



April 28, 2010

Daphne Griffin, Executive Director
Boston Centers for Youth & Families
1483 Tremont Street
Boston, MA 02120
Sent via facsimile to (617) 635-4524 and U.S. Mail

Re: *Ban on religious programs at community center*

Dear Ms. Griffin,

Calvary Chapel In The City, a Boston-based church, has contacted the Alliance Defense Fund about a possible violation of its constitutional rights stemming from a Boston Centers for Youth & Families' policy. By way of introduction, ADF is a non-profit legal and educational organization which exists to educate the public and the government about religious freedom and other fundamental rights. Where necessary, we litigate to secure our clients' rights.

RELEVANT FACTS

Since January 2008, Calvary Chapel In The City has been holding Calvary Kidz meetings on Fridays from 4:00-5:30 PM at the Thomas L. Johnson Community Center in Roxbury. The meetings are designed for children between the ages of five and twelve, and include Bible lessons, games, and other activities. The Calvary Kidz meetings are fully staffed and funded by Calvary Chapel in the City.

Like other BCYF community centers, the Johnson Community Center is available for outside organizations to use for out-of-school time programming (like Calvary Kidz) as well as other types of meetings and activities. In addition to Calvary Kidz, there are hundreds of out-of-school time programs offered throughout the Boston area, including more than a dozen that include religious or spiritual development as a primary activity.¹ At least three other programs currently meet on a regular basis at the Johnson Community Center: Might Mission, Mission High School, and the Health Career Academy.

Judy Mercer, who help runs the Johnson Community Center, recently notified Calvary Kidz director, Angelina Rayno, that Calvary Kidz would no longer be allowed to include any

¹ A database of these out-of-school time programs is available at www.bostonnavigator.org.

religious content in its programs at the community center. Ms. Rayno expressed her concern that this prohibition may violate the Church's constitutional rights. Ms. Mercer explained that she was told by her supervisor, Shirley Billings of BCYF, that BCYF imposes this same rule on all events that are held at the community center. Ms. Rayno later contacted Ms. Billings, who confirmed the "city policy" providing that groups "cannot teach religion inside of a community center."

Despite its concerns about the constitutionality of this policy, the Church has complied with the new rule and is currently conducting its Calvary Kidz meetings without any religious content.

RELEVANT LAW

BCYF's decision to prohibit private groups, including Calvary Chapel, from using any religious content in their programs violates clearly established constitutional law. On three separate occasions, the U.S. Supreme Court has struck down a government policy that allows outside groups to use public facilities for meetings, but prohibits religious expression. These cases are controlling here.

In *Good News Club v. Milford Central Schools*, for example, a school district enacted a policy that allowed community groups to use its facilities during non-instructional time for a variety of secular purposes, but prohibited meetings "by any individual or organization for religious purposes."² After enacting this policy, the school district refused to allow a Christian club to hold after-school programs for children in its facilities. Those meetings, much like Calvary Chapel's, involved Bible lessons, games, and prayer. The Supreme Court concluded that by denying this group access to the facilities "on the ground that the Club was religious in nature, [the school] discriminated against the Club because of its religious viewpoint in violation of the Free Speech Clause of the First Amendment."³

Similarly, in *Lamb's Chapel v. Center Moriches Union Free School District*, the Supreme Court unanimously struck down a school district's policy prohibiting the use of its facilities "by any group for religious purposes."⁴ A church was denied permission to show a film series that taught about family issues and child rearing from a Biblical perspective. Denying the church access to a forum solely because the presentation came from a religious perspective, the Court held, was "plainly invalid."⁵

² 533 U.S. 98, 103 (2001).

³ *Id.* at 120.

⁴ 508 U.S. 384, 387 (2003).

⁵ *Id.* at 393-394.

And in *Widmar v. Vincent*, a state university opened its facilities for student groups to use, but prohibited their use for “for purposes of religious worship or religious teaching.”⁶ Pursuant to this policy, the university prohibited a religious student club from meeting on campus. The Supreme Court held the First Amendment prohibits the school from imposing this sort of content-based restriction on a public forum.⁷

Government entities sometimes enact bans on religious speech because of a mistaken belief that allowing religious speech in a public facility would somehow violate the Establishment Clause. But the Supreme Court has long held that a policy of equal access for private religious expression in a government forum does not violate the Establishment Clause. In *Widmar*, for example, the Court explained that allowing religious speech in a public forum “does not confer any imprimatur of state approval on religious sects or practices ... [since] the forum is available to a broad class of nonreligious as well as religious speakers.”⁸ This principle applies even with programs that involve school-aged children.⁹

Likewise, in this situation there is no reason for BCYF to be concerned that it is somehow endorsing Calvary Chapel’s speech merely by allowing the church to use the Johnson Community Center. The community center is broadly available for outside groups and individuals to use for a variety of different activities. And Calvary Chapel is just one of several outside groups that conduct out-of-school time programs at the community center. No one from the community center or BCYF attends helps conduct the Calvary Kidz meetings, and participation in the meetings is entirely voluntary. Under these circumstances, Establishment Clause concerns cannot justify the BCYF’s unconstitutional policy.

To eliminate any possible perception that BCYF is endorsing its programs, Calvary Chapel is willing to include a disclaimer in its materials and advertising clarifying that the program is sponsored by the Church and not BCYF. While not constitutionally required, Calvary Chapel offers this in the hope that it can work with BCYF to resolve this matter as quickly and amicably as possible.

⁶ 454 U.S. 263 (1981).

⁷ *Id.* at 276-77.

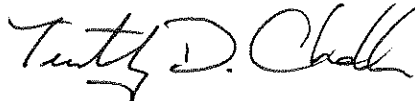
⁸ *Id.* at 274.

⁹ See, e.g., *Good News Club*, 533 U.S. at 114 (finding “unpersuasive” an argument that school children will mistakenly believe that the school endorses a religious meeting that was given equal access to its facilities); *Lamb’s Chapel*, 508 U.S. at 395 (holding that there is “no realistic danger that the community would think that the [school district] was endorsing religion or any particular creed” by granting a religious group equal access to its facilities); *Bd. of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 250 (1990) (explaining that “there is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect” and concluding that students can understand that a school does not “endorse or support” religious speech that it “merely permits on a nondiscriminatory basis”).

CONCLUSION

BCYF's decision to prohibit Calvary Chapel from including religious content in its programs is clearly unconstitutional. I trust that you will recognize this problem and that we can quickly resolve this matter. Loss of First Amendment rights, even for a moment, results in irreparable injury.¹⁰ Thus, it is imperative that Calvary Chapel's First Amendment rights be restored as soon as possible. Please notify my office in writing by the close of business on **Wednesday, May 12, 2010** that BCYF has rescinded its ban. Should you wish to discuss this situation further, please do not hesitate to contact me.

Respectfully,



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cc: Calvary Chapel In The City
Philip Moran, ADF allied attorney

¹⁰ *Elrod v. Burns*, 427 U.S. 347, 373 (1976).