

RELIGION IN THE PUBLIC SCHOOLS

PRAYER IN PUBLIC SCHOOLS

Organized prayer in the public school setting, whether in the classroom or at a school-sponsored event, is unconstitutional. The only type of prayer that is constitutionally permissible is private, voluntary student prayer that does not interfere with the school's educational mission.

SPECIFIC ISSUES & QUESTIONS

May students pray? Students have the right to engage in voluntary individual prayer that is not coercive and does not substantially disrupt the school's educational mission and activities.¹ For example, all students have the right to say a blessing before eating a meal. However, school officials must not promote or encourage a student's personal prayer. Students may engage with other students in religious activity during non-curricular periods as long as the activity is not coercive or disruptive. In addition, while students may speak about religious topics with their peers, school officials should intercede if such discussions become religious harassment. It is essential that private religious activity not materially disrupt the school's educational mission and activities.² Personal religious activity may not interfere with the rights or well-being of other students, and the threat of student harassment and pressure must be carefully monitored.³ It is also critical to ensure that the religious activity is actually student-initiated, and that no school employee supervises or participates in the activity. Any school promotion or endorsement of a student's private religious activity is unconstitutional.

Are vocal prayer and Bible reading in the classroom permitted? Vocal denominational or nondenominational prayer, or ceremonial reading from the Bible, are unconstitutional practices in the public school classroom.ⁱ It is legally irrelevant if the prayer or Bible reading is voluntary, or if students may be excused from the activity or classroom during the prayer. Student volunteers may not offer prayers for recitation.ⁱⁱ Similarly, student volunteers are prohibited from broadcasting prayers over a school intercom system into the classroom.ⁱⁱⁱ

Can a school or state require a moment of silence in the classroom? The U. S. Supreme Court struck down a statute requiring a moment of silence which students could use for silent prayer or

¹ See *Tinker v. Des Moines Indep. Community School District*, 393 U.S. 503 (1969).

² Id.

³ Id.

meditation because it was enacted for the purpose of advancing religion.^{iv} Similarly, one Federal Appeals Court struck down a moment of silence statute because it had a religious purpose.^v More recently, however, four other Federal Courts of Appeals upheld moment or minute of silence statutes. In those cases, the courts found that statutes in question and their legislative histories did not have a religious purpose or the effect of advancing religion.^{vi} Based on the Supreme Court decision and these Federal Courts of Appeals decisions, if the language or legislative history of a moment of silence law or policy has a religious purpose, advances religious, or is entangled with religion, it is unconstitutional. Furthermore, a moment of silence law or policy - regardless of whether its language and legislative history reflect a secular purpose and effect - will be unconstitutional if the statute is implemented in any way that encourages or discourages students to pray or engage in other religious activity.

Can there be prayer before or after athletic events or activities? A school district's policy of permitting student-led, student-initiated prayer before football games is unconstitutional.^{vii} It is also unconstitutional for a school official, including a coach, to initiate, lead, or participate in a team in prayer.^{viii} Nor may a school official ask a team member or any other student to initiate or lead a prayer before, during or after a public or school-sponsored athletic activity or event.^{ix} It is also unconstitutional for a member of the clergy to offer prayers before or after public school athletic activities or events.^x Voluntary prayer presented and led by students without official permission or sanction may be constitutional, provided that it is not coercive in any way.

Can there be prayer at graduation ceremonies? Prayers delivered by clergy at official public school graduation ceremonies are unconstitutional.^{xi} The fact that a prayer is nondenominational or voluntary does not render it constitutional.^{xii} The U. S. Supreme Court has not specifically ruled on whether student-initiated, graduation prayer is constitutional, and the lower Federal courts disagree on the issue. However, when the Supreme Court ruled in *Santa Fe Independent School Dist. v. Doe* that a district policy allowing student-initiated and student-led prayer before football games was unconstitutional, it effectively ruled-out the possibility that any district policy allowing student-initiated and student-led prayers would be permissible at graduation ceremonies. Moreover, in both *Santa Fe v. Doe* and *Lee v. Weisman*, the Supreme Court expressed particular concern that students could be coerced, through pressure from their peers and others, into praying during school events such as football games and graduation ceremonies. This danger exists regardless of whether it is a member of the clergy or a student who offers the prayer.

