

# **Religious Liberty in Your Classroom and School**

*A Primer*

The law concerning religious liberty and the schools is confusing to many people. It is easier to understand if we distinguish how it applies to individual action as opposed to government – in this case, public school – action.

Just remember: Individuals have the right to express religious beliefs; public schools do not.



**A**mong the great principles upon which this country is based is the right to express one's religious beliefs and the right to be free from religious coercion. Yet every year, parents of students in public schools bring complaints against school districts because either their child is not allowed to express his or her religious beliefs or because they object to religious activities taking place in school.

Educators may struggle with the conflict between religious expression and ensuring students' rights are not violated by letting students or school officials express their religion in a way that makes it seem that the school itself is endorsing a religion. The ACLU of Arkansas is providing you with this guide to help you manage this issue in your public school or classroom and minimize conflicts that may result from religious activities on school grounds.

The First Amendment to the Constitution protects individuals from government interference in their right to decide whether to pray, when to pray and to whom to pray. Students may pray in public school as long as they do not disrupt educational activities or compel others to pray with them. Schools may allow religious clubs and groups to meet during nonschool hours under specific conditions; however, it's important to know that school-sponsored prayers are forbidden, even when they are voluntary and are nonsectarian or nonevangelical. In this area, certain rules have been set forth by the courts<sup>1</sup>. This primer will help you navigate those rules.

This guide is an effort to help you and your schools avoid complaints as well as legal action and to clarify what can be a confusing situation. This guide is not exhaustive but is meant to equip you with general understanding of the law.

<sup>1</sup> Much of the information in this guide was obtained from Anne Marie Lofaso, *Religion in the Public Schools: A Road Map for Avoiding Lawsuits and Respecting Parents' Legal Rights* (2009), available on line at <http://religioninthepublicschools.com/>. Other information can be found at the publications listed at [www.freedomforum.org](http://www.freedomforum.org).

# The First Amendment Protects Religious Liberty

The First Amendment contains three important clauses that govern religion in the public schools:

The first words of the First Amendment provide that “Congress shall make no law respecting an establishment of religion...” This clause is called the Establishment Clause, and it prohibits public schools from endorsing or encouraging religion in any way.

The First Amendment further provides that “Congress shall make no law . . . prohibiting the free exercise [of religion].” This clause is called the Free Exercise Clause, and it ensures that all people shall be free to exercise their sincere religious beliefs free from governmental coercion or interference.

The First Amendment additionally provides in the Free Speech Clause that “Congress shall make no law . . . abridging the freedom of speech.” This means the Constitution requires school officials to allow students to express their religious views, within certain guidelines.



## TEST YOUR UNDERSTANDING

- 1: **T or F** School officials must demonstrate neutrality regarding religious beliefs in school.
- 2: What is the Establishment Clause? Can you recite it?
- 3: How does the Constitution ensure all people will be able to freely exercise their religious beliefs?
- 4: **T or F** The fact that school officials cannot encourage or participate in religious activities violates the rights of those officials.
- 5: How does the First Amendment protect religion if it prohibits people (school officials) from expressing their religious views under certain circumstances?

Answers: 1. T; 2. “Congress shall make no law respecting an establishment of religion...” 3. Free Exercise Clause. 4. F; 5. Religious liberty is protected in two ways: 1) by prohibiting government officials from endorsing religious views, and 2) by protecting the right of people (not acting as government officials) to believe whatever they want, go to any house of worship they want, and otherwise express their religious views.



“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 press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

## Prayer In the School

## 2 Lesson

It is not unconstitutional for students to pray in school. In fact, students have the constitutional right to pray in school—on their own, or with others, any time that does not “materially disrupt” school activities. In other words, students can pray at any time they can otherwise talk: before school, between classes, during lunch, etc. Of course they may pray silently at their desk or anywhere else at any time.

Other wholly student-initiated religious activities held on school grounds (like “See you at the Pole”) are also constitutionally permissible under certain conditions:

- \* The activity must be genuinely student-initiated, voluntary and not fostered, supported or led by public school staff.
- \* The activity must take place during noninstructional hours.
- \* Outside persons may not direct, conduct, control or regularly attend the activities of the student groups.
- \* Schools may not advertise or promote such events within the school either verbally or in writing, the same as with any other pure student groups.

