

STUDENTS IN PUBLIC K-12 SCHOOLS



RELIGIOUS LIBERTY PROTECTION KIT

How You Can Exercise
Your Legal Rights in
Public School



FirstLiberty.org



DEAR FRIEND OF RELIGIOUS FREEDOM,

Thank you for your desire to protect **the rights of students of faith in our public schools** against increasingly hostile legal threats to your freedom to believe and to act upon your beliefs. I hope you find this **Religious Liberty Protection Kit** a simple but high-quality tool for helping you guard the most precious freedom you or anyone in our society has: religious liberty, our first liberty in the Bill of Rights.

Please let us know any further way we can help you.

A handwritten signature in white ink that reads 'Kelly Shackelford'.

Kelly Shackelford, Esq.

President, CEO & Chief Counsel



FIRST LIBERTY INSTITUTE® RELIGIOUS LIBERTY PROTECTION KIT FOR STUDENTS IN PUBLIC K-12 SCHOOLS

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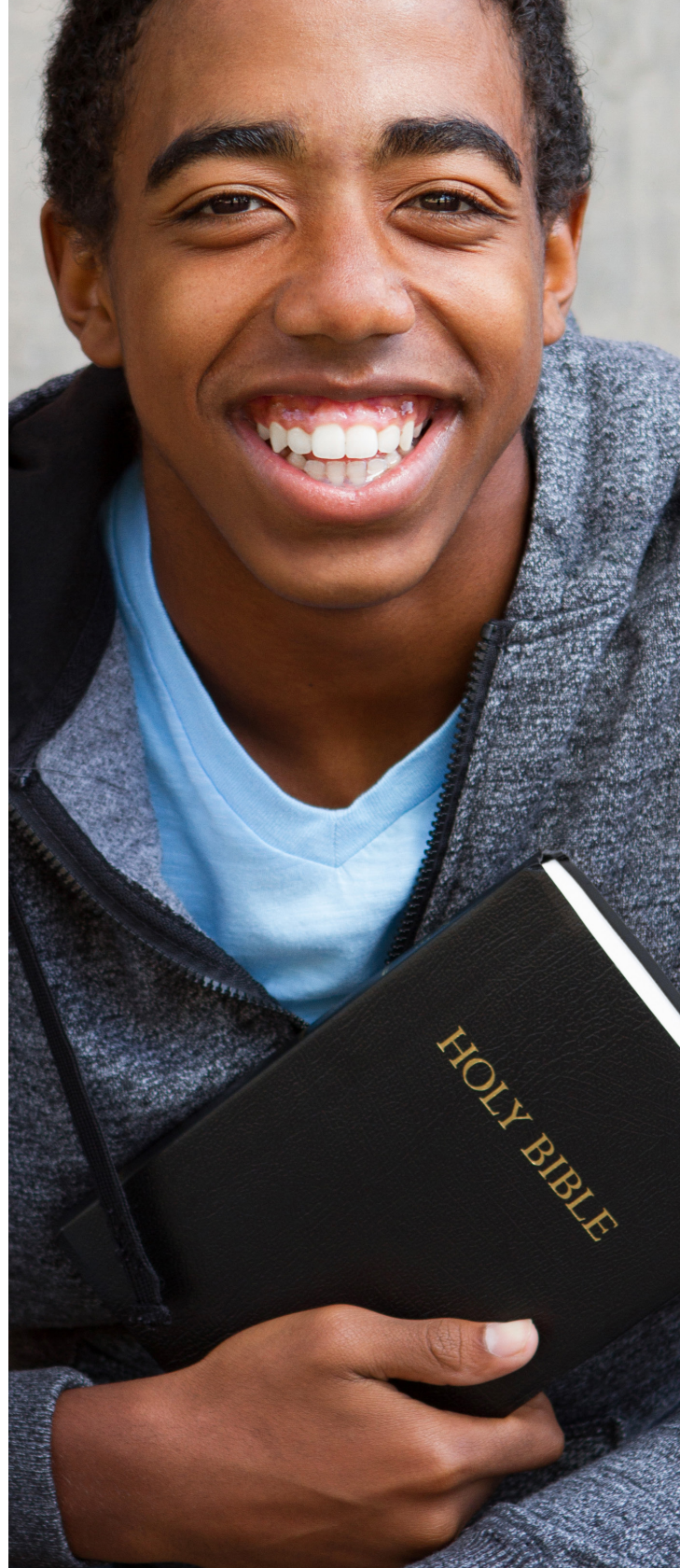
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INTRODUCTION

America's public schools have grown increasingly hostile toward religion. School districts routinely censor private religious expression in the name of a distorted view of the so-called "separation of church and state." Worse, such government hostility coerces religious students and teachers to hide their faith, creating the impression that religion has no place in the school environment. But the U.S. Constitution and other laws protect the religious liberty of students and teachers [1] in public schools. Recent cases from the U.S. Supreme Court, including First Liberty Institute's legal victories in *American Legion v. American Humanist Association* [2] and *Kennedy v. Bremerton School District*, [3] have established strong protections for people of faith in the school setting. Instead of purging religion from public schools, the Supreme Court now looks to "historical practices and understandings" to determine whether an action is consistent with the original meaning of the First Amendment. Given these changes, school districts cannot rely on outdated notions of an extreme "separation of church and state" as an excuse to purge religion from the school environment. And schools may not silence religious expression out of fear that the government is endorsing it.

