

# STUDENT & TEACHERS IN PUBLIC K-12 SCHOOLS



## RELIGIOUS LIBERTY PROTECTION KIT

How you can exercise  
your legal rights in  
public school



## DEAR FRIEND OF RELIGIOUS FREEDOM,

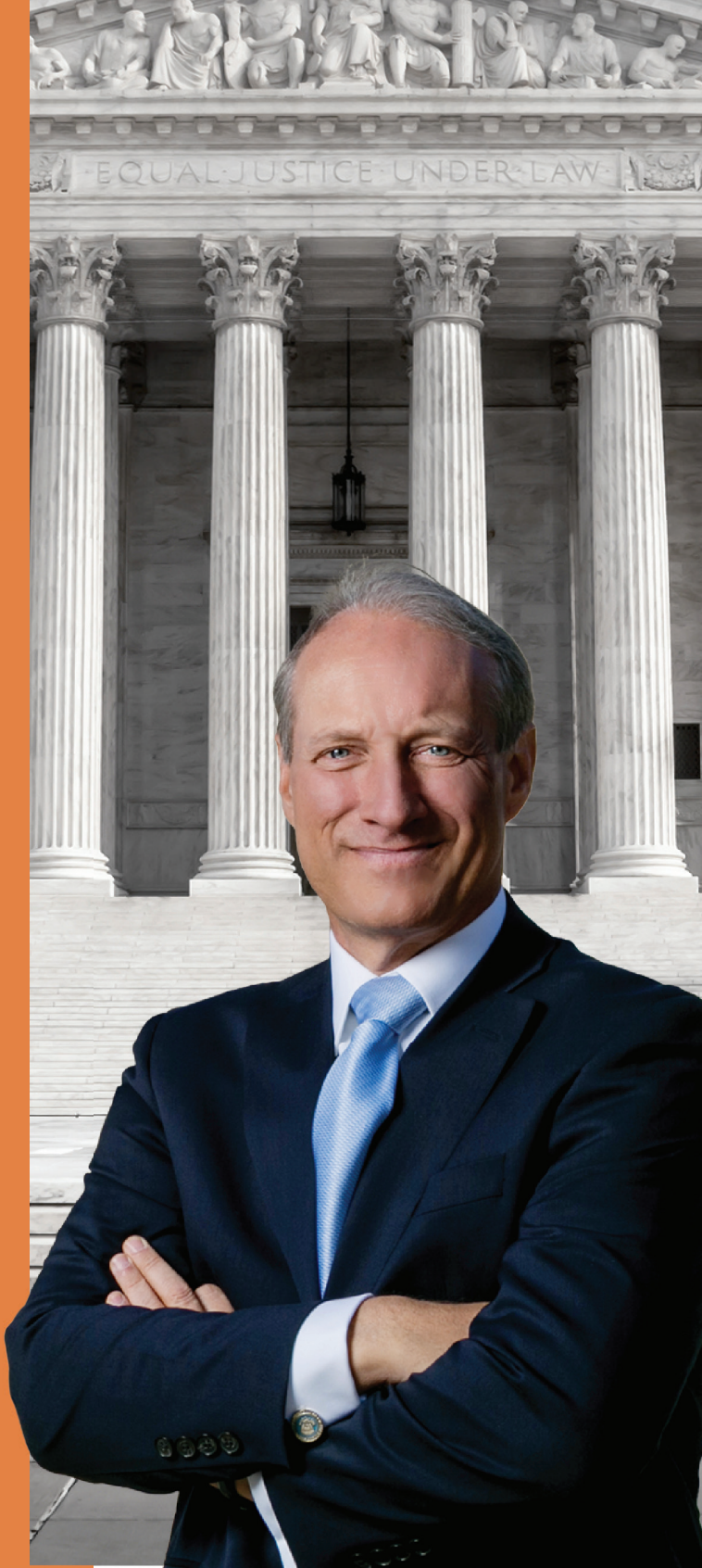
Thank you for your desire to protect **the rights of students and teachers of faith in our public schools** against increasingly hostile legal threats to your freedom to believe and to act upon your beliefs. I hope you find this **Religious Liberty Protection Kit** a simple but high-quality tool for 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.