Court cases have settled this: Institutionalized prayer in school is unconstitutional because it violates the Establishment Clause (See Lesson No. 1). This means:

- \* Educators may not require students to recite prayers or to read from the Bible.
- \* Educators may not organize “student-initiated” prayer.
- \* Schools may not set aside a moment for silent prayer.

A school principal once tried to get around the prohibition against school sponsored prayer at graduation by asking a student to conduct a poll of seniors to find out whether they wanted a “student-initiated” prayer at graduation. This was clearly not a “student-initiated” activity and was therefore unconstitutional.

Other cases:

*Engel v. Vitale*, 370 U.S. 421 (1962) (daily use of Regents’ prayer in New York public school classrooms unconstitutional).

*School Dist. of Abington Tp. v. Schempp*, 374 U.S. 203 (1963) (Pennsylvania statute mandating that students recite at least ten verses from the Bible and recite the Lord’s Prayer each school morning violated the Establishment Clause).

*Wallace v. Jaffree*, 472 U.S. 83 (1985) (Alabama’s silent meditation and prayer statute violated the Establishment Clause).

### TEST YOUR UNDERSTANDING



1 : T or F Any prayer in school is unconstitutional

2 : What kind of prayer is unconstitutional in schools?

- A. Christian
- B. Institutionalized
- C. All

3 : Under what conditions may students conduct religious activities on school grounds?

4 : Under what conditions may students pray in school?

Answers: 1. F; 2. B; 3. Student-initiated, without direction, control or regular attendance by outside individuals and without school advertisement or promotion of the event.  
4. Any time that does not disrupt class time or school activities, or silently at any time.



# Lesson 3

## Prayer at School Functions

As we learned in Lesson No. 2, institutionalized prayer in public schools is unconstitutional. This means that prayer at school functions that is part of the program and sponsored or organized by the school is unconstitutional. Here are some examples:

### Graduation

Students have the right to include references to God in their Valedictory speeches, for instance. But an “invocation” or “benediction” may not be part of the school program, even if conducted by a student. Nor may the school allow the student to lead the audience in prayer.

Did you know that public schools may not invite members of the clergy to graduation to give a prayer or invocation? However, the absence of prayer from a public school’s official graduation does not prohibit students as a group from affirming their religious beliefs before or after the ceremony.

### Baccalaureate Services

Students have the right to organize a privately-sponsored baccalaureate service, provided that it is held separately from the school’s graduation program, is entirely voluntary, and is neither sponsored, advertised nor supervised by school officials.

### Athletic Events

As permitted by the Free Exercise and Free Speech Clauses, students may exercise their religious beliefs and practices by gathering together to pray before a game, as long as public school coaches and other staff members do not participate. Again, students may pray by themselves at any time.

Coaches and other school officials may not encourage the prayer by:

- Giving students access to public-speaking equipment
- Kneeling
- Telling students that it is time for prayer

Students cannot lead prayers at school events if it creates the impression that the school is sponsoring the prayer. This means that students should not lead prayers at any school event, including athletic competitions.



### TEST YOUR KNOWLEDGE

- 1 : **T or F** Schools may invite a clergy member to say or read a prayer at graduation ceremonies.
- 2 : **T or F** Students may lead prayers over public address systems at school athletic contests.
- 3 : **T or F** Students may not pray or make reference to God during a graduation speech.
- 4 : **T or F** Students may not lead the audience in a prayer during graduation.
- 5 : Who can organize a Baccalaureate ceremony for graduation?  
A. Students  
B. The school  
C. Both

Answers: 1. F; 2. F; 3. F; 4. T; 5. A.



## Prayer at School Board Meetings

Did you know that prayer at school board meetings is also unconstitutional?

In *Coles ex rel. Coles v. Cleveland Board of Education*, 171 F.3d 369 (6<sup>th</sup> Cir. 1999), the court found that the school board's practice of opening its meetings with a prayer violated the Establishment Clause. The court focused on the fact that the school board, unlike other public bodies, is an integral part of the public school system. *Id.* at 381.



