eighth Circuit ruled that the university’s policy was an unconstitutional content-based exclusion of religious worship from a neutrally open speech forum. *Id.* at 1320. The Supreme Court affirmed. *Widmar v. Vincent*, 454 U.S. 263 (1981).

In *Concerned Women for America v. Lafayette County*, 883 F.2d 32, 33-34 (5th Cir. 1989), a public library permitted the use of an auditorium for meetings of a “civic, cultural or educational character,” but excluded religious expression. A local chapter of Concerned Women for America requested permission to use the auditorium for a prayer meeting. *Id.* The library denied its request. *Id.* The Fifth Circuit held that the library’s policy was an unconstitutional content-based regulation of speech and that it did not violate the Establishment Clause to permit such a use. *Id.* at 34-35.

Even the policy excluding religious worship from a public library’s meeting room in *Faith Center Church Evangelistic Ministries v. Glover*, 480 F.3d 891, 902-03, 918 (9th Cir. 2007), was eventually struck down as unconstitutional. There, the Ninth Circuit held that a church was not entitled to preliminary injunction against a public library’s policy of opening its facilities to “educational, cultural and community related meetings, programs and activities,” but excluding “religious services.” The court found that the policy did not violate the church’s freedom of speech because the policy was reasonable and viewpoint neutral. As a result, the library lawfully prohibited the church from using its facilities for a “praise and worship” meeting. *Id.* at 903-04. On remand, however, the district court struck down the library’s policy because it excessively entangled the government with religion in violation of the Establishment Clause. *Faith Ctr. Church Evangelistic Ministries v. Glover*, No. C 04-03111, 2009 WL 1765974, *9-10 (N.D. Cal. June 19, 2009). The court explained that because the library’s policy did not define “religious services,” the library determined whether an activity fell within that prohibition on a case by case basis, which necessarily involved an inquiry into religious doctrine. *Id.* at *8-9. Thus, the court ruled in favor of the church and struck down the policy. *Id.* at *11; *see also Gregoire*, 907 F.2d at 1382 (noting that a policy that permitted religious speech but excluded religious worship would excessively entangle the government with religion).

Outside the Second Circuit the federal courts of appeals agree: banning worship from a neutral speech forum is unconstitutional.

II. Many Federal District Courts Also Agree that Banning Worship from a Neutrally Available Forum is Unconstitutional.

Federal district courts across the country also have struck down government policies banning worship from neutral speech forums. In *Citizens for Community Values, Inc. v. Upper Arlington Public Library Board of Trustees*, No. C-2-08-223, 2008 WL 3843579, *1 (S.D. Ohio Aug. 14, 2008), a public library opened its meeting rooms for cultural activities and discussion of public questions and social issues. The library policy welcomed use of the facilities by churches for committee meetings, but banned religious services. *Id.* A community group applied to use one of the rooms for Bible discussion, legal discussion, prayer, and a time of singing praise songs. *Id.* at *2. The library rejected its application based on the inclusion of prayer and worship in the program. *Id.* at *3. The district court ruled that the policy violated the First Amendment because it constituted unlawful viewpoint discrimination in a limited public forum. *Id.* at *13.

In *Moore v. City of Van, Texas*, 238 F. Supp. 2d 837, 839 (E.D. Tex. 2003), a city permitted the use of its community centers for any purpose except religious purposes. A citizen applied to use one of the centers for an event that involved prayer, discussion of local school issues and student safety, and singing hymns. *Id.* The city denied her request based on its unwritten policy prohibiting “religious service meetings.” *Id.* at 840. The district court ruled that the city’s policy was unconstitutional viewpoint discrimination, that was not reasonable in light of the purposes of the forum, and that it was not justified by the Establishment Clause. *Id.* at 847-49, 851.

