

# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

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**SENT VIA U.S. MAIL AND EMAIL TO:**

sdagresta@orlandolaw.net

Suzanne D'Agresta  
Brown, Garganese, Weiss & D'Agresta, P.A.  
111 N. Orange Ave., Suite 2000  
P.O. Box 2873  
Orlando, FL 32802-2873

Re: Unconstitutional Prayers at Board of Education Meetings

Dear Ms. D'Agresta:

I write again on behalf of the Freedom From Religion Foundation ("FFRF"). Thank you for your prompt and courteous response to our letter last June. We write to you again regarding serious constitutional violations by the Indian River County School Board ("Board").

We understand that the Board includes an invocation before all of its meetings. We understand that local religious leaders are invited by the Board to give these invocations and that Board members will sometimes give the invocation themselves. We understand that these invocations have been regularly occurring since at least July 2012. We further understand that these invocations are often sectarian in nature. Example copies of Board meeting minutes enclosed.

It is beyond the scope of a public school board to schedule prayer as part of its regular meetings. Federal courts have struck down school board practices that include this religious ritual. *See Doe v. Indian River Sch. Dist.*, 653 F.3d 256 (3d Cir. 2011), *cert. denied*, 132 S. Ct. 1097 (holding that prayer at school board meetings conveys message favoring religion); *Doe v. Tangipahoa Parish Sch. Bd.*, 473 F.3d 188 (5th Cir. 2006), *dismissed on other grounds*, 494 F.3d 494 (5th Cir. 2007) (finding a school board's practice of opening meetings with sectarian prayer unconstitutional); *Bacus v. Palo Verde Unified Sch. Dist.*, 52 Fed. Appx. 355, (9th Cir. Cal. 2002) (unpublished) (finding that a school board violated the Establishment Clause in allowing prayers "in the name of Jesus"); *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999) (finding that a school board's practice of opening its meetings with prayers violated the Establishment Clause).

The Supreme Court has continually and consistently struck down prayers offered by public schools. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (striking down school-sponsored prayers at football games); *Lee v. Weisman*, 505 U.S. 577 (1992) (finding prayers at public high school graduations an impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturning law requiring daily "period of silence not to exceed one minute ... for meditation or daily prayer"); *Abington*

*Twp. Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (declaring as unconstitutional devotional Bible reading and recitation of the Lord’s Prayer in public schools); *Engel v. Vitale*, 370 U.S. 421 (1962) (declaring prayers in public schools unconstitutional). In all of the aforementioned cases, the federal courts have struck down school-sponsored prayer because it constitutes a government advancement and endorsement of religion, which violates the Establishment Clause of the First Amendment.

The opinion in *Indian River Sch. Dist.* emphasized that school board prayer is analogous to other school prayer cases when it comes to protecting children from the coercion of school-sponsored prayer, which is heightened in the context of public schools. 653 F.3d at 281. In that case, the court also held that the school board meetings are “an atmosphere that contains many of the same indicia of coercion and involuntariness that the Supreme Court has recognized elsewhere in its school prayer jurisprudence.” *Id.* The final conclusion was that the school board prayer policy “[rose] above the level of interaction between church and state that the Establishment Clause permits.” *Id.* at 290.

The issues discussed and decisions made by school boards are wholly school-related, affecting the daily lives of district students and parents. In striking down the board’s prayers in *Coles*, the Sixth Circuit found prayers at school board meetings to be squarely within the context of school prayer cases. The court noted, “although meetings of the school board might be of a ‘different variety’ than other school-related activities, the fact remains that they are part of the same ‘class’ as those other activities in that they take place on school property and are inextricably intertwined with the public school system.” *Coles*, 171 F.3d at 377. Therefore, prayer at public school board meetings is no different than a prayer given at other school district events and is unconstitutional.

Certainly, a public school board is an essential part of the public school system. *See id.* at 381 (“[T]he school board, unlike other public bodies, is an integral part of the public school system.”). Public school boards exist to set policies, procedures, and standards for education within a community. It is this role in education that sets school boards apart from city councils and other legislative bodies.

The U.S. Supreme Court’s decision in *Town of Greece v. Galloway*, permitting sectarian legislative prayers at town meetings, does not apply to public school board meetings because school boards are part of the school system. In addition, *Galloway* does not apply to school board meetings because there is no longstanding “historical precedent,” or an “unambiguous and unbroken history,” since the First Amendment was ratified, of prayers at school board meetings, unlike government prayers in other contexts. *See Galloway*, 134 S. Ct. 1811, 1819 (2014). In fact, while Congress and state legislatures existed when the First Amendment was ratified, public schools did not. Thus, *Galloway* has no applicability to the constitutionality of prayers at public school board meetings.