**Kelly Shackelford, Esq.**

*President, CEO & Chief Counsel*





## **LIBERTY INSTITUTE® RELIGIOUS LIBERTY PROTECTION KIT FOR STUDENTS & TEACHERS IN PUBLIC K-12 SCHOOLS**

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# INTRODUCTION

America's public schools grow increasingly hostile towards religion. School districts routinely censor private religious expression in the name of a distorted view of the "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 in public schools.

First Liberty Institute has advised many students and teachers about their rights to religious liberty in America's public schools. Our guidance has helped them 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 the important work you do for your community and for your interest in protecting your public-school students' and teachers' religious liberty – our First Amendment's First Liberty.[1]

## Case Precedent:

1. First Liberty Institute's Religious Liberty Protection Kit for Students and Teachers in Public Schools provides general guidance to assist public school students and teachers in response to current legal threats to religious freedom. This document does not create an attorney-client relationship, and it is not to be used as a substitute for legal advice from a licensed attorney. Because the law is constantly changing and each organization's policies and documents are unique, First Liberty Institute and its attorneys do not warrant, either expressly or impliedly, that the law, cases, statutes, and rules discussed or cited in this guide have not been changed, amended, reversed, or revised. If you have a legal question or need legal advice, please contact an attorney. First Liberty Institute's attorneys may be contacted by requesting legal assistance at [FirstLiberty.org](http://FirstLiberty.org). August 2021

02 Introduction

04 **QUICK START:**  
25 Surprising Facts About Religious Rights in School

06 Students' Religious Rights in Public School

18 Teachers' Religious Expression in Public Schools

24 Legal Rights as a Public-School Employee

26 Additional **FREE** Resources

28 First Liberty Clients

30 How to Connect with Us

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## QUICK START:

### 25 Surprising Facts About Religious Rights in Public Schools

01. Students and educators do have First Amendment religious rights inside public schools.
02. Students can speak about their faith even when teachers must be neutral.
03. Schools cannot treat religious activity differently than other activity.
04. Students can pray during lunch, recess, or other designated free time.
05. Students can pray silently during a school's moment of silence.
06. Students can read the Bible or other religious materials at school.
07. Students can share their faith with fellow students.
08. Schools can acknowledge religion.
09. Students can pray, either individually or as a group, at school athletic competitions, student assemblies, or other extracurricular activities when school officials are not involved.
10. In many cases, a school district can allow student-led prayer before an athletic competition (such as a football game), a student assembly, or other extracurricular event as part of the school program.
11. Students can pray at graduation ceremonies or include religious content in their speeches.
12. A public school can refer to "Christmas" and have a "Christmas party" if the intent is not to advance Christianity.
13. A public school can display Christmas decorations if the intent is to teach and not part of a religious exercise.
14. A public school can include religious Christmas music, art, or drama in a school play or performance if it is used to teach history or cultural heritage and not advance a particular religion.
15. Students can give out Christmas gifts with religious messages at school parties.
16. Students can incorporate their faith or religion in classroom and homework assignments under normal and appropriate circumstances.
17. A public school district cannot be hostile toward religious beliefs.
18. Teachers and other public school employees can discuss religion with students under many conditions.
19. Teachers and other public school employees can discuss religion with other teachers or other school employees.
20. A public school or a teacher cannot limit religious speech by students unless they limit other speech.
21. Students can have a religious club at their school.
22. Religious student groups can meet on campus whenever other non-curricular clubs can meet.
23. Religious clubs can use the same school resources available to non-religious clubs (e.g., school facilities, bulletin boards, public address system) to promote or facilitate club events.
24. In most states, teachers or other public school employees may attend a religious student group's meetings in a supervisory role.
25. Members of religious student clubs can distribute flyers about meetings and events just like non-religious clubs.



## Students' Religious Rights in Public School

### *Students' Religious Rights in Public School*

Almost 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.” The following is a summary of the legal situation today regarding religious rights beyond the schoolhouse gate.[2]

Although there are some limits that apply to government speech (the speech of the school district and its employees), the U.S. Constitution strongly protects a student's private religious expression.[3] The First Amendment prohibits a school district and its employees from being hostile toward students' religious beliefs and expression.[4] The proper role of a school district is to remain neutral and accommodate students' religious beliefs.[5]

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.”[6]

### *Student Religious Expression*

Public schools must treat religious expression such as prayer, reading the Bible, and religious discussion the same way they treat similar nonreligious expression.[7] Unlike the government, students may promote specific religious beliefs or practices. [8]

### *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 the same way that it treats nonreligious expression. The U.S. 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. [9]

Additionally, the U.S. Department of Education guidelines provide:

“Students may pray when not engaged in school activities or instruction, subject to the same rules designed to prevent material disruption of the education 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 non instructional time to the same extent that they may engage in nonreligious activities”[10]

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. This means that if a school district allows students to converse with each other about any topic during lunch, recess, or free time, it must allow students to pray. 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 are prohibited from discouraging students from praying during this time.[11] [12]

### ***Reading Religious Texts***

Further, 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.[13]

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. In the same way, if a school allows students to bring car magazines to class to read, then students can also bring religious magazines.