In *Liberty Christian Center, Inc. v. Board of Education of the City School District of the City of Watertown*, 8 F. Supp. 2d 176, 180 (N.D.N.Y. 1998), a church sought permission to use a school’s facilities after hours for a worship service. Pursuant to New York Education Law § 414, the school’s policy permitted use of its facilities for “activities which are educational, cultural, social, recreational or civic in nature.” *Id.* at 179. The school denied the church’s request because its policy did not “include the use of public school buildings by religious organizations.” *Id.* at 180. The Northern District of New York permanently enjoined the school’s policy because the school previously allowed the use of its facilities for worship services and could not justify the different treatment. *Id.* at 185.

The District of Nevada also enjoined a school from refusing to allow a church to use its facilities for worship. In *Wallace v. Washoe County School District*, 818 F. Supp. 1346 (D. Nev. 1991), a school district allowed community groups to use its facilities for “worthwhile purposes,” except if they were religious in nature. *Id.* at 1350. After the school district denied the request of a church to use the facilities for Sunday morning worship, the church sued and the district court held that the school had not compelling interest that justified excluding the church. *Id.* at 1351.

Mr. Robert Newman
January 10, 2012
Page 5 of 6

In *Country Hills Christian Church v. Unified School District No. 512*, 560 F. Supp. 1207, 1211-13 (D. Kan. 1983), a church requested permission to use a school's multi-purpose room for Sunday worship. The school permitted the use of its facilities for activities of "general interest to the community," including "educational, cultural, political, and recreational activities." *Id.* at 1210. Despite the breadth of the policy, the school denied the church's request because its policy permitted religious activities only in emergency situations. *Id.* at 1211-12. The district court declared the school's policy unconstitutional and ruled that the school's rejection of the church's application was a content-based restriction on speech that was not justified by the Establishment Clause. *Id.* at 1219.

District courts have even ruled that schools must open their facilities to private baccalaureate services for graduating high school seniors. See *Shumway v. Albany Sch. Dist. No. 1*, 826 F. Supp. 1320, 1327 (D. Wyo. 1993) (holding school district violated First Amendment by prohibiting use of its facilities for private baccalaureate service); *Randall v. Pegan*, 765 F. Supp. 793, 796 (W.D.N.Y. 1991) (holding school district did not violate Establishment Clause by permitting privately-run baccalaureate service in its facilities); *Verbena United Methodist Church v. Chilton Cnty. Bd. of Educ.*, 765 F. Supp. 704, 714 (M.D. Ala. 1991) (holding school violated First Amendment by prohibiting privately-run baccalaureate service).

Finally, one may wonder whether a policy explicitly permitting worship in public facilities would withstand an Establishment Clause challenge—a question the Second Circuit failed to answer in *Bronx Household of Faith*. We can only find one court that has addressed this question, because it is implicit in applicable precedent that such a policy would be constitutional. In fact, the relief ordered in cases like *Widmar*, 454 U.S. 263, *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819 (1995), *Good News Club v. Milford Central School*, 533 U.S. 98 (2001), and the cases discussed above would be unconstitutional if the government could not permit worship in a neutral speech forum.

But in *Brunner v. School Board of Manatee County*, No. 8:99-CV-339, slip op. at 1, 11-12 (M.D. Fla. Sept. 13, 2001), a group of citizens sued the board alleging that it violated the Establishment Clause by permitting churches to use its facilities after hours for worship. The district court rejected the challenge and held that the board did not violate the Establishment Clause because many different types of organizations used the board's facilities, churches were a minority of those users, religious materials were not displayed in school during school hours, and the board minimized entanglement with religion because it required churches to certify that they were looking elsewhere for permanent facilities.

CONCLUSION

The overwhelming consensus outside the Second Circuit is that prohibiting religious individuals and organizations from using neutrally available public facilities for worship violates the Free Speech Clause of the First Amendment and is not justified by the Establishment Clause. The Second Circuit's decision is truly an outlier among federal precedent. New York City would not be an anomaly if it permitted houses of worship to use neutrally available public facilities on

Mr. Robert Newman
January 10, 2012
Page 6 of 6

the same terms as non-religious speakers. Please do not hesitate to contact me if you would like to discuss this further.

