

FREEDOM FROM RELIGION *foundation*

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

November 20, 2017

SENT VIA EMAIL AND U.S. MAIL:
superintendent@evsck12.com

Dr. David B. Smith
Superintendent
Evansville Vanderburgh School Corporation
951 Walnut St.
Evansville, IN 47713

Re: Unconstitutional school-endorsed prayer

Dear Superintendent Smith:

I am writing on behalf of the Freedom From Religion Foundation to alert you to a constitutional violation that occurred at an Evansville Vanderburgh School Corporation athletic event. FFRF is a national nonprofit organization with about 30,000 members across the country, including more than 450 in Indiana. FFRF's purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned District community member contacted us to report that F.J. Reitz High School personnel, including head football coach Andy Hape, prayed with student athletes after a game against Mater Dei High School on Oct. 13. A local newspaper printed a photo with the caption "Reitz Head Coach Andy Hape prays with his team," which is enclosed for your review. Our complainant stated that in addition to praying with students, Hape and several of his assistant coaches also regularly promote religion to students.

It is illegal for public school athletic coaches to lead their teams in prayer, participate in student prayers, or to otherwise promote religion to students. We are writing to request assurances that this constitutional violation will not recur in the future.

The Supreme Court has continually struck down school-sponsored prayer in public schools. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (holding student-led prayer over the loudspeaker before football games unconstitutional. "Regardless of the listener's support for, or objection to, the message, an objective Santa Fe High School student will unquestionably

perceive the inevitable pregame prayer as stamped with her school's seal of approval" because it occurred at a "regularly scheduled school-sponsored function conducted on school property."); *Lee v. Weisman*, 505 U.S. 577 (1992) (finding prayers at public high school graduations an impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturning law requiring daily "period of silence not to exceed one minute . . . for meditation or daily prayer"); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (holding school-sponsored devotional bible reading and recitation of the Lord's Prayer unconstitutional); *Engel v. Vitale*, 370 U.S. 421 (1962) (declaring school-sponsored prayers in public schools unconstitutional).

In each of these cases, the Supreme Court struck down school-sponsored prayer because it constitutes a government advancement and endorsement of religion, which violates the Establishment Clause of the First Amendment.

Public school coaches must refrain not only from leading prayers themselves, but also from participating in students' prayers. It is unconstitutional for public school employees to participate in the religious activities of their students. *See, e.g., Bd. of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 253 (1990) (noting that public school faculty may only be at student-led religious meetings in a "nonparticipatory capacity."). Federal courts have held that even a public school coach's silent participation in student prayer circles is unconstitutional. *See, e.g., Borden v. Sch. Dist. of the Twp. of E. Brunswick*, 523 F.3d 153 (3d Cir. 2008), *cert. denied*, 129 S.Ct. 1524 (2009) (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) (holding a basketball coach's participation in student prayer circles an unconstitutional endorsement of religion).

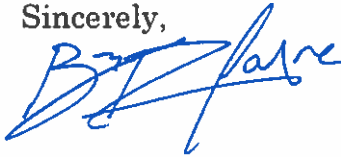
In *Borden*, the Third Circuit Court of Appeals held the high school football coach's history of organizing, leading, and participating in prayers before games was unconstitutional. *Borden*, 523 F.3d at 174. In that case, the court stated that the coach's involvement in the prayer by "taking a knee" 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. *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. *Id.*

Coach Hape's conduct is unconstitutional because he endorses and promotes religion when acting in his official capacity as a school district representative. Certainly, he represents the school and the team when he acts as a coach of the Panthers. When public school employees acting in their official capacities organize and advocate for team prayer, they effectively endorse religion on the District's behalf.

We ask that the District commence an immediate investigation and take action to ensure that in the future Reitz High coaches will not pray with students during District athletic programs and will not otherwise use their position as District coaches to promote religion. Please inform us in writing of the steps you are taking to remedy this serious and flagrant violation of the First Amendment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan D. Jayne". The signature is stylized and cursive.

Ryan D. Jayne
Staff Attorney

Enclosure



**Raitz Head Coach
Andy Hape prays
with his team
after their 49-46
win over the
Mater Dei
Wildcats.**