First Liberty Institute has advised many students and teachers about their rights to religious liberty in America's public schools. Our guidance has helped protect their ability to share their faith on campus without fear of government censorship or punishment. First Liberty Institute is a nationwide, nonprofit law firm dedicated to protecting religious freedom for all Americans, at no cost to our clients. Our President and CEO, Kelly Shackelford, has over 30 years of experience defending the constitutional rights of students and teachers like you.

We have carefully summarized our recommendations over the years to develop this Religious Liberty Protection Kit. First Liberty wants you to know your rights and be empowered and confident to live out your faith without fear. America thrives when our public schools protect faith as a daily, positive aspect of education.

Thank you for your interest in protecting your public-school students' religious liberty – our First Amendment's First Liberty.

Citations:

1. For guidance about teachers' rights, please see our Religious Liberty Protection Kit for Teachers in Public Schools.
2. 588 U.S. 29 (2019).
3. 597 U.S. 507 (2022).

Students' Religious Rights in Public School

Over fifty years ago, in *Tinker v. Des Moines Independent Community School District*, the U.S. Supreme Court declared that neither teachers nor students “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” [4] This is a summary of the legal landscape regarding religious rights beyond the schoolhouse gate.

Although there are some limits that apply to the speech of a school district and its employees, the U.S. Constitution strongly protects a student’s private religious expression. [5] The First Amendment prohibits a school district and its employees from showing hostility toward students’ religious beliefs and expression or from treating religious exercise or activities less favorably than other forms of expression or activities. [6] The proper role of a school district is to remain neutral and accommodate students’ religious beliefs and exercise. [7]

As one court observed, the Constitution “does not permit [a public school] to confine religious speech to whispers or banish it to broom closets. If it did, the exercise of one’s religion would not be free at all.” [8] On the contrary, the First Amendment “does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts.” [9]

Citations:

4. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969); *Morgan v. Swanson*, 659 F.3d 359, 374 (5th Cir. 2011) (en banc).
5. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022); see also *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (“Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.”)
6. *Kennedy*, 597 U.S. at 525 n.1 (“A plaintiff may also prove a free exercise violation by showing that official expressions of hostility; to religion accompany laws or policies burdening religious exercise; in cases like that we have set aside such policies without further inquiry.”); *Tandon v. Newsom*, 593 U.S. 668, 673 (1984) (“government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular

activity more favorably than religious exercise”).

7. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 839 (1995).

8. *Chandler v. Siegelman*, 230 F.3d 1313, 1316 (11th Cir. 2000) (emphasis added).

9. *Kennedy*, 597 U.S. at 524.

Student Religious Expression

As the Supreme Court’s holding in *Kennedy* made clear, the First Amendment protects the ability of students to express their faith in public schools. The Court explained that the clauses of the First Amendment “work in tandem. Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities.” [10] The result is that the First Amendment “doubly protects religious speech.” [11] Students can express their faith in multiple ways, through religious clubs, prayer, reading religious texts, evangelism, school assignments, extracurricular events, graduation ceremonies, and holidays.

Citations:

10. *Id.* at 523; *Widmar v. Vincent*, 454 U.S. 263, 269, n. 6 (1981);

Rosenberger, 515 U.S. at 841.

11. *Kennedy*, 597 U.S. at 523.

Religious Clubs

One of the most important ways that students can exercise and share their faith is through non-curricular clubs. The legal protections for this form of free exercise are very strong, yet school administrators will often resist the formation of new religious clubs, revoke recognition of existing clubs, or try to control their leadership choices.

The Equal Access Act is a federal law that guarantees that students in secondary schools (typically grades 6-12) can form religious clubs at their public schools. [12] Religious clubs must be treated equally with all the benefits that other clubs enjoy. If the school allows at least one non-curricular club to meet on school premises during noninstructional time, the school cannot “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.” [13] In other words, if a middle

school or high school allows a chess club, they must allow a faith-based club too.