The Court also emphasized in *Weisman and Santa Fe* that attendance at major school events like graduation or football games should not be considered "voluntary" even if authorities officially designate it as such. Weekly football games and high school graduation are central parts of student life and students should be able to attend these events without fear of religious coercion. However, baccalaureate services, which are distinct and separate from official graduation ceremonies, may constitutionally include prayers and religious sermons. Such events must be privately sponsored and must not be led or sponsored by school personnel. Any school endorsement of such events should be actively discouraged.

Can there be prayer at school assemblies? School officials, employees or outsiders must not offer prayers at school assemblies. Even if attendance is voluntary, students may not deliver prayers at school assemblies either.^{xiii} Student-initiated prayer at school assemblies is unconstitutional even if the prayer is non-proselytizing and nonsectarian.^{xiv}

May teachers pray in school? It is unconstitutional for teachers to pray **with** or **in the presence of** students in school or in their capacities as teachers or representatives of the school. Indeed, teachers may have their free speech and free exercise rights to speak about religious matters and otherwise say prayers in the presence of students abridged in an effort to ensure that there is no appearance that the school is violating the Establishment Clause. Because teachers hold such a special status in the school and are viewed as government officials speaking to a group that is both a captive audience and extremely impressionable, religious speech by teachers or other school personnel will be seen as a state endorsement of religion.^{xv} The Supreme Court has said that "the interest of the State in avoiding an Establishment Clause violation 'may be [a] compelling' one justifying an abridgement of free speech otherwise protected by the First Amendment..."^{xvi} It is also impermissible for a teacher to read the Bible in front of students during a daily silent reading period.^{xvii}

Can school boards say prayers prior to their meetings? The Supreme Court has upheld the right of legislative or deliberative bodies such as state legislatures to open their sessions with prayer.^{xviii} At least two Federal Courts of Appeals, however, have struck down prayers as unconstitutional in the school board context.^{xix} Significantly, both courts found that due to the close relationship of schools boards to public schools and students, such entities do not fall within the Supreme Court's meaning of legislative or deliberative body.^{xx} As a result, the courts in reaching their decisions applied the established standards for prayer in the public schools to the school boards.

SAMPLE SCENARIOS & SITUATIONS

Football Coach Leads Team in Prayer

On the day of the Central Valley High School football championship, the coach gave his team a last-minute pep talk in the Bulldogs' locker room. He then led the team in a prayer, as he traditionally did before each athletic event. Richard Nelson, a student, felt uncomfortable reciting the prayer because he was an atheist. He mentioned his discomfort to the coach who responded that Richard should simply stand in silence or feel free to leave the room while his teammates prayed together.

Is the team prayer constitutional? Is the coach's solution viable?

The team prayer led by Richard Nelson's coach is unconstitutional and the coach's offered solution is unacceptable. He has created an environment where Richard will feel isolated and as if he belonged to this group less than the other athletes. Moreover, as a school official, the coach cannot endorse religion as he is doing here.

Fourth-grader Prayer and Religious Discussion at Recess

Every day at recess, Jessica Lewis, a fourth-grade student, sits under a tree in the schoolyard, recites prayers, and engages her classmates in discussions of a religious nature. The recess monitor, unsure of whether Jessica's activities violate the school's prohibition against classroom prayer, alerts school officials who forbid Jessica's recess prayers and discussions. Jessica's mother threatens to sue the school officials, claiming that their interference with her daughter's activities was unconstitutional.

Does Mrs. Lewis have a valid claim? How should the school respond?

The school should allow Jessica Lewis to engage in prayer and religious discussions with her classmates during recess provided that her activity is not disruptive and does not coerce or otherwise infringe upon the rights of other students.

Teacher Participation at Flag Pole Prayer Event

Prior to school hours on a September morning, a group of students from Pines Middle School hold a student-initiated, led and run prayer event in front of the school flag pole. Student participation in the event is completely voluntary. Ms. Lake, a seventh grade social studies teacher, sees the students praying on her way to the school building. She stops, joins with the group of student, bows her head, and prays with the students. Mr. Jones, a Pines Middle School teacher also on his way into to the school building, sees Ms. Lake sees and hears Ms. Lake praying with the students. Mr. Jones reports Ms. Lake's conduct to Principal Franks.

Was Ms. Lake's Participation in the Student Prayer Event Permissible?

No. Provided that the flag pole prayer event was truly student initiated, led, run, and voluntary, student participation in the event was permissible. Furthermore, it is permissible for a teacher or administrator to be at the event in a non-participatory manner to ensure that students comply with school rules or policies. However, Ms. Lake's participation in the event was impermissible because it constituted an unconstitutional school endorsement of religion.