Very truly yours,

s/ Jordan W. Lorence
Jordan W. Lorence
Senior Counsel
Alliance Defense Fund

JWL/djh

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/2/12

(PLEASE PRINT)
Name: Michael Martinez

Address: _____

I represent: Abounding Grace

Address: 465 E 10th Street

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)
Name: Jae Won Choi

Address: 64-32 233rd Bayside, NY

I represent: Manhattan Mission Church

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/2/11

(PLEASE PRINT)
Name: Sham Ninah

Address: 2348 University Ave. 4S, Bronx, NY 10468

I represent: Bronx Household of Faith

Address: 2235 University Ave. Bronx NY 10453

▶ Please complete this card and return to the Sergeant-at-Arms ◀

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

1155

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/2/12

Jose
GOIKO

(PLEASE PRINT)

Name: JOSE GOIKO

Address: 1050 44th St. Apt. 4A

I represent: ABreak Dancing Ministry

Address: 4717 48th Street Sunset Park Bklyn.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155

in favor in opposition

Date: 2/2/2012

(PLEASE PRINT)

Name: Juma Lee

Address: 13-22 33rd Ave. 1st FLR #B, LIC, NY 11106

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155

in favor in opposition

Date: 2/2/2012

(PLEASE PRINT)

Name: Diego Velazquez

Address: 231 West 254 Street

I represent: _____

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155

in favor in opposition

Date: 2/2/2012

(PLEASE PRINT)

Name: Emily Joyce

Address: 32-28 146th Street, Flushing, NY 11354

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Matthew Savianis

Address: 2171-12 40th Avenue Bayside, NY 11361

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Ryan Kirby

Address: 465 WILDWOOD DR YO. OH 44152

I represent: Myself

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: FEB 2, 2012

(PLEASE PRINT)

Name: ARTHUR EISENBERG

Address: 125 BROAD ST, NYC

I represent: NYCLU

Address: 125 BROAD ST, NYC

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. A5500 Res. No. _____

in favor in opposition

Date: 02/02/2012

(PLEASE PRINT)

Name: RANON RODRIGUEZ

Address: 29 POST AVE APT# 52 NEW YORK NY 10034

I represent: HEAVENLY VISION CHRISTIAN CENTER

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. A5500 Res. No. _____

in favor in opposition

Date: 2-2-12

(PLEASE PRINT)

Name: PABLO NUVA

Address: 2865 UNIVERSITY

I represent: _____

Address: Heavenly Vision Prisoners

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 18800 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: MARIA De la CRUZ

Address: 71 W. 112 St #7E

I represent: Self & Heavenly Vision Christian Center

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 18800 Res. No. _____

in favor in opposition

Date: 2/2/12

(PLEASE PRINT)

Name: ESMERALDA ENCARNAÇÃO

Address: 2755 RESOR VIDA APTS 5A

BRONX NY 10468

I represent: Self and Hevedy

vision christian center

Address: 2868 Jerome Av VDC

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 18800 Res. No. _____

in favor in opposition

Date: 2/2/12

(PLEASE PRINT)

Name: Jenny Pineiro

Address: 2931 Creston Ave

I represent: Heavenly Vision Christian Center

Address: 2868 Jerome Ave Bronx NY 10468

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 18500 Res. No. _____

in favor in opposition

Date: 2-2-12

(PLEASE PRINT)

Name: Albertina Castillo

Address: 2541 Aqueduct Ave Apt 2A Bronx

I represent: My Self and Heavenly Vision Center

Address: 2868 Jerome Ave in the Bronx

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 18500 Res. No. _____

in favor in opposition

Date: 2/2/12

(PLEASE PRINT)

Name: Victoria Fabian

Address: 463A Brook Ave Bx NY 10455

I represent: Heavenly Vision Ctr.

