

FREEDOM FROM RELIGION *foundation*

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May 10, 2016

SENT BY EMAIL & U.S. MAIL TO:
cgrover@rmgllp.com

Mr. Clay T. Grover
Rogers Morris & Grover
5718 Westheimer Road, Suite 1200
Houston, TX 77057

Re: Friendswood ISD sponsorship of baccalaureate service

Dear Mr. Grover:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding concerns over a constitutional violation within Friendswood ISD. We were contacted by a local parent. Thank you for your February 10 correspondence indicating that I should direct future concerns about the school district to your attention.

It is our understanding that Friendswood High School is advertising on its website a baccalaureate service taking place in the high school's auditorium on May 22 (see <http://myfisd.com/hs/fhs-parents/graduation/>). This event was also advertised in a handout sent home to parents with seniors' most recent report cards, entitled "REMINDER OF IMPORTANT DATES FOR SENIORS!" It appears that the school has also scheduled a senior picture to take place in the Girls Gym half an hour before the baccalaureate service, on a Sunday afternoon.

As you are likely aware, public schools cannot organize or promote baccalaureate services. The Establishment Clause of the First Amendment prohibits public schools from sponsoring any type of religious practices. Baccalaureate programs are religious services that include prayer and worship. We understand that a minister from a local church is scheduled to speak at the baccalaureate service at Friendswood High. Schools may not in any way plan, advertise, or supervise baccalaureate 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 baccalaureate ceremonies).

Even if a public school does not officially sponsor or organize the baccalaureate service, there still exists a danger that a reasonable observer would conclude the service is school sponsored. *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 district's efforts to advertise the event and to schedule an official senior picture to coincide with the service, students will inevitably perceive the baccalaureate as school-sponsored.

When courts have permitted privately sponsored baccalaureate services in public schools, 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 baccalaureate 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.”).

Please note that the legal analysis doesn’t change simply because the school district has labeled the baccalaureate as an “optional” event. Courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *See, e.g., Lee v. Weisman*, 505 U.S. 577, 596 (1992) (“It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.”); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 288 (1963) (Brennan, J., concurring) (“Thus, the short, and to me sufficient, answer is that the availability of excusal or exemption simply has no relevance to the establishment question”); *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003) (“VMI cannot avoid Establishment Clause problems by simply asserting that a cadet’s attendance at supper or his or her participation in the supper prayer are ‘voluntary.’”).

The school’s role in the upcoming baccalaureate service would cause any reasonable graduating senior or parent to conclude that Friendswood ISD endorses the religious messages espoused at the event. To avoid the perception of school sponsorship of religious practices, the district must immediately end all advertising and sponsorship of the event. Additionally, the fact that the district scheduled a senior picture for a Sunday afternoon to coincide with the baccalaureate service sends a clear message of district endorsement for the event. The district should not ask students to assemble in school on a Sunday half an hour before a private religious event takes place on the property.

We ask that the district take immediate action to address the unconstitutional sponsorship of this baccalaureate service. This event cannot be organized or promoted by the district. Given the communications that the district has already sent about the service, the district must take steps to disassociate itself from the baccalaureate, by issuing a disclaimer to students and parents and by rescheduling the senior picture to take place at a more appropriate time. Please inform us in writing of the steps the district takes. Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sam Grover', with a long horizontal line extending to the right.

Sam Grover
Staff Attorney