School Policy Permitting Prayer by Student at Graduation

A school district is reviewing its graduation ceremony policy. The policy calls on a member of the local clergy to deliver a "non-sectarian, non-proselytizing" prayer at the start of the ceremony. After the parent of a graduating senior complains, the school district would like to substitute a student who is elected by his or her peers to deliver the prayer instead.

Can the school district substitute a student for a local clergy person?

No. Neither is acceptable. Schools may not arrange to allow prayer at an event. Student prayer is limited to prayer that is personal, voluntary and non-disruptive. So long as the prayer is in any way sanctioned or controlled by the district, at an official event using the school's loudspeaker and podium, such prayer is prohibited.

PROVIDED BY: Civil Rights Division

- ⁱ *School Dist. of Abington Township, Pa. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962).
- ⁱⁱ *Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1982), aff'd, 455 U.S. 913 (1982).
- ⁱⁱⁱ *Herdahl v. Pontotoc County School District*, 933 F. Supp 582, 588 (N.D. Miss. 1996). See also *Hall v. Board of School Com'rs of Conecuh County*, 656 F.2d 999, 1000 (5th Cir. 1981).
- ^{iv} *Wallace v. Jaffree*, 472 U.S. 38 (1985).
- ^v *May v. Cooperman*, 780 F.2d 240, 252-53 (3rd Cir. 1985).
- ^{vi} *Sherman v. Koch*, 623 F.3d 501, 520 (7th Cir. 2010), cert. denied, 132 S.Ct. 92 (2011); *Croft v. Perry*, 562 F.3d 735, 750 (5th Cir. 2009); *Brown v. Gilmore*, 258 F.3d 265 (4th Cir. 2001), cert. denied, 122 S. Ct. 465 (2001); *Bown v. Gwinnett County School Dist.*, 112 F.3d 1464 (11th Cir. 1997).
- ^{vii} *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290 (2000).
- ^{viii} See *Borden v. School District of the Township of East Brunswick*, 523 F.3d 153 (3rd Cir. 2008), cert. denied, 129 S. Ct. 1524 (2009); *Doe v. Duncanville Independent School Dist.*, 70 F.3d 402 (5th Cir. 1995).
- ^{ix} *Jager v. Douglas County School Dist.*, 862 F.2d 824 (11th Cir. 1989), cert. denied, 490 U.S. 1090 (1989).
- ^x *Duncanville Independent School Dist., v. John Doe*, 994 F.2d 160 (5th Cir. 1993).
- ^{xi} *Lee v. Weisman*, 505 U.S. 577 (1992). See *Santa Fe Independent School Dist.*, 530 U.S. 290.
- ^{xii} *Lee v. Weisman*, 505 U.S. 577.
- ^{xiii} *Collins v. Chandler Unified School Dist.*, 644 F.2d 759 (9th Cir.), cert. denied, 454 U.S. 863 (1981). See *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290.
- ^{xiv} *Santa Fe Independent School Dist.*, 530 U.S. 290; *Ingebretsen v. Jackson Public School Dist.*, 88 F.3d 274 (5th Cir. 1996), cert. denied, 519 U.S. 965 (1996).
- ^{xv} *Peloza v. Capistrano Unified School Dist.*, 37 F.3d 517, 522 (9th Cir. 1994), cert. denied, 515 U.S. 1173 (1995).
- ^{xvi} *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384, at 394 (1993) (quoting *Widmar v. Vincent*, 454 U.S. 263 (1981)).
- ^{xvii} *Roberts v. Madigan*, 921 F.2d 1047 (10th Cir. 1990), cert. denied, 112 S. Ct. 3025 (1992).
- ^{xviii} *Marsh v. Chambers*, 463 U.S. 783 (1983).
- ^{xix} *Doe v. Indian River School District*, 653 F.3d 256 (3rd Cir. 2011), cert. denied, 132 S. Ct. 1097 (2012); *Coles v. Cleveland Board of Education*, 171 F.3d 369 (6th Cir. 1999), reh'g en banc denied, 183 F.3d 538 (6th Cir. 1999).
- ^{xx} See *Doe*, 653 F.3d 256; *Coles*, 171 F.3d 369; but See *Doe #2 v. Tangipahoa Parish School*, 631 F. Supp. 2d 823 (E.D. La. 2009) (Court found that the school board in question fell within meaning of deliberative body as defined by the U.S. Supreme Court in its *Marsh* decision. However, the court did not reach the ultimate question of whether the prayers occurring at school board meetings were unconstitutional).