


A Legal Memorandum

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Quarterly law topics for school leaders

Graduation: Navigating a Legal Minefield



High school graduation is an important milestone for students and their families, and plans for family gatherings and celebrations are often made early in the senior year. Despite the anticipation, some seniors will not graduate because of insufficient credits, disciplinary action, or failure to pass a state exam.

Breaking the news to students and parents can be heart-wrenching. They may react with anger, grief, frustration, and denial. Principals may face intense pressure to make “exceptions” for particular students. Given the emotional and social significance of graduation, it’s not surprising that there is considerable litigation over graduation issues. The high stakes make it imperative that principals adhere to common sense, school rules, and the legal precedents established by our courts.

Deciding whether to allow a student to “walk” in the graduation ceremony without being awarded an official diploma can be extremely difficult for a principal. These situations often involve students who failed an examination in a required course at the last minute. Policies vary by school district, but the recommended practice is to implement clear school standards about the issue and inform students *and their parents* of the school’s standards well in advance, even as early as the beginning of senior year.

The process leading to graduation can be filled with potential pitfalls. It’s important for principals to understand the legal parameters related to graduation. This *Legal Memorandum* will highlight the areas challenged in the courts and identified as significant sources of conflict.

About the Author

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Denying a Diploma

Withholding a high school student's diploma can land a principal in hot water. A student who has successfully completed the school's graduation requirements is generally entitled to a diploma. The Constitution provides that the government cannot deprive a person of "life, liberty, or property" without due process of law. Court decisions generally hold that a school district cannot withhold a diploma from a student who has met the prescribed graduation requirements. The decisions in the following cases illustrate this standard.

A student attending a Pennsylvania school was suspended in May of her senior year. While awaiting her expulsion hearing, the student completed her coursework and examination. In June, she was expelled and denied her high school diploma. The trial court ordered the school district to grant the student's diploma which she had earned. The school district appealed the decision but was denied on the basis of a section in the Pennsylvania

school code that mandates that diplomas be granted to every student who completes graduation requirements (*Ream v. Centennial School District*, 2001).

In *Shuman v. Cumberland Valley School District Bd. of Dir.* (1988), another Pennsylvania case with similar facts, the court ordered the school to award a diploma to the student, stating, "a student may not be denied a high school diploma where he has successfully completed all the coursework required for graduation and is expelled after successful completion of his courses."

Similarly, a Missouri school district was ordered to grant a diploma to a student who had completed the requisite number of credits when her on-the-job credits were included. Because the school district had previously granted diplomas to students with fewer credits than this student, the court would not enforce the school's policy, which it had enforced in a manner that was arbitrary, inequitable, or unreasonable (*State ex rel. Miller v. McLeod*, 1980). This court decision demonstrates how previous exceptions can return to haunt school officials.

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Exit Exams

Currently, 22 states require some type of exit exam as a prerequisite for earning a high school diploma, and more states will join them. In general, legal challenges to policies that require a student to pass a state assessment test as a graduation requirement have not been successful as demonstrated in the following cases: *O'Connell v. Superior Court* (2006), California High School exit exam; *Student No. 9. v. Board of Education* (2004), Massachusetts Comprehensive Assessment System; *Forum v. Texas Education Agency* (2000), Texas Assessment of Academic Skills.

Most legal challenges to exit exam requirements allege constitutional violations of due process and equal protection; wrongful discrimination based on race, national origin, and ethnicity; and violation of statutory protections for persons with disabilities, including the Individuals with Disabilities Education Act, Section 504, and the Americans with Disabilities Act.

A reviewing court typically pays careful attention to the purpose of the exit exam. In theory, exit exams provide motivation for teachers and students to, respectively, instruct and learn the essential components of the curriculum, which is designed to ensure that students graduate with essential skills. The effectiveness of these exams is questionable, and it is feared that strict requirements may only increase the already disconcerting drop-out rate.