Address: 2868 Jerome Ave Bx NY 10455

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 18500 Res. No. _____

in favor in opposition

Date: 2/2

(PLEASE PRINT)

Name: ROBERT PINEIRO

Address: 2731 CRESTON AVE BRONX NY

I represent: HEAVENLY VISION CHRISTIAN CENTER

Address: 2868 JEROME AVE BRONX NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. ACE 00 Res. No. _____

in favor in opposition

of church Date: 02/2/12

Name: Pastor Sol Jobino (PLEASE PRINT)

Address: 2868 Jerome Ave NY 10468

I represent: Heavenly Vision Christian Church

Address: 2868 Jerome Ave

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/2/12

Name: Jay WORA (PLEASE PRINT)

Address: New York State School Boards Assoc

I represent: Latham, NY

Address: 24 Century Hill Drive

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 155

in favor in opposition

Date: 2-2-12

Name: PETER KEMP (PLEASE PRINT)

Address: 85-46 115 ST. BLDG 115 NY 11418

I represent: SAVING ABOVE

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155

in favor in opposition

Date: 2/2/12

(PLEASE PRINT)

Name: Inhyun Ryn

Address: 29 W 30th St #D 202 New York

I represent: New Frontier Church

Address: 320 W 21st New York, NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155

in favor in opposition

Date: 2/2/12

(PLEASE PRINT)

Name: Bo Han

Address: 77 Fifth Ave #5C NY, NY 10003

I represent: New Frontier

Address: 320 W 21st New York, NY 10011

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155

in favor in opposition

Date: 2/2/12

(PLEASE PRINT)

Name: Pastor Jon Storek

Address: 4100 43rd Ave QDW

I represent: Grace Fellowship Church of

Address: Queens Presbyterian Church

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1188 Res. No. _____

in favor in opposition

Date: 2-2-12

(PLEASE PRINT)

Name: Paul Curtis

Address: 322 87th St. Brooklyn, NY 11209

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jonathan Willner

Address: 521 @ 41st St. Bklyn NY 11232

I represent: LABT schoolchildren

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2-2-12

(PLEASE PRINT)

Name: Bishop Lillian Robinson - Wiltshire

Address: 183 Van Buren ST. BKLYN NY 11221

I represent: Cathedral of Christ Community Ministries

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1115-2011 Res. No. _____

in favor in opposition

Date: 2/2/12

(PLEASE PRINT)

Name: Prof. Marda Hamilton

Address: Cards 20 Law School, NYC

I represent: _____

Address: 55 Fifth Ave.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155

in favor in opposition

Date: 2/2/12

(PLEASE PRINT)

Name: JACK ROBERTS

Address: 2235 UNIVERSITY AVE

I represent: BRONX HOUSEHOLD OF FAITH

Address: BRONX, NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155

in favor in opposition

Date: FEB 2, 2012

(PLEASE PRINT)

Name: STEPHEN K. LEUNG

Address: 75-05 KESSEL ST., FORESTHILLS, NY 11375

I represent: ASCENSION CHURCH

Address: P.O. BOX 4142, FOREST HILLS, NY 11375

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Gary Frost

Address: 4551 Kings Highway Brooklyn

I represent: Evergreen Baptist Church

Address: 455 Evergreen Ave Brooklyn

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155

in favor in opposition

Date: 2-2-12

(PLEASE PRINT)

Name: Rev. Pedro A. Cardi Jr.

Address: 110 Wall Street, NYC, NY, 10005

I represent: NYC Teamsters, LACLA, LESF

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155

in favor in opposition

Date: 2/2/12

(PLEASE PRINT)

Name: Eden A. Martinez

Address: 98 Ave. C

I represent: Abounding Grace Ministries

Address: 393 E 9th St.

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155

in favor in opposition

Date: 2/2/2012

(PLEASE PRINT)

Name: Rev Richard DeVito

Address: 208 E. BROADWAY J604 NY NY 10002

I represent: ABOUNDING GRACE MINISTRIES

Address: 393 E. 84th St NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155

in favor in opposition

Date: 2/2/12

(PLEASE PRINT)

Name: JEREMY DEL RIO

Address: 375 76 St #3C, BROOKLYN, NY 11209

I represent: 20/20 VISION FOR SCHOOLS

Address: 8225 5th Ave #323, BROOKLYN, NY 11209

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Rev. Christopher Dito

Address: 11 E. Raleigh Ave Staten Island N.Y.

