

Know Your Rights: Religion in Public Schools

A Guide for Administrators and Teachers

Prayer in Classrooms and at Assemblies

The United States Supreme Court has long held that the Establishment Clause of the First Amendment prohibits school-sponsored prayer or religious indoctrination. Forty years ago, the Court struck down classroom prayers and scripture readings, even if they were voluntary and even if students had the option of being excused. School Dist. Of Abington Township v. Schempp, 374 U.S. 203 (1963); Engel v. Vitale, 370 U.S. 421 (1962).

Pledge of Allegiance

The Constitution requires that students' recitation of the Pledge of Allegiance must be voluntary. Over 60 years ago the United States Supreme Court declared that compulsory flag salute and recitation of the Pledge of Allegiance violated an individual's constitutional right to freedom of expression. "No official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." West Virginia State Board of Education v. Barnette, 319 U.S. 624, 642 (1943).

While school officials may encourage students to show respect for our country, they may not require mandatory displays of patriotism. Students have the constitutional right to remain seated and silently respectful during the Pledge of Allegiance, and cannot be otherwise compelled to salute the flag. Students who choose not to recite the Pledge of Allegiance may do so without parental consent. Formal discipline, including detentions and suspensions, cannot be imposed for non-participation, nor can other types of non-disciplinary penalties such as reducing grades, requiring transfers to different classrooms, or withholding letters of recommendations.

Distribution of Gideon Bibles

In Berger v. Rensselaer School Corp., 982 F.2d at 1165-66 (7th Cir.), cert. Denied, U.S. 113 S. Ct. 2344 (1993) the court ruled that the Gideons Society practice of distributing Bibles to public school students in fifth grade classrooms was unconstitutional. The court found both the Gideons in-school presentation as well as the practice of stacking Bibles by the classroom door with the encouragement to take one to violate the Establishment Clause. Although the teachers did not distribute the Bibles, and the students were not required to take a Bible, the court found the practice to be an unconstitutional governmental endorsement of religion. The court noted that the availability of Bibles to students in schools carried the stamp of school endorsement simply because they were made available to students during instructional time and with the permission of the school. The fact that distribution occurs during school hours could lead a reasonable student to believe that the school endorses the program.

Equal Access Act

Religious clubs may hold meetings on public high school grounds in accordance with the Federal Equal Access Act as long as other similar non-curriculum related student groups are allowed to meet during non-instructional time; the club does not interfere with regular educational activities; and the school does not initiate, direct, sponsor, participate in, or promote during instructional time the religious activities of student clubs. Additionally, while faculty are commonly required to be present during student meetings for insurance purposes, their role should be restricted to a custodial, non-participatory role. These measures are in place to ensure the separation of church and state.

Under Federal Law, "nonschool persons may not direct, conduct, control, or regularly attend activities of student groups." 20 U.S.C. 2071 (c) (5). This statute ensures that the motivation for these meetings is based on genuine student interest, rather than a method of outside manipulation by adults for their own purposes.



Holiday Celebrations

If public schools hold holiday celebrations, they should make every effort to accommodate diverse faiths during the holiday season. Students cannot be forced to participate in any event that offends his or her beliefs, and school officials should make every effort to accommodate diverse faiths during the holiday season by including their customs, songs and traditional foods at parties and other in-school events. However, assemblies dominated by religious music would raise constitutional concerns.

The United States Supreme Court has determined that schools may celebrate the holidays and create displays as long as they do so within “the context of the Christmas season” and the religious component of their display does not dominate but simply represents one element of a holiday that has obtained secular status in our society. Lynch v. Donnelly, 465 U.S. 668, 679, and 691 (1984). Under this ruling, a Christmas tree would be appropriate while a cross or a nativity scene would not. Crosses and nativity scenes are purely religious symbols that have not gained secular status in our society and therefore may not be displayed in public schools.

Prayer at Athletic Events

In Santa Fe Independent School District v. Doe, 68 U.S. 4525 (2000), the United States Supreme Court ruled that a Texas school district’s policy permitting its student body to vote whether to have prayers before school football games and to elect a student chaplain to deliver the prayers over the loudspeaker violated the Establishment Clause. The Court rejected the argument that the decision to allow students to vote on the question of prayer relieved the school district of any constitutional responsibility if the students voted in favor of prayer.

As the Court explained: “[t]hese invocations are authorized by a government policy and take place on government property at government-sponsored school-related events.” Id. at 4529.

The Court also concluded that the school district’s ongoing and unconstitutional purpose had been to preserve the practice of prayer at football games, even though the wording of the school’s policy had changed during the course of litigation to omit any specific reference to “prayer.”

Finally, the Court held that the school district’s policy was facially unconstitutional regardless of the outcome of any particular student vote because it allowed the majority to determine the religious rights of the minority through an election.

