

# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

December 26, 2017

**SENT VIA EMAIL & U.S. MAIL**

**skalis@foxrothschild.com**

Stephen H. Kalis, Esq.  
Fox Rothschild, LLP  
1035 High Street  
Pottstown, PA 19464

Re: Pottstown School District—School Sponsorship of Baccalaureate Ceremony

Dear Mr. Kalis:

I am writing again on behalf of the Freedom From Religion Foundation (FFRF) regarding a recurring constitutional violation in Pottstown School District. As we previously explained, a concerned PSD employee contacted FFRF to report that PSD organizes and sponsors a religious baccalaureate ceremony. FFRF is a national nonprofit organization with more than 30,000 members across the country, including more than 850 members and two chapters in Pennsylvania. Our purpose is to protect the constitutional principle of separation between state and church.

This is the fifth letter we've written on this baccalaureate and complaints continue to come in because PSD has not sufficiently divorced itself from organizing and sponsoring this religious service. The previous letters, laying out the issue in detail, are enclosed. FFRF prefers to solve these complaints amicably through educational letters like these. However, when these letters are ignored and school districts continue to disregard the law, we are willing to take these cases to court. *See, e.g., Freedom from Religion Found. Inc v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469 (3d Cir. 2016)(FFRF lawsuit over Ten Commandments monument at a public school in Pennsylvania); *Freedom from Religion Found., Inc. v. Connellsville Area Sch. Dist.*, 127 F. Supp. 3d 283 (W.D. Pa. 2015)(same, declaring the monument unconstitutional).

The New Kensington case cost that school district more than \$160,000 in fees and costs.<sup>1</sup> They chose to fight a case that courts had already decided. And just as it is unconstitutional to display Ten Commandments monuments in public schools, so too it is unconstitutional for those schools to organize or promote baccalaureate services.

The Establishment Clause of the First Amendment prohibits public schools from sponsoring any type of religious practices. *See Lee v. Weisman*, 505 U.S. 577, 590 (1992). Baccalaureate programs are religious services that include prayer and worship. Schools may not in any way plan, design, or supervise baccalaureate programs. *See, e.g., Warnock v. Archer*, 443 F.3d 954

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<sup>1</sup> <https://ffrf.org/legal/challenges/highlighted-court-successes/item/16972-ffrf-and-parents-seek-removal-of-ten-commandments-monuments-in-front-of-two-penn-public-schools>

(8th Cir. 2006) (upholding injunction prohibiting school district from orchestrating or supervising prayers at school graduation or baccalaureate ceremonies).

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.”).

We understand some changes have been made to PSD’s involvement in the baccalaureate program, but they are not sufficient to bring it in line with constitutional requirements. We are told that “The event was organized by staff and administration and the band and chorus were again involved.” Indeed the school assigned at least sixteen staff members “baccalaureate duties” for the religious service itself.

The baccalaureate must be an entirely private event. As a private religious event, there can be no school involvement whatsoever. Just as school staff and personnel are prohibited from organizing church attendance for their students or using their public position to encourage church attendance or rehearsals for church events, so too they are prohibited from helping plan the baccalaureate.

Pottstown School District’s baccalaureate is an unconstitutional school-sponsored religious event. We ask that you inform us in writing of the steps the District is taking to ensure no further school-sponsored baccalaureate services occur.

Sincerely,



Madeline Ziegler, Esq.  
*Patrick O'Reiley Legal Fellow*  
*Freedom From Religion Foundation*

Enclosures

# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

April 7, 2017

**SENT VIA EMAIL & U.S. MAIL**  
**skalis@foxrothschild.com**

Stephen H. Kalis, Esq.  
Fox Rothschild, LLP  
1035 High Street  
Pottstown, PA 19464

Re: Pottstown School District—School Sponsorship of Baccalaureate Ceremony

Dear Mr. Kalis:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Pottstown School District. We were contacted by a concerned District employee. FFRF is a national nonprofit organization with 27,000 members across the country, including more than 850 members and two chapters in Pennsylvania. Our purpose is to protect the constitutional principle of separation between state and church.

I sent a letter in August 2015 to former PSD Superintendent Jeffrey Sparagana objecting to Pottstown Senior High School's school-sponsored religious baccalaureate service. Please find that letter enclosed. Despite sending several follow-up letters, I never received a response, although I understand some changes were made to last year's baccalaureate. Nevertheless, the ceremony remains school-sponsored, and thus unconstitutional, so I write to renew our objection to the ceremony and ask that you ensure no such event takes place this year.

We understand that last year, a May 4, 2016 email from Principal Danielle McCoy to staff titled "Bacc and Grad" informed teachers "that senior students have chosen to have a religious component to baccalaureate this year. Baccalaureate is totally a student driven activity. Please let me know if you would like to opt out of baccalaureate duty due to the religious component. You will be scheduled for graduation duty instead."

