



Religion in Public Schools

What does federal law require regarding student religious expression?

Federal law requires the Secretary of the United States Department of Education (U.S. DOE) to issue guidance on constitutionally protected prayer in public schools.¹ The purpose of the guidance is to provide state education agencies, districts, and the public with information on the current state of the law concerning prayer in public schools and to clarify the extent to which prayer in public schools is legally protected.²

In order to receive federal funding under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, each school district must certify in writing to the Florida Department of Education (DOE) that its policies do not prevent or deny student participation in constitutionally protected prayer. DOE must annually submit to the U.S. DOE a list of school districts that have not filed the certification or against which complaints have been filed.³

What religious freedoms do public school students have?

The relationship between religion and government in the United States is governed by the First Amendment to the United States Constitution, which both prevents the government from establishing religion and protects privately initiated religious expression and activities from government interference and discrimination.^{4,5} According to the guidance provided by the U.S. DOE these First Amendment freedoms include the following:

- ❖ Students may pray individually or in groups so long as they are not disruptive.

¹ 20 U.S.C. s. 7904(b).

² U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools* (Feb. 7, 2003), available at http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html [hereinafter U.S. DOE Guidance].

³ 20 U.S.C. s. 7904(b). Each year DOE sends a memorandum and blank certification form to the district school superintendents. DOE has received the certifications back. This year, such a memorandum was sent on August 13, 2010. To date, about 30 certifications have been returned. Email, Florida Department of Education, Director Governmental Relations (Aug. 26, 2010).

⁴ The relevant portions of the First Amendment provide: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech. U.S. Const., amend. 1. The U.S. Supreme Court has held that the Fourteenth Amendment makes these provisions applicable to all levels of government—federal, state, and local—and to all types of governmental policies and activities. See *Everson v. Board of Education*, 330 U.S. 1 (1947) and *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

⁵ The 2010 Florida Legislature passed legislation that expressly protected First Amendment freedoms (creating s. 1003.4504, F.S.) providing that "district school boards, administrative personnel, and instructional personnel are prohibited from taking affirmative action, including, but not limited to, the entry into any agreement, that infringes or waives the rights or freedoms afforded to instructional personnel, school staff, or students by the First Amendment to the United States Constitution, in the absence of the express written consent of any individual whose constitutional rights would be impacted by such infringement or waiver." Section 1, ch. 2010-214, L.O.F.

- ❖ Students may express their religious beliefs in the form of reports, homework, and artwork. Teachers may not reject or correct such submissions simply because they include a religious symbol or address religious themes.
- ❖ Students may participate in before or after-school religious activities.
- ❖ Students may speak to, and attempt to persuade, their peers about religious topics just as they may regarding politics and other topics.
- ❖ Students may, as explained below, organize on-campus religious activities and groups during non-instructional hours.⁶

Florida law requires the DOE to annually distribute these guidelines to district school board members, superintendents, school principals, and teachers.⁷

What limitations are placed on school officials by the First Amendment of the United States Constitution regarding religious expression in public schools?

The Establishment Clause of the First Amendment of the United States Constitution prohibits government speech endorsing religion. The U.S. Supreme Court has repeatedly held that the First Amendment requires public school officials to be neutral in their treatment of religion, showing neither favoritism toward nor hostility against religious expression such as prayer.⁸ Therefore, teachers and other school personnel, as government officials, may not lead students in prayer, devotional readings from religious texts, or other religious practices.⁹ May public schools teach students about the Bible or religion?

⁶ U.S. DOE *Guidance*, *supra* note 2.

⁷ Section 1002.205, F.S.

⁸ *See, e.g., Everson*, 330 U.S. at 18 (the First Amendment “requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them”); *see also Good News Club v. Milford Central School*, 533 U.S. 98 (2001). In *Holloman ex rel. Holloman v. Harland*, the United States Court of Appeals for the Eleventh Circuit revisited its previous ruling in *Chandler II* (*see infra* note 14) after an Alabama public school student brought action against a teacher for soliciting prayer requests and conducting a daily “silent moment of prayer.” The court reversed a lower court’s decision in favor of the teacher and ruled that simply because the idea initially came from a student, this type of prayer could not be considered “student-initiated” (and therefore constitutionally protected) if the school “encouraged, facilitated, or in any way conducted the prayer.” *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1287 (11th Cir., Ala., 2004).

⁹ *See Engel v. Vitale*, 370 U.S. 421 (1962)(invalidating state laws directing the use of teacher-led prayer in public schools) and *School District of Abington Township Pennsylvania v. Schempp*, 374 U.S. 203 (1963)(invalidating state laws requiring public schools to begin the school day with Bible readings and prayer). In *Santa Fe Independent School District v. Doe*, the United States Supreme Court ruled that the school district’s policy permitting student-led, student-initiated prayer authorized by student election violated the Establishment Clause. In the case, the Court ruled that the prayers did not amount to private speech and that the school district policy of allowing such prayers was impermissibly coercive. The Court ruled that because the speech was authorized by government policy and was delivered on government property at government-sponsored, school-related events, and because the student delivering the speech was elected by a majority of the student body (effectively silencing any minority views), it could not be considered private speech. The Court also ruled that schools could not force students to make the decision between attending these events and avoiding potentially offensive religious rituals. *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 302-304, 311-312 (2000).

