

THE RUTHERFORD INSTITUTE

INTERNATIONAL HEADQUARTERS
Post Office Box 7482
Charlottesville, Virginia 22906-7482

TELEPHONE 434 / 978 - 3888
FACSIMILE 434/ 978 - 1789
www.rutherford.org

March 26, 2007

Via Facsimile (434-296-5869) & U.S. Mail

Sue Bell Friedman, Chair
Albemarle County School Board
401 McIntire Road, Room 345
Charlottesville, Virginia 22902

Re: Albemarle County Public Schools' Athletic Training Rule

Dear Ms. Friedman:

The Rutherford Institute has been contacted by several parents who have expressed concern about the Albemarle County Public Schools' Athletic Training Rule (referred to hereafter as "the Training Rule").

While we support the spirit of the administration's efforts to discourage student use of alcohol, drugs and tobacco, the Training Rule as it has been structured poses a serious risk to the rights of parents and students and constitutes an unwarranted invasion into the privacy of families.

By requiring parents to act as agents of the state, the Training Rule threatens the sanctity of the family and runs afoul of judicial precedents against compelled testimony by parents. As currently written, the Training Rule forces parents, as a condition of allowing their children to participate in a school athletic activity, into the role of state informants and requires them to turn their children in to school officials if they are found in violation of the Training Rule. However, several courts have recognized that the parent-child relationship is rooted in the imperative need for confidence and trust and, thus, have ruled that parents cannot be compelled to testify against their children. *In re Grand Jury Proceedings*, 949 F. Supp. 1487, 1496-97 (E.D. Wash. 1996); *In re A & M*, 403 N.Y.S.2d 375, 381 (App. Div. 1978).

By supplanting parents as the persons with primary responsibility for counseling and disciplining their children, the Training Rule usurps parental authority. Schools certainly should, and must, enforce laws and rules forbidding students from possessing or being under the influence of drugs and alcohol while on school grounds. However, the Training Rule upsets this balance by injecting the schools into family life. The United States Supreme Court has long recognized that it is a fundamental right of parents to have primary care, custody and control of

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their children. *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000). Public schools may not intrude upon that parental prerogative except in extreme circumstances.

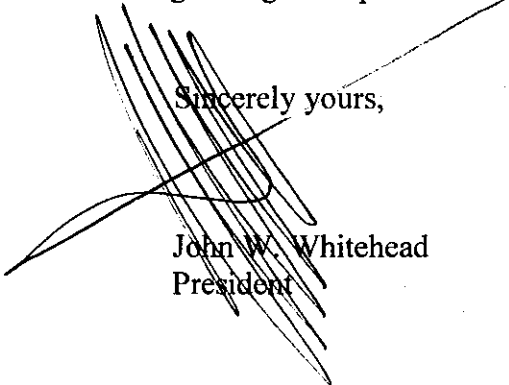
By failing to provide an exemption for religious students who may use alcohol in connection with a religious ceremony, such as the Christian ritual of communion, the Training Rule violates the First Amendment's guarantee of religious freedom. *Horen v. Commonwealth*, 23 Va. App. 735 (1997). Even though this use is clearly proper, it would be considered a technical violation of the Training Rule, which requires that it be reported by a parent and could result in suspension from athletic activities.

By depriving parents and families of privileges otherwise provided to them under the law, the Training Rule is in conflict with Virginia law and constitutes a misuse of the educational system authority. For example, the Training Rule is at odds with Virginia law that allows parents to provide alcohol to their children in their homes and in a supervised setting. Va. Code § 4.1-200(7). Virginia law wisely leaves this matter of upbringing and instruction to parents, but the Training Rule undermines that legislative choice.

Finally, by specifically singling out student athletes, the Training Rule violates a student's right to equal protection under the law. The Constitution requires that the government have some substantial, rational basis for treating one group of persons differently from others. *United States v. Virginia*, 972 F.2d 890, 896 (4th Cir. 1992). If the school district's goal is to discourage alcohol and drug use by students, there is no reason to limit coverage solely to students who are involved in athletics, thus discriminating against parents whose children are involved in such activities.

While we support the spirit of this effort to discourage underage drinking and drug use, any legislative effort to combat it must be done within a constitutional framework. Thus, The Rutherford Institute is prepared to offer its assistance to the school district in revamping the Albemarle County Public Schools' Athletic Training Rule in such a way that it might be beneficial to the community without violating the rights of parents and students or endangering the sanctity of the family bond.

Sincerely yours,



John W. Whitehead
President

cc: Interested parties