

ORIGINAL



FILED
SUPREME COURT
STATE OF OKLAHOMA
AUG 28 2023

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

JUSTIN and LYNDY MECKLENBURG,)

Petitioners,)

v.)

KINGFISHER INDEPENDENT SCHOOL)
DISTRICT NO. 7 OF KINGFISHER)
COUNTY, OKLAHOMA, a/k/a)
KINGFISHER PUBLIC SCHOOLS;)
DAVID GLOVER, Superintendent of)
Kingfisher Public Schools; OKLAHOMA)
STATE DEPARTMENT OF)
EDUCATION; OKLAHOMA STATE)
BOARD OF EDUCATION; and RYAN)
WALTERS, State Superintendent of)
Public Instruction;)

Respondents.)

JOHN D. HADDEN
CLERK

Case No. **#121552**

PETITIONERS' BRIEF IN SUPPORT OF APPLICATION TO ASSUME ORIGINAL
JURISDICTION AND PETITION FOR WRIT OF MANDAMUS

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The children of Kingfisher are in danger. For the better part of the past two decades, Kingfisher Public Schools (KPS) has maintained an athletic program that condones and encourages bullying, hazing, violence, and child abuse. Minor children have been sodomized, urinated on, tazed, whipped, beaten, humiliated, and verbally and mentally abused. All of it took place on school property. All of it took place under the supervision of Kingfisher coaches. Indeed, many times the coaches were the abusers.

Students have been running an underground fight club (the “Ring”) in the KPS locker room since 2007. The coaches knew about it. And, at least one time, a coach participated in it. The coach was 40 years old, six-feet tall, and weighed over 300 pounds. His opponent was a 15-year-old child. Other coaches watched this happen; no one did anything to stop it.

At least three players have reported being sexually assaulted in the KPS locker room—all in the same manner: “tea-bagging”¹ or “butt-stamping.”² When KPS coaches found out, no one reported it to law enforcement. Indeed, the head coach disputed whether such acts even constituted sexual abuse. *See supra*, n. 2. No one investigated the abuse. No one documented it. And the most discipline any perpetrator received was sitting out the next football game and “some extra running.” *Id.* The program didn’t miss a beat.

Victims of this abuse have attempted suicide and turned to drugs. And, as KPS’s own policies recognize, it is only a matter of time before one of those victims turns to violence and brings tragedy to Kingfisher like what happened in Columbine, Uvalde, and Parkland. *See* KPS Policy on Prohibiting Harassment, Intimidation and Bullying (App. 365-61).

¹ “Tea-bagging is a hazing act—indeed a form of sexual assault—during which the victim is pinned down on the floor by several players while another player rubs his genitalia in the victim’s face.” *Cioffi v. Averill Park Cent. Sch. Dist.*, 444 F.3d 158, 161 (2d. Cir. 2006); *see* Smith Depo. Tr. at 29:9-30:10 (App. 240-41); Nall Depo. Tr. at 142:20-143:8 (App. 129-30).

² *See* Jeff Myers Depo Tr. at 258:16-264:2 (App. 205-11).

The words that define Kingfisher athletics are not words like teamwork, loyalty, and respect, but rather terms like: “tea-bagging,” “butt-stamping,” “corn-dogging,”³ “dicking,”⁴ “the Ring,” “dirt-bag training,”⁵ and “rape stick.”⁶

Throughout this entire sordid history, two things have remained constant in Kingfisher. One is Jeff Myers, the head football coach. Myers has been at KPS since 2004. And he has witnessed and participated in the abuse of Kingfisher children over that entire time. Kingfisher’s files are littered with complaints from parents, letters to the State Department of Education (OSDE), and criminal investigations regarding Jeff Myers, his behavior towards students, and the behavior he condoned in his football program.

Yet, to this day, Myers remains the head football coach at KPS. Despite his blatantly unacceptable record, KPS has never formally disciplined Myers. Rather, KPS constantly *rewards* Myers with raises and nicer facilities. KPS knows of Myers’s past; indeed, they have known about him all along. But the administrators and School Board members in Kingfisher—those appointed and elected to protect our children—have *chosen* to bury their heads in the sand, throw up their hands, and wait for someone else to take action. This is the second constant in Kingfisher over these last two decades: the deliberate indifference of those in power to the rampant, bullying, hazing, and abuse in the Kingfisher athletic program.