*Lee v. Weisman*, 505 U.S. 577 (1992) (Establishment Clause forbids public schools inviting members of clergy to offer prayers as part of official graduation ceremony). Prayer, even nonsectarian or nonproselytizing, is unconstitutional. The Court, in reaching its conclusion in *Lee*, focused on the subtle pressures that accompany any religious exercise conducted as part of a school-sponsored event. As the Court stated: “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.

In *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), the Supreme Court held that student-led, student-initiated religious speech over a school's public address system is unconstitutional if it occurs in a context that creates the appearance of school sponsorship or support. In *Santa Fe*, the Texas school district had a policy of permitting its student body to vote whether to have prayers before school football games and to elect a school chaplain to deliver the prayers over the public address system. The Court stated: “Such a 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.” *Id.* at 317.

In both *Lee* and *Santa Fe v. Doe*, 530 U.S. 290 (2000), the Court emphasized the increased threat of coercion caused by public and peer pressure to attend important school functions.

See *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5<sup>th</sup> Cir. 1995) (holding unconstitutional school district's practice of allowing the basketball coach to initiate prayers before games and practices).



# Curriculum Issues: Teaching of the Bible or Other Religious Texts, Evolution, Creation Science and “Intelligent Design”

The Bible can be part of a curriculum – for high school students only – if the teacher focuses on its literary or historic value. Teachers may not, however, support or oppose any particular religious beliefs or religion in general in that instruction.

## What does this mean?

- Public schools may provide instruction about religious traditions and beliefs, including the history of religion, sacred writings as literature, the role of religion in history, and on art, music and literature as long as it is taught in an objective, unbiased way, and does not advocate or criticize either religion in general or any particular beliefs.
- Schools or school districts **cannot forbid teachers from teaching evolution** as part of their curriculum; in fact, the teaching of evolution is now part of the Arkansas benchmarks for biology.
- Similarly, it is well settled that **public schools cannot require teachers to teach creationism or “creation science”** along with evolution as part of the high school science curriculum.
- Teachers **cannot of their own accord teach creationism** under any circumstances.
- Teachers **cannot refuse to teach evolution** on account of personal religious reasons.

## What about “Intelligent Design”?

Teachers may not teach “Intelligent Design.” The only court to have considered the question concluded that the teaching of “Intelligent Design” is unconstitutional. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707 (M.D. Pa. 2005). The court decided that “Intelligent Design” **is not science**, and that the school district’s purpose was to advance an inherently religious view. (The court held that teaching “Intelligent Design” as an alternative to Darwin’s evolutionary theory violates the Establishment Clause because it is a religious view, a relabeling of creationism, and not a scientific theory.)

While “study of religions and of the Bible from a literary and historic viewpoint, presented objectively as part of a secular program of education” is acceptable, “the State may not adopt programs or practices in its public schools . . . which ‘aid or oppose’ any religion.” *Epperson*, 393 U.S. at 106 (citation omitted).

*Epperson v. Arkansas*, 393 U.S. 97 (1968) (Arkansas statutes forbidding teaching of evolution in public schools violated Establishment Clause).

*Edwards v. Aguillard*, 482 U.S. 578 (1987) (Louisiana statute requiring that instruction on evolution be accompanied by teaching on creation science violated Establishment Clause). The Court found that the Louisiana statute had no identifiable purpose, but that the “pre-eminent purpose of the Louisiana Legislature was clearly to advance the religious viewpoint that a supernatural being created humankind.” *Id.* at 591.

## Case History



## TEST YOUR KNOWLEDGE

1 : T or F The Bible may not be taught in any lesson or in any context.

2 : Discussion Question: How does “Intelligent Design” fit into this discussion?

Answers: 1. F; 2. “Intelligent Design,” like Creationism, cannot be required in an effort to “balance” the teaching of evolution, and the only court to have considered “Intelligent Design” decided that its teaching is unconstitutional because it advances the beliefs of a specific religion.





What can students wear to school to express their religious views, constitutionally speaking? In the absence of a neutral school uniform policy, a student can generally wear jewelry or clothing bearing religious symbols or a religious message, for instance, as long as the message is not considered vulgar, lewd, or advocating a violation of the law, or would cause a “**substantial**” disruption or materially interfere with classroom activities. Schools may not prohibit religious messages or symbols because of the religious viewpoint.

