

FREEDOM FROM RELIGION *foundation*

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May 12, 2016

SENT VIA EMAIL & U.S. MAIL
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Mr. Charles Crawford
Abernathy Roeder Boyd & Hullett, P.C.
PO Box 1210
McKinney, TX 75070-1210

Re: MISD religious displays, school-sponsored baccalaureate, graduation in a church

Dear Mr. Crawford:

I am again writing on behalf of the Freedom From Religion Foundation (FFRF) regarding multiple constitutional issues within McKinney Independent School District (MISD). If your firm no longer represents MISD, please notify me as soon as possible.

Multiple concerned MISD community members have contacted us within the past month regarding a number of issues. Each issue is addressed below. We write to ensure that the district takes appropriate action to protect the right of conscience of its students and to respect its obligations under the Establishment Clause.

Latin crosses and religious messages cannot be displayed on MISD walls.

We are informed that several Latin crosses are displayed on the walls of MISD's three high schools. We are informed that at McKinney High School, crosses are displayed on the office wall behind the librarian's desk, the 2nd-floor school resource officer's office, and the classroom of the Marine JROTC liaison. At McKinney North High School, a cross is displayed in classroom F226 with a quote from the book of Jeremiah directly behind the teacher's desk. At McKinney Boyd High School, the school resource officer's office contains two Latin crosses, visible from the front reception area. Additionally, in Scott Johnson Middle School there is a religious poster facing into the girl's locker room. The poster begins "As Believers You Are Saved Forever by Grace through Faith" and continues with other religious descriptions including "Baptized into Christ Jesus" and "Soldiers of Christ." An image of this poster is enclosed.

As MISD is aware from our January 2015 correspondence, a public school district cannot promote religion through religious displays or iconography. I will not rehash the case law cited in our previous letter. All Latin crosses and the religious poster must be removed.

Please note that it is not a violation of a district employee's free speech or free exercise rights to require him or her to remove a religious display and refrain from promoting religion in the school. School employees have access to a captive student audience solely because of their

position as public school educators: “Because the speech at issue owes its existence to [his] position as a teacher, [the School District] acted well within constitutional limits in ordering [the teacher] not to speak in a manner it did not desire.” *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 970 (9th Cir. 2011) *cert. denied*, 132 S. Ct. 1807 (2012) (upholding decision of school board to require a math teacher to remove two banners with historical quotes referencing “God”). *See also Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (“We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”).

Needless to say, the specific religious displays listed above may not be exhaustive. In addition to removing the displays described by our complainants, we encourage MISD to institute staff training on this legal point over the summer to avoid future violations.

Public schools cannot sponsor bacalaureate services.

One concerned complainant has reported that during the morning announcements on May 9, an assistant principal at McKinney Boyd High School solicited participation of students to offer prayers, read scripture, and sing hymns at the upcoming bacalaureate service. We understand that the contact person for interested students is a faculty member at the school.

As you are likely aware, public schools cannot organize or promote bacalaureate services. The Establishment Clause prohibits public schools from sponsoring any type of religious practices. Bacalaureate programs are religious services that include prayer and worship. Schools may not in any way plan, advertise, or supervise bacalaureate programs. *See, e.g., Warnock v. Archer*, 443 F.3d 954 (8th Cir. 2006) (upholding injunction prohibiting school district from orchestrating or supervising prayers at school graduation or bacalaureate ceremonies).

Even if McKinney Boyd High does not officially sponsor the bacalaureate, there still exists a danger that a reasonable observer would conclude the service is school sponsored if faculty members are intimately involved in organizing the service. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) (ruling pre-game prayers by students over the public address system unconstitutional given that an objective student would “unquestionably perceive” the prayers as “stamped with the school’s seal of approval”). Given the administrator’s efforts to advertise and solicit participation in the event, and a faculty member’s involvement in organizing it, students will inevitably perceive the bacalaureate as school sponsored.

When courts have permitted privately sponsored bacalaureate services, the schools took significant steps to ensure that there was no school endorsement. *See Randall v. Pagan*, 765 F. Supp. 793 (W.D.N.Y. 1991) (noting that “the school board has already formally and publicly dissociated itself from the bacalaureate service, has canceled its prior order for programs and has refused to lend any financial support, either direct or indirect, to assist the [religious group] in its sponsorship of the event.” In addition, no “district personnel are involved in any aspect of the service, either in their capacities as District employees or . . . in their personal, individual capacities.”); *Verbena Methodist Church v. Chilton Bd. of Educ.*, 765 F. Supp. 704 (M.D. Ala.

1991) (“The Board must also ensure that no other school officials promote, lead, or participate in the service.”).