³ Shoving a baseball bat into another’s anus. Sternberger Tr. at 141:19-145:22 (App. 162-66).

⁴ Blind-siding another during football practice outside the course of any play or drill; a full-speed cheap shot. Mecklenburg Depo Tr. at 439:6-20 (App. 192); States Depo. Tr. at 13:16-15:16 (App. 244-46); Nall Depo. Tr. at 171:24-174:1 (App. 131-34).

⁵ A drill to “toughen up” a player that involved repeatedly hitting him while he was defenseless and that ultimately resulted in criminal charges against the coach who ran it. Nall Depo. Tr. at 12:1-13:16; 15:8-18:6; 72:20-74:7; 281:24-290:13 (App. 104-12, 151-60).

⁶ A pipe players would use to beat each other in the locker room. Myers Depo. Tr. at 54:9-55:5; 68:18-24 (App. 199-200, 203); KPS Tr. at 173:3-176:21, 194:24-195:8 (App. 78-81, 97-98).

That indifference reached its apex a few weeks ago during a deposition of the sitting KPS Superintendent, David Glover. Testifying on behalf KPS, Mr. Glover acknowledged KPS's awareness of nearly 20 confirmed incidents of verbal, mental, physical, and sexual abuse of KPS students perpetrated by both students and coaches during Myers's tenure—the earliest incident as far back as 2005; the latest as recent as Spring of 2023. KPS Depo. Tr. at 97:16-180:21 (App. 2-85). Mr. Glover acknowledged the criminal nature of several of these incidents and admitted that KPS never reported these incidences to law enforcement. *Id.* at 103:16-105:8; 107:17-24; 119:24-122:6 (App. 8-10, 12, 24-27). Mr. Glover admitted that in every instance, Kingfisher violated its own policies and procedures in responding to (or, more appropriately, in failing to adequately respond to) each of these specific instances of misconduct and abuse. *Id.* at 185:7-198:8 (App. 88-101). He admitted that the custom, practice, and policy of KPS was to *not* follow its written policies for how to handle reports of bullying, harassment and abuse—policies which are mandated by state and federal laws like the School Safety and Bullying Prevention Act, 70 O.S. §§ 24-100.2 *et seq.*, and Title IX. KPS Depo. Tr. at 196:2-198:8 (App. 99-101). He admitted that, based on the evidence available to the school, the environment in the Kingfisher football program is “toxic” and “dangerous.” *Id.* at 200:11-23 (App. 102). And, just a few weeks before, Glover testified that that same evidence was sufficient to pursue termination of Myers's employment at KPS. *See* Glover Depo. Tr. at 91:2-9 (App. 194). Glover is not alone in that regard; Don Scales, KPS Superintendent from 2008–2011 and a professional with over 45 years of experience in Oklahoma public schools, testified that there were grounds to fire the entire Kingfisher football staff. *See* Scales Depo. Tr. at 72:11–86:3 (App. 215-29). And a former Kingfisher School Board member, Jim Perdue, said he thought Myers should go to jail for what has happened in his football program. (App. 242).

Yet—despite all this evidence and admitted failures—Myers is still the Coach, and his official record remains spotless. No reprimands; no termination recommendations. Nothing.

Sadly, stories like those out of Kingfisher seem to be more and more common. Whether it's in Ninnekah,⁷ Ringling,⁸ or Wewoka,⁹ it seems like every week there is a new story about children being abused in Oklahoma schools. But what is so striking about Kingfisher, is the inaction from those in power. No one at KPS is willing to stand up and do the right thing, despite the fact that multiple superintendents—including the sitting superintendent—agree that there is more than enough evidence to fire Myers. One KPS Board member testified that it would likely take a decision by a jury in a federal lawsuit before the Board would commit to firing him. *See* Golbek Depo. Tr. at 143:12-24 (App. 231). And another Board member—one with first-hand knowledge of the “toxic culture” in the KPS football program—has reportedly recused himself from this matter, refusing to do anything to fix what he *knows* is broken. *See* Craig Depo. Tr. at 122:2-124:4 (App. 328-30). Worse still, the KPS administration says they *can't* do anything, that they know too much, and that their knowledge prevents them from being able to fulfill their duty to protect the children of Kingfisher. *See* Glover Depo. Tr. at 93:7–95:24 (App. 195-97); KPS Depo. Tr. at 164:13–167:10 (App. 69-72).