### ***Sharing Your Faith***

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.[14] 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.

### ***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 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.[15]

To further illustrate, 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.

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.[16] 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.[17]

### *Student Religious Speech at Athletic Competitions, Student Assemblies, and Other Extracurricular Events*

Even 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. Indeed, the U.S. 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.[18]

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.[19]

#### **According to the U.S. Department of Education's guidelines:**

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 antireligious) 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 antireligious) 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.[20]

For example, 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.

It is important to note that "the First Amendment permits public school officials to review student speeches for vulgarity, lewdness, or sexually explicit language. Without more, however, such review does not make student speech attributable to the state." [21] This means that a school official can review a student's speech for vulgarity, lewdness, or sexually explicit language and the speech can still remain private, constitutionally protected expression.

### *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 (e.g., valedictorian and salutatorian are selected by grade point average, class officers are selected by a student body vote) and the control over the content of each address is left to the students, and not the school.

#### **According to the U.S. Department of Education's guidelines:**

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 primary 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 antireligious) 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.[22]

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 a few courts have deviated from this generally accepted rule regarding the permissibility of religious content in graduation speeches. In one case, the Ninth Circuit (which includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington) determined that when school officials exercise complete control over a graduation ceremony, including student speech, that the school officials may remove proselytizing and sectarian language from a student's graduation speech. The court determined that an objective observer would perceive the speech to be approved and endorsed by the school, and, therefore, the school could remove the proselytizing comments to avoid an Establishment Clause violation.[23]

The Ninth Circuit, however, in a different case did not require school officials to eliminate all references to God in a student's graduation speech. After removing the proselytizing comments, the student was allowed to make[24] "references to God as they related to [the student's] own beliefs." [25] The student also distributed unedited copies of his graduation speech just outside of the graduation site, and at graduation, the student announced the time and place where he would deliver the unedited version of his speech.[26]

The Eleventh Circuit (which includes Alabama, Georgia, and Florida) 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." [27] 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.[28]

### ***Religious Holidays in Public Schools***

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. A federal court 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. While public schools may celebrate Christmas, they do not have to; "holiday parties" are legally acceptable as well.[30]

Additionally, 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. [31]

In a different context, the Supreme Court allowed the display of a Nativity scene, which depicts the historical origins of the Christmas holiday, when the religious display was next to many secular symbols, including Santa Claus, a reindeer, lights, candy-striped poles, carolers, and a teddy bear.[32]

Public schools can likewise 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, a federal court has held that to allow students only to study and not to participate in 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. [33]

Federal courts have also affirmed that choirs can sing both religious and secular songs, as long as the religious songs are not part of a religious exercise. One court stated that if the music curriculum is designed to cover the full array of vocal music, the inclusion of religious songs is to be expected. Another court, recognizing that most choral music is religious, stated that preventing public schools from including religious songs would demonstrate an unlawful animosity toward religion. [34]

As it relates to religious gifts, like Christmas gifts, with religious messages at school parties, if students are allowed to distribute gifts at a school party, then the students are allowed

to give out gifts with religious messages.[35] 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, such as kindergarten and first grade students, are involved. Some federal appeals courts, such as the Third Circuit (which includes Delaware, New Jersey, and Pennsylvania), and the Sixth Circuit (which includes Kentucky, Michigan, Ohio, and Tennessee), 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.