A June 2, 2016 email from Principal McCoy had an attached "Baccalaureate Plan 2015-2016," which assigned personnel to work the event. The schedule reveals that staff were still heavily involved in planning and supervising the event, that the JROTC distributed programs, and that the Pottstown choir and band still participated in the event. This was confirmed by an email sent to all PHS employees by Band Director Michael Vought on June 9, 2016, saying, "This is a reminder that all band students will be attending Baccalaureate/Commencement practice this morning during Block 1." Copies of these emails are enclosed.<sup>1</sup>

Principal McCoy claiming the baccalaureate was "totally a student driven activity" in an email in which she, as principal, is assigning teachers to "baccalaureate duty" is self-defeating. District

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<sup>1</sup> Please note that the date on the Baccalaureate Plan is inaccurate; the document automatically updates to the time and date the document is opened.

staff members clearly do not understand that they may have absolutely no involvement whatsoever in a baccalaureate service.

Our enclosed 2015 letter outlines why schools may not sponsor baccalaureate services. This remains true even if a majority of students want a baccalaureate service. In *Santa Fe Indep. Sch. Dist. v. Doe*, the U.S. Supreme Court specifically struck down a school policy that authorized students to vote on whether to have religious activity at school-sponsored events. 530 U.S. 290 (2000). In finding the student vote unconstitutional, the Court specifically addressed the constitutional problem this practice poses, stating, "A student election does nothing to protect minority views but rather places the students who hold such views at the mercy of the majority. Because 'fundamental rights may not be submitted to vote; they depend on the outcome of no elections,' the District's elections are insufficient safeguards of diverse student speech." *Id.* at 304-305 (citations omitted). The Court held that because the event was a regularly scheduled school-sponsored function conducted on school property, an objective observer would perceive it as a state endorsement of religion, "stamped with her school's seal of approval." *Id.* at 308.

In addition, courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *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."); *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.'"); *Abington Twp. Sch. Dist. 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 . . ."); *Jager v. Douglas County Sch. Dist.*, 862 F.2d 825, 832 (11th Cir. 1989), *cert. denied*, 490 U.S. 1090 (1989) (" . . . whether the complaining individual's presence was voluntary is not relevant to the Establishment Clause analysis . . . The Establishment Clause focuses on the constitutionality of the state action, not on the choices made by the complaining individual.").

If this were truly a private or "totally student driven" baccalaureate, Principal McCoy would not have had occasion to send several planning emails about it to teachers, it would not have been listed on the school's end of year schedule, teachers would not have participated, rehearsals would not have taken place during the school day at the behest of staff members, and students would not have been compelled or asked by school staff to perform and pass out programs.

Pottstown School District's baccalaureate is an unconstitutional school-sponsored religious event. We ask that you inform us in writing of the steps the District is taking to ensure no further school-sponsored baccalaureate services occur.

Sincerely,



Madeline Ziegler, Esq.  
*Patrick O'Reiley Legal Fellow*  
*Freedom From Religion Foundation*

Enclosures

# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFRF.ORG

August 4, 2015

**SENT VIA EMAIL & U.S. MAIL**  
**jsparaga@pottstownsd.org**

Jeffrey R. Sparagana  
Superintendent  
Pottstown School District  
230 Beech St.  
Pottstown, PA 19464-0779

**Re: School Sponsorship of Baccalaureate Ceremony**

Dear Superintendent Sparagana:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Pottstown School District. We were contacted by a concerned District employee. FFRF is a national nonprofit organization with 22,500 members across the country, including more than 700 members and two chapters in Pennsylvania. Our purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that Pottstown Senior High School has long sponsored a baccalaureate service. We understand the baccalaureate is held in the high school auditorium and is funded by the District, and that clergy members participate in the event. We are also informed that the school band and choir, as well as some high school faculty members, are required to attend.

The Establishment Clause of the First Amendment prohibits public schools from sponsoring any type of religious practices. *See Lee v. Weisman*, 505 U.S. 577, 590 (1992). Baccalaureate programs are religious services that include prayer and worship. Schools may not in any way plan, design, 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). Nor may they require that faculty or students attend religious events.

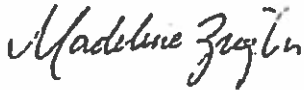
When courts have permitted privately sponsored baccalaureate services in public schools, the schools took significant steps to ensure that there was no school endorsement. *See Randall v. Pagan*, 765 F. Supp. 793 (W.D.N.Y. 1991) (noting that “the school board has already formally and publicly dissociated 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.”).

The school’s longtime role in planning, funding, and hosting this bacculaureate would cause any reasonable graduating senior or parent to conclude that the District endorses the religious messages espoused at these services. To avoid the perception of school sponsorship of religious practices, the District must immediately end all involvement with future bacculaureates. This means that no public school employees can be involved in further organization, planning or coordination of the bacculaureate services. The District must not fund or advertise the bacculaureate, and it must not require or encourage faculty or students, including members of the band and choir, to attend.