Any school employee involvement in organizing or promoting the baccalaureate service must cease immediately. The baccalaureate cannot continue as a school-sponsored event. If a private group is sponsoring this event, the school must take steps to correct the impression, created by the assistant principal, that the high school is sponsoring the service.

Graduations must be held in secular locations, not churches.

Each year the McKinney High School graduation takes place at Prestonwood Baptist Church. We are informed that the graduation ceremony takes place in the church’s sanctuary, which is decorated with traditional Baptist symbols, including Latin crosses. Graduation has taken place at this same church for at least the past four years. Our complainant notes that there are alternative, secular facilities available in the area, including at the University of Texas, Dallas.

The Establishment Clause prohibits public schools from holding graduation ceremonies in houses of worship. This practice is unconstitutional because it forces graduating students and their family and friends wishing to participate in the ceremony to enter a church, even if the selected church espouses a religious ideology to which they do not adhere. Moreover, this practice creates the impression that McKinney High School, and by extension MISD, endorses the Christian religion.

It is unconstitutional for a public high school to compel its graduating students, their families, teachers, and other guests, to violate their rights of conscience to attend a graduation ceremony. *See, e.g., Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840 (7th Cir. 2012), *cert. denied*, 134 S. Ct. 2283 (2014) (finding use of church for public school graduations unconstitutional); *Lee v. Weisman*, 505 U.S. 577, 587 (1992) (“It is beyond dispute that, at a minimum, the constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise.”); *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947) (“The ‘establishment of religion’ clause of the First Amendment means at least this: neither a state nor the Federal Government can . . . force nor influence a person to go to or remain away from church against his will . . .”).

Many courts have held that holding graduations in churches offends the Establishment Clause. *See Does v. Enfield Pub. Sch.*, 716 F. Supp. 2d 172 (D. Conn. 2010) (“By choosing to hold graduations at [a church], [a school] sends the message that it is closely linked with [the church] and its religious mission, that it favors the religious over the irreligious, and that it prefers Christians over those that subscribe to other faiths, or no faith at all.”); *Musgrove v. Sch. Bd. of Brevard Cnty.*, 608 F. Supp. 2d 1303 (M.D. Fla. 2005) (ruling that plaintiffs had demonstrated likelihood of success on the merits of their claim that holding public high school graduations in a church violates the Establishment Clause). The appearance of religious endorsement is heightened when, as here, the violation recurs annually and becomes standard practice.

The Seventh Circuit Court of Appeals held in *Doe v. Elmbrook Sch. Dist.* that “[t]he same risk that children in particular will perceive the state as endorsing a set of religious beliefs is present

both when exposure to a pervasively religious environment occurs in the classroom and when government summons students to an offsite location for important ceremonial events.” 687 F.3d at 856. Absent an emergency, hosting a public school graduation in a church contravenes the First Amendment because the “school administrators effectively required attendances [of students], because graduations are not truly optional, and [because the] school administrators selected the [church] over several other suitable options.” *Id.* at 854 (citations omitted). “The critical point [of why a public school graduation in a church is unconstitutional] is that this important rite of passage in the life of a public school and its students is held in the sacred worship space of *any* faith, absent unusual and extenuating circumstances such as temporary emergency.” *Id.* at 857 (Hamilton, J., concurring).

Graduations are viewed as special, once-in-a-lifetime moments for graduating students. *See Lee*, 505 U.S. at 595 (“[G]raduation is one of life’s most significant occasions . . .”). Legal violations aside, students wishing to participate should not be forced to forego this momentous occasion in their lives simply because McKinney High School deems it necessary to hold its graduations in a church. We ask that the school take steps to remove or cover religious iconography in the church sanctuary before holding its graduation there this year and that MISD take steps this summer to arrange for a new location to be used in all future graduation ceremonies.

Please inform us in writing of what action MISD and its schools take in response to the several Establishment Clause violations outlined in this letter so that we can notify our complainants. Thank you for your time and attention to all of these concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sam Grover', written over a horizontal line.

Sam Grover
Staff Attorney

Enclosure

As Believers You Are Saved
Forever by Grace through Faith,
Forgiven, Accepted, Beloved of God,
Servants of the Most High God,
New Creatures, Dead to Sin, Alive to God,
Walking in the Newness of Life,
Baptized into Christ Jesus,
The Temple of the Holy Spirit,
Clothed with Christ, Holy, Blameless,
At Peace with God,
Christians, You Are, Born Again,
Partakers of the Divine Nature,
Empowered by God,
Children of Promise, One in Him,
The Body of Christ,
Seated in Heaven, Kingdom Citizens,
A Royal Priesthood, Vessels of Honor,
Salt of the Earth, Light of the World,
Soldiers of Christ, Fishers of Men,
Ministers of Reconciliation,
Victorious.