

# Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools

May 15, 2023

## II. Applying the Governing Constitutional Principles in Particular Public School Contexts Related to Prayer

### A. Prayer and Religious Exercise During Non-Instructional Time

Students may pray when not engaged in school activities or instruction, subject to the same rules designed to prevent material disruption of the educational program that are applied to other privately initiated expressive activities. Students also may read from religious materials; say a prayer or blessing before meals; and engage in worship or study religious materials with fellow students during non-instructional time (such as recess or the lunch hour) to the same extent that they may engage in nonreligious activities. Although school authorities may impose rules of order and pedagogical restrictions on student activities, they may not discriminate against student prayer or religious perspectives in applying such rules and restrictions.

### B. Organized Prayer Groups and Activities

Students may organize prayer groups and religious clubs to the same extent that students are permitted to organize other noncurricular student activity groups. Such groups must be given the same access to school facilities for assembling as is given to other noncurricular groups, without discrimination because of the groups' religious character or perspective. School officials should neither encourage nor discourage participation in student-run activities based upon the activities' religious character or perspective. Schools may take reasonable steps to ensure that students are not pressured to participate (or not to participate) in such religious activities. School authorities possess substantial discretion concerning whether to permit the use of school media for student advertising or announcements regarding noncurricular activities. However, where student groups that meet for nonreligious activities are permitted to advertise or announce their meetings—for example, by advertising in a student newspaper, making announcements on a student activities bulletin board or public address system, or handing out leaflets—school authorities may not discriminate against groups that meet to engage in religious expression such as prayer. School authorities may choose to issue appropriate, neutral disclaimers of the school's sponsorship or approval of noncurricular groups and events.

### C. Teachers, Administrators, and Other School Employees

Teachers, school administrators, and other school employees may not encourage or discourage private prayer or other religious activity.

The Constitution does not, however, prohibit school employees themselves from engaging in private prayer during the workday where they are not acting in their official capacities and where their prayer does not result in any coercion of students. Before school or during breaks, for instance, teachers may meet with other teachers for prayer or religious study to the same extent that they may engage in other conversation or nonreligious activities. School employees may also engage in private religious expression or brief personal religious observance during such times, subject to the same neutral rules the school applies to other private conduct by its employees. Employees engaging in such expression or observance may not, however, compel, coerce, persuade, or encourage students to join in the employee's prayer or other religious activity, and a school may take

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reasonable measures to ensure that students are not pressured or encouraged to join in the private prayer of their teachers or coaches.

School employees may participate in their personal capacities in privately sponsored baccalaureate ceremonies or similar events.

## D. Moments of Silence

If a school has a "moment of silence" or other quiet periods during the school day, students are free to pray silently, or not to pray, during these periods of time. Teachers and other school employees may not require or encourage students to pray, or discourage them from praying, during such time periods.

## E. Accommodation of Prayer and Religious Exercise During Instructional Time

Students may engage in prayer or religious expression during instructional time to the same degree they may engage in nonreligious private expression during such time. Students may, for example, bow their heads and pray to themselves before taking a test.

## F. Student Assemblies and Noncurricular Events

Student speakers at school assemblies and noncurricular activities such as sporting events may not be selected on a basis that either favors or disfavors religious perspectives. Where a student speaker is selected on the basis of genuinely content-neutral, evenhanded criteria, and the school does not determine or have control over the content of the student's speech, the expression is not reasonably attributed to the school and therefore may not be restricted because of its religious content (or content opposing religion) and may include prayer. In these circumstances, school officials may choose to make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's speech. By contrast, where school officials determine or have control over the content of what is expressed, such speech is attributable to the school and may not include prayer or content promoting (or opposing) religion.

## G. Prayer at Graduation

School officials may not mandate or organize prayer at graduation or select speakers for such events in a manner that favors religious speech such as prayer. Where students or other private graduation speakers are selected on the basis of genuinely content-neutral, evenhanded criteria, and schools do not determine or have control over their speech, however, that expression is not attributable to the school and therefore may not be restricted because of its religious content (or content opposing religion) and may include prayer. In these circumstances, school officials may choose to make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's speech.