Meanwhile, the same inaction persists in the state institutions responsible for safeguarding our schools. Petitioners sent a letter to the State Department of Education (OSDE) on January 17, 2022, detailing the abuse in the KPS football program and pleading that OSDE

⁷ *See* <https://kfor.com/news/local/ninnekah-public-schools-placed-on-probation-for-how-they-handled-student-allegations-of-sex-abuse-against-former-basketball-coach/>.

⁸ *See* <https://kfor.com/news/local/ok-football-coach-on-paid-leave-pending-abuse-probe/>.

⁹ *See* <https://www.oklahoman.com/story/news/education/2023/04/13/wewoka-oklahoma-principal-accused-sexual-assault-charged-felonies/70109436007/>.

and the State Board of Education (OSBOE) do something to help protect the children in Kingfisher. *See* Petitioners' Letter to OSDE (App. 347-55). OSDE says it opened an investigation later that spring. *Id.* But, since then—over a year later—there is no indication that OSDE has done anything to address the obvious dangers in KPS. *Compare with Western Heights ISD v. State ex rel. OSDE*, 2022 OK 79, 518 P.3d 531. This inaction and indifference must stop now. And this Court has the power to stop it.

As explained below, the law provides that when those in a school district identify the sort of misconduct that has been uncovered—over and again—in Kingfisher, those in power have a mandatory duty to take disciplinary action. *See* 70 O.S. §§ 6-101.22 to 6-101.26. And, if those in Kingfisher are unwilling or unable to take that action, the law also allows OSBOE to step in and do that job. *See, e.g., Western Heights ISD*, 2022 OK 79.

When it comes to protecting our children, we all have a *mandatory* duty—especially those elected officials who have chosen to campaign for and accept the honor of representing our communities in the administration of our schools. That honor must come with a commensurate responsibility to ensure that our schools are safe. Many of our children spend the majority of their waking moments in school. We cannot and should not be forced to rely on the political process to protect our children. When the danger to our students is so clear and obvious, the law must provide for immediate action. The law in Oklahoma does just that.

NATURE OF RELIEF SOUGHT

KPS has unlawfully refused to take disciplinary action and/or terminate Myers's employment despite repeated reports of the danger he presents to the minor children at KPS. KPS has a mandatory duty to discipline and/or terminate a teacher whenever a member of the board of education, superintendent, or other administrator has evidence of "conduct that the

administrator believes may lead to a recommendation for the dismissal or nonreemployment of the teacher.” See 70 O.S. § 6-101.24. KPS has been informed that Myers has engaged in “mental or physical abuse to a child” and acts of “moral turpitude”—both of which are grounds for termination. See 70 O.S. § 6-101.22.¹⁰ And, as discussed above, KPS clearly believes that Myers’s misconduct is the sort that qualifies for a “recommendation for ... dismissal.” See Glover Depo. Tr. at 91:2-9 (App. 194); Scales Depo. Tr. at 72:11–86:3 (App. 215-29).

Moreover, under these facts—where the evidence shows Myers has committed acts of child abuse and moral turpitude—immediate termination is both warranted and necessary. See *Hill v. ISD No. 25 of Adair Cty.*, 2002 OK CIV APP 97, ¶16, 57 P.3d 882 (“It is well-settled that career teachers who are found to have committed acts demonstrating moral turpitude are *not* entitled to the admonishment and reasonable time for improvement provided for in 70 O.S.2001 § 6–101.24.”) (citing *House v. ISD I–29 of Muskogee County*, 1997 OK 35, ¶16, 939 P.2d 1127). “While teachers who have *remediable* teaching performance problems that could result in dismissal for willful neglect of duty are entitled to admonishment, those whose dismissals are based on specific, *irremediable* instances of misconduct are not.” *Id.* (citing *Harjo v. Board of Ed. of ISD No. 7*, 1999 OK CIV APP 35, 976 P.2d 1096 (holding that a probationary teacher who was terminated for misconduct, including use of profane, sexist language, and intimidation of both faculty and students, was not entitled to an admonishment and time for improvement because his dismissal was based on misconduct, not teaching problems)). As such, Petitioners seek a writ of mandamus compelling KPS to initiate the termination process outlined in 70 O.S. §§ 6–101.20 *et seq.*

¹⁰ “Moral turpitude broadly defined is any conduct contrary to justice, honesty, and good morals. Moral turpitude implies something immoral in itself regardless of whether it is punishable by law.” *Kelley v. City of Tulsa*, 1977 OK 160, ¶ 5, 569 P.2d 455, 457.

