

October 5, 2017

Via Certified Mail & Email

Scott Smith, Superintendent
Bossier Parish Schools
410 Sibley Street
Benton, LA 71006

Re: Constitutional violations

Dear Superintendent Smith:

As reported in the national media last week, students and parents in Bossier Parish School district were told by school authorities that student athletes would be disciplined if they protested during the playing of the National Anthem. The same reports indicate that one game which followed this announcement was prefaced by a student-led Christian prayer over the public address system. Both aspects of this trouble the signatories to this letter, who are representatives of national organizations that campaign to protect the freedoms set out in the First Amendment to the Constitution. Our organizations represent the atheist, agnostic, humanist, and other non-believer communities in the United States, and we stand for the protection of the free speech of the students concerned, as well as the need for the preservation of the wall of separation between church and state—two cornerstones of our freedoms guaranteed by the First Amendment.

The School District's Policy Regarding Expressive Speech by Students

The signatories to this letter are organizations committed to maintaining and enforcing the constitutional rights of public school students, their parents, and members of the faculty and staff of public school districts. The right of an individual, child or adult, to speak her or his mind on matters of public concern is unassailable, whether in the classroom or on the athletic field. Retribution against an individual for peacefully exercising that right in a non-disruptive manner strikes at one of the fundamental pillars of a free society.

On September 27, 2017, the superintendent of Bossier Parish Schools, Scott Smith, sent a letter home to parents¹ in which he stated:

In Bossier Parish, we believe when a student chooses to join and participate on a team, the players and coaches should stand when our National Anthem is played in a show of respect. This extends to those that elect to join a club or student organization, which requires a faculty sponsor. It is a choice for students to participate in extracurricular

¹ https://www.ktbs.com/news/bossier-schools-take-the-national-spotlight-parkway-high-football-players/article_31dca590-a591-11e7-9128-5ff2d0f2e8e2.html

activities, not a right, and we at Bossier Schools feel strongly that our teams and organizations should stand in unity to honor our nation's military and veterans.²

The letter went on to state that Bossier Parish Schools would "be in full support" of any school official who chose to discipline any student athletes who "elect not to stand during the National Anthem."

The day after Superintendent Smith issued his proclamation, individuals in the stands at a high school football game in the district reported that dozens of uniformed police officers were in attendance.

This edict by Superintendent Smith flies in the face of long-established law. Nearly 75 years ago, the Supreme Court in *West Virginia Bd. of Ed. v. Barnette* spoke forcefully on this precise issue:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control. 319 U.S. 624, 642 (1943).

Furthermore, retaliation against a private individual for the exercise of their constitutional rights itself amounts to a violation that exposes teachers and administrators to personal liability. *Morgan v. Swanson*, 755 F.3d 757, 760 (5th Cir. 2014). Punishing students for speaking their minds runs counter to one of the main objectives of our public schools: training our children to become active participants in a free society. Moreover, it forces students and parents to protect their rights through litigation, the financial burden of which will ultimately be shouldered by the school districts themselves, whose resources would be far better spent on instructing students, rather than defending short-sighted violations of their fundamental freedoms.

Free speech is not "free." One of the prices of free speech is that we are often forced to tolerate the speech of others, even though we may vehemently disagree with their message. This is particularly true of government officials who are likely to encounter private citizens with disparate, conflicting views. Government officials are obligated not simply to tolerate such contrary points of view, but actively protect the right of the citizen to express them.

We therefore request that Bossier Parish Schools rescind its policy regarding the National Anthem and inform the district's students and parents that students will be permitted to express their views in a non-disruptive manner without fear of retribution. We also request that the district

² <https://www.atheists.org/wp-content/uploads/2017/10/Bossier-Parish-Smith-Policy-Letter.pdf>

instruct the principals, administrators, and faculty on right to free speech enjoyed by all public school students.

The School District's Policy Regarding Prayer at Public School Football Games

As organizations committed to the First Amendment, the signatories to this letter are also concerned regarding what appears to be a school-sponsored religious prayer delivered before the game by a student.

According to the report in the Washington Post:

As to the announcer at Airline High School's stadium, where Parkway High School's football team played Friday, asked the crowd *to rise for a prayer* and the national anthem, some Parkway players silently linked arms in their white jerseys, forming a line down the sideline.