Yes. Florida law authorizes public schools to offer a secular and objective study of the Bible and of religion.¹⁰ Thus, courses studying the Bible as literature or comparing religions are

permissible; a course offered with the intent of indoctrinating students in the practices of a particular religion is impermissible.¹¹

DOE's 2010-11 Course Code Directory includes several high school level Humanities and Social Studies courses that address religious topics; for example, Introduction to the Bible I and II, Religious Studies, World Religions, Jewish History, Western Civilization.¹²

May students pray during the school day?

Yes. Florida law authorizes district school boards to recognize a two-minute moment of silence at the start of each school day or each school week. Students may use this time to pray or meditate.¹³ School officials may neither encourage nor discourage students from praying during such times.¹⁴

Further, according to the U.S. Supreme Court, the United States Constitution does not prohibit privately initiated, voluntary student prayer during the school day.¹⁵ Students may pray, read religious texts, or study religious materials in a non-disruptive manner when not engaged in school activities or instruction. School authorities may regulate such activities, but must do so in a manner that does not discriminate against religious expression.¹⁶ May students include religious messages in speeches delivered at school-sponsored events such as graduation ceremonies or athletic contests?

It depends. The U.S. Supreme Court has invalidated school board policies that allow school officials to invite, encourage, or arrange for speakers to deliver religious messages at school-sponsored events.¹⁷ However, permitting students to independently decide whether to include religious messages in speeches delivered at such events is acceptable. In such cases, the student speaker must be free to deliver any message, whether it be sectarian, secular, or both.¹⁸

¹⁰ Section 1003.45(1), F.S.

¹¹ *Abington*, 374 U.S. at 225 (statute providing for Bible readings in public schools is unconstitutional).

¹² Florida Department of Education, Bureau of Instruction and Innovation, *2010-211 Course Code Directory*, Section 3: Grades PreK to 12 Education Courses (Aug. 2010) available at <http://www.fldoe.org/articulation/CCD/files/1011CCDBasic9-12.pdf>.

¹³ Section 1003.45(2), F.S.

¹⁴ U.S. DOE *Guidance*, *supra* note 2. In *Chandler v. Siegelman*, (*Chandler II*) the United States Court of Appeals for the Eleventh Circuit ruled that students are allowed to take part in group prayers at school functions. The court reviewed a lower court's injunction against the enforcement of an Alabama statute permitting student-initiated prayer at school-related events. Finding that the injunction wrongly assumed that any religious speech in schools is attributable to the State, the appellate court held that the injunction was overbroad and found that as long as the speech was truly student-initiated and not the product of school policy which encourages it, the speech is private and protected. *Chandler v. Siegelman*, 230 F.3d 1313, 1316-1317 (11th Cir., Ala., 2001), *cert. denied*, 533 U.S. 916 (2001).

¹⁵ *Westside Community Schools v. Mergens*, 496 U.S. 226, 250 (1990).

¹⁶ U.S. DOE *Guidance*, *supra* note 2.

¹⁷ *Lee v. Weisman*, 505 U.S. 577, 587-588 (1992); *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 306 (2000).

¹⁸ *Adler v. Duval County School Board*, 250 F. 3d 1330, 1342 (11th Cir. May 11, 2001), *cert. denied*, 534 U.S. 1065 (2001). In *Adler*, the United States Court of Appeals for the Eleventh Circuit upheld a lower court's ruling that the school board's policy of permitting a graduating student, elected by the graduating class, to deliver an unrestricted

In 2001, this issue was litigated. The U.S. Eleventh Circuit Court of Appeals upheld, and the U.S. Supreme Court let stand, a Duval County school board policy allowing student-led and initiated messages, including prayers, at school events.¹⁹

May public schools allow student groups to meet on school grounds for religious activities during non-instructional hours?

Yes. Students may organize prayer groups, religious clubs, and "see you at the pole" gatherings during non-instructional hours to the same extent that students are permitted to organize other non-curricular student groups.²⁰ If a district school board has a policy of allowing access to school facilities by student groups, it must not deny access to groups that are religious in nature. Such action violates the Free Speech Clause of the First Amendment.²¹

Where can I get additional information?

Florida Department of Education

Office of Federal Programs

(850) 245-0509

<https://www.fldoe.org/nclb/>

Florida House of Representatives

Education Committee

(850) 488-7451

<http://www.myfloridahouse.gov>

message at graduation ceremonies did not violate the Establishment Clause of the First Amendment on its face. The court ruled that the primary factor in distinguishing state speech from private speech is the element of state control over the content of the message. In distinguishing *Santa Fe*, see *supra* note 10, the court noted that, in *Santa Fe*, "the speech was 'subject to particular regulations that confine the content and topic of the student's message ... and the policy 'by its terms, invites and encourages religious messages. ... Those two dispositive facts are not present in [*Duval County*]. First, the *Duval County* policy does not contain any restriction on the identity of the student speaker or the content of the message that might be delivered. Indeed, school officials are affirmatively forbidden from reviewing the content of the message, and are expressly denied the opportunity to censor any non-religious or otherwise disfavored views. ... Second, unlike *Santa Fe*'s policy, the *Duval County* policy does not 'by its terms, invite and encourage religious messages. ... On the contrary, the policy is entirely neutral regarding whether a message is to be given, and if a message is to be given, the content of that message." *Id.* at 1336, 1337.

¹⁹ *Id.*; see *supra* note 18.

²⁰ U.S. DOE *Guidance*, *supra* note 2.

²¹ *Good News Club*, 533 U.S. at 120.