For decades, the Supreme Court has consistently upheld the Equal Access Act, finding that religious clubs must be afforded the same recognition, access, and rights as other noncurricular clubs. [14] Public schools cannot exclude or deny benefits to certain clubs based on their religious viewpoint. First Liberty has successfully used the protection of the Equal Access Act to help multiple students overcome schools' resistance to their religious clubs, including the Students United in Faith Club [15] and the Dare to Believe Club. [16]

While the Equal Access Act technically does not apply to elementary schools, the same constitutional protections extend to younger students too. In *Good News Club v. Milford Central School*, a Christian family sued when their elementary school refused to allow an after-school religious club. The Supreme Court held that the school district violated the Free Speech Clause by excluding the Christian club from meeting at school because of its religious viewpoint. [17] More recently, in 2024, a Seattle-area elementary school denied a student's interfaith prayer club while approving several other non-curricular clubs. First Liberty stepped in and the school district changed course, allowing the club to meet. [18]

Public schools must allow religious clubs to choose their own leaders, as long as non-religious clubs are allowed this freedom. Public schools should not use anti-discrimination policies to target religious clubs. In a heavily criticized 2010 decision called *Christian Legal Society v. Martinez*, the Supreme Court seemed to endorse the idea that Christian clubs couldn't require their leaders to share their faith commitments, but only where the school had an "all-comers policy" requiring every club to allow anyone to be a leader. Yet student clubs are almost always tailored to student interests and demographics and are free to choose leaders who share their goals. In *Fellowship of Christian Athletes v. San Jose Unified School District*, a school district derecognized a Christian club because of its religious beliefs about marriage. The U.S. Court of Appeals for the Ninth Circuit held that the school district violated the First Amendment, because it allowed non-religious clubs to select their own leaders and members. The Court held that "[u]nder the First Amendment's protection of free exercise of religion and free speech, the government may not 'single

out' religious groups 'for special disfavor' compared to similar secular groups." [19] In other words, if the Senior Women can limit membership to female students, and the National Honors Society can limit membership to students with good moral character, then religious clubs can choose leaders who share their faith commitments. [20] The court also held that government hostility toward religious clubs violates the Free Exercise Clause, and that if a school district makes any exceptions to its policies (including nondiscrimination policies) for student clubs or any of its other programs, it also needs to make exceptions for religious clubs. [21]

Citations:

12. 20 U.S.C. § 4071.

13. *Id.*

14. *Board of Education of Westside Community Schools v. Mergens*, 496 U.S. 226, 236 (1990) ("Thus, even if a public secondary school allows only one 'noncurriculum related student group' to meet. . . 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."); *see also Trinity Lutheran v. Comer*, 582 U.S. 449, 458 (2017) ("The Free Exercise Clause 'protect[s] religious observers against unequal treatment and subjects to the strictest scrutiny laws that target the religious policies for 'special disabilities' based on 'their religious status.'")

15. John Raney Case, <https://firstliberty.org/cases/johnraney/>.

16. Liz Loverde Case, <https://firstliberty.org/cases/lizloverde/>.

17. *Good News Club v. Milford Central School*, 533 U.S. 98, 111–12 (2001); *see also Rosenberger*, 515 U.S. at 828 (university's refusal to fund student publication from religious perspective violated Free Speech Clause); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393 (1993) (excluding religious perspective yet allowing other perspectives "discriminates on the basis of viewpoint").

18. Creekside Prayer Club, <https://firstliberty.org/cases/creekside-prayer-club/#simple1>.

19. *Fellowship of Christian Athletes v. San Jose Unified School District*, 82 F.4th 664, 673, 695 (9th Cir. 2023) ("Anti-discrimination laws and policies serve undeniably admirable goals, but when those goals collide with the protections of the Constitution, they must yield—no matter how well-intentioned.").

20. *Id.* at 689.

21. *Id.* at 691-92.

Prayer

The First Amendment grants students the right to pray during non-instructional time, such as lunch, recess, or other designated free time, to the same extent that the school allows students to engage in nonreligious activities. In other words, the school must treat religious expression, such as prayer, in



at least the same way that it treats nonreligious expression. Indeed, prayer is doubly protected by the Free Speech and Free Exercise Clauses. [22] The Supreme Court stated that “nothing in the Constitution as interpreted by this Court prohibits any public-school student from voluntarily praying at any time before, during, or after the school day.” [23]

In addition to non-disruptive prayer throughout the school day, the U.S. Department of Education gives additional examples:

“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.” [24]

As long as the prayer is student-initiated and not substantially disruptive to the school environment, schools may not restrict or punish students for praying or expressing their faith, even in front of non-believers. [25] This means that if a school district allows students to talk with each other about any topic during lunch, recess, or free time, it must allow students to pray. [26] If the school has a moment of silence, students are allowed to silently pray, just as they may engage in any other silent activity. Teachers cannot discourage students from praying during this time, and under *Kennedy*, teachers and staff members can likely join in, as long as the situation is not coercive and occurs during non-instructional time. [27]

Citations:

22. *Kennedy*, 597 U.S. at 523.

23. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000) (holding that although it is unconstitutional for the government to “affirmatively sponsor[] the particular religious practice of prayer,” the Constitution does protect the right of students to engage in voluntary prayer).

24. U.S. Dep’t of Education, *Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools*, last updated Jan. 14, 2025, <https://perma.cc/9CD4-WMSN>.

25. *Chandler v. Siegelman*, 230 F.3d 1313, 1317 (11th Cir. 2000) (“So long as the prayer is genuinely student-initiated, and not the product of any school policy which actively or surreptitiously encourages it, the speech is private and it is protected.”)

26. *Tinker*, 393 U.S. at 511.

27. *Kennedy*, 597 U.S. at 541.

Reading Religious Texts

During non-instructional time, students can read the Bible or other religious materials to the same extent that the school allows students to read similar nonreligious materials. The First Amendment prohibits schools from treating religious materials differently from nonreligious materials. [28]

For example, if schools allow students to bring books from home to read during free time, then the school cannot prevent students from bringing religious material, such as a Bible or scriptures of other faiths, and reading these during free time. If a school allows students to bring car magazines to class to read, then students can also bring religious magazines. When fifth-grade Giovanni Rubeo was told he couldn't read his Bible during free reading time, First Liberty informed the school that this was discriminatory and unconstitutional. The school changed its policy, adding the Bible to a list of books approved for students' free reading time. [29]

Citations:

28. U.S. Dep't of Education, *Guidance on Constitutionally Protected Prayer and Religious Expression*, *supra* note 25.

29. "Back to School: 7 Religious Liberty Victories Students Should Know About," <https://firstliberty.org/news/back-to-school-7-religious-liberty-victories-students-should-know-about/>.

Evangelism and Religious Materials

If a school allows students to talk to each other in between classes, at recess, during lunch, or other non-class times, the school cannot prohibit students from speaking to each other about religion and faith. This means that students can also share their faith with fellow students. [30] For example, if a school allows students to speak about sports, movies, or friendships during non-instructional time, the school cannot restrict students from also talking about their faith with others. This also applies to religious-themed materials that students may want to share with classmates, such as Bible verses and holiday cards. As long as they are shared in a context where other students are permitted to share secular materials, students are free to share their faith in this way. For example, the U.S. Court of Appeals for the Fifth Circuit held that school officials violated the First Amendment

when they stopped a student from giving "Legend of the Candy Cane" pens to his classmates during a holiday party when other students were allowed to hand out non-religious items. [31]

If students or parents can pass out flyers for non-religious activities, the school must allow them to pass out flyers for religious activities. [32] A school violated the First Amendment when it prohibited students from handing out religious literature but allowed them to hand out other materials. [33] "Schools may not prohibit their pupils from expressing ideas. And no arm of government may discriminate against religious speech when speech on other subjects is permitted in the same place at the same time. . . Students therefore may hand out literature even if the recipients would misunderstand its provenance. The school's proper response is to educate the audience rather than squelch the speaker." [34]

Citations:

30. *Morgan*, 659 F.3d at 412 ("[W]hat one child says to another child is within the protection of the First Amendment").

31. *Morgan*, 659 F.3d at 388 ("where Tinker applies in public elementary schools, a school may not allow some speech on a given topic but not others, based solely on the content of its message").

32. *Rusk v. Crestview Loc. Sch. Dist.*, 379 F.3d 418, 423 (6th Cir. 2004); *Child Evangelism Fellowship of Maryland, Inc. v. Montgomery Cnty. Pub. Sch.*, 373 F.3d 589, 598 (4th Cir. 2004).

33. *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1297 (7th Cir. 1993).

34. *Id.* at 1299.

Student Religious Expression in Class Assignments

Students can express their faith in school assignments such as homework, projects, or artwork. The U.S. Department of Education's guidelines state:

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 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. [35]

For example, if a teacher instructed students to draw pictures about the “winter season,” a student could draw a picture of the birth of Jesus as part of the Christmas tradition in the same way that a student could draw a picture of a snowman. The First Amendment forbids a teacher from giving a student who incorporates religion into his or her assignment a lower grade based on the religious viewpoint expressed. First Liberty represented sixth-grader Mackenzie Frasier, who wanted to include John 3:16 as her “inspirational saying” during a class activity called “All About Me,” but her teacher said Bible verses were not allowed. After First Liberty stepped in, the school issued a formal, written apology and allowed her to resubmit the assignment including John 3:16. [36]

Although schools cannot discriminate against religious expression, they can require that the religious expression is related to the topic assigned, that the assignment reflects the student’s own work, and that the student has followed the specific directions of the assignment. [37] For example, if the class assignment is to write about the U.S. Constitution and a student writes about the Bible instead, the student can be penalized for not following the directions of the assignment. It is important to note that student expression in class assignments may be different from expression in school-sponsored publications (such as school newspapers), theatrical productions, or other school-sponsored activities that the school district promotes and that appear to be the speech of the school district itself. [38]

Citations:

35. U.S. Department of Education, *Guidance on Constitutionally Protected Prayer and Religious Expression*, *supra* note 25.

