

THE RUTHERFORD INSTITUTE

The Ten Commandments of Prayer and Religious Expression at Graduation Ceremonies™

A publication of The Rutherford Institute

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

—First Amendment to the United States Constitution

As parents, students, teachers and school officials prepare for commencement exercises, questions continue to be raised regarding what role prayer and/or religious expression are allowed to play during graduation ceremonies. Unfortunately, despite court rulings that have attempted to discern between students' free speech rights and the Constitution's prohibition of a government establishment of religion, there remains a great deal of confusion about the rights of students and speakers to offer prayers and engage in religious expression at graduation ceremonies.

However, as the following guidelines indicate, there are constitutionally permissible ways to incorporate prayer into and make religious references at graduation ceremonies without violating the First Amendment to the United States Constitution, as well as certain practices that should be avoided.

1. Students who have been selected to speak at a graduation ceremony may voluntarily pray as long as the ceremony is planned and organized by the student body independent of school officials.¹
2. Non-student guest speakers who have been invited to speak based on neutral criteria² during graduation ceremonies may offer a prayer as long as it is absolutely independent of involvement by school officials into the planning or content of the prayer. The school may not invite a clergyman or religious leader

¹ This conclusion has been reached by the Fifth Circuit Court of Appeals in *Jones v. Clear Creek Independent School District*, 977 F.3d 963 (5th Cir. 1992) and the Eleventh Circuit Court of Appeals in *Adler v. Duval County School Board*, 250 F.3d 1330 (11th Cir. 2001). Therefore, school officials and students in Texas, Mississippi, Louisiana, Alabama, Georgia and Florida can rely on this statement. However, there is contrary authority in one circuit. The Ninth Circuit Court of Appeals (encompassing California, Nevada, Arizona, Oregon, Washington, Idaho and Montana) has ruled that where school officials, as opposed to students, retain control over all aspects of the graduation and the content of student speeches, speakers may not offer prayers. *Cole v. Oroville Union High Sch.*, 228 F.3d 1092, 1103 (9th Cir. 2000).

² *Doe v. School District of the City of Norfolk*, 340 F.3d 605 (8th Cir. 2003).

- (minister, rabbi, priest, etc.) to offer a prayer during the graduation ceremony or otherwise orchestrate the inclusion of a prayer.³
3. Students and speakers who offer their own personal prayers during graduation ceremonies must do so voluntarily and with no involvement from school officials.⁴
 4. Students and speakers who offer prayers at graduation ceremonies must do so in a nonsectarian and non-proselytizing manner.⁵
 5. Audience members attending graduation ceremonies may individually or collectively and of their own volition pray silently or out loud as long as there is no assistance from school officials.⁶
 6. School officials must not write, suggest, edit, review, censor or control the content or manner of prayer by any student or guest speaker at the graduation ceremony.⁷
 7. Attendees, including students, of the graduation ceremony have a right to not be coerced into participation. Attendees must not feel pressured or compelled to participate in any form of religious exercise, including prayer, during the ceremony.⁸
 8. Students who are chosen to speak at the ceremony on the basis of neutral criteria, such as grade point average or student government office, may give a speech that has a religious viewpoint and includes religious content.⁹
 9. The ceremony may include vocal and instrumental music that is related to religion or has a religious basis so long as the music is offered in a non-devotional manner and is balanced with comparable works that are secular.¹⁰
 10. Any student, community leader or religious leader who wishes to organize a Baccalaureate ceremony has a constitutional right to do so. However, these ceremonies must be organized and performed independent of school officials.¹¹

³ In *Lee v. Weisman*, 505 U.S. 577 (1992), the U.S. Supreme Court determined that a graduation prayer was unconstitutional in part because the school had invited a religious leader (rabbi) to pray.

⁴ *Jones v. Clear Creek Independent School District*, *supra*. See also, *Doe v. School District of the City of Norfolk*, *supra*.

⁵ *Jones v. Clear Creek Independent School District*, *supra*.

⁶ Since there is no government involvement in the audience's private decision to pray individually or collectively, there is no constitutional concern.

⁷ *Lee v. Weisman*, *supra*.

⁸ *Id.*

⁹ As noted in note 1, there is contrary authority from the Ninth Circuit.

¹⁰ *Bauchman v. West High School*, 132 F.3d 542, 554 (10th Cir. 1997); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 407-08 (5th Cir. 1995).

¹¹ *Id.* See also, *Verbena United Methodist Church v. Chilton County*, 765 F. Supp. 704, 706 (M.D. Ala. 1991) (local churches and community leaders organized the Baccalaureate service in the wake of school board's decision to discontinue its involvement).