

**MOUNT VERNON CITY SCHOOLS  
INDEPENDENT INVESTIGATION OF A COMPLAINT REGARDING  
JOHN FRESHWATER**

H.R. On Call, Inc. was engaged by Squire, Sanders & Dempsey L.L.P. to conduct an independent investigation of a complaint filed against a teacher in the Mount Vernon Middle School. The following report presents the findings from this investigation.

**SCOPE OF THE INVESTIGATION**

Attached is the complaint filed on April 14, 2008 against John Freshwater, an eighth grade science teacher in the Mount Vernon Middle School, as well as a follow-up complaint filed on April 21, 2008. (Attachments 1 and 2 respectively).

The complaint involved concerns parents raised regarding their child and Mr. Freshwater. In summary these concerns were:

- Mr. Freshwater burned a cross into their child's arm using a science machine that caused pain.
- The Ten Commandments were displayed in Mr. Freshwaters' classroom.
- Several Bibles were kept in Mr. Freshwaters' classroom displayed for the students, not his own personal use.
- Mr. Freshwater engaged in religious teaching including his own beliefs from the Bible.
- Mr. Freshwater engaged in prayer in FCA meetings contrary to the District's legal obligations for monitoring such organizations.
- Mr. Freshwater led a "healing session" during an FCA meeting.
- Mr. Freshwater violated the school's permission slip policy.
- Mr. Freshwater made statements about FCA members "being the saved ones" and gave them Bibles to distribute to other students.
- Mr. Freshwater gave an "extra credit" assignment involving intelligent design.

In addition to what is contained in the written complaint, during our interview the parents stated that their primary concern is not the Bible on Mr. Freshwaters' desk. They stated that their primary concern was that Mr. Freshwater appeared to be teaching students to defy the school and to disobey rules and this was contrary to what their son was being taught at home.

During the investigation HROC surfaced another complaint that had been filed against Mr. Freshwater in 2006, and other concerns that were raised by individuals that were interviewed during the course of our investigation. Since these, along with the April 14, 2008 and April 21, 2008 complaints seem to be inter-related, they were included in the investigation.

## INVESTIGATION PROCESS

Our investigation included interviews with:

- The parents who filed the complaint and the student involved
- John Freshwater, the teacher against whom the complaint had been filed
- Stephen Short, Superintendent of the Mount Vernon City Schools
- Jeff Maley, Former Superintendent of the Mount Vernon City Schools
- Bill White, Middle School Principal
- Kathy Kasler, High School Principal
- Dr. Lynda Weston, Director of Teaching and Learning for the Mount Vernon City Schools
- The monitor assigned to Mr. Freshwaters' classroom since April 23, 2008
- Twelve other teachers in the Middle School and High School
- Five current or former students of Mr. Freshwater along with, in four instances, their parents

Other activities that were included in our investigation were:

- A walk through of Mr. Freshwaters classroom
- A visit to the Middle School cafeteria
- A discussion with the manufacturer of the electrostatic device used by Mr. Freshwater
- A demonstration of the electrostatic device used by Mr. Freshwater
- A review of Mr. Freshwaters' personnel file
- A review of other related information that surfaced during the investigation.

## FINDINGS

### **John Freshwater**

Mr. Freshwater has been employed by the Mount Vernon City Schools for the past 21 years. During all of this time he has been an eighth grade science teacher. Mr. Freshwater stated that he has also been involved in a number of student activities during his career including coaching wrestling and football, science fairs, and the Fellowship of Christian Athletes (FCA) for the past 17 years.

Mr. Freshwater described the mission of the school and his role as educating students to the highest level that you can educate them, enjoying watching them learn, and being excellent in your teaching. He said that Ohio Achievement Test (OAT) scores help provide a gauge of teaching success.

Several students described him as a "great guy" and their "favorite teacher." Fellow teachers and administrators also spoke positively regarding Mr. Freshwater as a person. However, parents, students, teachers, and administrators raised concerns and provided evidence regarding Mr. Freshwater and his activities in the classroom.

The following are the results of the investigation of the complaint and other concerns that arose from it:

## Mr. Freshwaters' Use of Religion in Teaching and His Teachings In Relation To The Curriculum Of The Mount Vernon City Schools And State Standards

### Overview

Dr. Lynda Weston and two representatives of the science department stated that the curriculum for the Mount Vernon City Schools follows the Academic Content Standards adopted by the State Board of Education and published by the Ohio Department of Education. They stated that their curriculum is standards based. They teach to the standards and test to the standards (O.A.T. tests). Results are published and their school is measured by how students perform on the tests.

