



September 17, 2015

Dear Bremerton School District families, staff and community,

Our District recently learned that a member of our coaching staff was participating in religious prayer with our students on school property. Because of the constitutional concerns this raised, we hired an outside attorney to determine whether there was a need for training and clarification of the parameters around staff involvement in religious activities with students.

These concerns have now been resolved.

We are pleased that Joe Kennedy will continue coaching our student athletes, and we look forward to the game tomorrow night.

Our coaching staff can continue to provide motivational, inspirational talks to students before, during and after games and other team activity, focusing on appropriate themes such as unity, teamwork, responsibility, safety and endeavor. This is the heart of our athletics program.

However, talks with students may not include religious expression, including prayer. They must remain entirely secular in nature, so as to avoid alienation of any team member and, importantly, violate the law and our Board policy.

Students are free to initiate and engage in religious activity, including prayer, so long as it does not interfere with school or team activities. Student religious activity must be entirely and genuinely student-initiated, and may not be suggested, encouraged (or discouraged), or supervised by any District staff.

The District is bound by these federal precedents. Should the District disregard them, we would be subjected to significant potential liability, endangering precious funds needed to educate the District's students and sustain its important programs.

Moving forward, the District realizes we must take steps to make sure our staff members understand the implications of federal law. We will make sure coaching staff are provided ample training regarding this admittedly complex area of constitutional law. **To be clear: The BHS football coaching staff's conduct has been entirely well-intentioned.** It is up to the District to establish clear parameters that will ensure compliance with these laws (*included on page 2 and 3 of this document*).

While we certainly wish we had provided coaching staff with training and direction that might have avoided the current controversy, this process has been a learning experience – one that will surely continue – and I am optimistic that the BHS football program will continue to thrive within these newly clarified guidelines.

Sincerely,

Aaron Leavell, Ed.D.
Superintendent

/pg

Bremerton Policy and Legal References

Board Policy 2340 includes the following statement:

As a matter of individual liberty, a student may of his/her own volition engage in private, non-disruptive prayer at any time not in conflict with learning activities. School staff shall neither encourage nor discourage a student from engaging in non-disruptive oral or silent prayer or any other form of devotional activity.

This policy is intended to implement the District's obligations under the First Amendment to the United States Constitution, which reads:

Congress shall make no law respecting *an establishment of religion*, or *prohibiting the free exercise thereof*; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Many decades of federal court litigation, including decisions of the United States Supreme Court, have fleshed out the meaning of the First Amendment's Establishment Clause and Free Exercise Clause. In the public schools context, it is clear that schools and their employees may not directly prohibit students from participating in religious activities, nor may they require students to participate in religious activities. Further, it is equally clear that school staff may not indirectly encourage students to engage in religious activity (or discourage them from doing so), or even engage in action that is likely to be perceived as endorsing (or opposing) religion or religious activity. In short, schools and their employees, while performing their job duties, must remain neutral – allowing non-disruptive student religious activity, while neither endorsing nor discouraging it.

As pertains to athletics, the federal courts have held that:

- Schools may not allow prayers to be read – even by students – over the public address system at even optional extracurricular events, such as football games – *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000)
- Schools may not allow coaches to initiate, lead or supervise student prayer – *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995)
- Schools may not even allow coaches to participate in or appear to endorse religious activity that is entirely student-initiated – *Borden v. Sch. Dist. of the Township of East Brunswick*, 523 F.3d 153 (3rd Cir. 2008)

The District of course recognizes that its employees possess fundamental free exercise and free expression rights of their own under the First Amendment. However, the courts have held that where there is direct tension between the district's need to avoid an Establishment Clause violation and a school employee's free exercise or expression rights, the latter must yield so far as necessary to avoid school endorsement of religious activities. *Borden*, above; *Berger v. Rensselaer Central School Corp.*, 982 F.2d 1160 (7th Cir. 1993). The District is bound by these federal precedents. Should the District disregard them, allowing conduct that violates the

Establishment Clause, the District will be subjected to significant potential liability, endangering precious funds needed to educate the District's students and sustain its important programs.

The District's inquiry into this matter did reveal practices that are not allowed under federal precedent. However, it also revealed that coaching staff have not been provided ample training regarding this admittedly complex area of constitutional law. **To be clear: The BHS football coaching staff's conduct has been entirely well-intentioned.**

Going forward, the District has established clear parameters that will ensure compliance with the District's obligations under the Establishment Clause, while honoring and respecting the fundamental personal free exercise and free expression rights of students and the coaching staff. These parameters will continue to allow students to engage in voluntary, student-initiated religious activity; allow coaching staff to continue to deliver the inspirational, motivational, team-building talks to students that have been such an asset not only to BHS teams but to those of opposing teams and their coaching staffs; and allow our staff to engage in their own religious activities in a manner that will not run afoul of the United States Constitution.