

Upcoming West Virginia Graduation Ceremonies and the Establishment Clause

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As the end of the 2010-2011 school year comes to a close in West Virginia, with it comes the planning of High School graduation ceremonies. Over the years, the issue of prayer at graduation ceremonies has been a hot topic nationally, including on occasion the banning of valedictorian speeches that include religious references, all because of the Establishment Clause.

The United State Supreme Court has long held that the [Establishment Clause of the First Amendment](#) forbids school-sponsored prayer or religious indoctrination. Over thirty years ago, the Court struck down classroom prayers and scripture readings even where they were voluntary and students had the option of being excused. [School Dist. of Abington Township v. Schempp, 374 U.S. 203 \(1963\)](#); [Engel v. Vitale, 370 U.S. 421 \(1962\)](#).

The Supreme Court has also held that a school district may not require that students observe a moment of silence at the beginning of the school day where the purpose of such a requirement is that students use that time for prayer. [Wallace v. Jaffree, 472 U.S. 28 \(1985\)](#). Also, the Court has held that the school district may not require the posting of the Ten Commandments in public school classrooms. [Stone v. Graham, 449 U.S. 39 \(1980\)](#).

The fundamental principle underlying all these decisions is that the Constitution commands that public schools may not take sides in matters of religion and may not endorse a particular religious perspective or any religion at all. The government, including public school officials, must act neutrally with respect to religious expression in schools, and can neither favor religion(s) nor discriminate against them.¹

As it relates to graduation ceremonies, the Supreme Court held in [Lee v. Weisman, 505 U.S. 577 \(1992\)](#), ruled that prayer -- even nonsectarian and nonproselytizing prayer -- at public school graduation ceremonies violated the Establishment Clause of the Constitution. The Supreme Court held that the inclusion of prayers as part of a school-sponsored and school-supervised graduation ceremony contravened the Establishment Clause both because of its inevitably coercive effect on students and because it conveyed a message of government endorsement of religion.

A handful of federal courts have considered challenges to student-initiated graduation prayers. Although the outcome of these cases has been somewhat mixed, most have held that student-initiated graduation prayers run afoul of the separation of church and state required by the Establishment Clause of the First Amendment.

For example, federal courts in Iowa, New Jersey, and Virginia have held that student-initiated prayers of the type are forbidden by the Establishment Clause.

In a particular case, one court said,

the graduation ceremony is a school sponsored event; the fact that the school board has chosen to delegate the decision regarding one segment of that ceremony to members of the graduating class does not alter that sponsorship, does not diminish the effect of a prayer on students who do not share the same or any religious perspective, and does not serve to distinguish, in any material way, the facts of this case from the facts of *Lee v. Weisman*.

One federal court held that graduation prayers offered by authority of a majority student vote "run head on into the mandate of *Lee v. Weisman*" and are constitutionally impermissible. Likewise, another Federal court found that a school district's protocol allowing students to vote for the offering of a nonsectarian, nonproselytizing graduation prayer violated the Establishment Clause. Court in these instances determine that the fact that a majority of students may ask the school district to allow a prayer at graduation does not change the requirements of the Establishment Clause. Indeed, the very purpose of the Establishment Clause is to prevent a majoritarian government from imposing particular religious beliefs -- or any religious beliefs at all -- on individuals in our society who do not share those beliefs. [West Virginia Bd. of Educ. v. Barnette, 319 U.S. 624 \(1943\)](#).

Lastly, courts have [upheld decisions](#) by school officials who have barred valedictorians from giving graduation speeches that include references to their religious beliefs and have even cut off the valedictorian's microphone. These courts have ruled that a school district's policy and practice of banning all religious speech during graduation ceremonies passes constitutional muster because the purpose of the policy is to maintain a district's neutrality toward religion as required by the Establishment Clause.

Should you have any questions on this issue or any issues please feel free to contact a member of [Dinsmore & Shohl's Education Law Practice Group](#).

(1) U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools* (Feb. 7, 2003).