

# Findings



Dedicated to the  
Preservation of the Family

## Religious Freedom in Schools

### *Guidelines for Students and Teachers in Public Schools*

*Provided by the N.C. Office of the Attorney General and the U.S. Department of Education*



One of the most contentious and confusing issues involving public education today is the proper role of religious expression in government-run schools. With tensions occasionally

felt between individuals who want to exercise their faith and school officials who want to avoid religious entanglements, it is helpful for everyone to understand how the current laws apply to this issue. The following information is taken from publications of the N.C. Attorney General's office and the U.S. Department of Education. It is provided as a tool for students, parents and teachers who have questions about the legally recognized boundaries of religious activity in public schools, and should help to shed some light on what our state and federal government have to say on this important subject.

### **State Information**

The information provided here was published by the N.C. Office of the Attorney General and is available online at <http://www.jus.state.nc.us/crframe.htm>.

### **Religious Expression in North Carolina Public Schools**

The United States Constitution guarantees religious liberty through the First Amendment which says that the government "...shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

Both parts of this guarantee of religious liberty--the Establishment Clause and the Free Exercise Clause--apply to public schools because public schools are entities of the government.

Public schools are not required to be "religion-free zones." The Constitution, Congress, and the Courts permit a wide

range of voluntary religious activity in and around public schools. An individual's right derived from the Free Exercise Clause to engage in religious activities in school or on school property must frequently be balanced with the Establishment Clause and the necessity of maintaining public schools for their intended educational purposes. The proper balance between these competing interests is the subject of constant judicial review.

The following questions are frequently asked by school officials and others. The answers reflect the law as established by U.S. Supreme Court decisions and federal statutes.

#### **Q. May students and teachers pray and engage in religious discussion while at school?**

A. Yes. The Supreme Court has said students have the same right to engage in individual or group prayer and religious discussion on their own time during the school day as they do to engage in other comparable, non-disruptive activities. For example, students may read their Bibles or other scriptures during free periods and lunch, say grace before meals, and pray before tests.

When teachers and administrators are not acting in their official capacities, such as in the teachers' lounge when they are "off-duty," they may express their religious views and pray in a non-disruptive manner. However, teachers and administrators may not encourage or discourage students' religious activity, nor may they participate in such activity while acting in their official capacities.

#### **Q. May a student include his or her religious beliefs in assignments?**

A. Yes. 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. Teachers are free to grade assignments in accordance with the ordinary academic standards of substance and relevance.

#### **Q. May students distribute religious literature at school?**

A. Yes. Students have a right to distribute religious literature on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. School officials may only impose the same reasonable time, place and manner or other constitutional restrictions on distribution of religious literature as they do on non-school literature generally. They may not single out religious literature for special regulation or permission.

#### **Q. What happens if a student or his or her parent objects to the content of a particular lesson on religious grounds?**

A. School officials have the authority to excuse students from lessons that are objectionable to either the student or their parents on religious or other conscientious grounds.

#### **Q. May students be released from school to participate in off-campus religious activities?**

A. Yes. School officials have the authority to grant reasonable requests for permission to attend off-premises religious instruction, provided that schools do not encourage or discourage participation or penalize those who do not attend.

#### **Q. What if students want to wear religious attire to school?**

A. School officials may enforce neutral dress codes of general applicability and the requirement of uniforms may be enforced as long as the burden to any affected religious practice is incidental. Religious attire may not be singled out for suppression but is subject to the same rules as generally apply to comparable non-religious attire.

#### **Q. May schools teach about religious holidays?**

A. Yes. Public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of holidays. Schools may not, however, observe holidays as religious events or promote such observance by students.

**Q. What aspects of religion may teachers discuss in the classroom?**

A. Permissible instruction may include discussions about the history of religion; comparative religion; religious writings as literature; and the role of religion in history.

**Q. Can public school teachers discuss moral values in the classroom if those values are also held by a particular religion?**

A. Yes. Schools may play an active role with respect to teaching about civic values and the moral code that holds us together as a society. The fact that some of these values are held also by religions does not make it unlawful to teach them in school.

**Q. May student-run religious groups meet at school?**

A. Yes. The federal Equal Access Act provides that student-run religious groups at public schools have the same right of access to school facilities as is enjoyed by other comparable non-curriculum student groups.

**Q. May non-student-run religious groups meet at school?**

A. Yes. If a school generally opens its facilities to private groups, it must make its facilities available on the same terms to religious groups. At the same time, a school may not extend preferential treatment to religious groups.