While courts are generally comfortable with the concept of exit exams, the details and implementation components may still harbor legal issues. In particular, courts will look at the intended use and validity of the examination under review as well as the rationale for the selected cut score.

For further information, the Center on Education Policy (2006) published a study entitled, *High School Exit Exams: A Challenging Year*. This article will be of interest to principals in states that require students to pass an exit exam in order to receive a high school diploma.

Community Service Requirement

In addition to academic proficiency, a school district may include a community service component as a graduation requirement. A federal appeals court upheld a Pennsylvania school district's community service requirement, finding that it did not violate the student's constitutional rights. The program neither forced a student to express a belief in the value of community service nor forced the student to participate in specific community service activities or programs. Therefore, students were not confined to expression of school-approved sentiment and the students' constitutional rights of expression were not violated (*Steirer v. Bethlehem Area Sch. Dist.*, 1993).

Graduation Ceremony

The graduation ceremony is an important and symbolic event. Unlike a student's right to a diploma upon completion of the graduation requirements, participating in the ceremony is a *privilege*. In fact, in *North Babylon Union Free School District* (1988), a federal circuit court described graduation exercises as "mere social occasions." In denying a student's request for an injunction to permit his participation in the school's graduation ceremony, a Texas federal court aptly summarized the distinction between the diploma and the ceremony:

While the Court recognizes that high school graduation is an important and memorable occasion in a young person's life, 'walking across the stage' certainly does not rise to the level of a constitutionally protected property interest any more than attending one's high school prom, which most young people expect to do after completing twelve years of public school. It is the actual high school diploma which is the property interest.... (*Williams v. Austin Independent School District*, 1992)

Dress and Conduct. Occasionally, graduating seniors refuse to wear the traditional cap and gown to the ceremony. A school district may establish policies for conduct at the graduation ceremony, and those rules should be outlined clearly in the student handbook and in other written communications. School officials may enforce a dress code requiring appropriate graduation attire and may prohibit a student who violates the dress code from participating in the graduation ceremony (*Fowler v. Williamson*, 1978).

Court decisions generally hold that a school district cannot withhold a diploma from a student who has met the prescribed graduation requirements.

Discipline. A student may be excluded from graduation exercises as a disciplinary measure. As principals know all too well, senioritis has a tendency to intensify as the year draws to a close. Denial of participation in graduation exercises may be the only remaining consequence to curb bad behavior. As with graduation requirements, the beginning of the senior year is not too early to review this concern with students and parents. This issue should also be addressed in the student handbook and reminders should be delivered to the entire senior class throughout the spring.

A recent court decision in Michigan involved a student who confronted the assistant principal on the last day of school for taking away his graham crackers. The student blocked the assistant principal in the hall, and attempted to take the graham crackers back from him. The student then called the assistant principal a vulgar name. As a result, the student received a 10-day suspension and was banned from entering school grounds, which caused him to miss commencement and other senior events.

After an unsuccessful appeal to the School Board, the student filed a lawsuit in federal court, alleging that school officials violated his civil rights. The court dismissed the lawsuit on the school district's motion, finding that the student's due process rights had not been violated. The court also dismissed the student's First Amendment free speech claim that he was unjustly punished for giving "his opinion" about the assistant principal's confiscation of the graham crackers (*Posthumus v. Board of Education of the Mona Shores Public Schools*, 2005).

Participation without a diploma. Further, principals must also determine whether a student who has not

met the graduation requirements may participate in the graduation ceremony. The rules vary by school district. Students in this situation may include those who fail to pass a necessary course or exam at the last minute, as well as students who have been at risk of failing for some time. Deciding whether to allow these students to walk in the

Unlike a student's right to a diploma upon completion of the graduation requirements, participating in the ceremony is a privilege.

graduation ceremony is often extremely difficult for a principal.

Some districts issue blank diplomas and allow students to walk with their class; others deny students the opportunity to participate unless all requirements are met at the time of graduation. The recommended practice is to

implement clear school policy on this issue and inform students and their parents of the situation and the policy in advance. It is important to recognize that although the graduation ceremony is an important event, nonparticipation does not diminish the value of the diploma.

Prayers at Graduation

Across the nation, school boards and public school administrators are frequently challenged to satisfy their community's desire for religious observations during graduation. Before 1993, it was common practice nationwide for a community religious leader to say a prayer at the school graduation ceremony. But in June 1992, a lawsuit challenging a school's practice of having clergy-led prayers at graduation was decided by the U.S. Supreme Court and changed the practice. The school district argued that the practice was not unconstitutional because the local clergy member was instructed to deliver a "nonsectarian, non-proselytizing" graduation invocation. The Court disagreed, ruling that despite the school's attempt to "neutralize" the invocation, the practice nonetheless violated the First Amendment's establishment clause prohibiting government from establishing a religion (*Lee v. Weisman*, 1992). The Court issued its decision in late June, well after most school graduation exercises.

Since the *Lee* decision, school districts have attempted to find a loophole to permit graduation prayer. Those

attempts have largely been unsuccessful after review by the federal courts. The American Civil Liberties Union (ACLU) and Americans for the Separation of Church and State have been vigilant in filing lawsuits to stop prayer at school-sponsored activities, including graduation.

A Virginia school board tried to circumvent the *Lee* decision by allowing the senior class to vote on whether the graduation ceremony should include a nonsectarian, nonproselytizing prayer delivered by a student volunteer. Although the board "disclaimed" its involvement in the prayer selection, the court found the actions unconstitutional, holding that the board could not delegate decisions to students that the board was otherwise prohibited from making (*ACLU v. Black Horse Pike Regional Board of Education*, 1996). The court rejected the board's claim that its policy protected the free speech rights of those students who voted to include a prayer. The court reasoned that the "will of the majority" could not be imposed on the minority by submitting fundamental rights to a vote. Furthermore, since the graduation was school-sponsored, the board could not disclaim its involvement by noting that the senior class, and not the board, made the decision to include prayer at the ceremony.

Although schools must recognize that students have free speech rights, schools nonetheless have the authority to control graduation exercises. For example, a federal court upheld a principal's decision to delete proselytizing statements from a student's graduation message (*Lassonde v. Pleasanton Unified School District*, 2003).

In obvious recognition of efforts to circumvent limitations imposed by the establishment clause, as interpreted by the *Lee* decision, the Supreme Court later held that a school could not ask students to lead a prayer over the public address system before football games. The Court found that the school's practice was not a matter of private student speech, but of students speaking on behalf of and at the request of school officials" (*Santa Fe Independent School District v. Doe*, 2000).

Regardless of the person who actually delivers the prayer, the *Santa Fe* decision emphasized that a religious message presented on school property at a school-sponsored and school-related event remains public speech and results in an actual and perceived endorsement of religion. Student speech that is part of a school-sponsored event generally bears the imprimatur of the school and can be restricted. Appropriate guidelines, as well as careful review of the speech *before* the event go a long way to avoid legal challenges.

Baccalaureate

Baccalaureate has its origins dating back to medieval times and typically involves a community sponsored, interdenominational religious ceremony held for the graduating class. This service provides an avenue for religious expression at graduation time and participation is strictly voluntary for graduating seniors. The role of school officials in baccalaureate ceremonies is one of neutrality and is clearly defined in the document *Religious Expression in Public Schools: A Statement of Principles*, guidelines prepared by the U.S. Department of Education (1998), to help end the confusion regarding religious expression in schools. In relation to graduation prayer and baccalaureates, the following was stated:

Under current Supreme Court decisions, school officials may not mandate or organize prayer at graduation, nor organize religious baccalaureate ceremonies. If a school generally opens its facilities to private groups, it must make its facilities available on the same terms to organizers of privately sponsored religious baccalaureate service. A school may not extend preferential treatment to baccalaureate ceremonies and may in some instance be obliged to disclaim endorsement of such ceremonies. (p. 7)

Court decisions on this issue are firm. The district court enjoined school district employees from orchestrating or supervising prayers at a baccalaureate ceremony in *Archer v. Warnock* (2006). The court held a school employee in contempt for attending the ceremony after he was enjoined from doing so. The court found that school employees were involved in almost every aspect of the preparation for the service. Further, school employees served as senior class sponsors, supervised and advised students, prepared the baccalaureate program, copied the program using school resources, and advised students during school hours. The court held that these actions violated the Establishment Clause.

Although schools must recognize that students have free speech rights, schools nonetheless have the authority to control graduation exercises.

Time to renew your membership?

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Summary

Graduation usually occurs at the end of the school year—one of the busiest and most challenging times for principals. Therefore, it is essential that they understand how the law applies to issues associated with graduation. To avoid any last-minute problems, principals should:

- Be familiar with their district's policies regarding graduation requirements, as well as graduation ceremonies and activities. District policies will provide principals with a road map to address most issues. Remember, these policies vary from district to district.
- Communicate clearly all graduation expectations to students and parents "early and often" and emphasize the consequences for violating school policy.
- Be aware that neutrality, not hostility or endorsement, is the standard to which courts hold schools on matters involving religious expression and activities.

References

- ❑ ACLU v. Black Horse Pike Reg'l Bd. of Educ., 84 F.3d 1471 (3rd Cir. 1996).
- ❑ Archer v. Warnock, 380 F.3d 1076 (8th Cir. 2004).
- ❑ The Center on Education Policy (2006, August). *High school exit exams: A challenging year*. Retrieved on November 1, 2006 from <http://www.cep-dc.org/pubs/hseeAugust2006/HSEE2006FINAL.pdf>
- ❑ Forum v. Texas Educ. Agency 87 F. Supp. 2d 667 (W.D. Tex. 2000).
- ❑ Fowler v. Williamson, 448 F.Supp. 497 (W.D.N.C. 1978).
- ❑ Lassonde v. Pleasanton Unified Sch. Dist., 320 F. 3d 979 (9th Cir. 2003).
- ❑ Lee v. Weisman, 505 U.S. 577 (1992).
- ❑ North Babylon Union Free Sch. Distl, 844 F.2d 90 (2d Cir. 1988).
- ❑ O'Connell v. Superior Court, 2006 Cal. App. LEXIS 1236 (2006).
- ❑ Posthumus v. Board of Educ. of the Mona Shores Pub. Schs., 380 F.Supp. 2d 891 (W.D. Mich. 2005).
- ❑ Ream v. Centennial Sch. Dist., 765 A.2d 1195 (Pa. Commw. Ct. 2001).
- ❑ Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000).
- ❑ Shuman v. Cumberland Valley Sch. Dist. Bd. of Dir., 536 A.2d 490 (Pa. Commw. Ct. 1988).
- ❑ State ex rel. Miller v. McLeod, 605 S.W.2d 160 (Mo. Ct. App. 1980).
- ❑ Steirer v. Bethlehem Area Sch. Dist., 987 F.2d 989 (3rd Cir. 1993).
- ❑ Student No. 9. v. Board of Educ. 802 N.E.2d 105 (Mass. 2004).
- ❑ United States Department of Education. (1998). *Religious expression in public schools: A statement of principles*. (ERIC Document Reproduction Service No. ED416591)
- ❑ Williams v. Austin Indep. Sch. Dist., 796 F.Supp. 251 (W.D. Tex. 1992).

Other Resources

- ❑ United States Department of Education. (2003). *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*. Retrieved on March 20, 2007 from http://www.ed.gov/print/policy/gen/guid/religionandschools/prayer_guidance.html

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