



February 21, 2018

Timothy Saxton, Superintendent
West Branch Local School District
14277 Main Street
Beloit, Ohio 44609

Re: Protecting Student Religious Exercise and Expression in Public Schools

Dear Superintendent Saxton:

First Liberty Institute is a law firm with a nationwide practice focused on First Amendment matters. We advise and represent schools and students around the country on issues of church and state.

Local parents have retained First Liberty on behalf of their children who are enrolled in West Branch schools. Our purpose is to ensure the rights of West Branch students are upheld following the school district's change of policy regarding prayer before athletic competitions, and help resolve the current controversy in a way that maximizes student freedoms and liberties.

Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). “Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any.” *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984). As the U.S. Court of Appeals for the Sixth Circuit explained, “the First Amendment does not demand a wall of separation between church and state.” *ACLU of Ky. v. Mercer Cty.*, 432 F.3d 624, 638 (6th Cir. 2005). That “separation,” the Sixth Circuit further explained, is an “extra-constitutional construct [that] has grown tiresome.” *Id.* We are, after all, “a religious people whose institutions presuppose a Supreme Being.” *Zorach v. Clauson*, 343 U.S. 306, 313 (1952).

Recognizing this, the U.S. Department of Education issued broad guidance on prayer and religious freedom in public schools. See *U.S. Dept. of Educ., Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, available at https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html. This guidance recognizes “the Constitution mandates neutrality rather than hostility toward privately initiated religious expression,” and requires that while “local school authorities possess substantial discretion to impose rules of order and pedagogical restrictions on student activities, . . . they may not structure or administer such rules to discriminate against student prayer or religious speech.” *Id.*

I have reviewed a copy of the January 18, 2018 complaint letter you received last month regarding prayer before school events. It directly attacked student religious freedom, particularly a student's right to pray at school events.

Conspicuously absent from the complaint was the U.S. Supreme Court's express re-affirmation of student religious freedom in the same case the complaint relied on: "nothing in the Constitution as interpreted by this Court prohibits any public school student from voluntarily praying at any time before, during, or after the schoolday." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000). That principle is so well established in the law that, years after *Santa Fe* was decided, the U.S. Department of Education, in its guidance on prayer in schools, expressly warned that the speech of "[s]tudent speakers at student assemblies and extracurricular activities such as sporting events" "may not be restricted because of its religious (or anti-religious) content." *U.S. Dept. of Educ., Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, available at https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html. That speech includes prayer. *Id.*

On behalf of our clients, we request to meet with you and the school board to provide our assessment of the matter and discuss options for moving forward in a manner that ensures student rights are protected.

I can be reached at 972-941-4444, email rbyron@firstliberty.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roger Byron".

Roger Byron
Senior Counsel