**Q. May these meetings be announced in the school newspaper or over the public address system?**

A. Yes. Any policy concerning the use of school media must be applied to all non-curriculum-related student groups, including religious groups, in a non-discriminatory manner. Schools, however, may inform students that certain groups are not school-sponsored.

For further information, please contact either the Education Section at (919) 716-6920 or the Citizens' Rights Section at (919) 716-6780.

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Citizens' Rights Section  
P.O. Box 629  
Raleigh, NC 27602-0629  
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## **Federal Information**

The following guidelines were published by the U.S. Department of Education on February 7, 2003, and issued to public elementary and secondary schools as required by the No Child Left Behind Act of 2001.

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

Section 9524 of the Elementary and Secondary Education Act ("ESEA") of

1965, as amended by the No Child Left Behind Act of 2001, requires the Secretary to issue guidance on constitutionally protected prayer in public elementary and secondary schools. In addition, Section 9524 requires that, as a condition of receiving ESEA funds, a local educational agency ("LEA") must certify in writing to its State educational agency ("SEA") that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as set forth in this guidance.

The purpose of this guidance is to provide SEAs, LEAs, and the public with information on the current state of the law concerning constitutionally protected prayer in the public schools, and thus to clarify the extent to which prayer in public schools is legally protected. This guidance also sets forth the responsibilities of SEAs and LEAs with respect to Section 9524 of the ESEA. As required by the Act, this guidance has been jointly approved by the Office of the General Counsel in the Department of Education and the Office of Legal Counsel in the Department of Justice as reflecting the current state of the law. It will be made available on the Internet through the Department of Education's web site ([www.ed.gov](http://www.ed.gov)). The guidance will be updated on a biennial basis, beginning in September 2004, and provided to SEAs, LEAs, and the public.

#### **The Section 9524 Certification Process**

In order to receive funds under the ESEA, an LEA must certify in writing to its SEA that no policy of the LEA prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance. An LEA must provide this certification to the SEA by October 1, 2002, and by October 1 of each subsequent year during which the LEA participates in an ESEA program. However, as a transitional matter, given the timing of this guidance, the initial certification must be provided by an LEA to the SEA by March 15, 2003.

The SEA should establish a process by which LEAs may provide the necessary certification. There is no specific Federal form that an LEA must use in providing this certification to its SEA. The certification may be provided as part of the application process for ESEA programs, or separately, and in whatever form the SEA finds most appropriate, as long as the certification is in writing and clearly states that the LEA has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance.

By November 1 of each year, starting in 2002, the SEA must send to the Secretary a list of those LEAs that have not filed the required certification or against which

complaints have been made to the SEA that the LEA is not in compliance with this guidance. However, as a transitional matter, given the timing of this guidance, the list otherwise due November 1, 2002, must be sent to the Secretary by April 15, 2003. This list should be sent to:

*Office of Elementary and Secondary Ed.  
Attention: Jeanette Lim  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202*

The SEA's submission should describe what investigation or enforcement action the SEA has initiated with respect to each listed LEA and the status of the investigation or action. The SEA should not send the LEA certifications to the Secretary, but should maintain these records in accordance with its usual records retention policy.

#### **Enforcement of Section 9524**

LEAs are required to file the certification as a condition of receiving funds under the ESEA. If an LEA fails to file the required certification, or files it in bad faith, the SEA should ensure compliance in accordance with its regular enforcement procedures. The Secretary considers an LEA to have filed a certification in bad faith if the LEA files the certification even though it has a policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance.

The General Education Provisions Act ("GEPA") authorizes the Secretary to bring enforcement actions against recipients of Federal education funds that are not in compliance with the law. Such measures may include withholding funds until the recipient comes into compliance. Section 9524 provides the Secretary with specific authority to issue and enforce orders with respect to an LEA that fails to provide the required certification to its SEA or files the certification in bad faith.

#### **Overview of Governing Constitutional Principles**

The relationship between religion and government in the United States is governed by the First Amendment to the Constitution, which both prevents the government from establishing religion and protects privately initiated religious expression and activities from government interference and discrimination.<sup>1</sup> The First Amendment thus establishes certain limits on the conduct of public school officials as it relates to religious activity, including prayer.

The legal rules that govern the issue of constitutionally protected prayer in the public schools are similar to those that govern religious expression generally. Thus, in discussing the operation of Section 9524 of the ESEA, this guidance sometimes

speaks in terms of "religious expression." There are a variety of issues relating to religion in the public schools, however, that this guidance is not intended to address.

