

FREEDOM FROM RELIGION *foundation*

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October 21, 2024

SENT VIA EMAIL & U.S. MAIL: sschuler@cowdenherrick.org

Superintendent Seth Schuler
Cowden-Herrick Community Unit 3A School District
633 County Highway 22
Cowden, IL 62422

Re: Unconstitutional graduation prayer

Dear Superintendent Schuler:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation at Cowden-Herrick High School's 2024 graduation ceremony. FFRF is a national nonprofit organization with 40,000 members across the country, including more than 1,100 members and a local chapter in Illinois. Our 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 community member informs us that CHHS's Sunday, May 19, 2024 graduation ceremony featured an invocation delivered by [REDACTED], a Youth Minister at First Church Church of Cowden. The event also included an official sermon, delivered by [REDACTED] pastor at the same church. [REDACTED] reportedly ranted about transgender people, human sexuality, and Kansas City Chiefs kicker Harrison Butker—an unholy trinity of talking points. Several attendees, we are informed, got up and walked out upon hearing [REDACTED]'s homophobia and transphobia. Both [REDACTED] and [REDACTED] were planned speakers for the event, as the program title included their church titles, "Invocation," and "Scripture/Sermon." The event is also described as a "Baccalaureate." Please see the enclosed screenshot.

Pre-planned graduation prayer is unconstitutional. Besides that, [REDACTED]'s undereducated comments about transgender individuals are inappropriate for graduations. The District should refrain from scheduling pre-planned prayer or bigots from its future graduations.

Pre-Planned Prayer at Official Events is Unconstitutional

Public school students have a constitutional right to be free from religious indoctrination in their public schools. It is well settled that public schools may not show favoritism towards or coerce belief or participation in religion. *See generally Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Arkansas*, 393 U.S. 97 (1967); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *McCollum v. Bd. of Educ.*, 333

U.S. 203 (1948). The Supreme Court has continually struck down prayers at school-sponsored events, including graduations. *See Lee*, 505 U.S. 577 (declaring prayers unconstitutional at a public school graduation). School officials may not invite a student, teacher, faculty member, or clergy member to give any type of prayer, invocation, benediction, or sermon at a public school-sponsored event, nor may they give a prayer themselves. *See Santa Fe*, 530 U.S. 290 (holding that student-delivered prayers at high school football games violate the Establishment Clause). “It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise[.]” *Lee*, 505 U.S. at 587. Furthermore, government-led prayer “has the improper effect of coercing those present to participate in an act of religious worship.” *Santa Fe*, 530 U.S. at 312.

The state constitution stands as an independent reason for not planning prayer at official school events. Illinois’s Establishment Clause reads “No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.” Ill. Const. Art. I. § 3. Illinois’s state Establishment Clause is “*more restrictive* than the [] federal Constitution.” *Record of Proceedings*, Sixth Ill. Const. Con. at 1372. So, irrespective of any First Amendment analysis, Illinois law prohibits pre-planned graduation prayer. *See People ex rel. Bakalis v. Bd of Educ.*, 54 Ill. 2d 448 (Ill. 1973).

Homophobic & Transphobic Graduation Speakers are Unwise

Graduation speeches serve as a short time to encourage and uplift graduating students. CHHS seniors did not get that because [REDACTED] did not do that. Instead, attendees received a local pastor’s rant; and these seniors had to sit and listen prior to receiving their diplomas. Not only is that unwise and unfair, but it is also illegal in multiple ways.

Namely, homophobic and transphobic graduation speeches create a hostile environment on the basis of sex. They cast some students as normal while making other students seem abnormal. That is textbook sex discrimination. The District is required to serve all of these students, equally, irrespective of gender or sexual orientation. Title IX of the Education Amendments Act prohibits sex discrimination by federally supported institutions. *See* 20 U.S.C. § 1681 *et seq.* *See generally Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017); *see also Doe v. Elkhorn Area Sch. Dist.*, No. 24-CV-354-JPS (E.D. Wis. Aug. 1, 2024). The Fourteenth Amendment’s Equal Protection Clause prohibits sex discrimination. *See* U.S. Const. Amend. XIV; *U.S. v. Virginia*, 518 U.S. 515 (1996).

Illinois’s Constitution also protects against sex, sexual orientation, and transgender status discrimination. *See* Ill. Const. Art. I § 18. This is heightened protection compared to the federal constitution. Illinois’s anti-discrimination statute protects transgender status and sexual orientation as well. 775 ILCS 5/1-101 *et seq.* Illinois schools may not deprive individuals full enjoyment or access to graduation ceremonies based on sexual orientation or transgender status. *Id.* Nor may they tolerate any environment in which transgender students

are attacked. *Id.* Instead, Districts should look for speakers who provide a secular, uplifting message that does not isolate, but resonates with young people entering their adult lives.

But CHHS students did not get that. What they received instead was hateful preaching. That is inappropriate for a graduation speech over a captive audience. To respect the federal and state constitutional rights of students and their families, the District must not schedule prayer at any future school-sponsored events and must better regulate speakers to comply with its own anti-discrimination duties. Please respond in writing with the steps the District is taking to remedy these constitutional violations. Thank you for your time and attention to these matters.

Sincerely,

A handwritten signature in cursive script that reads "Hirsh M. Joshi". The signature is written in black ink and is positioned above the typed name and title.

Hirsh M. Joshi
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation