



Student Religious Speech at Graduation Ceremonies

General Principles

It is well established that students have First Amendment rights in public schools.¹ Because public schools are dedicated places for learning, however, courts apply students' rights differently than in other contexts.

There is an important distinction between government speech (the speech of the school district and its employees) and private student speech.² Although there are some limits that apply to government speech, the First Amendment fully protects a student's private religious expression.³

Frequently Asked Question

May students pray at graduation ceremonies or include religious content in their speeches?

Yes, students can include religious content, including prayer, in their graduation speeches so long as the students were selected by neutral criteria (e.g. valedictorian and salutatorian are selected by grade point average, class officers are selected by a student body vote) and the control over the content of each address is left to the students, and not the school.

According to the U.S. Department of Education's guidelines:

School officials may not mandate or organize prayer at graduation or select speakers for such events in a manner that favors religious speech such as prayer. Where students or other private graduation speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, however, that expression is not attributable to the school and therefore may not be

¹ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."); *Morgan v. Swanson*, 659 F.3d 359 (5th Cir. 2011) (en banc).

² *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000) ("[T]here is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.") (internal quotations omitted).

³ *See Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) ("Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.").

restricted because of its religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student or other private speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's.⁴

For example, if the school district allows the valedictorian, salutatorian, class president, and class vice-president to each speak for a certain amount of time, and the students have control over the content of their speeches, then the school cannot discriminate against students who wish to incorporate religious speech, including prayer, in their addresses.

Please note, however, that a few courts have deviated from this generally accepted rule regarding the permissibility of religious content in graduation speeches. In one case, the Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington) determined that when school officials exercise *complete* control over a graduation ceremony, including student speech, that the school officials may remove proselytizing and sectarian language from a student's graduation speech. The court determined that an objective observer would perceive the speech to be approved and endorsed by the school, and therefore the school could remove the proselytizing comments to avoid an Establishment Clause violation.⁵

The Ninth Circuit, however, in a different case did not require school officials to eliminate all references to God in a student's graduation speech.⁶ After removing the proselytizing comments, the student was allowed to make "references to God as they related to [the student's] own beliefs."⁷ The student also distributed unedited copies of his graduation speech just outside of the graduation site, and at graduation, the student announced the time and place where he would deliver the unedited version of his speech.⁸

The Eleventh Circuit (Alabama, Georgia, and Florida) upheld a school district's policy that permitted "graduating students to decide through a vote whether to have an unrestricted student graduation message at the beginning and/or closing of graduation ceremonies."⁹ The policy did not refer to any religious speech. If the students voted to have a classmate deliver a speech, the classmate's speech would not be reviewed or edited by school officials; therefore, the speech was private student speech, and the message was allowed regardless of the religious content.¹⁰

If a situation arises concerning a public school district's attempt to censor a student's graduation speech, please contact Liberty Institute immediately for further analysis and guidance.

⁴ U.S. Dept. of Educ., *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, available at http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html (emphasis added).

⁵ *Cole v. Oroville Union High Sch.*, 228 F.3d 1092, 1103–05 (9th Cir. 2000).

⁶ *Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 981–82 (9th Cir. 2003).

⁷ *Id.* at 981.

⁸ *Id.* at 981–82, 985.

⁹ *Adler v. Duval Cnty. Sch. Bd.*, 250 F.3d 1330, 1334, 1342 (11th Cir. 2001).

¹⁰ *Id.* at 1332, 1342.

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