

FREEDOM FROM RELIGION *foundation*

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**SENT VIA EMAIL AND U.S. MAIL:
publicinput@fhsaa.org**

Ms. Michele Faulk
Florida High School Athletic Association
Santa Fe High School
16213 NW U.S. Highway 441
Alachua, FL 32615

Re: FHSAA prayer policy

Dear Chairperson Faulk and committee members:

I am writing on behalf the Freedom From Religion Foundation in support of FHSAA's policy disallowing broadcasted prayer before FHSAA sporting events. FFRF is a national nonprofit organization with more than 23,000 members nationwide, including nearly 1,200 in Florida and a state chapter, Central Florida Freethought Community. Our purpose is to protect the constitutional separation between state and church.

We understand that Liberty Institute, a Christian legal ministry, has threatened FHSAA with a lawsuit due to its prayer policy, which allows students to pray whenever they want to pray, but prohibits broadcasting a prayer over the public sound system. We are writing to support FHSAA's policy, which is both legal and wise.

FHSAA's is not required to loan out its equipment or property to amplify public prayer at its events. Students and coaches have a right to pray on their own, but no one has a right to subject an entire stadium to their prayers via loudspeaker. Indeed, FHSAA's current policy *protects* FHSAA from legal liability by avoiding the appearance of favoring religion over nonreligion.

As you are no doubt aware, interscholastic associations that are pervasively entwined with public institutions may be considered state actors with accompanying constitutional duties. In *Brentwood Academy*, the Supreme Court ruled that the Tennessee Secondary School Athletic Association was a state actor because its "nominally private characters [were] overborn by the pervasive entwinement of public institutions and public officials in its composition and workings" and there was "no substantial reason to claim unfairness in applying constitutional standards to it." *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 298 (2001).

FHSAA is likely a state actor for purposes of the Establishment Clause and so must comply with the prohibition against endorsing prayer to the same extent as the public schools it serves. And as you know, the Supreme Court has explicitly prohibited prayers over loudspeakers at publicly organized athletic events, even when student-led. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000).

FHSAA's prayer policy is typical. Many other interscholastic associations have already reviewed the case law and concluded that they must ask member schools to limit directed prayer at publicly-sponsored events without depriving attendees of the ability to pray individually. Among those athletic associations are: Iowa High School Athletic Association,¹ Illinois High School Association,² Nebraska Schools Activities Association,³ Oregon School Activities Association,⁴ and the Virginia High School League.⁵ VHSL explicitly changed its prayer policy so that the league could include private religious schools without violating public school students' rights or the Constitution.

As Liberty Institute has shown repeatedly in its letter, prayers are private religious speech. This argument is self-defeating. The government has no obligation to amplify private prayers, but it does have an obligation to ensure government power is not used to promote private religious views. In short, FHSAA is acting as the Constitution requires.

FHSAA's current policy protects the rights of conscience of all student athletes participating in FHSAA-sponsored events. We appreciate the FHSAA's commitment to the Establishment Clause and encourage FHSAA to ignore the threats of religious zealots.

Sincerely,

Andrew L. Seidel
Staff Attorney

ALS:rdj

¹ IAHSAA 2013-14 Handbook ("Prayer shall not be permitted prior to FHSAA-sponsored events in accordance with Supreme Court ruling of June 19, 2000.") *citing Santa Fe Indep. Sch. Dist.*, available at www.iahsaa.org/resource_center/2013_2014_FHSAA_Handbook.pdf.

² IHSA Guidelines and Policies, 29 (2014-15) ("Prayer at an IHSA state series contest that takes place over the public address system is prohibited."), available at www.ihsa.org/documents/forms/2014-15/IHSA%20Policies%202014-15.pdf.

³ Letter from Dr. Jim Tenopir, NSAA Executive Director, to Member Schools, Re: Public Prayer Activities in which NSAA has Substantial Involvement (Feb. 10, 2014) ("By this letter the NSAA is requesting all member schools to refrain from publicly led prayer as part of NSAA-sponsored subdistrict, district, playoff, and state competitions (activities in which the NSAA has substantial involvement). . . . We would note that the request is not directed toward member school practices or policies related to team prayers (pre-game, during the contest or post-game), moments of silence, or other forms of personal expression."), available at <https://nsaahome.org/nsaaforms/pdf/prayermemo.pdf>.

⁴ OSAA Handbook, 74. *State Championships, Pre-Contest Public Prayer* (Fall, 2012) ("Under rulings of both Federal and State Courts, a pre-contest public prayer at any OSAA sponsored event is a violation of both federal and state constitutions regardless of where the game is played and which schools are participating. Therefore, offering a pre-contest public prayer over a public address system at any OSAA sponsored interscholastic event is prohibited."), available at www.osaa.org/governance/handbooks/osaa#_Toc393093257.

⁵ VHSL, *Handbook Changes for Membership Meeting*, PM 55-7-1 (May 20, 2015) ("There is to be no publicly-sponsored prayer or publicly-sponsored invocation at VHSL state events."), available at www.vhsl.org/doc/upload/vhsl-2015-handbook-changes-for-membership-meeting-5-20-15.pdf.