

# GRADUATION PRAYER IN THE PUBLIC SCHOOLS

## QUESTIONS & ANSWERS

### **Can a Public School Invite a School Official, Public Official, Member of the Clergy or Other Person to Offer a Prayer at Graduation?**

No – The U.S. Supreme Court ruled that inviting a clergy member to offer a prayer at a public school graduation ceremony was unconstitutional.<sup>1</sup> In reaching this conclusion the Court stated:

*The prayer exercises in this case are especially improper because the State has in every practical sense compelled attendance and participation in an explicit religious exercise at an event of singular importance to every student, one the objecting student had no real alternative to avoid.*<sup>2</sup>

Central to the Court’s reasoning was that the school’s actions effectively compelled student participation in prayer at graduation. The same reasoning would apply whether a school asks a faculty member, public official or other individual to offer a prayer, invocation or benediction at a public school graduation ceremony.

### **Can there be a Non-Sectarian Prayer at Graduation?**

No – The U.S. Supreme Court found that from a constitutional perspective, school-sponsored non-sectarian prayer at graduation raises the same issues as sectarian prayer.<sup>3</sup> Just as a public school cannot sponsor a prayer of a particular faith tradition at a graduation, it cannot sponsor a non-sectarian prayer.<sup>4</sup>

### **If a Public School Graduation Ceremony Occurs Off-Campus, Can There Be Prayer at the Ceremony?**

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<sup>1</sup> See *Lee v. Weisman*, 505 U.S. 577 (1992).

<sup>2</sup> *Id.*

<sup>3</sup> See *Lee*, 505 U.S. 577.

<sup>4</sup> See *Lee*, 505 U.S. 577; *Workman v. Greenwood Community School Corporation*, 2010 U.S. Dist. LEXIS 42813 (S.D. Ind. 2010).

No – Public school graduation ceremonies often occur in non-school facilities. The same rules apply whether a graduation ceremony occurs on or off campus. A public school cannot sponsor a sectarian or non-sectarian prayer at a graduation ceremony that occurs at a non-school facility.<sup>5</sup>

### **If a Public School Advises Students that Attendance at Graduation is Voluntary, Can There Be Prayer at the Ceremony?**

No – Although technically speaking attending graduation is voluntary for most students, the U.S. Supreme Court ruled that this technicality does not open the door to school-sponsored prayer at graduation.<sup>6</sup>

Rather, it stated:

*Law reaches past formalism. And to say a teenage student has a real choice not to attend her high school graduation is formalistic in the extreme. ... Everyone knows that in our society and in culture high school graduation is one of life's most significant occasions. ... Attendance may not be required by official decree, yet it is apparent that a student is not free to absent herself from the graduation exercise ... for absence would require the forfeiture of all those intangible benefits which have motivated the student through youth and all her high school years.<sup>7</sup>*

Based on this reasoning, the Court ruled that school-sponsored prayer at public-school graduation coerces religion in violation of the constitution.<sup>8</sup>

### **Can a School Authorize a Student Election on Whether a Student-Led Prayer Occurs at Graduation?**

No – A public school cannot avoid a constitutional violation by authorizing students to decide by majoritarian election whether a student-led prayer will occur at graduation or who the particular student giving the prayer will be.<sup>9</sup> In striking down such a practice, the U.S. Supreme Court stated that although a “... majoritarian election might ensure that most of the students are represented, it does nothing to protect

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<sup>5</sup> See *Lee*, 505 U.S. 577; *Lassonde v. Pleasanton Unified School District*, 320 F.3d 979 (9th Cir. 2003); see also *Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840 (7th Cir. 2012), *cert denied*, 134 S. Ct. 2283 (U.S. 2014).

<sup>6</sup> See *Santa Fe Indep. School Dist. v. Doe*, 530 U.S. 290 (2000); *Lee*, 505 U.S. 577.

<sup>7</sup> See *Lee*, 505 U.S. 577.

<sup>8</sup> See *Lee*, 505 U.S. 577.

<sup>9</sup> See *Santa Fe Indep. School Dist.*, 530 U.S. 290; *ACLU of New Jersey v. Black Horse Regional Board of Education*, 84 F. 3d 1471 (3rd Cir. 1996).

the minority; indeed, it likely serves to intensify their offense.”<sup>10</sup> Such an election “... encourages divisiveness along religious lines in a public school setting, a result at odds with the ... “ Constitution.”<sup>11</sup>

### **Can a School Adopt a Policy that Allows A Student to Offer a Graduation Ceremony Message, Including Prayer?**

Some public schools have policies or practices that allow a graduating student or students to offer a short opening or closing message at graduation ceremonies. If the policy or practice authorizes the school in any way to review a student message in advance of graduation; control its subject matter, content or purpose; or encourage prayer by using such words as “prayer” “invocation,” or “solemnize;” a prayer offered by a student pursuant to such a policy most likely would be unconstitutional.<sup>12</sup>

One court upheld a legal challenge to a policy that allowed the graduating senior class “as a whole” to choose a student volunteer who would give a two-minute opening or closing message at graduation. Critical to the court’s decision was that the school could not monitor or otherwise review the message.<sup>13</sup> The court, however, only addressed the facial legality of the policy and not a student prayer that actually occurred pursuant to it.<sup>14</sup>