Further, and to the extent KPS says they *can't* take action to terminate Myers's employment, Petitioners ask that the Court direct the State Board of Education to exercise its authority under 70 O.S. §§ 1-105 and 3-104, take over this function on behalf of KPS, implement an interim superintendent, and oversee the termination process outlined in 70 O.S. §§ 6-101.20 *et seq.* The State Board of Education is the entity charged by the Legislature with supervising Oklahoma's public school system and is vested with authority and responsibility for ensuring "the health and safety of school children and school personnel while under the jurisdiction of school authorities." *See* 70 O.S. § 3-104(A). The State Board is responsible for evaluating school district's annual health and safety accreditation metrics, 70 O.S. § 3-104.4, and where a school district is found wanting, the Legislature has given the State Board of Education the authority to annex, deny accreditation, place on probation, and take any other necessary action on the operation of the school district. *See* 70 O.S. §§ 1-105; 3-104(13); *see also Western Heights ISD*, 2022 OK 79, ¶ 76, 518 P.3d at 553; 70 O.S. §3-104(20).

The facts here dictate that action be taken to protect the health, safety, and welfare of Kingfisher's students. Petitioners beg this Court to make those responsible for our education system to do their jobs. *Someone* must do something.

EVIDENCE IN SUPPORT OF THE WRIT

Petitioners have compiled evidence of physical, mental, and sexual abuse in and around KPS athletics dating as far back as 2005, right around the time Jeff Myers took over the football program. And Petitioners have evidence that Myers and his staff not only knew about this abuse—they encouraged and, in some cases, actively participated in it. Worse still, Petitioners have evidence that KPS officials repeatedly received notice of such abuse, yet routinely did nothing to remedy the obviously dangerous conditions within the athletic program, consciously

disregarding the ongoing health, safety, and well-being of Kingfisher students. Below is a summary of some the major events over that time:

- In February 2005, a mother reported that Myers physically assaulted her son during gym class. *See* KPD Report (App. 258). Kingfisher police made a report, classifying the offense as “Assault on a Minor.” *Id.* But KPS did nothing to discipline Myers.
- In the Fall of 2008, a student was sexually assaulted in the KHS locker room. KPS was informed of the assault, but no one at KPS—including Myers—reported the assault to law enforcement, nor did anyone conduct an investigation as required by school policies. Myers Depo. Tr. at 258:16-264:2 (App. 205-11); KPS Depo. Tr. at 103:20-105:8; 107:1-24 (App. 8-10, 11). Again, Myers received no reprimand, instruction, or extra training for how he handled this sexual assault, which happened on his watch by his players in his locker room. *See* Myers Depo. Tr. at 256:3-11 (App. 204).
- In the fall of 2009, a student was physically assaulted by another player in the KHS locker room. This former student and his father—a current Kingfisher School Board member—both testified that they reported the assault to the superintendent at the time, but nothing was done. C. Payne Depo. Tr. at 9:10-13:6, 16:2-20 (App. 260-65); T. Payne Depo. Tr. at 28:24-30:17 (App. 272-74); KPS Depo. Tr. at 110:18-112:11 (App. 15-17). This former player also testified that the physical assaults he suffered in the Kingfisher football program, and the depression, shame, and vulnerability he felt as a result, contributed to substance abuse that has led him to drug rehab on numerous occasions. C. Payne Depo. Tr. at 9:10-13:6, 16:2-20 (App. 260-65).
- In the fall of 2010, Myers physically abused a senior football player who had developed a staph infection in his leg and was undergoing medical treatment. At practice, Myers attempted to squeeze the bacteria out of the player’s infected knee, apparently so that the player would be able to play in the upcoming game. Myers’s conduct caused the staph infection to worsen and placed the student at substantial risk of serious, immediate harm. The student’s doctor was furious because the student could have lost his leg and/or his life as a result of Myers’s recklessness. The student’s parents and their lawyer reported the abuse to the School Board and then-superintendent Don Scales. Scales told the parents that the new superintendent, Jason Sternberger, would handle it. But neither superintendent did anything in response to the reported abuse. Ultimately, the parents presented their complaint to the Kingfisher School Board with the assistance of an attorney. Yet, despite their report, Myers was never disciplined or reprimanded for his abusive conduct. *See* Clark Ltr. (App.275-76); Smith Depo. Tr. at 17:17-21:1; 21:18-24 (App. 233-37); KPS Depo. Tr. at 112:15-116:8 (App. 17-21); Myers Depo Tr. at 256:3-11 (App. 204).
- In the 2015–2016 schoolyear, a father of a student reported to then-Superintendent Jason Sternberger that a student was sexually assaulted with a baseball bat on the team bus when a player penetrated the anus of another student with a baseball bat. *See* Sternberger Depo. Tr. at 141:19-145:22 (App. 162-66). Superintendent Sternberger referred to it as “corn dogging.” *Id.* at 143:19-144:9 (App. 164-65). But, just like the