## H. Baccalaureate Ceremonies

School officials may not mandate or organize religious baccalaureate ceremonies. However, if a school makes its facilities and related services available to other private groups, it must make its facilities and services available on the same terms to organizers of privately sponsored religious baccalaureate ceremonies. In addition, a school may disclaim official sponsorship or approval of

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events held by private groups, provided it does so in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

## III. Applying Constitutional Principles Regarding Religious Expression Other Than Prayer in Particular Public School Contexts

### A. Religious Literature

Public school 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 curricula or activities. Schools may impose the same reasonable time, place, or manner restrictions on distribution of religious literature as they do on non-school literature generally, but they may not target religious literature for more permissive or more restrictive regulation.

### B. Teaching about Religion

Public schools may not provide religious instruction, but they may teach *about* religion and promote religious liberty and respect for the religious views (or lack thereof) of all. For example, philosophical questions concerning religion, the history of religion, comparative religion, religious texts as literature, and the role of religion in the history of the United States and other countries are all permissible public school subjects. Similarly, it is permissible to study religious influences on philosophy, art, music, literature, and social studies. For example, public schools generally may allow student choirs to perform music inspired by or based on religious themes or texts as part of school-sponsored activities and events, provided that the music is not performed as a religious exercise and is not used to promote or favor religion generally, a particular religion, or a religious belief.

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, nor may schools promote or disparage such observance by students.

### C. Student Dress Codes and Policies

Public schools generally may adopt policies relating to student dress and school uniforms to the extent consistent with constitutional and statutory civil rights protections. Schools may not, however, target religious attire in general, or the attire of a particular religion, for prohibition or regulation. If a school makes exceptions to a dress code to accommodate nonreligious student needs, it ordinarily must also make comparable exceptions for religious needs. Students may display religious messages on items of clothing to the same extent and pursuant to the same conditions that they are permitted to display nonreligious messages. In addition, in some circumstances Federal or State law may require schools to make accommodations that relieve substantial burdens on students' religious exercise. School officials may wish to consult with their attorneys regarding such obligations.

### D. Religious Expression in Class Assignments and Homework

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious perspective of their submissions. Such

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home and classroom work should be judged by ordinary academic standards of substance, relevance, and other legitimate pedagogical objectives. Thus, if a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards (such as literary quality) and be neither penalized nor rewarded on account of its religious perspective.

## E. Excusals for Religious Activities

Public schools have discretion to permit students to attend off-premises religious instruction, provided that schools do not encourage or discourage participation in such instruction or penalize students for attending or not attending. Similarly, schools may excuse students from class to remove a burden on their religious exercise, including prayer or fasting, at least where doing so would not impose material burdens on other students. For example, it would be constitutional for schools to excuse students from class to enable them to fulfill their religious obligations regarding prayer, religious holidays, or other observances.

Where school officials have a practice of excusing students from class on the basis of requests for accommodation of nonreligious needs, religiously motivated requests for excusal may not be accorded less favorable treatment. In some circumstances, Federal or State law may require schools to make accommodations that relieve substantial burdens on students' religious exercise. School officials may wish to consult with their attorneys regarding such obligations.

## IV. Additional Requirements under the Equal Access Act and Other Federal and State Laws

In addition to the constitutional principles discussed above, public schools may also be subject to requirements under Federal and State laws relevant to prayer and religious expression. (Such Federal and State laws may not, however, obviate or conflict with a public school's Federal constitutional obligations described herein.)

For example, the Equal Access Act, 20 U.S.C. § 4071, is designed to ensure that student religious activities are accorded the same access to Federally funded public secondary school facilities as are student secular activities. Under the Equal Access Act, a public secondary school receiving Federal funds that creates a "limited open forum" may not refuse student religious groups access to that forum.<sup>[21]</sup> A "limited open forum" exists "whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time." 20 U.S.C. § 4071(b). Such meetings, as defined and protected by the Equal Access Act, may include a voluntary and student-initiated prayer service, scripture reading, or other worship exercise. Under the Act, a public secondary school receiving Federal funds must also allow student religious groups to use school media—including the school's newspaper, public address system, and bulletin board—to announce their meetings on the same terms as other noncurriculum-related student groups are allowed to use school media. Any policy concerning the use of school media must be applied to all noncurriculum-related student groups in a nondiscriminatory matter. Schools may, however, issue appropriate, neutral disclaimers of the school's sponsorship or approval of noncurricular groups and events. Consistent with the First Amendment, the Equal Access Act also states that it should not be construed (among other things) to authorize a public school or its officials to influence the form or content of any prayer, require any person to participate in prayer, or abridge the constitutional rights of any person. 20 U.S.C. § 4071(d).