*A female student delivered the prayer, thanking Jesus.*³

The Supreme Court has been clear that religious activities, like this, a public prayer delivered on at a high school football game, using publicly owned equipment, constitute an endorsement of religion which violates the Establishment Clause of the First Amendment. See *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000).

As the Court made clear, even student-led prayer in such a forum was unconstitutional. As the Court noted:

In this context the members of the listening audience must perceive the pregame message as a public expression of the views of the majority of the student body delivered with the approval of the school administration. *Id.* at 308.

The signatories to this letter all support the maintenance of the wall of separation between church and state and work to further the goal of a secular society that respects the rights of all of its members. By permitting and endorsing such prayer, the schools involved are sending a message that students of no religious faith, or those of minority faiths, are lesser than their Christian co-students. Such a message goes completely against the purpose of the public school system, which is the education of all children to be good and productive members of society, and instead places the religious views of only some on a pedestal.

We therefore request that you send us a copy of the school district's policy regarding prayers at school events, including athletic contests. If the district has no such policy, it is imperative that one be developed which respects both the United States Constitution and the rights and dignity of all students, including atheist, agnostic, other non-believing, and minority-faith-holding ones. If the district does have such a policy, and the school concerned is simply ignoring it, we demand that

³ https://www.washingtonpost.com/national/in-louisiana-high-school-players-link-arms-but-do-not-kneel-during-anthem/2017/09/29/9f893f40-a564-11e7-ade1-76d061d56efa_story.html

such unconstitutional practices are put to an immediate end, and all schools in the district be reminded of their responsibilities under the law.

Scholastic Organizations' Policies Regarding Prayer at Public School Football Games

The responsibility for protecting the rights of public school students does not fall solely on the shoulders of school districts and their officials. Nominally private organizations like the Louisiana High School Athletic Association (LHSAA) and the Louisiana School Boards Association (LSBA) also bear responsibility. According to news reports, both of these organizations have informed public school officials "that it would be left up to individual school districts to determine how they would respond to potential protests by student-athletes."⁴ Neither organization appears to have made this guidance public.

Even nominally private organizations have a responsibility to preserve the constitutional rights of individuals if those organizations are acting under the color of state law. 42 U.S.C. § 1983; *Brentwood Acad. v. Tenn. Secondary Sch. Ath. Ass'n*, 531 U.S. 288, 298 (2001). The LHSAA and LSBA are made up not of private individuals but rather of public school boards and individual schools, their funding is paid by members out of public coffers, and they are operated by officers predominantly chosen from among public officials.⁵ Consequently, both organizations can be held liable for constitutional violations mandated or encouraged by their policies. *Louisiana High School Athletic Assn. v. St. Augustine High School*, 396 F.2d, 228 (5th Cir. 1968); *Walsh v. Louisiana High School Athletic Assn.*, 616 F.2d 152, 156 (5th Cir. 1980).

If the reports are accurate that the LHSAA and the LSBA issued guidance permitting school officials to violate the rights of students and parents by curtailing students' ability to engage in peaceful, non-disruptive expression and by subjecting students, parents, faculty, and staff to school-organized prayer, the LHSAA and LSBA are complicit in those violations. We therefore request that the LHSAA and LSBA immediately rescind any such guidance and inform their members of students' rights under the First Amendment to the U.S. Constitution.

We therefore respectfully request the following steps to be taken:

- That any policies infringing on a student's free-speech rights to peacefully protest be rescinded immediately, and all schools in the district be instructed on students' rights to expression;
- That any practice of beginning student athletic contests with religious ceremonies be terminated, and all schools in the district be instructed as to the legal standards regarding such activities;

⁴ https://www.washingtonpost.com/national/in-louisiana-high-school-players-link-arms-but-do-not-kneel-during-anthem/2017/09/29/9f893f40-a564-11e7-ade1-76d061d56efa_story.html?utm_term=.db493482dec

⁵ http://cdn.lhsaa.org/uploads/handbook/17HB_Constitution.pdf;
<http://www.lsba.com/PageDisplay.asp?p1=5403>

- That the relevant governing bodies implement policies which protect these students' constitutional rights, and do not leave such decisions to individual schools.

Please advise us within five business days of the steps you are taking to ensure that you are meeting your obligations to protect students' rights under the United States Constitution. You may contact us by email at legal@atheists.org.

Sincerely,



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