36. Mackenzie Frasier Case, <https://firstliberty.org/cases/mackenziefrasier/>.

37. See *Rosenberger*, 515 U.S. at 828–29, 845–46; *Lamb’s Chapel*, 508 U.S. at 393–94; Morgan, 695 F.3d at 401–02.

38. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 270–271 (1988).

Student Religious Speech at Extracurricular Events

At a school athletic competition (such as a football game), student assembly, or other extracurricular activity, students

can voluntarily pray, and the First Amendment protects the students’ prayers to the same extent that the school allows other speech to occur. The key distinction here is whether the speech is private speech or government speech. For example, if members of a football team are allowed to talk to one another about any subject prior to a game, then the school may not prohibit students from engaging in religious speech or prayer during this time. The school cannot treat conversations about religion differently than conversations about movies, friendships, or any other similar nonreligious speech. [39]

Some states have passed laws to protect religious speech. Alabama passed a law protecting students’ ability to pray at school-related events, as long as their prayers were not seeking to convert others. When this law was challenged in *Chandler v. James*, the U.S. Court of Appeals for the Eleventh Circuit upheld students’ ability to pray, finding that the First Amendment requires schools to tolerate “student-initiated religious speech in schools.” [40] In a problematic decision in 2000, *Santa Fe Independent School District v. Doe*, the Supreme Court struck down a Texas school’s policy of allowing students to pray over the loudspeaker before football games, suggesting that had a potentially “coercive” effect on students who were required to attend. [41] After this decision, the court of appeals in *Chandler* held that students could still pray at school events, pointing out that while “*Santa Fe* condemns school sponsorship of student prayer, *Chandler* condemns school censorship of student prayer.” [42] The court explained, “Private speech endorsing religion is constitutionally protected—even in school. Such speech is not the school’s speech even though it may occur in the school. Such speech is not unconstitutionally coercive even though it may occur before non-believer students.” [43]

If a school allows a student speaker to deliver “opening remarks” before each athletic competition, and the student speaker is chosen by neutral criteria (such as a position in student council, a position on the athletic team, or is selected randomly), and the school does not usually control the speech of the student, then the student speaker can discuss religion, pray, or engage in any other speech during this time because his or her speech is constitutionally protected, private speech. This area of the law is currently developing, so please reach out to First Liberty for guidance on specific situations.

Citations:

39. U.S. Department of Education, *Guidance on Constitutionally*

Protected Prayer and Religious Expression, supra note 25.

40. *Chandler v. James (Chandler I)*, 180 F.3d 1254, 1258 (11th Cir. 1999).

41. *Santa Fe Indep. Sch. Dist.*, 530 U.S. at 302.

42. *Chandler v. Siegelman (Chandler II)*, 230 F.3d 1313, 1315 (11th Cir. 2000).

43. *Chandler II*, 230 F.3d at 1317.

Student Religious Speech at Graduation Ceremonies

Students can include religious content, including prayer, in their graduation speeches so long as the students were selected by religiously-neutral criteria and the control over the content of each address is left to the students, and not the school. While school officials may not mandate prayer at graduation, students may speak about religion and their speeches may include prayer. Schools may choose to make neutral disclaimers explaining that students' speech is not attributable to the school. [44] Under most circumstances, a graduation speaker's words are their own, not the government's. A student's remarks are not attributable to the state simply because they are delivered in a public setting or to a public audience. [45]

For example, if the school district allows the valedictorian, salutatorian, class president, and class vice president to each speak for a certain amount of time, and the students have control over the content of their speeches, then the school cannot discriminate against students who wish to incorporate religious speech, including prayer, in their addresses.

Please note, however, that schools often attempt to censor religious speech and need guidance on the proper First Amendment standards in this area. For example, First Liberty represented Brooks Hamby, a California salutatorian who tried to reference his religious faith in his graduation speech. [46] The school district censored three different versions of the speech. First Liberty also represented Moriah Bridges, a Pennsylvania senior class president who was forced to remove faith-based content from her speech and was told that she "most certainly may not recite a prayer that excludes other religions." [47] Those acts of censorship violated the First Amendment.