I represent: International Christian Center

Address: 1501 Richmond Ave S.I NY 10314

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Rev. Dimas Salaberris
Address: 69 Hawkins St Bx NY
I represent: Infinity NY Church
Address: PO Box 59 Bx NY 10070

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Glen Kleraknecht
Address: 510 Main St Roosevelt Island
I represent: myself + Here's Life Inner City
Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 2/2/12

(PLEASE PRINT)

Name: Chaplain Viviana V. Hernandez
Address: 348 Marshall Dr. S. apt 3B
I represent: United Chaplains
Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1155 Res. No. _____

in favor in opposition

Date: 2-2-12

(PLEASE PRINT)

Name: Donna Lieberman

Address: 125 Broad St, 19th fl NY, NY 10004

I represent: New York Civil Liberties Union

Address: same -

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/2/2012

(PLEASE PRINT)

Name: Min. Paul C. Langley

Address: 1640 MACCLES RD. BX. N.Y. 10453

I represent: H. V. C. C.

Address: 1220 Jorham ave BX N.Y.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/2/2012

(PLEASE PRINT)

Name: Sylvia P. Laughlin

Address: 201 A PENCE STREET, BROOKLYN

I represent: World Outreach Christian Life

Address: 201 A Pence Street ^{Central Ministries} Brooklyn NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/2/2012

(PLEASE PRINT)

Name: Robert Hall

Address: 2218 University Ave #2N
Bronx NY 10469

I represent: The Bronx Household of Faith

Address: 2235 University, Bronx 10453

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: Feb. 2, 2012

(PLEASE PRINT)

Name: Jordan Lorence

Address: 801 G St NW #509 Wash DC

I represent: Alliance Defense Fund &

Address: Bronx Household of Faith

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1153

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Matthew Stewart

Address: 52 E 81st St. Apt. 3

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Carlos Rodriguez

Address: Comptroller, LIC

I represent: NYC Comptroller, LIC

Address: 1 Centre St.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1155

in favor in opposition

Date: 2-2-12

(PLEASE PRINT)

Name: C. MATTHEW BECKER

Address: 249-16 Caney Rd. Rosedale NY 11422

I represent: Heritage Baptist Church

Address: 519 8th Ave NY, NY 10018

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Dr. Burchell Marcus

Address: 5105 Church Ave

I represent: Churches

Address: Education

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

Name: REN. CONRAD B. WILLARD (PLEASE PRINT)

Address: 506 Mc Donough St

I represent: NAZARENE UCC

Address: 506 Mc Donough St BKLY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 02/02/12

Name: ALLISON VENTURA (PLEASE PRINT)

Address: 9 FREDERICK PLACE

I represent: N.U.C.C.

Address: 650 Academy Ave. NYC

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 2/2/12

Name: Ruth Richards (PLEASE PRINT)

Address: 2325 Cambreleng Ave Bronx, N.Y. 10458

I represent: Heavenly vision C.C.

Address: 650 Academy NY, NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2.7.12

(PLEASE PRINT)

Name: MAXIMO GUZMAN

Address: 2188 Washington Av Bronx, NY

I represent: Heavenly Vision C.C.

Address: 650 Academy NY NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 02/02/12

(PLEASE PRINT)

Name: Evelyn COÑEZ

Address: 65 W 192 Street Apt 16, Bronx NY 10468

I represent: Heavenly V.C.C.

Address: 650 Academy NY NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/2/12

(PLEASE PRINT)

Name: Yohanna Richards

Address: 1968 Morris Ave Bronx NY

I represent: Heavenly Vision C.C.

Address: 650 Academy N.Y. NY

Please complete this card and return to the Sergeant-at-Arms