sexual assault in the locker room in 2008, no one at KPS reported this assault to the police. No one investigated it further. And no one was reprimanded, disciplined, or provided with extra training on how to handle or prevent sexual assaults at school. KPS Depo. Tr. at 119:24-122:6 (App. 24-27).

- In or around the fall of 2017, a player's parent went to Myers and then-Superintendent Sternberger after his son came home in tears after getting in a fist fight at school with another player. The parent stated the following:

I went to the coach afterwards and said, "Hey man, this horse-play's gotta stop. This fighting's gotta stop." He said, "Well, they're football players." I'm like, "You know what, there's college football programs, pro football programs. They don't allow it." I went to [Superintendent] Sternberger and he said, "Hey, there's not much I can do. It's an afterschool program."

This parent described his son's senior year as "a living hell." (App. 277). Myers knew about this assault, as did KPS administration. Myers Depo. Tr. at 63:4-64:17 (App. 201-02). Yet, again, nothing was done: no investigation, no report, no discipline. KPS Depo. Tr. at 122:25-125:19 (App. 27-30).

- In the fall of 2018, Petitioners' oldest son was pinned down in the locker room by four older players. He attempted to fight off his attackers but was physically overwhelmed. While pinned down with his back on the locker room floor, the boy's arms and legs were pulled in four different directions in a starfish-type pattern by the four assailants while a fifth, completely naked, squatted over the victim's face and placed his bare anus on the victim's nose with the attacker's scrotum on the victim's face. The attacker then began to grind his butt, anus, and scrotum on the victim's face and nose. The attacker also moved his body in an up-and-down motion on the victim's face and nose. Mecklenburg Depo. Tr. at 233:19-240:14 (App. 174-81). The day after the assault, Myers called a meeting of all the coaches and football players (including Petitioners' son and those who had assaulted him), wherein Myers instructed his team to stop talking about the assault for the good of the football program. Myers specifically referenced another high school football team that had recently been in the spotlight, stating, "*we don't want this to turn into another Putnam City West*"—referring to a recent sexual-assault incident where a group of football players sodomized another player with a broomstick. Myers stressed that he did not want the abuse to Petitioners' son to derail the football season. *Id.* at 250:1-251:19 (App. 182-83). Neither Myers nor anyone else reported this assault to law enforcement.
- In or around the fall of 2019, another player was held down in the football locker room by four players and sexually assaulted in the same manner as the assault on the student in 2008 and the assault on Petitioners' son in 2018. *See* Willson Depo. Tr. at 60:9-61:20 (App. 279-80). That player has since attempted suicide—twice—and credited the abuse he endured in the Kingfisher football program as a reason why he wanted to end his life. *Id.* at 69:18-71:15 (App. 281-83).