Prayer at public school board meetings is unnecessary and divisive. Calling upon Board members, staff, and families to pray is coercive and beyond the scope of a secular school system. Board members are free to pray privately or to worship on their own time in their own way. The school board, however, ought not to lend its power and prestige to religion, amounting to a governmental endorsement of religion that excludes the 19% of the American population that is nonreligious.<sup>1</sup> Employees and students should not be made to feel like outsiders when attending meetings.

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<sup>1</sup> Nones on the Rise: One-in-Five Adults Have No Religious Affiliation,” Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012)

Furthermore, students and parents have the right—and often have reason—to go before or participate in school board meetings and deliberations. Fully 70 years of firm Supreme Court precedent bars religious indoctrination and rituals from public schools for the express purpose of protection the rights of conscience of impressionable school children.

FFRF is committed to defending student and parental constitutional rights. We are currently suing a school board in South Carolina for conducting prayers before their board meetings. *See Nielson v. Sch. Dist. Five of Lexington and Richland Counties*, No. 3:12-cv-01427 (D.S.C.).

We ask that you take immediate action and refrain from scheduling prayers as part of future school board meetings to insure the rights of conscience embodied in our First Amendment are protected. We further request that you respond in writing at your earliest convenience with the steps you are taking to remedy these constitutional violations.

Sincerely,



Andrew Seidel  
Staff Attorney

Enclosure

ALS:njf

The Indian River County District School Board met on Tuesday, July 12, 2012, at 6:00 p.m. The special business meeting was held in the Teacher Education Center located at the J.A. Thompson Administrative Center, 1990 25th Street, Vero Beach, Florida. School Board Members attending were: Chairman Jeff Pegler, Vice Chairman Carol Johnson, and Board Member, Claudia Jiménez. Dr. Frances J. Adams, Superintendent of Schools, and School Board Attorney Suzanne D'Agresta were also present. Board Members Matthew McCain and Karen Disney-Brombach were not present.

### 2012-2013 Tentative Budget for Advertising

- I. Chairman Pegler opened the meeting.
  - II. Invocation was given by Vice Chairman Johnson.
  - III. Pledge of Allegiance to the Flag was led by Chairman Pegler.
  - IV. Adoption of Agenda – Chairman Pegler  
Mrs. Johnson moved approval of the Orders of the Day, with the addition of Consent A. Ms. Jiménez seconded the motion and it carried unanimously, with a 3-0 vote.
  - V. CONSENT AGENDA  
Ms. Jiménez moved approval of the Consent Agenda. Mrs. Johnson seconded the motion and it carried unanimously, with a 3-0 vote.
    - A. **Approval of Personnel Recommendations**  
Attached was a list of personnel recommendations, which included personnel additions, terminations, and/or changes. Superintendent recommended approval.
- Introductions:
- Dr. Adams introduced Mrs. Beth Hofer, new Assistant Principal at Vero Beach High School; Mr. Todd Jones, new Assistant Principal at Sebastian River Middle School; and Mrs. Ainsley Seeley, new Principal at Vero Beach Elementary School. Dr. Adams announced that Mrs. Robyn Bethel would be the new Assistant Principal at Treasure Coast Elementary; Cheryl Conley would be the new Curriculum and Instruction Coordinator of Professional Development; and Diane Fannin would be the new Principal at Highlands Elementary School.
- VI. PURPOSE OF THE MEETING – Dr. Adams  
Dr. Adams stated that the purpose of the meeting was to approve the advertisement of the budget and millage rates for 2012-2013. The posting in the newspaper would be on Saturday, July 21, 2012. She turned the meeting over to Mr. Morrison, who reviewed the information that would be printed in the newspaper.

The Indian River County District School Board met on Tuesday, January 22, 2013, at 6:00 p.m. The business meeting was held in the Teacher Education Center located at the J.A. Thompson Administrative Center, 1990 25th Street, Vero Beach, Florida. School Board Members attending were: Chairman Carol Johnson, Vice Chairman Claudia Jiménez, and Board Members: Jeff Pegler, Matthew McCain, and Karen Disney-Brombach. Dr. Frances J. Adams, Superintendent of Schools, and School Board Attorney Suzanne D'Agresta were also present.