Dr. Weston and the two representatives of the science department stated that the key academic standards related to this investigation are in the Academic Content Standards K-12 Science book in the Life Sciences sections on the following pages (Copy as Attachment 3):

- 120: The benchmarks for life sciences to be achieved by the end of the grade 6-8 program
- 130: What I am expected to teach in the eighth grade.
- 132-133: The benchmarks for life sciences to be achieved by the end of the grade 9-10 program along with a statement under H. that says "*(The intent of this benchmark does not mandate the teaching or testing of intelligent design.)*"
- 144-145: What I am expected to teach in the tenth grade
- 225: The following statement has been struck from the standards "*Describe how scientists continue to investigate and critically analyze aspects of evolutionary theory. (The intent of this benchmark does not mandate the teaching or testing of intelligent design.)*"

They stated that the teaching of evolution should be limited to the standards for that grade level and the cognitive development of an adolescent is not sufficient to teach aspects of evolution that are in the tenth grade standards to students in the eighth grade. They stated that there should be no instruction regarding creationism or intelligent design or any challenge to the concept of evolution, since it is the underlying principle of all biology taught at the high school level.

They also described a "spiral approach" to the curriculum where the instruction at each grade level builds on what the students have learned in the previous grades. If a student is taught something at a lower grade that should be taught at a higher grade it creates difficulties, particularly if the instruction was in conflict with the standards. The teacher then has to "re-teach" the subject.

A position statement regarding the teaching of evolution published in July 1997 by the National Science Teachers Association (NSTA) was reviewed with Dr. Weston and the two representatives of the science department. This document was in a file titled "Evolution" in the superintendent's office. (Copy as Attachment 4) This document states, "*The National Science Teachers Association supports the position that evolution is a major unifying concept of science and should be included as part of K-College science framework and curricula.*" It also states, "*Science teachers should not advocate any religious view about creation, nor advocate the converse: that there is no possibility of supernatural influence in bringing about the universe as we know it. Teachers should be nonjudgmental about the personal beliefs of students.*" Dr. Weston and the two representatives stated that while there may be a newer version of this document it still represents the guidelines that a science teacher should follow in teaching evolution. (A copy of the most recent version published in July, 2003 on the NSTA website is Attachment 5).

## **John Freshwater Interview**

Mr. Freshwater said the State sets the benchmark standards and the school has adopted them. He said that all three eighth grade science teachers follow the same curriculum but exercise flexibility in how they present the curriculum. He said that he teaches evolution.

He denied that his teachings have varied from the District's curriculum in any way due to his religious beliefs or that he has ever told students that although he is forced to teach from the text books the teachings are wrong or not proven according to the Bible.

In response to a question as to whether he has taught creationism or intelligent design, Mr. Freshwater said that in 2003 he proposed putting a policy in place to critically analyze evolution. He said that he was cautious about following school policy and protocol. He took it to the Board, but they did not adopt his proposal. (Copy of proposal is attached as Attachment 6) He concluded by saying that since that proposal was not adopted, "I teach evolution."

When asked about his students' use of the word "here" Mr. Freshwater said that he teaches them to say that to represent something that should not be stated as a fact. For example, radiometric dating of fossils is not 100% a fact.

When asked if he discussed Good Friday and Easter with his students, Mr. Freshwater said that he discussed how the date for Easter is determined by the first full moon after the spring equinox. He said that the meaning of Easter came up near the end of one class. He can't recall who brought it up, the students or him. He stated he followed the establishment clause.

Mr. Freshwater stated that he had given a voluntary extra credit assignment where students had the choice of watching the movie "Expelled" or choosing a current event and writing a short report. (The movie website can be found at <http://www.expelledthemovie.com/>) (A copy of the assignment is Attachment 7)

## **Other Interviews And Findings**

Parents and former students of Mr. Freshwater presented the following copies of materials that Mr. Freshwater had handed out in class to them. They said his normal practice was to collect the handouts at the end of class, but in these cases they had not turned them back in. These documents were reviewed with Dr. Weston and the two representatives of the science department who stated that none of these documents should have been used as part of the curriculum for an eighth grade science class:

- Two worksheets that a parent of a former student said were handed out by Mr. Freshwater in his 2002 science class titled, "The Giraffe" and "The Woodpecker." Both end with the statement, "Is there an I.D. involved?" (Copies as Attachment 8)
- Documents that a parent of a former student said were handed out by Mr. Freshwater in his 2003 science class titled, "Dragon History," "Dinosaur Fossils – Age Old Debate" and "Dinosaur Extinction." Note that the copy of "Dragon History" and the copy of "Dinosaur Extinction" that were available for review in the meeting with Dr. Weston and the two representatives of the science department had portions of each document deleted. A former student had a copy of the "Dinosaur Extinction" handout she received from Mr. Freshwater that included the full document with references to God and the Bible in the parts that had been deleted. (Copy as Attachment 9)
- A copy of a complaint filed on April 4, 2006 against Mr. Freshwater regarding a handout titled, "Darwin's Theory of Evolution – The Premise and Problem." The complaint charged

Mr. Freshwater with passing out a paper from “All About God Ministries” entitled “Darwin’s Theory of Evolution – The Premise and the Problem” which the parent believed to be improper. As a result of this complaint Mr. Freshwater received a letter dated June 8, 2006 from Superintendent Jeff Maley stating in part, *“The material has not passed the test of scientific review and acceptance of the established scientific community. I am directing you to delete the material from your supplemental resources. Also, in the future please refrain from using materials that the source or author cannot be readily identified.”* (Copy as Attachment 10)

Dr. Weston stated that she has had to deal with internal and external complaints about his failure to follow the curriculum for much of her 11 years at Mount Vernon. It has come to her attention many times. She has reported these events to administrators and there have been some attempts to make changes and other instances where they seem to have been disregarded, particularly by one former assistant principal. She said that Mr. Freshwater cannot separate creationism/intelligent design from teaching to the science standards. She stated Mr. Freshwater has a lot of influence with his students that causes her concern.

Former Superintendent Jeff Maley said he had received informal complaints regarding Mr. Freshwater’s teaching creationism/intelligent design rather than evolution. When he had such circumstances with Mr. Freshwater he would tell him not to teach creationism or intelligent design. He stated he never had complaints concerning any other teacher like the ones concerning Mr. Freshwater. He tried to find another position for Mr. Freshwater, but could not do so because he was only certified in science.

In a January 21, 2003 evaluation by Principal Jeff Kuntz, Mr. Freshwater was directed to “Continue to adhere to board policy and guidelines 2270 with respect to Religion In The Curriculum.” As part of the evaluation, he was given copies of the policy and guidelines.

The High School Principal said that Mr. Freshwater has caused issues for her high school teachers in having to reeducate students from his teachings. The specific issues include a number of areas -- his failure to follow the curriculum regarding teaching creationism/intelligent design rather than evolution and his teaching of the Periodic Table, as examples. The High School Principal specifically asked that her daughter not be assigned to Mr. Freshwater for her 8<sup>th</sup> grade science due to her concern about his teaching not being consistent with the curriculum.

A ninth grade science teacher provided copies of questionnaires that incoming students complete on the first or second day of school in the fall. The teacher provided copies for the following school years (Copies attached as Attachments 11, 12 and 13 respectively):

- 2005 – 2006 (Incoming students from Mr. Freshwater’s 2004 – 2005 class)
- 2006 – 2007 (Incoming students from Mr. Freshwater’s 2005 – 2006 class)
- 2007 – 2008 (Incoming students from Mr. Freshwater’s 2006 – 2007 class)

These questionnaires have a consistent pattern of comments from year to year such as:

- In response to question 2: What are some things you disliked or found difficult in your past science classes?
  - “I disliked how much time we spent studying evolution, although I found it interesting, I wanted to move on.” (2005 – 2006)
  - “Studying evolution out of the book because it is all opinion. Not proven facts.” (2005 – 2006)

- “Evolutions theory before eighth grade because teachers always say look in your book when the book can’t give you solid evidence.” (2006 – 2007)
- In response to question 3: What is the most important **concept** you learned in science last year?
  - “The difference between theories and proven laws. Obvious, but I suppose very important.” (2005 – 2006)
  - “Evolution, and why that isn’t probable and how it is.” (2005 – 2006)
  - “The dates scientists put on things are not always accurate.” (2005 – 2006)
  - “The most important concept was the evolution theories.” (2006 – 2007)
  - “Evolution.” (2006 – 2007)
  - “Big Bang Theory” (2007 – 2008)
  - “The Big bang theory was the most important concept I learned in science.” (2007 – 2008)
- In response to question 4: What are some topics that you enjoyed studying last year (and why)?
  - “Evolution, because we learned about it and how it can or can’t be true and got both sides of the story.” (2005 – 2006)
  - “Evolution because, despite the fact that I don’t believe it, I find some of the techniques they use to come to their results interesting.” (2005 – 2006)
  - “Evolution because Mr. Freshwater showed us both sides of the issue.” (2006 – 2007)
  - “Evolution because we always had debates about it.” (2006 – 2007)
  - “I liked debating about creation and evolution, because it’s always fun to debate!” (2007 – 2008)