- In the fall of 2019, after acknowledging that Petitioners' oldest son was injured and couldn't catch, Myers threw a football as hard as he could at Petitioners' son and hit him in the groin. 10.25.19 Meeting Tr. at 38:2-39:12 (App. 288). Another football coach testified that he was aware of this incident at the time but did not report it. Nall Depo. Tr. at 198:21-203:19 (App. 135-40). Petitioners discussed this incident with Myers shortly after it happened. During Petitioners' meeting with Myers in the fall of 2019, Petitioner explained that their son had endured "ridicule, degrading remarks, embarrassment, hazing, and not just by his teammates, but at the hands of his coaching staff (primarily [Myers])." See 10.25.19 Meeting Notes (App. 292-96). Petitioners discussed the incident when Myers threw the ball at their son, as well as the abuse their son was subjected to in the locker room, which (to Petitioners' knowledge at that time) included being electrocuted with a taser and whipped with towels to the point of bleeding. See *id.*; 10.25.19 Meeting Tr. at 5:2-9:9; 10:13-11:15; 38:2-39:5; 105:6-106:5 (App. 285-90). Petitioners also showed Myers a picture of their son's back with the marks he came home with after the whippings. *Id.* at 8:1-18 (App. 286); Picture (App. 297). Myers informed then-superintendent Sternberger about this conversation with Petitioners. Myers Depo. Tr. at 316:22-317:7 (App. 212-13); Sternberger Depo. Tr. at 160:23-161:19 (App. 167-68). But, as with all the other incidents before, nothing was done: no investigation, no report, no discipline for Myers.
- In 2020, a student was physically abused during a practice drill under the supervision of Myers and one of his chief assistants, Micah Nall. Coach Nall labeled the drill "dirt-bag training" on the schedule that day, which all the coaches would have seen. Nall Depo. Tr. at 287:2-290:13 (App. 157-60). The drill consisted of one player being surrounded by his teammates and the coach calling on those in the circle to run full-speed and hit the player in the middle as hard as they could, a drill sometimes referred to as the "bull in the ring." But Coach Nall admitted that this "dirt-bag training" was not "bull in the ring." *Id.* This drill was designed to "toughen up" the player in the middle; so, unlike bull in the ring, the player in the middle was never subbed out and—worse still—the coach had other players hit him while he was down and defenseless (*i.e.*, "spearing," see *id.* at 288:11-289:4; 73:3-79:13 (App. 158-59, 111-17); App. 304), endangering both the player in the middle and those diving head-first at him. Upon hearing about what happened at practice that day, a parent of one of the students forced to hit the defenseless player contacted the media about the incident. Delozier Witness Statement (App. 298). Once KPS found out, rather than go to Myers to investigate what happened, then-superintendent Sternberger called the parent and cussed her out for bringing negative attention to the football program. *Id.* Because of the bravery of that parent, Kingfisher police began investigating the incident, and Coach Nall eventually pled guilty to a misdemeanor and resigned from Kingfisher. See Nall Criminal Records (App. 301-08); Nall Depo. Tr. at 221:8-25 (App. 150). But, again, no one from KPS ever interviewed Myers, much less reprimanded or even provided him with additional training regarding what he allowed to go on in his program. KPS Depo. Tr. at 152:21-157:1; 193:18-194:23 (App. 57-62, 96-97).
- In February 2021, concerned parents & citizens sent the following (App. 362) to the Kingfisher School Board:

Kingfisher School Board Members:

As a board member, you are elected to be a representative for the Kingfisher Public School system and to prioritize the needs of the students/staff/faculty of KPS. Let's not let one problem turn into multiple problems. There is not a single employer that would tolerate this kind of behavior. Why would we accept this behavior in our schools, around our underage kids? Our children are disciplined for things that do not even compare to this incident. A student getting blamed for bullying would get suspended. Yet, a grown adult that repeatedly bullies children and defies the law, is still employed @ KPS!?!? The fact that he is still at the school is a total disrespect to all students/staff/faculty and a future liability. DO THE RIGHT THING!

Sincerely,

Concerned Parents & Citizens

- In May of 2021, just before Dan Craig started as superintendent, sitting KPS Board member Terry Payne met with him to discuss the “toxic culture” in the Kingfisher football program and how that culture has existed since Payne was on the coaching staff—years before. Craig Depo. Tr. at 122:2-124:4 (App. 328-30).
- In the Summer of 2021, Petitioners laid out in great detail all of the allegations against the school in meetings with then-Superintendent Dan Craig, High School Principal Jay Wood, and several Kingfisher School Board members. See Craig Depo Tr. at 93:22-103:6, 105:14-111:15 (App. 310-27); KPS Depo. Tr. at 160:15-161:3 (App. 65-66); Texts with Charles Walker (App.331-37). In response, KPS finally confronted Myers, who unsurprisingly denied the allegations—a denial that KPS now knows was untruthful. Compare Craig Depo. Tr. at 108:20-109:7 (App. 324-25) with 10.25.19 Meeting Tr. at 38:2-39:12 (App. 288). But KPS's investigation stopped there, and many from KPS have since claimed that, because Petitioners' oldest son no longer attends Kingfisher schools, there is nothing KPS could do. Craig Depo Tr. at 107:2-108:19 (App. 323-24).
- In the fall of 2021, a Kingfisher football player reported that freshmen were being beaten with a PVC pipe the players called the “rape stick.” Myers Depo. Tr. at 54:9 - 55:5, 68:18-24 (App. 199-200, 203); KPS Depo. Tr. at 173:3-176:21, 194:24-195:8 (App. 78-81, 97-98). Yet, no one at KPS investigated, documented, or disciplined anyone as a result—which again violated multiple KPS policies. KPS Depo. Tr. at 173:3-176:21, 194:24-195:8 (App. 78-81, 97-98).
- In or around February or March 2023, Myers took a minor female student into his office at school and screamed profanities in her face. See KPS Depo. Tr. at 178:7-180:21 (App. 83-85). KPS is aware of this incident and has admitted that it violates school policy and is grounds for discipline. *Id.* But KPS refuses to discipline Myers.

