Keeping Graduation & Prom Inclusive

Prayer at Graduation

Graduation prayers violate the principle of separation of church and state. In 1992, the Supreme Court held in *Lee v. Weisman*, 505 U. S. 577 (1992), that prayer – even nonsectarian or nonproselytizing prayer – at public school graduation ceremonies violates the Establishment Clause of the First Amendment. The Court held that the inclusion of prayers as part of a school-sponsored and school-supervised ceremony violates the Establishment Clause. The decision was based on the inevitably coercive effect on students and because such religious activities convey a message of government endorsement of religion.

In *Lee*, the Supreme Court focused on the subtle pressures that accompany any religious exercise conducted as part of a school-sponsored event. The Court held that even though a school district does not require students to attend graduation in order to receive their diplomas, the students' attendance and participation in graduation exercises is "in a fair and real sense obligatory." *Id.* at 586.

As the Court said, "Everyone knows that in our society and in our culture high school graduation is one of life's most significant occasions…. Attendance may not be required by official decree, yet it is apparent that a student is not free to absent herself from the graduation exercise in any real sense of the term 'voluntary,' for absence would require forfeiture of those intangible benefits which have motivated the student through youth and all her high school years." *Id.* at 595.

Because attendance at high school graduation ceremonies is in effect obligatory – and because the ceremonies themselves are an adjunct to, and, in a real sense, the culmination of the public school curriculum – the inclusion of a religious program in graduation ceremonies violates the Establishment Clause.

As the Court stated in *Lee*, "The prayer exercises in this case are especially improper because the State has in every practical sense compelled attendance and participation in an explicit religious exercise at an event of singular importance to every student, one the objecting student had no real alternative to avoid." *Id.* at 598.

Baccalaureate Services

The absence of prayer from a public school's official graduation ceremony does not prohibit students from affirming their religious beliefs before or after the ceremony. Nothing in *Lee* or *Santa Fe Independent School District v. Doe*, 68 U.S. 4525 (2000) (a case in which the Supreme Court found prayer at school athletic events unconstitutional), for example, would prevent or prohibit like-minded students from organizing a privately-sponsored baccalaureate service – provided it was held separately from the school's graduation, was entirely voluntary, and was neither sponsored nor supervised by school officials.

Indeed, the Court went out of its way in *Santa Fe* to make clear that "nothing in the Constitution as interpreted by this Court prohibits any public school student from voluntarily praying at any time before, during, or after the school day. But the religious liberty protected by the Constitution is abridged when the State affirmatively sponsors the particular religious practice of prayer." Contrary to protests voiced by those who want to use the public schools as a forum for promoting their particular religious beliefs, the Supreme Court's holdings in *Lee* and *Santa Fe* are not anti-religious and do not interfere with the rights of students, guaranteed by the Free Exercise Clause, to worship and pray according to the dictates of their own consciences.

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Prom & Lesbian, Gay, Bisexual & Transgender Students

Every year, the ACLU receives calls from students whose schools have told them that they cannot bring a same-sex date to the prom or that they must wear prom clothing that conforms to traditional gender norms. Policies such as these, which exclude LGBT students from participating fully in school life, are not only prejudicial, they are unconstitutional.

Prom Attire

Schools can impose a requirement of proper, even formal, attire for the prom (provided it doesn't create an undue financial burden for students). However, enforcing outdated notions that only boys can wear tuxedoes and only girls can wear dresses to prom is illegal.

A requirement that all girls wear traditionally female attire to school dances constitutes gender discrimination prohibited by federal statutes. Federal courts have consistently ruled that acting against a person for not conforming to traditional gender norms amounts to illegal sex stereotyping, prohibited by civil rights laws. [*Price Waterhouse v. Hopkins,* 490 U.S. 228, 250 (1989); *Rosa v. Park West Bank,* 214 F.3d 213 (1st Cir. 2000); *Montgomery v. Independent School District No. 709,* 109 F.Supp.2d 1081 (D. Minn. 2000).]

The equality provisions of the Fourteenth Amendment also prohibit a public school from engaging in this type of gender discrimination. [*Knussman v. Maryland,* 272 F.3d 625 (4th Cir. 2001).] Different treatment based on sex is constitutional only if supported by a significant governmental interest, and there is certainly no significant governmental interest in barring girls from wearing tuxedos or forcing them to wear dresses.

A policy prohibiting girls from wearing tuxedos to the prom, moreover, violates important First Amendment rights. The freedom to select what to wear to one's prom (and whom to bring as a date) is protected by the First Amendment's guarantee of free expression and association. [*McMillen v. Itawamba County Schools,* No. 10-00061, 2010 WL 1172429 (N.D. Miss. March 11, 2010); *Fricke v. Lynch,* 491 F.Supp. 381 (1980); *Doe v. Yunits,* No. 001060A, 2000 WL 33162199 (Mass. Super. 2000); aff'd *Doe v. Brockton School Committee,* 2000 WL 33342399 (Mass.Appl.Ct. Nov. 30, 2000).]

Same-Sex Dates

In *Fricke v. Lynch,* 491 F. Supp. 381 (D.R.I. 1980), a federal court ruled that any policy excluding same-sex couples from proms or school dances violates the right to free expression guaranteed by the First Amendment to the U.S. Constitution.

In addition, the U.S. Supreme Court ruled that any policy of a public entity (like a public school) that's based on animosity or prejudice towards gay people violates equality rights guaranteed to all Americans by the 14th Amendment. [*Romer v. Evans,* 517 U.S. 620 (1996).]

But whether based on prejudice or not, it is unconstitutional to exclude same-sex couples from school dances. In *Fricke,* the federal judge was convinced of the sincerity of the principal's concern about possible disruptive reactions to the presence of a gay couple at prom, but ruled that the Constitution required the school to take steps to protect the couple's free expression rather than to stifle it. "To rule otherwise would completely subvert free speech in the schools by granting other students a 'heckler's veto', allowing them to decide through prohibited and violent methods what speech will be heard," wrote the judge.

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