During interviews high school science teachers expressed frustration and concern regarding having to “re-teach” concepts that in their opinion had been improperly taught by Mr. Freshwater at the eighth grade level. Comments included:

- At the high school level evolution is the underlying principle of all biology. At the ninth grade level when we bring up evolution there is challenge and argumentation from students who have had Mr. Freshwater, bordering on hostility.
- “Here” from John Freshwaters’ students means that anytime he was telling them something out of the textbook that was wrong from his perspective they were to say, “Here.” For example, Mr. Freshwater taught there are reasons why carbon dating may not be accurate and so students were to say, “Here.” The high school science teachers pointed out the scientific data supports carbon dating as being accurate. Mr. Freshwater’s emphasis to the students is, “If carbon dating is wrong then evolution is wrong.” This becomes a detriment to the students getting a proper science education and requires the high school teachers to re-teach the basic science curriculum.

A ninth grade science teacher shared an e-mail she had sent in August 2007 to the high school principal stating, “The sections of the OGT that our students have the most difficulty with concern “science as process”... by mis-teaching science (i.e. that there’s some sort of “difference between facts and hypotheses”) this sets us up to miss this portion of the OGT, thus losing out on our AYP. I find it extremely unfair to have to start EACH SCHOOL YEAR reteaching students how science ACTUALLY works.” (Copy as Attachment 14)

In the interview of one other 8<sup>th</sup> grade science teacher, she indicated she followed the curriculum and, as such, did not teach evolution, creationism, intelligent design, the periodic table, the big bang theory or thermodynamics.

A teacher who was present in Mr. Freshwaters' classroom on a substitute basis for one period in either 2006 or 2007 (The teacher could not recall which year) stated in a written statement (Copy as Attachment 15):

*“The lesson of the day had been on the creation of the universe. John talked about how the textbook could be wrong. He said, ‘Let me give you an example of how science can be wrong.’ He then went on to say that an article in Time magazine a few years back stated that scientists had found a genetic link to homosexuality. ‘In that case science is wrong because the Bible states that homosexuality is a sin’ and so anyone who is gay chooses to be gay and therefore is a sinner. My reaction was one of disbelief that he was saying these things to eighth graders. I thought of how those two or three students in that classroom who might be struggling with their sexual identities would be feeling, hearing that they were sinners from a teacher. ... I was surprised at how comfortable John was talking about the Bible stating that homosexuality is a sin, and that anyone who is gay makes a conscious choice to be so. ... He had no problem declaring that not only can science be wrong by the example he gave, but heavily implied that the students’ textbook was wrong as well on how the universe was created.”*

Another teacher whose duties included being in Mr. Freshwaters' classroom during the 2006 – 2007 school year for several days found him to be a dynamic teacher who engaged the students, but said that some information that he presented created doubt regarding Darwin's findings rather than supporting them. He challenged kids to question Darwin.

A current student said that Mr. Freshwater would throw out both sides of issues, such as the big bang theory, intelligent design, carbon dating and evolution. When asked, Mr. Freshwater would offer his personal opinion such as I believe there was a boat in a flood. He also taught that you can't trust radiometric dating.

One student indicated Mr. Freshwater discussed the meaning of Good Friday and Easter during a class when the phases of the moon were discussed and how it affected when Easter occurs. The Middle School Principal and Superintendent questioned Mr. Freshwater and he acknowledged to them, contrary to our interview, that he “might have discussed” the meaning of Easter and Good Friday, including the “Resurrection,” for one or two minutes. The Superintendent advised Mr. Freshwater that was one or two minutes too long.

The investigators found the following material in the second cupboard in the front of the room during a walk through of Mr. Freshwaters' classroom on May 15, 2008:

- A book titled “Refuting Evolution”
- A video tape titled “Lies In The Textbooks, Part A 4 Of 7, 10 Lies Of Evolution”
- A book titled “Evolution Of A Creationist”
- A book titled “The Real Meaning Of The Zodiac”
- A book titled “Icons of Evolution”

## **Summary Of Findings**

There is a significant amount of evidence that Mr. Freshwaters' teaching regarding subjects opposed to evolution were not consistent with the curriculum of the Mount Vernon City Schools and state standards. Contrary to Mr. Freshwater's statement, the evidence indicates he has been teaching creationism or intelligent design and has been teaching the unreliability of carbon dating in support of opposition to evolution. While it may have been for only a minute or two, he did discuss the meaning of Easter and Good Friday with at least one of his classes. He has passed out materials to students for the past several years from religious sources challenging evolution and then collecting the materials back from the students. He has done so in spite of specific directives not to teach religion, creationism or intelligent design.