KPS has acknowledged each of these incidents. *Id.* at 97:16-180:21 (App. 2-85). And it has acknowledged that its response to each incident violated KPS's own policies and, in many cases, state and federal law. *Id.* at 185:7-198:8 (App. 88-101).

But these incidents still do not tell the whole story of what it's like to be a child living in this "toxic" environment. The verbal abuse these students suffer is sickening. Coaches call players "pussies" and "faggots." Nall Depo. Tr. at 132:3-133:7; 137:5-22 (App. 126-28). On one occasion, a coach called a player *he knew had a learning disability* a "fat worthless piece of shit" because the player couldn't remember the plays in practice. *Id.* at 118:13-125:5 (App. 118-25); Hoffman Aff. (App. 338-40). Myers has also made fun of kids with speech impediments by mocking the way they speak. Smith Depo. Tr. at 21:25-23:14 (App. 237-39); Mecklenburg Depo. Tr. at 78:21-81:22 (App. 170-73). No one who speaks to children this way should be allowed to call themselves a teacher.

Then there's the tradition in Kingfisher football known as "the Ring." The Ring is a "fight club" that regularly takes place in the Kingfisher locker room after football practice. Nall Depo. Tr. at 204:14-20 (App. 141); Mecklenburg Depo. Tr. at 414:5-421:6 (App. 184-91); States Depo. Tr. at 28:18-33:14 (App. 247-52). During practice, if one player would get a good hit on another during a play—or land a cheap shot after the whistle, a tradition known as "dicking"—the two players involved in the collision would challenge each other to a match in the Ring after practice. Nall Depo. Tr. at 204:21-205:4 (App. 141-42). The challenges would issue on the field, right in front of the coaches. *Id.* at 212:4-215:19 (App. 146-49). The coaches *knew* the players were going to fight after practice, yet they did nothing to stop it. *Id.* In fact, on one occasion, a coach participated in the fight club *against a student*. *Id.* at 205:19-207:10 (App. 142-44). And it wouldn't stop with just one match; after the first fight, the students would

keep it going with more matches, often pitting freshman against one another like some rite of passage. Mecklenburg Depo. Tr. at 414:5-421:6 (App. 184-91). The coaches knew. Myers knew. Nall Depo. Tr. at 212:4-215:19 (App. 146-49). It was a tradition that went on in the Kingfisher locker room for over a decade.¹¹ Yet, not once did a coach do anything to discourage that behavior, much less report it, as was required under school policy. Nall Depo. Tr. at 204:21-205:18 (App. 141-42); KPS Depo. Tr. at 182:16-183:19; 188:19-189:8 (App. 86-87, 91-92). When former superintendent Don Scales saw this evidence about the Ring—a man with 45-plus years of experience in Oklahoma public education—he immediately agreed that it was grounds to terminate the entire coaching staff. Scales Depo. Tr. at 72:11–86:3 (App. 215-29).

