

*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 right  
of the people  
peaceably to assemble,  
and to petition the  
Government for a redress  
of grievances.*

# 10

CHAPTER 10

## Student Religious Expression in Public Schools: United States Department of Education Guidelines

It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.

—Justice Abe Fortas  
*Tinker v. Des Moines School District*  
1969

## RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS: A STATEMENT OF PRINCIPLES

### **Student prayer and religious discussion**

The Establishment Clause of the First Amendment does not prohibit purely private religious speech by students. Students, therefore, have the same right to engage in individual or group prayer and religious discussion during the school day as they do to engage in other comparable activity. For example, students may read their Bibles or other scriptures, say grace before meals, and pray before tests to the same extent they may engage in comparable nondisruptive activities. Local school authorities possess substantial discretion to impose rules of order and other pedagogical restrictions on student activities, but they may not structure or administer such rules to discriminate against religious activity or speech.

Generally, students may pray in a nondisruptive manner when not engaged in school activities or instruction, and subject to the rules that normally pertain in the applicable setting. Specifically, students in informal settings, such as cafeterias and hallways, may pray and discuss their religious views with each other, subject to the same rules of order as apply to other student activities and speech. Students may also speak to, and attempt to persuade, their peers about religious topics just as they do with regard to political topics. School officials, however, should intercede to stop student speech that constitutes harassment aimed at a student or a group of students.

Students may also participate in before- or after-school events with religious content, such as “see you at the flag pole” gatherings, on the same terms as they may participate in other noncurriculum activities on school premises. School officials may neither discourage nor encourage participation in such an event.

The right to engage in voluntary prayer or religious discussion free from discrimination does not include the right to have a captive audience listen or to compel other students to participate. Teachers and school administrators should ensure that no student is in any way coerced to participate in religious activity.

### **Graduation prayer and baccalaureates**

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 services. A school may not extend preferential treatment to baccalaureate ceremonies and may in some instances be obliged to disclaim official endorsement of such ceremonies.



### **Official neutrality regarding religious activity**

Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the Establishment clause from soliciting or encouraging religious activity, and from participating in such activity with students. Teachers and administrators also are prohibited from discouraging activity because of its religious content and from soliciting or encouraging antireligious activity.

### **Teaching about religion**

Public schools may not provide religious instruction, but they may teach *about* religion, including the Bible or other scripture; the history of religion, comparative religion, the Bible (or other scripture)-as-literature, and the role of religion in the history of the United States and other countries all are permissible public school subjects. Similarly, it is permissible to consider religious influences on art, music, literature and social studies. Although public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of holidays, schools may not observe holidays as religious events or promote such observance by students.

### **Student assignments**

Students may express their beliefs about religion in the form of homework, artwork and other written and oral assignments free of discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school.

**Religious literature**

Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. Schools may impose the same reasonable time, place and manner or other constitutional restrictions on distribution of religious literature as they do on nonschool literature generally, but they may not single out religious literature for special regulation.

**Religious excusals**

Subject to applicable state laws, schools enjoy substantial discretion to excuse individual students from lessons that are objectionable to the student or the students' parents on religious or other conscientious grounds. However, students generally do not have a federal right to be excused from lessons that may be inconsistent with their religious beliefs or practices. School officials may neither encourage nor discourage students from availing themselves of an excusal option.

**Released time**

Subject to applicable state laws, schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation or penalize those who do not attend. Schools may not allow religious instruction by outsiders on school premises during the school day.

**Teaching values**

Though schools must be neutral with respect to religion, they may play an active role with respect to teaching civic values and virtue and the moral code that holds us together as a community. The fact that some of these values are held also by religions does not make it unlawful to teach them in school.

**Student garb**

Schools enjoy substantial discretion in adopting policies relating to student dress and school uniforms. Students generally have no federal right to be exempted from religiously neutral and generally applicable school dress rules based on their religious beliefs or practices; however, schools may not single out religious attire in general, or attire of a particular religion, for prohibition or regulation. Students may display religious messages on items of clothing to the same extent that they are permitted to display other comparable messages. Religious messages may not be singled out for suppression, but rather are subject to the same rules as generally apply to comparable messages.