In addition, there is evidence that Mr. Freshwater inappropriately said to his class that science is wrong because the Bible states that homosexuality is a sin and so anyone who is gay chooses to be gay and therefore is a sinner. That is an example of Mr. Freshwater teaching according to religious beliefs.

It is the investigators conclusion that Mr. Freshwater is teaching religious beliefs in his classes.

## **Mr. Freshwaters' Use Of An Electrostatic Device On Students In His Science Class**

### **Overview**

Another part of the complaint against Mr. Freshwater was that he burned crosses into students' arms causing pain from the burns.

### **John Freshwater Interview**

Mr. Freshwater said that he uses a telsa coil as part of a lab experiment where he charges gasses. He puts the elements in test tubes in a row, and then charges them with the device, and the students identify the elements by the color of the gasses. He said that the device is high voltage, but low current. .

He said that he uses the device about twice a year and has done so for 21 years. At the end of the experiment the kids are excited and ask if they can touch it. He said that he demonstrates it on his own arm by making an "X" and then lets them touch it voluntarily. He said that the incident in question occurred in December 2007. He remembers getting from 3 to 8 volunteers, but couldn't remember the order or all of the names.

He said that the device is owned by the school, he received verbal instructions on using it 21 years ago, and has never seen any written instructions. He said that he has not had a complaint in 21 years regarding his use of the device. The device leaves a red mark after one or two seconds of touching, but no blisters. He denied any religious discussions during this or any previous occurrences. He said that he would never hurt a student.

### **Other Interviews And Findings**

The investigators examined the device in question. It is a Model BD-10A High Frequency Generator manufactured by Electro-Technic Products Inc. in Chicago Illinois. There were no

written instructions that could be located with the device, however operating instructions were available and could be downloaded from the company's website. It was confirmed that the device has been owned for a number of years by the school.

The parents who filed the complaint said their primary concern was what had been done to their child's arm and why? They were also concerned about it being a cross. The marks on their child's arm caused pain the night of the incident, December 6, 2007, however they said that part of the pain could have been due to the spot being further irritated by the equipment he wore later that evening. They stated the burn remained on their child's arm for three or four weeks. They said that they did not take the issue to the police or the hospital because of concern regarding what would happen to Mr. Freshwater. They didn't want him to go to jail.

They approached the school regarding their concern on Friday, December 7, 2007. The parents indicated they wanted anonymity, did not want the authorities contacted and did not want Mr. Freshwater to lose his job, but wanted to learn what happened with the electrostatic device and wanted the activity stopped. The school investigated the incident and met with Mr. Freshwater on the following school day (December 10, 2007) advising him it was inappropriate to have used the device on any student, that he was not to use it again and confiscating the device. The school followed up with Mr. Freshwater after the return from winter break and gave him a letter on January 22, 2008 advising him, "As per our conversation the electrostatic machine(s) should not be used for purposes of shocking students. It was further directed that the machine(s) should be removed from the classroom or locked up so that the students do not have access to these machines." (Copy as Attachment 16)

The current or former students that were interviewed that had participated in the December 2007 incident or other similar incidents in earlier years described the demonstration in the same manner as had Mr. Freshwater with one exception. The all described the mark Mr. Freshwater put on his arm as a "cross". One student stated Mr. Freshwater would mark the student with a cross unless the student requested a different type of marking. It was the default mark. The pictures below were provided by the parents.



The parents and student who filed the complaint indicated the burn marks remained on the student's arm for approximately three to four weeks.

In the presence of Principal Bill White, one of the investigators tried the device on own arm. There is a knob to adjust the voltage of the unit. When held at full power for one or two seconds in the manner described by Mr. Freshwater, the device left a slight redness with no burns and the redness disappeared overnight.

The investigators contacted the President of Electro-Technic Products Inc. who stated that the device should not be used on individuals and e-mailed written instructions that state, *“Never touch or come in contact with the high voltage output of this device, nor with any device it is energizing.”* (Copy of warning label as Attachment 17).