Finally, this is how former students describe how they felt every day in the Kingfisher football program:

Q. Did you ... feel safe going into the Kingfisher football program?

A. No.

Q. Did you feel protected when you would go to practice at Kingfisher?

A. No.

Q. Did you feel like it was a dangerous environment within the Kingfisher football program?

A. Yes.

Q. Okay.

A. And I wouldn't say that just because it's a dangerous sport ... I would say that because whenever you would go to practice, if you did not have your head on a swivel throughout the whole practice or even after practice or before practice, there would be guys that could come up behind you, you know. And those things were happening, like shooting you with the paintball gun and shooting you with the Airsoft gun, tasing

¹¹ Derek Patterson, a current assistant football coach, testified that The Ring was going on in the Kingfisher locker room when he attended Kingfisher High School from 2007-2011. Patterson Depo. Tr. at 24:19-21, 45:2-48:24 (App. 342-46).

people, whipping you with a towel. If you did not have your head on a swivel, you know, kind of paying attention, looking around, that -- those stuff would happen to you. But, luckily for me, my only safe place within this football organization during my time there was I have a good friend like Wes that protected me like that. And whenever my older brother was there, which would have been my seen -- my freshman year, his senior year, that was the only protection I felt. Other than that, I did not feel any protection whatsoever from any of the coaches or anything like that.

States Depo. Tr. at 48:24-50:9; 52:21-53:2 (App. 253-57).

Q. You referred to a book to describe ... the culture of the program. Do you remember that?

A. Uh-huh. Yeah, the Lord ... of the Flies.

Q. Okay. Why did you use that literary reference?

A. Because when you think about that book you think about, you know, the weaker kids -- definitely like what pops in my head is the weaker kids are vulnerable, you know, they're definitely -- they were -- well, in the book they were killed, but they were threatened, they weren't safe and these are all the things that totally apply to the situation with the football coaches. Your kids that weren't as strong physically, you know, they were bullied, hazed, threatened, they weren't safe, a lot of them were sexually assaulted. So that when I -- when I think of that, that -- that book obviously, you know, it reminds me of kind of -- of the football program, you know.

...

Q. If Coach Myers were here right now, now that you're a 30 year old man with your own son, what would you say to him? What would you want to tell him directly to his face without any consequences?

A. I mean, you were supposed to look out for me and you didn't, you know, you were supposed to be the guy that protected me and made -- made sure things were safe. You're the adult yet you want to -- you've -- you've acted like a kid, you know. You've wanted -- you've -- you've been a bully and you for some reason like to be a bully and you've gotten away with it, so you continue to be a bully and you've created an atmosphere where bullies thrive and kids have got -- continue to be picked on because there's no accountability, there's no repercussion to their action. And it's obviously gotten worse as you can see. I mean, you can even see in the news 2018, 2019, 2020. It's almost like instances have continued to develop, it's gotten worse, more things have happened, you know, as this -- this culture has been allowed to thrive, it's almost grown, gotten sicker.

Q. What did you think will stop it?

A. Coach Myers getting fired and not allowed to coach anywhere for the rest of his life. I don't think he should be a coach. I think he's lost that opportunity. I think he should have lost that opportunity years ago. I think whenever he was told the first time that he wasn't supposed to do the wall anymore, to bring it back, like are you crazy, like what's wrong with you? Like why do you find pleasure in allowing, you know, kids to fight, you know. We're kids and our brains aren't even fully formed and you're teaching us wrong, you're teaching us to be bullies, that it's okay to be bullies and these kids that are getting bullied are -- are having issues that go long into life. I mean, look at me, I've been to rehab 19 times -- ... -- maybe 15. You know. There was a period where I was going multiple times a year and trying literally trying to stay sober. It was hard you know. You're making it harder on kids as they go into their adult lives. You're supposed to building them up and being a coach that looks out for them and prepares them for life and you're doing the opposite.

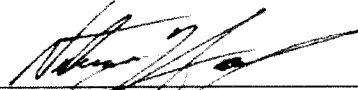
C. Payne Depo. Tr. at 12:24-13:6; 27:13-28:12; 128:13-130:7 (App. 263-64, 266-70).

No child should ever have to feel that way.

CONCLUSION

KPS has acknowledged repeated misconduct by Coach Myers and admitted that this record is enough to fire him. But KPS *chooses* not to do so. That is unacceptable. Our communities know all too well the consequences of bullying, hazing, and abuse in schools. Such things are the precursors to suicide and school shootings. We should not have to wait for that kind of tragedy before our elected officials will act. The law mandates school officials take disciplinary action in the face of such clear and obvious danger. Myers is such a danger. This Court should force these officials to do something about it.

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2023, a true and correct copy of the foregoing document was served by U.S. Mail, postage prepaid, to:

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