Furthermore, another court ruled that a virtually identical message policy was unconstitutional.<sup>15</sup> According to that court, the school in question had a history of allowing a student chaplain elected by his or her peers to give a graduation prayer.<sup>16</sup> Based on that history, the court found that the new policy’s “... selection of a speaker by majority vote, rather than by a purely secular criteria, simply allows the majority to ensure that prayer will be given at a school sponsored event.”<sup>17</sup>

It is therefore an open question whether such graduation message policies will be lawful under all circumstances. Aside from the legal issues, schools should be cautious about adopting such policies because they prohibit administrators from reviewing or monitoring student graduation messages. As a

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<sup>10</sup> See *Santa Fe Indep. School Dist.*, 530 U.S. 290.

<sup>11</sup> *Id.*

<sup>12</sup> See *Santa Fe Indep. School Dist.*, 530 U.S. 290; *Lassonde*, 320 F.3d 979.

<sup>13</sup> See *Adler v. Duval County School Board*, 250 F.3d 1330 (11th Cir. 2001).

<sup>14</sup> *Id.*

<sup>15</sup> See *Doe v. Gossage*, 2006 U.S. Dist. LEXIS 34613 (W.D. Ky 2006).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

result, such message policies open the door to controversial speech (religious or secular) which potentially could offend attendees or divide the community.

### **Can a Graduating Student Demand the Opportunity to Offer a Prayer at Graduation?**

Most likely Not – Courts have found that public school graduation ceremonies are curricular activities at which school administrators can limit speech if the restriction is reasonably related to legitimate educational concerns.<sup>18</sup> In cases where students have demanded to offer prayer or other religious content at graduation, courts have ruled that schools could prohibit such speech based on the educational concerns of avoiding controversy and preserving neutrality to religion in the school environment.<sup>19</sup>

### **Can a School Sponsor or Organize a Baccalaureate Service?**

No – A baccalaureate service is a religious service that honors high school graduates. Such services typically include prayer, as well as speeches and songs with religious themes. A school cannot “lend the aura of school sponsorship” to such a program and school officials cannot actively participate in a baccalaureate service.<sup>20</sup> For instance, they cannot introduce clergy at such events.<sup>21</sup>

Courts look at a number of factors to determine whether a school sponsors a baccalaureate service. For instance, does a school set the time, date or format of the service, or otherwise assist in planning a baccalaureate?<sup>22</sup> Does a school directly or indirectly decide whether a service occurs?<sup>23</sup> An indirect decision would include allowing a senior class to decide whether there will be a service?<sup>24</sup> Does the service

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<sup>18</sup> See *Corder v. Lewis Palmer School District No. 38*, 566 F.3d 1219 (9th Cir. 2009); *A.M. v. Taconic Hills Central School District*, 2012 U.S. Dist. LEXIS 7372 (N.D.N.Y. 2012), *aff'd*, 510 Fed. Appx. 3 (2nd Cir. 2013).

<sup>19</sup> See *Corder*, 566 F.3d 1219; *A.M.*, 2012 U.S. Dist. LEXIS 7372; see also *Nurre v. Whitehead*, 580 F.3d 1087 (9th Cir. 2009).

<sup>20</sup> See *Chandler v. James*, 985 F. Supp. 1068 (M.D. Ala. 1997), *stay granted in part on other grounds, stay denied in part*, 998 F. Supp. 1255 (M.D. Ala.), *aff'd in part, vacated on other grounds*, 180 F.3d 1254 (11th Cir. 1999), *vacated and remanded*, 530 U.S. 1256 (2000), *reinstated on remand*, 248 F.3d 1032 (11th Cir. 2001); see also *Doe v. Sch. Bd. for Santa Rosa Cty.*, 264 F.R.D. 670 (N.D. Fla. 2010) (subsequent history omitted).

<sup>21</sup> *Id.*

<sup>22</sup> See *Carlino v. Board President Edward C. Hubbs*, 57 F. Supp. 2d 1 (D. NJ 1999), *aff'd*, 44 Fed Appx. 599 (3rd Cir. 2002).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

occur in school facilities under circumstances indicating that the baccalaureate is not a private program organized by an outside group or individuals?<sup>25</sup>

**Apart from legal restrictions, what can public school officials say to students, parents and community members upset by a decision not to allow graduation prayer?**

Regardless of how religiously and culturally diverse a public school district may be, the graduation ceremony presents a teachable moment for districts about to send their students into a diverse society. Not including prayers on such an occasion does not reflect hostility to religion. To the contrary, it sends a message promoting sensitivity and fairness to all that is entirely consistent with the fundamental nature of American democracy.

**PROVIDED BY: Civil Rights Division**

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<sup>25</sup> See *Carlino*, 57 F. Supp. 2d 1; *Shumway v. Albany Sch. Dist. No. One Bd. of Educ.*, 826 F. Supp 1320 (D. Wy. 1993); *Randall v. Pegan*, 765 F. Supp 793 (W.D.N.Y. 1991); *Verbena United Methodist Church v. Chilton County Board of Education*, 765 F. Supp. 704 (M.D. Ala. 1991).