### **Summary Of Findings**

Mr. Freshwater did improperly use an electrostatic device on the student who filed the complaint and other students in his science class in a manner that was not in compliance with the manufacturer’s instructions. While there did not appear to be any intent by Mr. Freshwater to cause injury to any student, he was not using the device for its intended purpose. Contrary to Mr. Freshwater’s statement he simply made an “X” not a “cross,” all of the students described the marking as a “cross” and the pictures provided depict a “cross”.

### **Mr. Freshwaters’ Activities With The Fellowship Of Christian Athletes (FCA) Club At The Middle School**

#### **Overview**

The middle school FCA group meets during the students’ 30 minute lunch period. On Monday there is a “leadership group” of eighth grade students that typically meets in Mr. Freshwaters’ room. There are separate meetings for sixth, seventh, and eighth grade members on Tuesdays. In prior years the Tuesday meetings were held on the stage that is part of the cafeteria where other students are eating lunch. They are now held in the band room. FCA meetings are also held on Fridays before school. Outside speakers have regularly participated in the meetings

#### **John Freshwater Interview**

Mr. Freshwater said that the middle school FCA group was started 17 years ago and that he has been involved with it on a voluntary basis since it started. He said that he acts consistent with the law and has never gone against that.

When asked if he has ever contacted speakers he said that he has when he has run into them in the community. When asked if he has ever directed students regarding what speakers to call, he said yes there is definitely dialog. When asked about any other speaker contact he said he could not recall any.

When asked if he has ever engaged in prayer with students he said that I’m praying all the time. He said that he had never led prayer at a meeting. When asked if he had ever asked students to lead prayer, he said I may have.

When asked if there was an incident this year where the FCA group had gathered in a circle of prayer around a non-school speaker, Mr. Freshwater said that such an incident had occurred about a month to a month and a half ago. The speaker was Pastor Zirkle who had commented during the meeting about a personal medical issue. He or the students initiated a circle of prayer around Pastor Zirkle. He said another teacher also participated in the prayer. Mr. Freshwater said that he needed to end the prayer because the lunch period was ending, so he said “Amen.”

Mr. Freshwater said that he had been involved in discussions regarding a trip to an abortion clinic, however he could not recall if it was in an FCA meeting or his class. He said that he did not initiate discussions or propose a trip.

Mr Freshwater said that while he did not agree with the implementation of a permission slip policy, especially in the middle of the school year, he tried very hard to comply with the policy. He questioned why the policy was being implemented when there had never been a need over the 17 - year history of the FCA group. He also did not like the one-week advance notice for speakers. He said he went to a School Board meeting to get clarity. He said he also encouraged an “omission” vs. a “permission” approach.

### **Other Interviews And Findings**

The other teacher described Mr. Freshwaters’ role as “facilitator.” He opens up the leadership meetings by asking students regarding speakers. The students make the calls. He makes sure that speakers are there. He has students introduce the speaker. He is the timekeeper and gives a wrap up signal. He asks questions to generate discussion.

Students who were interviewed who were members of FCA described Mr. Freshwaters’ role as “sponsor and chaperone” and “leader.” Mr. Freshwater contacts speakers and students follow up or students suggest speakers and contact them. He had us call speakers he has in mind. We would fill out the form and give it to him to get signed. He asks for prayer if something special happens.

The students and the other teacher gave similar accounts of the incident with Pastor Zirkle to what Mr. Freshwater had described. Some said that Mr. Freshwater initiated the prayer with words such as if you want to pray you can pray or why don’t we pray for him. Several accounts said that he participated in the prayer. All accounts said that Mr. Freshwater closed the prayer. There was no evidence presented that Mr. Freshwater said anything regarding Satan leaving this man’s body or that anyone called to Satan. The prayers were described as being “of encouragement, not command.”

Students indicated that Mr. Freshwater would ask a student if they wanted to lead a prayer and if no student agreed to do so, Mr. Freshwater would lead the prayer.

One FCA participant said that Mr. Freshwater had stated that he was going to an abortion clinic to protest during the upcoming weekend. He said he wouldn’t take us at our age due to the potential for violence.

The investigators were provided with a list of 33 outside speakers that had spoken to the middle school FCA group during the 2007 – 2008 school year. Several of them spoke on multiple occasions. Participants in the FCA meetings said that the speakers initiated prayer during the meetings.

There was no information provided to support the charge that Mr. Freshwater made statements about FCA members “being the saved ones” or that non-school attendees told the students that they should disobey the law to further their own religion.