While the principles protecting student speech are clear, court decisions in this area often depend on specific facts

and policies. For instance, the U.S. Court of Appeals for the Eleventh Circuit upheld a school district's policy that permitted "graduating students to decide through a vote whether to have an unrestricted student graduation message at the beginning and/or closing of graduation ceremonies." [48] The policy did not refer to any religious speech. If the students voted to have a classmate deliver a speech, the classmate's speech would not be reviewed or edited by school officials. Therefore, the speech was private student speech, and the message was allowed regardless of the religious content. [49] The U.S. Court of Appeals for the Fifth Circuit intervened to protect a valedictorian's right to pray during her speech, after a judge's order threatened anyone who prayed during the graduation. [50] This area of the law continues to evolve now that the *Lemon* test is overruled. Please contact First Liberty if you have specific questions about your school's policy or actions.

Citations:

44. U.S. Department of Education, *Guidance on Constitutionally Protected Prayer and Religious Expression*, *supra* note 25.
45. *Santa Fe Indep. Sch. Dist.*, 530 U.S. at 302; *Mergens*, 496 U.S. at 248-50.
46. Brooks Hamby Case, <https://firstliberty.org/cases/brookshamby/>.
47. Moriah Bridges Case, <https://firstliberty.org/cases/moriah-bridges/>.
48. *Adler v. Duval Cnty. Sch. Bd.*, 250 F.3d 1330, 1334, 1342 (11th Cir. 2001).
49. *Id.* at 1332, 1342.
50. *Schultz v. Medina Valley Indep. Sch. Dist.*, No. 11-50486 (5th Cir. June 3, 2011) (granting emergency motion to dissolve lower court's order against prayer at graduation ceremony).

Student Dress Codes and Policies

While public schools may adopt dress codes or uniforms, they may not target, ban, or penalize religious attire. [51] If a student's religious exercise would be substantially burdened by conforming to the school's dress code, such as a Muslim's obligation to wear a hijab or a Jewish student's obligation to wear a yarmulke, schools need to accommodate religious attire. Schools may choose to ban all clothing with messages, but if they allow secular messages such as those promoting sports and political viewpoints, they must allow religious viewpoints as well. For example, in *Waln v. Dysart School District*, a Native American student asked to wear an eagle feather on her graduation cap for religious reasons,

and the school district refused, while making exceptions for other students with secular messages on their caps. [52] The court upheld the student's free exercise and free speech claims because the school had selectively enforced its dress-code policy to allow secular messages but not religious messages. [53] More difficult cases arise when schools claim that a student's expression causes a substantial disruption, but schools must still meet their "heavy burden to justify intervention" when political or religious speech is involved, and "a school cannot censor a student's speech merely because it is controversial." [54] When a student in Massachusetts was disciplined for wearing a shirt that said "there are only two genders," the U.S. Court of Appeals for the First Circuit held that the school did not violate the student's rights when it punished him for wearing the shirt. [55] Please reach out to First Liberty for specific legal guidance if you encounter a similar situation, as the law in this area is evolving quickly.

Citations:

51. U.S. Department of Education, *Guidance on Constitutionally Protected Prayer and Religious Expression*, *supra* note 25.
52. *Waln v. Dysart Sch. Dist.*, 54 F.4th 1152 (9th Cir. 2022).
53. *Id.* at 1158-59.
54. *Mahanoy Area School Dist. v. B. L.*, 594 U.S. 180, 190 (2021).
55. *L.M. v. Town of Middleborough, Massachusetts*, 103 F.4th 854 (1st Cir. 2024), cert. denied, 605 U.S. ___ (May 27, 2025 (Alito, J., dissenting from denial of certiorari)) ("[W]e should reaffirm the bedrock principle that a school may not engage in viewpoint discrimination when it regulates student speech.")

Religious Holidays in Public Schools

Thanks to the Supreme Court's historic ruling in *American Legion* upholding a 100-year-old veteran's memorial cross, holiday displays and monuments are now one of the clearer areas of First Amendment law. [56] The Court no longer uses the subjective "*Lemon* test" to evaluate whether a religious display has a secular purpose. Instead, because courts look to "historical practices and understandings," religious holiday displays are much more likely to be upheld as constitutional, even in the school context. A school district may include the temporary use of religious decorations and symbols to demonstrate the cultural and religious heritage of the religious holiday. In this way, the decorations and symbols are a teaching aid and resource, and not part of a religious exercise. [57]



