

FREEDOM FROM RELIGION *foundation*

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August 10, 2011

**SENT VIA FAX & U.S. MAIL
(662) 429-4198**

Mr. Milton Kuykendall
Superintendent
DeSoto County Schools
5 East South Street
Hernando, MS 38632

Re: Prayer at High School Athletic Events and Graduation

Dear Mr. Kuykendall,

I am writing on behalf of concerned parents of DeSoto County Schools, and other Mississippi members of the Freedom From Religion Foundation (FFRF), who object to the school district holding prayer at athletic events as well as scheduling a prayer at the public high school graduation ceremonies. FFRF is a national nonprofit organization with over 16,600 members across the country including members in Mississippi. Our purpose is to protect the constitutional principle of separation between state and church.

It is our information and understanding that prayers are given over the loudspeaker at high school football games, basketball games and other sporting events. It is also our information and understanding that students are often encouraged by their teachers to pray before meals. Our complainant also informs us that a prayer each year at the graduation ceremony, some led by students and some led by you, the superintendent. We understand these prayers are mostly Christian-based prayers.

Prayer at Athletic Events

First and foremost, it is illegal for a public school to organize, sponsor, and lead prayers at public high school athletic events. The Supreme Court has continually struck down formal teacher or school-led 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."); *Jager v. Douglas County Sch. Dist.*, 862 F.2d 825 (11th Cir. 1989), cert. den.,

490 U.S. 1090 (1989)(holding unconstitutional pre-game invocations at high school football games). In all of the aforementioned cases, the federal courts have struck down prayer in public schools because it constitutes a government-endorsement of religion, which violates the Establishment Clause of the First Amendment.

More importantly, the Supreme Court has struck down pre-game invocations even when they are student initiated. *See generally, Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000)(struck down a school policy that authorized students to vote on whether to hold a prayer at high school football games). In *Santa Fe Indep. Sch. Dist. v. Doe*, the Supreme Court found the school district policy of allowing student-initiated prayer at football games to be unconstitutional. *See* 530 U.S. at 320. The Court reasoned that because the football game was still a school-sponsored event, the fact that a student was leading the prayer did not cure the constitutional violation. *Id.* at 307. A prayer taking place 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 Court stated that in this context, “[r]egardless 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.” *Id.*

Prayer at Graduation Ceremony

The Supreme Court has struck down prayers at public high school graduations. *See Lee v. Weisman*, 505 U.S. 577 (1992)(declaring unconstitutional clergy-delivered prayers at a public school graduation). Even if student-initiated, school officials may not invite a student, teacher, faculty member, or clergy to give any type of prayer, invocation, or benediction at a public high school graduation. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000)(holding that student-delivered prayers at high school football games violate the Establishment Clause).

It is no defense that graduations are events at which participation or attendance is voluntary. Courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *See, generally, Lee v. Weisman*, 505 U.S. at 596 (“It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.”); *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 288 (1963) (Brennan, J., concurring) (“Thus, the short, and to me sufficient, answer is that the availability of excusal or exemption simply has no relevance to the establishment question...”); *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003) (“...VMI cannot avoid Establishment Clause problems by simply asserting that a cadet’s attendance at supper or his or her participation in the supper prayer are ‘voluntary.’”).

The law is clear. High school graduations must also be secular to protect the freedom of conscience of all students.

Conclusion

Therefore, the District must take immediate action to ensure that a prayer, an invocation, or a benediction is not scheduled for any part of next year's graduation ceremony or at any district athletic events. The prayers before high school athletic events signify an unconstitutional government endorsement of religion. The prayers are clearly offered as part of regularly scheduled school-sponsored functions. Therefore, a reasonable DeSoto County Schools student would certainly perceive the prayer "as stamped with her school's approval." *See Id.* Moreover, prayer offered at the school sponsored events would lead anyone participating on the team or in attendance to believe that DeSoto County Schools is endorsing religion, and specifically, in this case, Christianity.

We ask that the school district commence an immediate investigation into the complaints alleged, and take immediate action to stop any and all prayers occurring before any athletic events and graduation ceremonies. We ask that you promptly inform us in writing of the steps DeSoto County Schools will take to remedy this serious and flagrant violation of the First Amendment.

Sincerely,



Stephanie A. Schmitt
Staff Attorney

cc: Ann Jolley, Chairperson, DCS School Board (via email only)
Keith Treadway, DCS School Board Attorney (via email only)