Students and parents said that they did not have a problem with the new permission slip policy. They said that Mr. Freshwater had not voiced any opposition to it in their presence when it was implemented.

FCA meetings in the high school take place outside of school hours, not during the lunch period as occurs in the middle school. Former Superintendent Jeff Maley stated that allowing FCA meetings during the school day was probably a mistake.

The FCA publishes specific guidelines that indicate a teacher is not to engage in prayer or serve as a leader at FCA meetings.

### **Summary Of Findings**

Based on Mr. Freshwaters' own comments and information provided by attendees, his involvement with the Fellowship of Christian Athletes (FCA) club at the middle school exceeded the role of only being a monitor by regularly being an active participant in FCA activities. Non-school personnel regularly attended FCA meetings and played an active role in them. The only information presented to indicate that Mr. Freshwater had voiced opposition to the new permission slip policy in the presence of students and parents was a statement by the complaining parents who had not directly heard the statement.

### **Mr. Freshwaters' Responses To Directives Given To Him By His Superiors**

#### **Overview**

Jeff Maley retired in August 2007 after eight years as Superintendent. Stephen Short was promoted from the position of Director of Student Services to replace him. Bill White was hired as the new Principal of the Middle School for the 2007-08 school year. He replaced Assistant Principal Tim Kieb who had been the Acting Principal for the last portion of the 2006-07 school year after the former Principal left the organization. Mr. Kieb took a position in another school.

Mr. Freshwater has been involved in the following activities, discussions and correspondence with school administration during the current school year. Highlights include:

- 12/10/07: A meeting was held with Mr. Freshwater and Principal Bill White regarding the use of the electrostatic device on students
- 1/22/08: Mr. Freshwater received a letter from Mr. White regarding discontinuing the use of the electrical device. (Copy as Attachment 18)
- 4/7/08: Mr. Freshwater received a letter from Mr. White regarding his FCA activities and religious materials in his classroom (Copy as Attachment 19)
- 4/9/08: Mr. White and Mr. Short met with Mr. Freshwater to review the letter given to him on 4/7/08
- 4/11/08: Mr. White met with Mr. Freshwater regarding the removal of religious items from his classroom.
- 4/14/08: Mr. Freshwater received a letter from Mr. White advising him that all religious items need to be removed from his classroom by the end of the day on Wednesday, April 16, 2008. (Copy as Attachment 20)
- 4/15/08: Mr. Freshwater checked out a Bible and a book titled, "Jesus of Nazareth from the school library
- 4/16/08: Mr. Freshwater issued a statement saying in part, "In addition, my superiors have ordered me to remove the Bible from the desk of my classroom." It ends with, "I do not forfeit my right to free expression of my faith when I walk into the school and because I strongly object to the 'Christian censorship' being promoted in our schools I respectfully reject the request to remove the Bible."

- 4/16/08: Mr. White conducted a walk through of Mr. Freshwaters room. The Bible was on Mr. Freshwaters' desk. A Colin Powell poster with a Bible scripture showing leaders in prayer was on his wall, and Mr. White told him that it needs to come down.
- 4/21/08: Mr. White met with Mr. Freshwater regarding the various issues.

### **John Freshwater Interview**

During our interview on May 15, 2008 Mr. Freshwater stated he has had his Bible on his desk for 21 years. He said, "It's me. It's my inspiration. It's how I get through the day." He was asked if he had been instructed to remove his Bible from his desk. He said that he had been. He was asked if he had complied. He said that he had not. He said that his Bible is currently on his desk.

He also said he has a Bible beside desk on his lab table that he checked out of the school library. When asked if the school Bible was there to make a statement, he said, "Yes." He said that his 250 - page personnel file only had positive things in it and that he did not feel he had ever been insubordinate.

### **Other Interviews And Findings**

Mr. Maley said that there were no formal complaints against Mr. Freshwater because parents did not want him fired, so there is nothing in writing in his file. He also said he had no similar issues with any of the other teachers during his tenure as Superintendent.

Mr. Freshwaters' personnel file was reviewed and one letter was found for the period prior to the current school year. As noted earlier in the report, Mr. Freshwater received a letter on June 8, 2006 from Superintendent Jeff Maley as a result of a complaint from a parent questioning the supporting material he had handed out in class entitled, "Darwin's Theory of Evolution-The Premise and the Problem."

During the course of the discussions and correspondence included in the overview above, Mr. White said that Mr. Freshwater had asked him if he failed to remove his Bible from his desk if he would be considered insubordinate. Mr. White said that he answered, "Yes."