Public schools can celebrate and teach about religious holidays, such as Christmas, so long as the school is not celebrating the holiday for the purpose of furthering a certain religious belief. The U.S. Court of Appeals for the Eighth Circuit held that a public school is allowed to celebrate Christmas (and other holidays with both religious and secular aspects) because doing so serves the educational goal of advancing students' knowledge and appreciation of the role that America's religious heritage has played in the social, cultural, and historical development of civilization. [58] While public schools may celebrate Christmas, they do not have to; "holiday parties" are legally acceptable as well. [59]

Schools should accommodate students' religious exercise by providing excused absences for religious observances, including holy days and other observances, as long as the request is sincerely religious and accompanied by a parent note. When schools accommodate religious exercise "or cooperate with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs." [60] School administrators should not reject a sincerely religious accommodation request simply because not all members of that religion observe the same day. [61]

Public schools can include religious music, art, or drama in a school play or performance, so long as the religious music, art, or drama is presented in an objective manner as a traditional part of the cultural and religious heritage of the holiday. In fact, the U.S. Court of Appeals for the Eighth Circuit has held that "to allow students only to study and not to perform religious art, literature, and music when such works have developed an independent secular and artistic significance would give students a truncated view of our culture." [62] In 2025, First Liberty represented two elementary school students who wanted to sing Christian songs at their school's talent show. School officials pressured the students to change their songs. After a letter from First Liberty, the district apologized and stated that "school staff were unfamiliar with the legal guidelines concerning religious expression in a public school setting," that "students are permitted to perform songs of their choice, including those with religious content . . . at school events like talent shows." [63]

Federal courts have also held that choirs can sing both religious and secular songs, as long as the religious songs are not part of a religious exercise. The U.S. Court of Appeals for the Tenth Circuit stated that “[a]ny choral curriculum designed to expose students to the full array of vocal music culture therefore can be expected to reflect a significant number of religious songs.” [64] The U.S. Court of Appeals for the Fifth Circuit, recognizing that most choral music is religious, stated that preventing public schools from including religious songs would demonstrate an unlawful animosity toward religion. [65]

Please note, however, that a few courts have deviated from this generally accepted rule in cases involving student religious expression in class assignments when younger students are involved. Some federal courts have granted more discretion to schools in these situations depending on the particular facts. If this situation arises, please contact First Liberty for further analysis and guidance.

Citations:

56. *American Legion*, 588 U.S. 29.
57. *Florey*, 619 F.2d at 1314.
58. *Florey v. Sioux Falls Sch. Dist.*, 619 F.2d 1311, 1314 (8th Cir. 1980).
59. *Stratechuk v. Bd. of Educ.*, 587 F.3d 597, 610 (3d Cir. 2009).
60. *Zorach v. Clauson*, 343 U.S. 306, 313–14 (1952).
61. Because courts cannot undertake this sensitive analysis, school administrators should not either. *See, e.g., Holt v. Hobbs*, 574 U.S. 352, 362 (2015) (“[T]he guarantee of the Free Exercise Clause, is ‘not limited to beliefs which are shared by all of the members of a religious sect.’”) (quoting *Thomas v. Review Bd.*, 450 U.S. 707, 715–716 (1981)).
62. *Florey*, 619 F.2d at 1316 (cleaned up).
63. *Worship Songs at School Talent Show*, <https://firstliberty.org/cases/worship-songs-at-school-talent-show/>.
64. *Bauchman v. West High Sch.*, 132 F.3d 542, 554 (10th Cir. 1997).
65. *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 407–08 (5th Cir. 1995).

When Schools Require Students to Speak

Another important area that is currently in flux involves compelled speech. Sometimes, rather than wanting to express their beliefs, religious students simply want to remain silent or not be forced to participate in speech or activities that violate their consciences. In *West Virginia V. Barnette*, the Supreme Court found that an elementary school violated the Free

Speech Clause when it forced young children to salute the American flag and recite the Pledge of Allegiance against their religious beliefs as Jehovah’s Witnesses. [66] The Court held, “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” [67] In other words, the government – and schools – cannot force Americans to speak messages or participate in symbolic activities that go against their sincerely-held religious beliefs. [68]

In 2023, the Supreme Court held that a Christian wedding website designer could not be forced to create websites that violated her religious beliefs about marriage. [69] The Court held that it does not “matter whether the government seeks to compel a person to speak its message when he would prefer to remain silent or to force an individual to include other ideas with his own speech that he would prefer not to include All that offends the First Amendment just the same.” [70] While these principles are well-settled in other contexts, courts are still weighing how to apply them in the school context, particularly when it comes to the use of pronouns and participating in activities related to gender identity. [71] Please consult First Liberty for specific advice about these matters.

Parents’ Rights in Public Schools

For details on opt-outs, curriculum choices, notification of medical concerns, vaccines, and other topics, please see our Parental Rights Protection Kit.