We ask that you commence an immediate investigation into the bacculaureate services occurring in Pottstown School District and that you inform us in writing of the steps the District is taking to follow constitutional dictates.

Sincerely,

A handwritten signature in cursive script that reads "Madeline Ziegler".

Madeline Ziegler  
Attorney

From: Danielle McCoy  
Sent: Wednesday, May 04, 2016 2:31 PM  
To: PHS Professional Staff  
Subject: Bacc and Grad

Hello All:

Please be advised that senior students have chosen to have a religious component to baccalaureate this year. Baccalaureate is totally a student driven activity. Please let me know if you would like to opt out of baccalaureate duty due to the religious component. You will be scheduled for graduation duty instead.

Teachers invited as special guests of graduates will not be scheduled for a duty.

Thank you.

Danielle R. McCoy  
Principal  
Pottstown High School  
750 N. Washington St.  
Pottstown, PA 19464  
610-970-6700

From: Danielle McCoy  
Sent: Thursday, June 02, 2016 4:41 PM  
To: PHS Professional Staff  
Cc: Jeffrey Delaney  
Subject: RE: Grad and Bacc Duties REVISED

Attached please find the correct graduation duties. While the original document sent had the correct duties on it, it also had a great deal of information that was unnecessary for your purposes, out of date, and which might be confusing. For ease of understanding, please follow this document. Thank you.

Danielle R. McCoy  
Principal  
Pottstown High School  
750 N. Washington St.  
Pottstown, PA 19464  
610-970-6700

From: Danielle McCoy  
Sent: Thursday, June 2, 2016 3:50 PM  
To: PHS Professional Staff  
Cc: Jeffrey Delaney  
Subject: Grad and Bacc Duties

Attached please find assigned duties for both graduation and baccalaureate. If you requested NOT to work baccalaureate and were erroneously scheduled, please let me know immediately. All personnel are expected to be at their duties at the assigned time. All staff should report at 6:15pm for baccalaureate and 5:30pm for graduation. Everyone was assigned specifically. Should two people agree to switch duties, you must first get approval from Mr. Delaney. Thank you.

Danielle R. McCoy  
Principal  
Pottstown High School  
750 N. Washington St.  
Pottstown, PA 19464  
610-970-6700



Graduation Plan 2015-  
2016 Indoor (2).doc



Baccalaureate Plan 2015-  
2016.doc

**BACCALAUREATE PLAN**

Updated as of: 4/6/2017 16:58:37

**Numbering of Processional and Supervising Processional and Recessional**

Johnson\*                      Decker\*

**Music**

Marsden (choir)              Vought (band)

**Stage**

Yashinsky

**Meeting of Clergy**

DiBlasi                      Wise

**Ushers to Distribute Programs**

Porter/Kearse                      JROTC - Distribute Programs

**Crowd Control**

**Back of Auditorium:**              Blackwell              Dunleavy              **Main Lobby:** P. Pascal                      Braunsberg

**Locker Room  
(before and after)**

Boys (Room 124):              Drone                      Girls (Room 122):              Dundon

\*Teachers assisting in commencement practices

\*\*Teachers assisting in commencement practices needing coverage



From: Michael D. Vought  
Sent: Thursday, June 09, 2016 7:02 AM  
To: PHS All Employees  
Subject: Band

Hello,

This is a reminder that all band students will be attending Baccalaureate/Commencement practice this morning during Block 1. I have told them that if they need to attend their block 1 class because of a final or important review, they should go to block 1. Below is the list of band students.

London	Aquino
Mitchell	Aquino
Tiana	Bennett
Dylan	Brandt
Edward	Butler
Alessa	Caballero
Nathan	Camacho
Destiny	Chavez
Genesis	Chavez
Johney	Cranford
Yulisa	Cruz
Julia	Day
Sarah	Dudley
Andrew	Ecker
Amanda	Endy
William	Foster
Cebal	Francis
Jennifer	Hanson
Nata	Johnson
Kyle	Kretzer
Emilee	Lineman
Alysa	Lopez
Alexis	Magee
Dorothy	Marta
Caitlin	McLaughlin
Casey	Mest
William (Eliah)	Migale
Aubrey	Miler
William	Shenck
Gary	Obernolzer
Angelique	Olvera
Madison	Overroll
Ruby	Ovens
Julienne	Roseo
Hannah	Shankle
Destyn	Snyder
Amaya	Stevenson
Taylor	Sundstrom
Torrell	Taylor-Williams
Dylan	Thorne
Julian	Weber
Abigail	Welder
Isaiah	Williams
Rashell	Williams
Nicholas	Wilson
Matthew	Zopey

Mike Vought  
Director of Bands  
Pocahontas High School  
484-941-9809