The monitor of Mr. Freshwaters' classroom reported that a Bible was on the corner of Mr. Freshwaters' desk and a Colin Powell poster with a Bible scripture showing leaders in prayer was on the bulletin board from April 23, 2008 throughout the monitoring period. The monitor also reported that there was an American Eagle bag in the corner in the back of the room that contained two Bibles and 20 books titled, "The Story Of God."

During the investigator's walk-through of Mr. Freshwaters' room on May 15, 2008 the Bible was on Mr. Freshwaters' desk, the Colin Powell poster was on the bulletin board, and a Bible and a book titled, "Jesus Of Nazareth" were on a table by his desk. The investigators did not see an American Eagle bag in the room.

The monitor noted that on May 16, 2008 the American Eagle bag was no longer in Mr. Freshwaters' room and when they left he said that he needed to lock the door to his classroom.

### **Summary Of Findings**

Mr. Freshwater was insubordinate in failing to remove all of the religious materials from his classroom as ordered by his superior, Principal White.

## SUMMARY OF FINDINGS FROM OUR INVESTIGATION

There is a significant amount of evidence that Mr. Freshwaters' teachings regarding subjects related to evolution were not consistent with the curriculum of the Mount Vernon City Schools and State standards. Contrary to Mr. Freshwater's statement, the evidence indicates he has been teaching creationism and intelligent design and has been teaching the unreliability of carbon dating in support of opposition to evolution. He has passed out materials to students for the past several years challenging evolution and then collecting the materials back from the students. He has done so in spite of specific directives not to teach creationism or intelligent design. He has taught students to use the code word "Here" to challenge scientific process that is considered settled by the high school science teachers.

In addition, there is evidence that Mr. Freshwater inappropriately said to his class that science is wrong because the Bible states that homosexuality is a sin and so anyone who is gay chooses to be gay and therefore is a sinner.

Mr. Freshwater did improperly use an electrostatic device on the student who filed the complaint and other students in his science class in a manner that was not in compliance with the manufacturer's instructions. While there did not appear to be any intent by Mr. Freshwater to cause injury to any student, he was not using the device for its intended purpose. Contrary to Mr. Freshwater's statement he simply made an "X" not a "cross," all of the students described the marking as a "cross" and the pictures provided depict a "cross".

Based on Mr. Freshwaters' own comments and information provided by attendees, his involvement with the Fellowship of Christian Athletes (FCA) club at the Middle School exceeded the role of only being a monitor by regularly being an active participant in FCA activities. Non-school personnel regularly attended FCA meetings and played an active role in them. There was no information presented to indicate that Mr. Freshwater had voiced opposition to the new permission slip policy in the presence of students and parents.

Mr. Freshwater was insubordinate in failing to remove all of the religious materials from his classroom as ordered by his superior, Principal White.

- Mr. Freshwater did burn a cross onto the complaining family's child's arm using an electrostatic device not designed for that purpose.
- The Ten Commandments together with other posters of a religious nature were posted in Mr. Freshwater's classroom. Most were removed after Mr. White's letter of April 14, 2008, but at least one poster remained which Mr. Freshwater was again instructed to remove on April 16, 2008, but did not do so.
- Several Bibles were kept in Mr. Freshwater's classroom including his personal Bible on his desk and one he checked out of the library placed on the lab table near the desk. Other Bibles that had been maintained in the room were removed by the time the investigators viewed Mr. Freshwater's room.
- Mr. Freshwater engaged in teaching of a religious nature, teaching creationism and related theories and calling evolution into question. He had other materials in his classroom that could be used for that purpose.
- Mr. Freshwater engaged in prayer during FCA meetings in violation of the District's legal obligations for monitoring such organizations.

- Mr. Freshwater participated and possibly lead a prayer during an FCA meeting that concerned a guest speaker's health. There is no conclusion as to whether such prayer was a "healing" prayer.
- There is no evidence Mr. Freshwater violated the District's permission slip policy.
- There is no evidence Mr. Freshwater made statements about FCA members "being the saved ones" nor was there any corroboration to the allegation Mr. Freshwater gave FCA members Bibles for them to distribute. He did have two boxes of Bibles in the back of his room.
- Mr. Freshwater gave an extra credit assignment for students to view the movie "Expelled" which does involve intelligent design.

The information proved above represents the key findings of our investigation. If there are any questions or if further information is needed, please contact us.

Thomas J. Herlevi  
Co-Owner

Julia F. Herlevi  
Co-Owner