The 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.<sup>2</sup> Accordingly, the First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by private individuals, and the line between government-sponsored and privately initiated religious expression is vital to a proper understanding of the First Amendment's scope. As the Court has explained in several cases, "there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect."<sup>3</sup>

The Supreme Court's decisions over the past forty years set forth principles that distinguish impermissible governmental religious speech from the constitutionally protected private religious speech of students. For example, teachers and other public school officials may not lead their classes in prayer, devotional readings from the Bible, or other religious activities.<sup>4</sup> Nor may school officials attempt to persuade or compel students to participate in prayer or other religious activities.<sup>5</sup> Such conduct is "attributable to the State" and thus violates the Establishment Clause.<sup>6</sup>

Similarly, public school officials may not themselves decide that prayer should be included in school-sponsored events. In *Lee v. Weisman*,<sup>7</sup> for example, the Supreme Court held that public school officials violated the Constitution in inviting a member of the clergy to deliver a prayer at a graduation ceremony. Nor may school officials grant religious speakers preferential access to public audiences, or otherwise select public speakers on a basis that favors religious speech. In *Santa Fe Independent School District v. Doe*,<sup>8</sup> for example, the Court invalidated a school's football game speaker policy on the ground that it was designed by school officials to result in pregame prayer, thus favoring religious expression over secular expression.

Although the Constitution forbids public school officials from directing or favoring prayer, students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,"<sup>9</sup> and the Supreme Court has made clear that "private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression."<sup>10</sup> Moreover, not all religious speech that takes place in the public schools or at school-sponsored

events is governmental speech.<sup>11</sup> For example, "nothing in the Constitution ... prohibits any public school student from voluntarily praying at any time before, during, or after the school day,"<sup>12</sup> and students may pray with fellow students during the school day on the same terms and conditions that they may engage in other conversation or speech. Likewise, local school authorities possess substantial discretion to impose rules of order and pedagogical restrictions on student activities,<sup>13</sup> but they may not structure or administer such rules to discriminate against student prayer or religious speech. For instance, where schools permit student expression on the basis of genuinely neutral criteria and students retain primary control over the content of their expression, the speech of students who choose to express themselves through religious means such as prayer is not attributable to the state and therefore may not be restricted because of its religious content.<sup>14</sup> Student remarks are not attributable to the state simply because they are delivered in a public setting or to a public audience.<sup>15</sup> As the Supreme Court has explained: "The proposition that schools do not endorse everything they fail to censor is not complicated,"<sup>16</sup> and the Constitution mandates neutrality rather than hostility toward privately initiated religious expression.<sup>17</sup>

#### **Applying the Governing Principles in Particular Contexts**

##### **Prayer During Noninstructional 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. Among other things, students may read their Bibles or other scriptures, say grace before meals, and pray or study religious materials with fellow students during recess, the lunch hour, or other noninstructional time to the same extent that they may engage in nonreligious activities. While school authorities may impose rules of order and pedagogical restrictions on student activities, they may not discriminate against student prayer or religious speech in applying such rules and restrictions.

##### **Organized Prayer Groups and Activities:**

Students may organize prayer groups, religious clubs, and "see you at the pole" gatherings before school to the same extent that students are permitted to organize other non-curricular student activities groups. Such groups must be given the same access to school facilities for assembling as is given to other non-curricular groups, without discrimination because of the religious content of their expression. School authorities possess substantial discretion concerning whether to permit the use of school media for student advertising or

announcements regarding non-curricular 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 who meet to pray. School authorities may disclaim sponsorship of non-curricular groups and events, provided they administer such disclaimers in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

##### **Teachers, Administrators, and other**

**School Employees:** When acting in their official capacities as representatives of the state, teachers, school administrators, and other school employees are prohibited by the Establishment Clause from encouraging or discouraging prayer, and from actively participating in such activity with students. Teachers may, however, take part in religious activities where the overall context makes clear that they are not participating in their official capacities. Before school or during lunch, for example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversation or nonreligious activities. Similarly, teachers may participate in their personal capacities in privately sponsored baccalaureate ceremonies.

**Moments of Silence:** If a school has a "minute 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 neither encourage nor discourage students from praying during such time periods.

##### **Accommodation of Prayer During**

**Instructional Time:** It has long been established that schools have the discretion to dismiss students to 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 significant burden on their religious exercise, where doing so would not impose material burdens on other students. For example, it would be lawful for schools to excuse Muslim students briefly from class to enable them to fulfill their religious obligations to pray during Ramadan.

Where school officials have a practice of excusing students from class on the basis of parents' requests for accommodation of nonreligious needs, religiously motivated requests for excusal may not be accorded less favorable treatment. In addition, in some circumstances, based on federal or state constitutional law or pursuant to state

statutes, schools may be required to make accommodations that relieve substantial burdens on students' religious exercise. Schools officials are therefore encouraged to consult with their attorneys regarding such obligations.