## THE EQUAL ACCESS ACT

The Equal Access Act is designed to ensure that, consistent with the First Amendment, student religious activities are accorded the same access to public school facilities as are student secular activities. Based on decisions of the federal courts as well as its interpretations of the Act, the Department of Justice has advised that the Act should be interpreted as providing, among other things, that:

### **General provisions**

Student religious groups at public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups. Under the Equal Access Act, a school receiving federal funds that allows one or more student noncurriculum-related clubs to meet on its premises during noninstructional time may not refuse access to student religious groups.

### **Prayer services and worship exercises covered**

A meeting, as defined and protected by the Equal Access Act, may include a prayer service, Bible reading, or other worship exercise.

### **Equal access to means of publicizing meetings**

A school receiving federal funds must allow student groups meeting under the Act to use the school media—including the public address system, the school newspaper and the school bulletin board—to announce their meetings on the same terms as other noncurriculum-related student groups are allowed to use the school media. Any policy concerning the use of school media must be applied to all noncurriculum-related student groups in a nondiscriminatory matter. Schools, however, may inform students that certain groups are not school-sponsored.

### **Lunch-time and recess covered**

A school creates a limited open forum under the Equal Access Act, triggering equal access rights for religious groups, when it allows students to meet during their lunch periods or other noninstructional time during the school day, as well as when it allows students to meet before and after the school day.

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## LIST OF ORGANIZATIONS THAT CAN ANSWER QUESTIONS ON RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS

### **Religious Action Center of Reform Judaism**

Name: Rabbi David Saperstein  
Address: 2027 Massachusetts Ave., NW, Washington, DC 20036  
Phone: (202) 387-2800  
Fax: (202) 667-9070  
E-mail: [rac@uahc.org](mailto:rac@uahc.org)  
Web site: [www.cdinet.com/RAC/](http://www.cdinet.com/RAC/)

### **American Association of School Administrators**

Name: Andrew Rotherham  
Address: 1801 N. Moore St., Arlington, VA 22209  
Phone: (703) 528-0700  
Fax: (703) 528-2146  
E-mail: [arotherham@aasa.org](mailto:arotherham@aasa.org)  
Web site: [www.aasa.org](http://www.aasa.org)

### **American Jewish Congress**

Name: Marc Stern  
Address: 15 East 84th Street, New York, NY 10028  
Phone: (212) 360-1545  
Fax: (212) 861-7056  
E-mail: [Marc\\_S\\_AJC@aol.com](mailto:Marc_S_AJC@aol.com)

### **National PTA**

Name: Maribeth Oakes  
Address: 1090 Vermont Ave., NW, Suite 1200, Washington, DC 20005  
Phone: (202) 289-6790  
Fax: (202) 289-6791  
E-mail: [m\\_oakes@pta.org](mailto:m_oakes@pta.org)  
Web site: [www.pta.org](http://www.pta.org)

### **Christian Legal Society**

Name: Gregory Baylor

Address: 4208 Evergreen Lane, #222, Annandale, VA 22003

Phone: (703) 642-1070

Fax: (703) 642-1075

E-mail: clrf@mindspring.com

Web site: [www.christianlegalsociety.org](http://www.christianlegalsociety.org)

### **National Association of Evangelicals**

Name: Richard Cizik

Address: 1023 15th Street, NW #500, Washington, DC 20005

Phone: (202) 789-1011

Fax: (202) 842-0392

E-mail: [oga@nae.net](mailto:oga@nae.net)

Web site: [www.nae.net](http://www.nae.net)

### **National School Boards Association**

Name: Laurie Westley

Address: 1680 Duke Street, Alexandria, VA 22314

Phone: (703) 838-6703

Fax: (703) 548-5613

E-mail: [lwestley@nsba.org](mailto:lwestley@nsba.org)

Web site: [www.nsba.org](http://www.nsba.org)

### **Freedom Forum First Amendment Center**

Name: Charles Haynes

Address: 1101 Wilson Blvd., Arlington, VA 22209

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Fax: (703) 284-2879

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