

FREEDOM FROM RELIGION *foundation*

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May 22, 2023

SENT VIA EMAIL & U.S. MAIL: GreeneD@duvalschools.org

Diane Greene
Superintendent
Duval County Public Schools
1701 Prudential Drive
Jacksonville, FL 32207

Re: District's decision to cease holding graduation ceremonies in churches

Dear Superintendent Greene:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to express our support for the District's recent decision to cease hosting graduation ceremonies in churches and to refute the specious claims made by Liberty Counsel in their recent letter. We are still awaiting a substantive response to our September 22, 2022 letter regarding religious coercion in Andrew Jackson High School's football program, and would appreciate a response indicating what actions were taken following the investigation that you informed us that the District was undertaking.

It is our understanding that on May 12, 2023, Brian K. McDuffie, executive director of Policy & Compliance for Duval County School District, sent an email to all school principals asking them to cease holding graduation ceremonies in churches because of religious entanglement and constitutional issues posed by requiring students to enter a house of worship to participate in an important public school event. This decision protects the rights of all District students to be free from religious coercion as they celebrate their graduation with friends, family, classmates, and the broader community.

We understand that on May 16, 2023, Liberty Counsel, a Christian organization that works to advance Christianity and elevate the rights of Christians, sent a letter to the District offering poor legal justifications for continuing to force students and their families to enter Christian churches in order to participate in public school graduation ceremonies that are meant to be entirely secular. Liberty Counsel erroneously claims that hosting public school events is not only permissible, but that creating impermissible partnerships with churches and blurring the boundaries between public schools and local churches is actually good for the District.

We write to commend the District's decision to respect the religious diversity and protect the constitutional rights of its students and their families, and urge you to disregard Liberty Counsel's transparent attempt to advance Christianity by entangling Christian churches with our secular public schools. Christian students are free to host events celebrating their achievements

in their local churches, but non-Christian students shouldn't be forced to attend a public school event in a church, especially an event as important as graduation.

As you are aware, public school students have the First Amendment right to be free from religious indoctrination in their public schools, including when participating in school-sponsored events. It is unconstitutional for a public high school to compel or coerce its graduating students, their parents, teachers and other members of their families or friends, to enter a house of worship in order to participate in or attend a graduation ceremony. *See, e.g., 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”). Moreover, as Mr. Duffie’s email explained, hosting public school events in churches affiliates the district with the Christian religion, specifically the views espoused by the particular churches chosen to host the events.

Liberty Counsel’s letter focuses on the 7th Circuit’s decision in *Doe v. Elmbrook Sch. Dist.*, but multiple courts have held that holding graduations in churches violates the Establishment Clause. *See, e.g., Does v. Enfield Public 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 Co.*, 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). Absent an emergency, hosting a public school graduation in a church contravenes the First Amendment because the “school administrators effectively required attendance [of students], because graduations are not truly optional,” and because “school administrators selected the venue over several other suitable options.” *Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 854 (2012). “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 a temporary emergency.” *Id.* at 857 (Hamilton, J., concurring).

While Liberty Counsel is correct that the Supreme Court has unwisely abandoned the *Lemon* test, its contention that the ruling in *Kennedy v. Bremerton School District* has eliminated the constitutional rights of students and parents to be free from religious coercion and indoctrination while attending public school events is erroneous at best. In *Bremerton*, the Court explicitly distinguished the circumstances surrounding a private prayer by a school employee on their own time from school-sponsored prayer or religious exercises that burden students’ constitutional rights, such as the school-sponsored prayer practices in *Santa Fe Indep. Sch. Dist. v. Doe*:

[T]his case looks very different from those in which this Court has found prayer involving public school students to be problematically coercive...In *Santa Fe*

Independent School Dist. v. Doe, the Court held that a school district violated the Establishment Clause by broadcasting a prayer “over the public address system” before each football game. 530 U.S. 290, 294 (2000).

Kennedy v. Bremerton School District, 142 S.Ct. 2407, 2431 (2022).

The *Bremerton* decision simply affirms that school officials may pray privately during times when they are not acting in their official capacity as district representatives. It does not permit the District to compel students to enter churches in order to participate in their graduation ceremonies. Graduations are viewed as special, once-in-a-lifetime moments for graduating students. *See Lee*, at 595 (“graduation is one of life’s most significant occasions”). Students wishing to participate should not be forced to forgo this momentous occasion in their lives simply because their school deems it necessary to hold the graduation in a church.

Each year, FFRF receives many reports from parents and students dismayed to learn they will be required to attend an event at a church in order to celebrate their graduation. They feel uncomfortable with the beliefs espoused by the church, do not want the church’s religious imagery present in their graduation photos, or have had negative experiences with religion that make them hesitant to enter a church. We are glad that the District is instead striving to create a welcoming, inclusive environment for students, including graduating seniors, especially in light of the fact that nearly half of Generation Z is nonreligious.¹

We ask that you disregard Liberty Counsel’s letter, and instead continue upholding the rights of your students, their families, and the local community to celebrate graduation without the specter of district-sponsored religious coercion.

Sincerely,



Christopher Line
Staff Attorney
Freedom From Religion Foundation

¹ 2022 Cooperative Election Study of 60,000 respondents, analyzed by Ryan P. Burge
<https://religioninpublic.blog/2023/04/03/gen-z-and-religion-in-2022/>