### Business Meeting

- I. Meeting was called to order by Chairman Johnson.
  - ii. Invocation was given by Pastor Denny Hart, Assistant Principal at Storm Grove and Pastor at Saint Matthews Baptist Missionary Church.
  - III. PLEDGE OF ALLEGIANCE TO THE FLAG AND PRESENTATION OF COLORS  
BY: Sebastian River High School Naval Junior ROTC under the Direction of  
MGySgt. James R. O'Neal USMC (Ret)
  - IV. ADOPTION OF AGENDA  
Chairman Johnson called for a motion. Ms. Jiménez moved approval to adopt the Orders of the Day, with the deletion of Action B. Approval to Participate in Florida School Boards Association's Master Board of Distinction Leadership Team Training. Mrs. Disney-Brombach seconded the motion and it carried unanimously, with a 5-0 vote.
  - V. PRESENTATIONS
    - A. **2013 School-Related Employee of the Year Finalists and Announcement of the Indian River County School District Winner – Ms. Roberts**  
The following finalists were recognized by the District School Board:
      - Holly Emard**, Bookkeeper, Storm Grove Middle School
      - Ana Renuart**, ESOL Teacher Assistant, Citrus Elementary School
      - Sherry Johnson**, ESE Teacher Assistant, Glendale Elementary School
- Ms. Roberts announced the 2013 School-Related Employee of the Year for Indian River County School District – **Ana Renuart**. Mrs. Renuart was recognized by the District School Board for her contributions to the students of Indian River County, Florida. Ms. Roberts announced that The Community Credit Union sponsored \$400 towards the luncheon and contributed \$100 VISA gift certificate to Mrs. Renuart.

The District School Board of Indian River County met on December 17, 2013, at 6:00 p.m. The business meeting was held in the Teacher Education Center located at the J.A. Thompson Administrative Center, 1990 25<sup>th</sup> Street, Vero Beach, Florida 32960. District School Board Members attending were: Chairman Carol Johnson and Board Members: Claudia Jiménez, Karen Disney-Brombach, and Dale Simchick. Dr. Frances J. Adams, Superintendent of Schools; and Suzanne D'Agresta, School Board Attorney, were also present. Vice Chairman, Matthew McCain, was not present.

### **Business Meeting Minutes**

Chairman Johnson noted for the record that Mr. McCain had a conflict and could not attend telephonically.

- I. Meeting was called to order by Chairman Johnson.
- II. Invocation was given by Pastor Jack Diehl, Our Savior Lutheran Church.
- III. PLEDGE OF ALLEGIANCE TO THE FLAG – Chairman Johnson
- IV. ADOPTION OF ORDERS OF THE DAY  
Chairman Johnson called for a motion. Mrs. Disney-Brombach moved approval of the Orders of the Day. Mrs. Simchick seconded the motion and it carried unanimously, with a 4-0 vote.
- V. PRESENTATIONS  
No presentations
- VI. CITIZEN INPUT  
Scott Sergel requested to speak to the Board regarding Fellsmere Elementary School. (At the request of the Superintendent, Mr. Fritz met with Mr. Sergel outside the TEC.)
- VII. CONSENT AGENDA  
Chairman Johnson called for a motion. Mrs. Disney-Brombach moved approval of the Consent Agenda. Mrs. Simchick seconded the motion and it carried unanimously, with a 4-0 vote.
  - A. **Approval of Hearing Officer's Recommendation – Dr. Adams**  
It was recommended that the District School Board accept the Hearing Officer's Findings of Fact, Conclusions of Law, and recommendations in regard to Hearing #14-30. Superintendent recommended approval.

The District School Board of Indian River County met on June 24, 2014 at 6:00 p.m. The meeting was held in the Teacher Education Center located at the J.A. Thompson Administrative Center, 1990 25<sup>th</sup> Street, Vero Beach, Florida 32960. District School Board Members attending were: Chairman Carol Johnson, Vice Chairman Matthew McCain, and Board Members, Karen Disney-Brombach and Dale Simchick. Dr. Frances J. Adams, Superintendent of Schools; and Suzanne D'Agresta, School Board Attorney, were also present. Board Member, Claudia Jiménez, was not present but was attending by telephone.

### Business Meeting Minutes

- I. Meeting was called to order by Chairman Johnson  
Chairman Johnson announced that Ms. Jimenez was attending by telephone.
- II. Invocation was given by Rabbi Birnholtz, Temple Beth Shalom
- III. Pledge of Allegiance to the Flag by Mrs. D'Agresta.
- IV. ADOPTION OF ORDERS OF THE DAY  
Chairman Johnson called for a motion, with the deletion of Consent P, moving Consent K to follow the Consent Agenda for discussion, and included approval of all amendments. Mrs. Simchick moved approval. Mr. McCain seconded the motion and it carried unanimously, with a 5-0 vote.
- V. PRESENTATIONS  
No presentations
- VI. CITIZEN INPUT  
Leslie Spurlock requested to speak on tobacco free/no smoking, dipping, or vaping signs for the School District.  
  
Dr. Adams and Board Members congratulated Rachael Serra on her new position as Assistant Principal at Vero Beach High School Freshman Learning Center. They also recognized Emilio Gonzalez as the new Assistant Principal at Dodgertown Elementary School.
- VII. CONSENT AGENDA  
Chairman Johnson called for a motion. Mrs. Simchick moved approval of the Consent Agenda, with the deletion of Consent P. Mrs. Disney-Brombach seconded the motion and it carried unanimously, with a 5-0 vote.