Public schools can regulate dress with dress codes, as long as those codes are **content-neutral and unbiased, and they provide opt-out provisions for religious or political or philosophical reasons**. In other words, schools must allow exceptions to their dress codes to accommodate students’ individual religious beliefs.



## TEST YOUR UNDERSTANDING

- 1: **T or F** If a school implements a uniform policy it cannot constitutionally make exceptions for individual student religious needs, such as head coverings.
- 2: Is it constitutional for students in a school that has no dress code to wear t-shirts to school with religious messages on them? Discuss.

Answers: 1. F; 2. Students may wear religious messages on t-shirts, etc., if the message is not disruptive or vulgar.



See *Littlefield v. Forney Indep. County Sch. Dist.*, 268 F 3d 275, 293-94 (5<sup>th</sup> Cir. 2001) (Opt-out procedure of public school district’s mandatory school uniform policy requiring parents with bona fide religious or philosophical objections to apply for exemption did not violate First Amendment’s free exercise clause); *Isaacs v. Bd .of Educ.*, 40 F.Supp. 2d, 335, 337-38 (D. Md. 1999) (religious exemption from “no hats” school policy was constitutional).

# Lesson 6 Religious Holidays

Here's the basic rule for religious holiday celebrations in public schools: *Schools may teach about religious holidays, but may not celebrate them.*

What does that mean?

- \* A school's curriculum (teaching about religious holidays) may not favor one religion over another.
- \* Teaching about religious holidays must have a secular purpose in a public school.
- \* Religious holiday teaching must neither inhibit nor advance religious beliefs.
- \* Such teaching cannot foster government entanglement with a religion or religious belief.
- \* Schools may display holiday symbols as long as they are displayed with other holiday decorations symbolizing different beliefs.



## TEST YOUR KNOWLEDGE

- 1 : **T or F** Schools cannot display any holiday symbols that are religious.
- 2 : Under what conditions can a school teach about religious holidays?
- 3 : Give an example of a school teaching about a religious holiday but not celebrating it.

Answers: 1. F; 2. Such teaching cannot advance one religion over another, it must fulfill a secular purpose, it cannot foster or create government involvement in a religion. 3. For example, a school may teach about the historic context of Hanukkah, but it may not hold a candle-lighting service in celebration of the holiday.



- \* *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).
- \* *See Skoros v. City of New York*, 437 F.3d 1 (2d Cir. 2006) (school holiday display policy which permitted menorah, star and crescent, and other holiday symbols to be used in combination, but prohibited nativity scene did not violate Establishment Clause but was used to teach about diverse cultures and traditions).
- \* Admittedly, the “Supreme Court’s decisions regarding holiday displays have been marked by fine line-drawing, and therefore it is not easy to determine whether particular displays satisfy the Court’s standards.” *ACLU v. Schundler*, 168 F.3d 92, 105 (3<sup>rd</sup> Cir. 1999). Courts, however, have defined certain symbols, such as the menorah and Christmas tree, as having both religious and secular meaning, and it would “be prudent ... to incorporate these symbols into a display that celebrates cultural and religious diversity” rather than purely religious symbols such as the nativity scene. *Lofaso*, at p. 94.

# Distribution of Bibles or Other Religious Materials

## 7 Lesson

Allowing religious groups to provide religious materials to students on primary school grounds or in secondary schools where access is not granted to all outside groups is not permissible because it violates the Establishment Clause. This includes both handing out materials to students in class or leaving them on a table in the hall or other place where the public does not as a rule have the ability to leave materials.

Students have the right to read the Bible or other religious texts at school during noninstructional hours.

“Congress shall make no law respecting an establishment of religion....”

What does this mean?  
Schools cannot allow any groups (such as the Gideons) to distribute Bibles to elementary school students on school property during the school day.

The Establishment Clause



### TEST YOUR KNOWLEDGE

1 : T or F It is not permissible for the Gideons to distribute Bibles on school property.