**Religious Expression and Prayer in Class Assignments:** Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from 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. 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 neither penalized nor rewarded on account of its religious content.

**Student Assemblies and Extracurricular Events:** Student speakers at student assemblies and extracurricular activities such as sporting events may not be selected on a basis that either favors or disfavors religious speech. Where student speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content. By contrast, where school officials determine or substantially control the content of what is expressed, such speech is attributable to the school and may not include prayer or other specifically religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's.

**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 neutral, evenhanded criteria and retain control over the content of their expression, however,

that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student or other private speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's.

**Baccalaureate Ceremonies:** School officials may not mandate or organize religious 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 endorsement of events sponsored 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.

### Endnotes:

1. 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. I. The 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 Educ.*, 330 U.S. 1 (1947); *Cantwell v. Connecticut*, 310 U.S. 296 (1940).
2. 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"); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001).
3. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000) (quoting *Board of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (plurality opinion)); accord *Rosenberger v. Rector of Univ. of Virginia*, 515 U.S. 819, 841 (1995).
4. *Engel v. Vitale*, 370 U.S. 421 (1962) (invalidating state laws directing the use of prayer in public schools); *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (invalidating state laws and policies requiring public schools to begin the school day with Bible readings and prayer); *Mergens*, 496 U.S. at 252 (plurality opinion) (explaining that "a school may not itself lead or direct a religious club"). The Supreme Court has

- also held, however, that the study of the Bible or of religion, when presented objectively as part of a secular program of education (e.g., in history or literature classes), is consistent with the First Amendment. See *Schempp*, 374 U.S. at 225.
5. See *Lee v. Weisman*, 505 U.S. 577, 599 (1992); see also *Wallace v. Jaffree*, 472 U.S. 38 (1985).
6. See *Weisman*, 505 U.S. at 587.
7. 505 U.S. 577 (1992).
8. 530 U.S. 290 (2000).
9. *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969).
10. *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995).
11. *Santa Fe*, 530 U.S. at 302 (explaining that "not every message" that is "authorized by a government policy and take[s] place on government property at government-sponsored school-related events" is "the government's own").
12. *Santa Fe*, 530 U.S. at 313.
13. For example, the First Amendment permits public school officials to review student speeches for vulgarity, lewdness, or sexually explicit language. *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 683-86 (1986). Without more, however, such review does not make student speech attributable to the state.
14. *Rosenberger v. Rector of Univ. of Virginia*, 515 U.S. 819 (1995); *Board of Educ. v. Mergens*, 496 U.S. 226 (1990); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981); *Santa Fe*, 530 U.S. at 304 n.15. In addition, in circumstances where students are entitled to pray, public schools may not restrict or censor their prayers on the ground that they might be deemed "too religious" to others. The Establishment Clause prohibits state officials from making judgments about what constitutes an appropriate prayer, and from favoring or disfavoring certain types of prayers—be they "nonsectarian" and "nonproselytizing" or the opposite—over others. See *Engel v. Vitale*, 370 U.S. 421, 429-30 (1962) (explaining that "one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services," that "neither the power nor the prestige" of state officials may "be used to control, support or influence the kinds of prayer the American people can say," and that the state is "without power to prescribe by law any particular form of prayer"); *Weisman*, 505 U.S. at 594.
15. *Santa Fe*, 530 U.S. at 302; *Mergens*, 496 U.S. at 248-50.
16. *Mergens*, 496 U.S. at 250 (plurality opinion); *id.* at 260-61 (Kennedy, J., concurring in part and in judgment).
17. *Rosenberger*, 515 U.S. at 845-46; *Mergens*, 496 U.S. at 248 (plurality opinion); *id.* at 260-61 (Kennedy, J., concurring in part and in judgment).

Organized in 1992, the North Carolina Family Policy Council is a nonpartisan, nonprofit, research and education organization. Our goal is to serve as a voice for families and traditional family values in the public policy arena. We are supported solely by private contributions which are tax deductible as provided by law. Our mailing address is P.O. Box 20607, Raleigh, NC 27619. Phone: (919) 807-0800. Fax: (919) 807-0900. *Findings* is a publication of the North Carolina Family Policy Council which is intended to communicate research findings and perspectives on public policy issues that affect the family. Nothing written here should be construed as necessarily reflecting the views of the North Carolina Family Policy Council or as an attempt to aid or hinder the passage of any bill before Congress or the North Carolina General Assembly. Printed March 2003.