Teachers’ Religious Expression in Public Schools

For details on the legal protections for teachers and other employees of public schools, including prayer, religious expression, and accommodations, please see our Religious Liberty Protection Kit for Teachers in Public Schools.

Conclusion

We hope this guide will be a helpful resource for you. If you have any questions, please seek legal assistance. First Liberty attorneys are standing by at **FirstLiberty.org** to help protect

your rights to religious liberty at public schools.

Citations:

66. *Bd. of Educ. v. Barnette*, 319 U.S. 624, 632, 637 (1943).

67. *Id.* at 642.

68. *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 585 U.S. 878, 892 (2018) (“government officials cannot ‘compel[] individuals to mouth support for views that they find objectionable.’”); *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995) (the free speech clause protects “choices of content that in someone’s eyes are misguided, or even hurtful”).

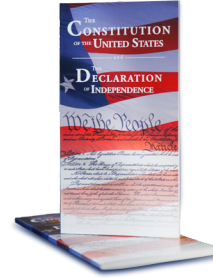
69. *303 Creative v. Elenis*, 600 U.S. 570, 586-87 (2023).

70. *Id.*

71. See, e.g., *Parents Defending Education v. Olentangy*, 120 F.4th 536 (6th Cir. 2024) (granting rehearing to decide whether students can be forced to use pronouns that conflict with their consciences); *S.E. v. Grey*, No. 3:24-cv-01611-L-SBC (S.D. Cal. May 12, 2025) (granting preliminary injunction to require opt-outs from gender identity activities that compel students to speak against their consciences in mentoring program).



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Cambridge Christian School

When set to play in a state football championship for the Florida High School Athletic Association (FHASS), two Christian schools asked to use the stadium's loudspeaker to begin with a prayer—a tradition of both schools. The FHASS denied their request, stating that it was the equivalent of the endorsement of religion. First Liberty has appealed the case to the U.S. Supreme Court.



Moriah Bridges

School officials ordered high school senior Moriah Bridges to remove religious references from her graduation speech. First Liberty secured a victory ensuring the respective school district clarified its policies to protect the religious liberty of students, allowing Moriah to mention her faith.



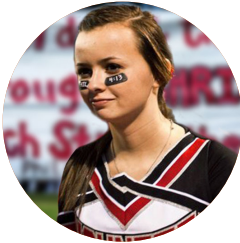
Encinas Family

When a 5th grader in California was compelled to affirm a book titled "My Shadow is Pink," which teaches children to question their gender identity, First Liberty stepped in. The parents requested an opt-out from the class for their child, and the request was denied. First Liberty is currently fighting the case in court.



Mackenzie Fraiser

Mackenzie Fraiser, a sixth-grader at Somerset Academy, a public charter school in Las Vegas, Nevada, was told that she could not include a Bible verse in a class assignment titled "All About Me." First Liberty sent a demand letter to school officials, who responded with a formal apology and allowed Mackenzie to resubmit her assignment including her expression of faith.



Kountze Cheerleaders

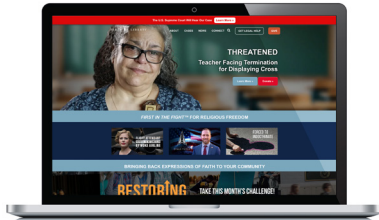
Middle school and high school cheerleaders in Kountze, Texas, made a team decision to paint Bible verses on run-through banners at games. But their inspirational signs were banned by school officials. First Liberty successfully defended their case at the Texas Supreme Court, who ruled that the cheerleaders had a constitutional right to express their religious beliefs.



Daniela Barca

New York school officials denied Daniela's application to start a Christian club, stating they could only approve it if its viewpoint was changed to something more "generic." First Liberty stepped in to represent Daniela, demanding the school system follow the law and allow Daniela and other religious students to form clubs.

School officials reversed their position and allowed Daniela's club to meet.



Learn More on First Liberty's Website

Visit our website, where you'll find information on our cases, clients and breaking updates on religious liberty in America. Whether you want to learn more about our attorneys, leadership and staff, or if you need to request legal assistance, our website is a one-stop shop for everything you need to know about religious freedom.

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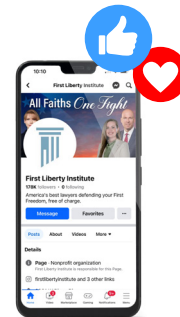
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Keisha Russell

Senior Counsel

First Liberty's Education Rights Expert

First Liberty is our nation's largest legal organization solely dedicated to protecting religious liberty for all Americans. We have won cases at all court levels, including the United States Supreme Court, federal and state courts, and administrative courts and agencies. Victories are won through a nucleus of top-ranked staff attorneys who coordinate a national network of top litigators from firms that include 24 of the largest 50 in the world.



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