



Baccalaureate ceremonies: Celebration that may lead to litigation

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Although we are firmly entrenched in winter, it won't be long before spring and graduation season arrives. For some schools, this historically has included a baccalaureate ceremony or similar celebration that honors a graduating class from high school or eighth grade. Such events are typically Christianity-based or interdenominational services. The ceremony normally includes a mix of speeches, musical/theatrical performances and worship.

Constitutional challenges may arise if public school employees or officials plan, lead or actively take part in these baccalaureate ceremonies. Most often, such challenges focus on whether the Establishment Clause of the First Amendment to the United States Constitution has been violated (i.e., "Congress shall make no law respecting an establishment of religion").

Generally speaking, government officials, including public school employees, may not take action that communicates an endorsement of a religion. [1] Several federal courts have tackled a public school's involvement in religious baccalaureate services and have issued rulings that provide guidance on this issue. Such courts have generally held that school employees or officials may not endorse or participate in baccalaureate ceremonies. [2] For example, in *Warnock v. Archer*, the Eighth Circuit Court of Appeals found a public school district conveyed an impermissible sponsorship of baccalaureate services where school employees "designed the services program, typed it up, and copied it using school resources" and "handed out the programs at the...service."

Second, it appears school employees and officials may not assist in planning or scheduling of baccalaureate ceremonies while within the scope of their public school employment. [3] The *Warnock* court held that school employees conveyed sponsorship of baccalaureate services by "meeting with...seniors during school hours, where they supervised and advised on the planning of the

baccalaureate service.” Similarly, the court in *Carlino v. Gloucester City High School* held that by dictating the time and format of a baccalaureate service, planning the service with the pastor and controlling the student’s ability to attend, school officials “appeared to exercise control and had actual control over the baccalaureate service.” [4]

Finally, it does not appear school officials may promote or advertise baccalaureate ceremonies. In *Chandler v. James*, the court held that a school was prohibited from printing baccalaureate announcements or commemorations or other materials regarding baccalaureate services or encouraging, directly or indirectly, a student’s attendance at baccalaureate services. [5]

It does not appear public schools may avoid the aforementioned prohibitions by showing student participation to be voluntary and/or notifying students they may opt out of the baccalaureate ceremony. [6] Therefore, faced with what is oftentimes a long-standing history of holding baccalaureate ceremonies for students and the strong community feelings associated with this tradition, what can a public school do to protect itself from a potential legal challenge? A concerned school district may consider one or more of the following options:

1. Turn control of the baccalaureate ceremony over to the local PTA or other third-party school support organization. This includes the PTA or other organization working with the students to organize and plan the ceremony, designing the program and utilizing non-school resources to prepare programs and to publicize the event.
2. The PTO or other third party organization may consider printing a disclaimer in the programs to be distributed at the baccalaureate ceremony clarifying that the ceremony is organized, presented and sponsored by them and is not an approved or endorsed activity of the school district.
3. Refrain from publicizing a baccalaureate ceremony through the district’s website, social media outlets or traditional news bulletins.
4. District employees and board members who choose to attend the event should not publicly speak or actively perform as part of the baccalaureate ceremony. Rather, such individuals should merely observe as audience members.
5. If a district wishes to retain control over the baccalaureate ceremony, then the religious elements of the event should be eliminated. This may include holding the event at a location other than a place of worship.

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[1] *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 305 (2000).

[2] *Warnock v. Archer*, 443 F. 3d 954, 955 (8th Cir. 2006). Although not controlling on the Sixth Circuit Court of Appeals (which includes Ohio), this ruling is nonetheless persuasive to a court with jurisdiction over an Ohio public school district.

[3] *Warnock*, supra.

[4] 57 F. Supp. 2d 1, 23 (D.N.J. 1999).

[5] 998 F. Supp. 1255, 1273 (M.D.Ala.1997).

[6] *School District of Abington Township v. Schempp*, 374 U.S. 203, 224-225 (1963).

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