Answers: 1. T



***Roark v. South Iron R-1 Sch. Dist.***, 573 F.3d 556, 561 (8<sup>th</sup> Cir. 2009) (upholding permanent injunction enjoining school district from “allowing distribution of Bibles to elementary school children on school property at any time during the school day.” )  
***See also Berger v. Rensselaer Cent. Sch. Corp.***, 982 F.2d 1160 (7<sup>th</sup> Cir. 1993) (school policy allowing classroom distribution of Gideon Bibles to fifth grade students violated Establishment Clause). In general, allowing religious groups to provide religious materials to students on public school grounds during the school day violates the Establishment Clause.

### Case History

## Student Religious Clubs: The Equal Access Act

**Can students participate in religious clubs at school?** The Equal Access Act (EAA) is a federal law that generally requires a public school to allow student religious clubs to use schools facilities on the same bases as provided to other student clubs that are not related to the school's curriculum.

It is important to remember that the EAA prohibits discrimination against *student* groups, and only applies to public *secondary schools* that provide a "limited open forum"; essentially, schools that allow *students* to form other clubs must also allow students to form religious clubs.

The purpose of the EAA is to ensure schools will not discriminate against student groups on the basis of the content or viewpoint of the group's message. Schools must grant access to school facilities and resources to religious groups on the same basis as nonreligious groups. Access, however, is restricted to the requirements of the statute. Once a school is obligated under the EAA to provide access to religious clubs, the religious clubs are entitled to the same privileges granted to other clubs, including the use of a school bulletin board and the public address system.

The statute provides that it is "unlawful for any public secondary school that receives Federal financial assistance and that has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings." 20 U.S.C. § 4071(a).

"A public secondary school has a limited open forum 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). "[N]oninstructional time" means time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends." 20 U.S.C. § 4072(4). Even by allowing "only one 'noncurriculum related school group' to meet, the Act's obligations are triggered and the school may not deny other clubs, on the basis of the content of their speech, equal access to meet on school premises during noninstructional time." *Bd. of Educ. v. Mergens*, 496 U.S. 226, 236 (1990).

Secondary schools are classified by the Arkansas Department of Education as grades 7 through 12, or any middle school having a combination of grades 5 through 8.

Requirements of the EAA:

- ✦ There is no sponsorship of the meeting by the school, the government or its agents or employees;
- ✦ Employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity;
- ✦ The meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and
- ✦ Nonschool persons may not direct, conduct, control, or regularly attend activities of student groups." 20 U.S.C. § 4071(c).





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## TEST YOUR KNOWLEDGE

1: **T or F** Student religious groups may have the same access to school facilities as other nonreligious students groups may have.

2: **T or F** Employees of the school may participate in student religious groups' activities on school grounds without violating the law.

V

Answers: 1. T, 2. F

*Mergens*, 496 U.S. at 247 (public secondary schools must give religious clubs the same official recognition and access given to other student clubs, including being a part of the student activities program, access to the school newspaper, bulletin boards, public address system, and annual Club Fair).



What is the difference between a school expressing the religious viewpoint of the majority of students at the school and the student expressing his or her religious views? When the school endorses a particular religious viewpoint, it is an act of government endorsement of religion. When a *student* expresses her religious views, she is exercising her constitutional rights.

It is the prohibition against government endorsement of religion that protects *everyone's* religious liberty. Those who want their children schooled in a religious environment have the right to send their children to a private religious school of their choice. Those who want their children to learn religion at home, and not at school, also have that right. We have this freedom over one of the most important parts of our lives – our religious views – because we do not let the government dictate what our religious views should be – no matter how many people in a school district or town may share *them*. Our system does not allow the majority to impose its views on the minority.

Because of the First Amendment, there is no greater religious diversity, religious tolerance, or religious freedom anywhere than there is here in the United States.

“The First Amendment’s Religion Clauses mean that religious beliefs and religious expressions are too precious to be either proscribed or prescribed by the State.”

*Lee v. Weisman*, 505 U.S. 577, 599 (1992)

- \* School districts should encourage all students and staff members to appreciate and tolerate each other's religious beliefs or lack of beliefs.
- \* Tolerance of religious differences is a fundamental principle on which our country was founded.
- \* Central to the First Amendment's guarantee of religious freedom is its prohibition against favoring one religion over another and prohibition against government endorsement of any particular religion or religious belief.



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