



# FREEDOM FROM RELIGION FOUNDATION

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July 1, 2010

**SENT VIA U.S. MAIL AND FAX  
(717) 938-2779**

Jamry L. Small  
Superintendent of Schools  
West Shore School District  
507 Fishing Creek Road  
P.O. Box 803  
New Cumberland, PA 17070-0803

COPY

Re: Cedar Cliff and Red Land Baccalaureate Services

Dear Ms. Small:

I am writing on behalf of an area resident and taxpayer and other Pennsylvania members of the Freedom From Religion Foundation (FFRF) regarding the two baccalaureate services held by your district high schools this spring. FFRF is a nationwide nonprofit organization that works to protect the constitutional principle of separation of church and state. FFRF represents over 16,000 supporters across the country, including over 500 members in Pennsylvania.

It is our understanding that on June 3, Cedar Cliff High School held a baccalaureate service under the direction of Mr. Ward and Mr. Hoffmann, two Cedar Cliff teachers. The service included an invocation, religious message and benediction by Pastor Jeff Davidson and a performance of *Anthem of Dedication* by student members of the Chamber Singers, among other religious messages. On June 7, Red Land High School held a similar baccalaureate service in which students sang *A Closing Prayer* and *The Lord Bless You and Keep You*. The programs for both baccalaureate services contained the District seal, a list of school board members, officers, and solicitor, as well as District non-discrimination and ADA disclosures. Both services were held on District property. It is our further understanding that Cedar Cliff scheduled and transported students to an official Baccalaureate Practice after senior exams on June 3.

As an inherently religious event, a baccalaureate service may not be held or financially supported by a public school. As currently structured, the baccalaureate services for your district high schools appear to be sponsored by the school district. School sponsorship, or even the appearance of sponsorship, of baccalaureate services is unconstitutional and any endorsement, participation, planning or promotion of the services must cease immediately.

A baccalaureate service is considered state-sponsored if an objective observer in the position of a student would perceive official school support for the religious activity. *See Bd of Educ. v. Mergens* 496 U.S. 226, 249-50 (1990) (holding that religious meetings could take place at school

only if not sponsored by the school, the government, or its agents). Within the Third Circuit, which hears cases from Pennsylvania, a court found that a school effectively sponsored a baccalaureate, even though the event was officially sponsored by a private party, when the school set out the date, time and format for the service, organized the content of the service, and retained control over whether students could attend the service. *See Carlino v. Gloucester City High Sch.*, 57 F. Supp. 2d 1, 22-23 (D.N.J. 1999) (noting that the “school officials made no effort to disassociate themselves from the Baccalaureate Service.”).

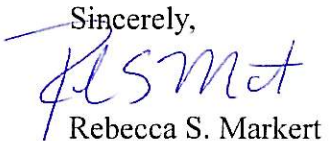
Courts have held that “a ceremony to honor a public high school’s graduates is vulnerable to carrying with it an aura of school affiliation.” *Verbena United Methodist Church v. Chilton County Bd. of Educ.*, 765 F.Supp. 704, 712 (M.D. Ala. 1991). In addition to organizing or funding a baccalaureate, courts have found a variety of other factors to be relevant in determining whether an objective observer could reasonably perceive school activity as an endorsement of religion. In *Carlino*, the court noted as significant the proximity of a baccalaureate to the school-sponsored graduation ceremony and the fact that a school superintendent had referred to the two events in a way that suggested that they were both part of commencement exercises. 57 F. Supp. 2d at 23. Courts have additionally found it relevant that baccalaureate programs were printed using school resources, *Warnock v. Archer*, 443 F.3d 954, 955 (8th Cir. 2006), that a school's official choir and orchestra participated in the service, *Shumway v. Albany County Sch. Dist.*, 826 F. Supp. 1320, 1327 (D. Wyo. 1993), and that a school produced a single written announcement for both baccalaureate and graduation. *Id.*

The baccalaureate services held in your district clearly violate the principles set out by the Supreme Court and federal courts within the Third Circuit and across the country. To conform with the Establishment Clause, your schools must withhold all endorsement and participation from these inherently religious activities. This means that no public school employees may be involved in the organization, planning or coordination of the event. This includes having school personnel direct the service or allowing for in-school preparation by school groups such as the school's Chamber Singers for performances at baccalaureate. Additionally, if a baccalaureate service, sponsored by a private party, were to be hosted on school grounds, the school would have to take affirmative steps to disassociate itself from that event, charge reasonable rent, etc. It is impermissible for district information to appear on the baccalaureate program or for the school to allocate resources (buses, facilities, paper, etc.) for the event.

End-of-the-year celebrations mean a lot not only to Christian students but also to students practicing non-Christian religions and the 15% of your student population who are nonreligious. (American Religious Identification Survey, 2008). Moreover, we recognize that many teachers, religious and nonreligious, may wish to celebrate the accomplishments of their students by participating in end-of-the-year ceremonies. While we do not know the details of your schools' Senior Awards Night, we would encourage District staff and school-sponsored musical groups such as the Chamber Singers to consider shifting their attention to participating at those events and/or at the graduation ceremony. A secular, school-sponsored awards night may benefit from full school endorsement and has the added advantage of being entirely inclusive of students and families from all types of religious or nonreligious background.

We ask that you respond in writing, at your earliest convenience, about what steps the District takes to remedy these serious constitutional violations. Our complainant awaits District action.

Sincerely,



Rebecca S. Markert  
Staff Attorney

RSM:stg