

FREEDOM FROM RELIGION *foundation*

P. O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

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SENT BY MAIL AND EMAIL TO: robert.fulton@cape.k12.de.us

Robert S. Fulton
Superintendent, Cape Henlopen School District
1270 Kings Highway
Lewew, DE 19958

Re: Athletic Team Prayers

Dear Superintendent Fulton:

I am writing on behalf of the Freedom From Religion Foundation (FFRF), to alert you to a serious constitutional violation occurring at Cape Henlopen High School. FFRF is a national nonprofit organization with more than 21,000 members, including members in Delaware. We protect the constitutional separation between state and church.

It is our information and understanding that Cape Henlopen High School (CHHS) football coach, Bill Collick, participated in prayer with his students after a recent game against Cambridge High School. We understand that two students led the prayer. Please see the attached image. It is our information that Coach Collick and other members of the coaching staff bowed their heads and participated. We are concerned that this is a common practice.

While students may wish to engage in prayer on their own, school staff, including coaches cannot participate in or encourage such religious activities. The Third Circuit Court of Appeals, with jurisdiction over Delaware, has directly addressed this practice and ruled it unconstitutional.

The Supreme Court has continually struck down school-sponsored prayer in public schools. *See, e.g., Abington Township Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (declared unconstitutional devotional Bible reading and recitation of the Lord's Prayer in public schools); *Engel v. Vitale*, 370 U.S. 421 (1962) (declared prayers in public schools unconstitutional); *see also Lee v. Weisman*, 505 U.S. 577 (1992) (ruled prayers at public high school graduations an impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturned law requiring daily "period of silence not to exceed one minute ... for meditation or daily prayer."). In all of the aforementioned cases, the federal courts have struck down prayer in public schools because it constitutes a government advancement or endorsement of religion, which violates the Establishment Clause of the First Amendment.

Moreover, the Supreme Court has struck down pre-game invocations that signal school endorsement even when led by a student. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) (striking down a school policy that authorized students to vote on whether to hold a prayer at high school football games). Likewise, a high school coach praying with student-players at a "regularly scheduled school-sponsored function conducted on school property" would lead an objective observer to perceive it as state endorsement of religion. *Id.* at 308. The Supreme Court has stated that "[r]egardless of the listener's support for, or objection to, the message, an objective [high school] student will unquestionably perceive the [religious message] as stamped with her school's seal of approval." *Id.*

Furthermore, a public school coach's participation in a team's prayer circle is illegal and inappropriate. Federal courts have specifically held public school coaches' participation in their team's prayer circles unconstitutional. *See, e.g., Borden v. Sch. Dist. of the Township of East Brunswick*, 523 F.3d 153 (3rd Cir. 2008), *cert. denied*, 129 S. Ct. 1524 (U.S. Mar. 2, 2009) (No.08-482) (declaring the coach's organization, participation and leading of prayers before football games unconstitutional); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995) (declaring basketball coach's participation in student prayer circles an unconstitutional endorsement of religion).

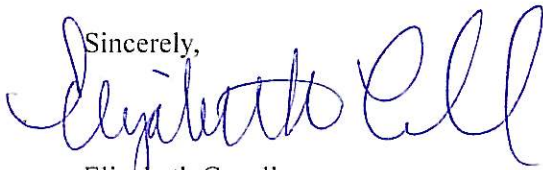
In *Borden*, the Third Circuit Court of Appeals, which has jurisdiction over Delaware, held the high school football coach, who had an extensive history of organizing, leading and participating in prayers before games, had violated the Establishment Clause by "bow[ing] his head and tak[ing] a knee while his team pray[ed]." *Borden*, 523 F.3d at 174. In that case, the court stated that the coach's involvement in the prayer by 'taking a knee' and 'bowing his head' during the prayers, even when student-led, "would lead a reasonable observer to conclude he was endorsing religion." *Id.* at 176. The court continued, "'if while acting in their official capacities, [school district] employees join hands in a prayer circle or otherwise manifest approval and solidarity with the student religious exercises, they cross the line between respect for religion and the endorsement of religion.'" *Id.* at 178 (quoting *Duncanville*, 70 F.3d at 406).

The court in *Borden* also rejected the coach's argument that the school district's policy of prohibiting its employees from engaging in prayer with students violated the employees' right to free speech. *See id.* at 174. In fact, the court found that the school district had a right to adopt guidelines restricting this activity because of its concern about potential Establishment Clause violations. *See id.* The Fifth Circuit in *Doe* also rejected the argument that a school district could not "prevent its employees from participating in student prayers without violating their employees' rights to the free exercise of religion, to association, and to free speech and academic freedom." *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 406 (5th Cir. 1995). It noted that "the principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the establishment clause." *Id.* (quoting *Lee*, 505 U.S. at 586-87).

As you are aware, Cape Henlopen School District is home to a diverse array of families, including parents and students who are non-Christian and non-religious. Recent data now puts the "Nones," those with no religion, at one in five U.S. adult citizens, and one in three young adults. (Pew Forum on Religion and Public Life, October 2012). The nonreligious, at nearly 20% of the population, is the second-largest segment of the population, second only to Roman Catholics.

Cape Henlopen School District must take action to ensure that coaches do not lead, organize, invite, encourage, or participate in prayers with their teams. Coaches must be informed of their legal obligations and school administrators should be directed to monitor school events to ensure compliance. We ask that you inform us promptly in writing of the steps you are taking to address this matter.

Sincerely,



Elizabeth Cavell
Staff Attorney

EC:jki

Enc.

CC: bdonahue@cape.k12.de.us.
Brian Donahue
Principal, Cape Henlopen High School
1270 Kings Highway
Lewew, DE 19958

