

From: Hiram Sasser
Date: Friday, October 16, 2015 at 4:46 PM
To: Jeff Ganson
Cc: Cyndi Nelson
Subject: Re: Bremerton School District/J. Kennedy

I am writing to quickly respond to your response letter dated October 16, 2015, which I received a few hours ago. We may have a fuller response if necessary after this weekend's activities.

There are some factual inaccuracies in your response, but we will not exhaustively list those here. It is important to note that Coach Kennedy only received the September 22, 2015 guidance letter on October 15, 2015. When Coach Kennedy asked the athletic director whether he must sign the document, the athletic director told him no. Again, as we offered to do yesterday, we are certainly open to meeting and discussing the issues in person.

We are encouraged by your acknowledgment that Coach Kennedy "is free to engage in religious activity, including prayer, even while on duty, so long as doing so does not interfere with performance of his job duties, and does not constitute District endorsement of religion."

Therefore, the only issue remaining is whether Coach Kennedy's post-game prayer is in fact a violation of the Establishment Clause on behalf of the District. In order to justify taking adverse employment action against Coach Kennedy, the district must plead and prove an actual Establishment Clause violation for the act for which the school district takes the adverse employment action. Among other key differences, the *Borden* case involves a coach praying before games with players who are required to be there. It is far from the facts here where the coach is praying after a game when everyone is free to leave the area. While we believe that the school district will be unable to prove any Establishment Clause violation, there is a better solution than litigation for this remaining issue of dispute.

The school district may resolve this issue by announcing a disclaimer that Coach Kennedy is acting in his private capacity and not as a representative of the school district. It is unfortunate that the school district is threatening action against Coach Kennedy when it could legally resolve the issue with a mere disclaimer.

This evening, Coach Kennedy will engage in activity that is permitted by the Establishment Clause and is protected by the First Amendment and Title VII of the Civil Rights Act of 1964 among other protections. If the school district takes adverse employment action against Coach Kennedy as a result of his post-game activity,

we will be left with no choice but to proceed with an appropriate legal response.

Hiram Sasser
Deputy Chief Counsel



o: [REDACTED]
direct: [REDACTED]
f: [REDACTED]

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From: Cyndi Nelson
Date: Friday, October 16, 2015 at 1:23 PM
To: Hiram Sasser
Cc: "A.J. Ferate" "[REDACTED]"
Subject: Bremerton School District/J. Kennedy

Mr. Sasser,

Attached is a letter from Jeffrey Ganson of Porter Foster Rorick, attorneys for the Bremerton School District in this matter.

A handwritten signature in blue ink that reads "Cyndi Nelson".

Cyndi Nelson, Legal Assistant to Jeffrey Ganson



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