The Court wrote: “Such system encourages divisiveness along religious lines and threatens the imposition of coercion upon those students not desiring to participate in a religious exercise. Simply by establishing the school-related procedure, which entrusts the inherently nongovernmental subject of religion to a majoritarian vote, a constitutional violation has occurred.”

Prayer at School Board Meetings

In Coles ex rel. Coles v. Cleveland Bd. of Educ., 171 F.3d 369 (6th Cir. 1999), a former student and teacher filed action against the Cleveland Board of Education and superintendent, alleging that the board’s practice of opening meetings with a prayer or moment of silence was unconstitutional. The 6th Circuit Court of Appeals held that the board’s practice of opening its meetings with a prayer violated the Establishment Clause, finding “the school board’s practice of opening its meetings with prayer leads to excessive entanglement in religious matters...” Id. at 385.

The Court observed that “[t]he very fact that school board meetings focus solely on school-related matters provides students with an incentive to attend the meetings that is lacking in other settings. The board makes policy on a wide range of issues directly affecting a student’s life in school. Be it dress codes, locker searches, changes in the curriculum, or funding for extracurricular activities, school board meetings are the arena in which all issues directly relevant to students are discussed and decided. The fact that the board regularly presents honors and awards to students at its meetings only provides added enticements for students to attend school board meetings. Further-

more, students who wish to challenge their suspension or expulsion from school are required by statute to air their grievances at a school board meeting. For such students, attendance at a board meeting is not a matter of choice, but a matter of necessity.” Id. at 381-2.

Ultimately, the court held that “...the policy of the Cleveland School Board is so inextricably intertwined with the public schools that it must be evaluated on the same basis as the schools themselves.” Id. at 383. Under this analysis the court found that the practice of beginning school board meetings with a prayer was unconstitutional.

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 contravenes 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 observed: “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, for example, would prevent or prohibit like-minded students from organizing a privately-sponsored baccalaureate service – provided that it was held separately from the school’s graduation program, 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 desire 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.

Moment of Silence

The quiet time for reflection must neither be intended to promote religious values and conduct nor be used to introduce group prayer into public schools. In 1985, the Supreme Court held that a school district may not require that students observe a moment of silence at the beginning of the school day when the purpose of such a requirement is that students use the time for prayer. Wallace v. Jaffree, 472 U.S. 38, 40 (1985).

As long as 1) the moment of silence is free from any direction by school officials, 2) there is no state coercion or element of preference during the moment of silence for a particular religion or for religion in general, and 3) students are left to meditate, reflect or pray silently as they see fit, the moment of silence does not violate the Establishment Clause. In summary, if the school tells students they may use the moment of silence as they wish, the activity does not violate the Constitution.

The fundamental principle underlying these decisions is that the Constitution commands that public schools may not take sides in matters of religion, and may not endorse a particular religious perspective or any religion at all. The First Amendment prohibits government policies and practices “respecting an establishment of religion, or prohibiting the free exercise thereof.” Both the Establishment Clause and the Free Exercise Clause operate to protect the religious liberty and freedom of conscience of all Americans.

“See You at the Pole”

Organized events such as “See You at the Pole” are permissible under certain conditions. “See You at the Pole” involves prayer meetings held before the start of the school day at a pre-arranged site on school grounds. Similar to guidelines outlined in the Equal Access Act, outside persons may not direct, conduct, control or regularly attend the activities of such student groups. Additionally, schools may not circumvent the ban against school-sponsored prayer by initiating such events and delegating the responsibilities to students, or by obtaining “permission” from parents. Furthermore, schools may not advertise or promote such events within the school either verbally or in writing. Within this framework schools prevent the impression of endorsement, equally respecting the practices of students of all religions.

Free Exercise of Religion

The ACLU has always defended students’ right to pray individually and voluntarily in school as long as they do not disrupt regular school activities. For example, students may be allowed to read their Bibles on the school bus or pray together before lunch; however, they may not force other students to read along or listen. We also have defended the Free Exercise rights of students of many faiths when government officials have interfered with their religious freedom. To cite just a few examples, the ACLU has defended: a high school basketball player in Alabama kicked off the team because he missed Sunday practice in order to attend church; an eighth grader in California barred from wearing a shirt that read “Real Women Love Jesus;” and a Vermont family who refused to provide their child’s Social Security Number to school authorities because of their fundamentalist Christian beliefs.

Summary

In conclusion, the state may neither prefer nor prohibit religious exercise but rather must remain neutral. “School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are non-adherents ‘that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.’” Santa Fe [citing Lynch v. Donnelly, 465 U.S., at 688 (1984) (O’Connor, J., concurring).]

“The First Amendment’s Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State. The design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere, which itself is promised freedom to pursue that mission.” Coles ex rel. Coles v. Cleveland Bd. of Educ., 171 F.3d 369 (6th Cir. 1999)