### Case Precedent:

2. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”); *Morgan v. Swanson*, 659 F.3d 359 (5th Cir. 2011) (en banc).
3. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000) (“[T] here 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.”) (internal quotations omitted). See *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.”).
4. *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) (“Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any.”).
5. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 839 (1995).
6. *Chandler v. Siegelman*, 230 F.3d 1313, 1316 (11th Cir. 2000) (emphasis added).
7. *U.S. Dept. of Educ., Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, available at [http://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html) (last updated Jan. 16, 2020); see also *Rosenberger*, 515 U.S. at 845-46.
8. See *Lynch*, 465 U.S. at 673 (“Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any.”); *Pinette*, 515 U.S. at 760.
9. *Santa Fe Indep. Sch. Dist.*, 530 U.S. at 313 (holding that although it is unconstitutional for the government to “affirmatively sponsor[] the particular religious practice of prayer” that the Constitution protects the right of students to engage in voluntary prayer); see also *Chandler*, 230 F.3d at 1317.
10. U.S. Dep’t of Educ., *Guidance on Prayer*, *supra* note 7 (emphasis added).
11. *Tinker*, 393 U.S. at 511; *Chandler*, 230 F.3d at 1317.
12. *U.S. Dept. of Educ.*, *Guidance on Prayer*, *supra* note 7.
13. *Id.*
14. *Id.*; see also *Morgan*, 659 F.3d at 412 (“[W]hat one child says to another child is within the protection of the First Amendment”).
15. U.S. Dep’t of Educ., *Guidance on Prayer*, *supra* note 7.
16. See *Rosenberger*, 515 U.S. at 828-29, 845-46; *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393-94 (1993); *Morgan*, 695 F.3d at 401-02.
17. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 270-271 (1988).
18. *Santa Fe Indep. Sch. Dist.*, 530 U.S. at 313 (holding that although it is unconstitutional for the government to “affirmatively sponsor[] the particular religious practice of prayer” that the Constitution protects the right of students to engage in voluntary prayer). See also *Chandler v. Siegelman*, 230 F.3d 1313, 1317 (11th Cir. 2000).
19. U.S. Dept. of Educ., *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, available at [http://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html); see also *Morgan*, 659 F.3d at 412 (“[W]hat one child says to another child is within the protection of the First Amendment”).
20. *Id.* (emphasis added).
21. *Id.*
22. *Id.* (emphasis added).
23. *Cole v. Oroville Union High Sch.*, 228 F.3d 1092, 1103-05 (9th Cir. 2000); *Smith v. Pyro Mining*, 827 F.2d 1081, 1085 (6th Cir. 1987); *Turpen v. Missouri-Kansas-Texas Railroad Co.*, 736 F.2d 1022, 1026 (5th Cir. 1984).
24. *Civil Rights Act of 1964*, § 701(j), 42 U.S.C. § 2000e(j); *Sanchez-Rodriguez v. AT & T Mobility Puerto Rico, Inc.*, 673 F.3d 1, 12 (1st Cir. 2012).
25. *Trans World Airlines v. Hardison*, 432 U.S. 63, 73-74 (1977); 29 C.F.R. § 1605.2(c); *Cloutier v. Costco Wholesale Corp.*, 390 F.3d 126, 137 (1st Cir. 2004); *Daniels v. City of Arlington*, 246 F.3d 500 (5th Cir. 2001); *Wilson v. U.S. West Commc’ns*, 58 F.3d 1337, 1342 n.3 (8th Cir.1995).
26. *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971) (“The Act proscribes not only overt discrimination, but also practices that are fair in form, but discriminatory in operation”); *Riley v. Bendix Corp.*, 464 F.2d 1113, 1115 (5th Cir. 1972).
27. *Cole v. Oroville Union High Sch.*, 228 F.3d 1092, 1103-05 (9th Cir. 2000).

25. *Id.* at 981.
26. *Id.* at 981–82, 985.
27. *Adler v. Duval Cnty. Sch. Bd.*, 250 F.3d 1330, 1334, 1342 (11th Cir. 2001).
28. *Id.* at 1332, 1342.
29. *Florey v. Sioux Falls Sch. Dist.*, 619 F.2d 1311, 1314 (8th Cir. 1980).
30. *Stratechuk v. Bd. of Educ.*, 587 F.3d 597, 610 (3rd Cir. 2009).
31. *Florey*, 619 F.2d at 1314.
32. *Lynch*, 465 U.S. at 671–72.
33. *Florey*, 619 F.2d at 1316.
34. *Bauchman v. West High Sch.*, 132 F.3d 542 554 (10th Cir. 1997); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 407–08 (5th Cir. 1995).
35. *Morgan*, 659 F.3d at 410, 412.



## Teachers' Religious Expression in Public Schools

### *Teachers' Religious Expression in Public Schools*

During instructional time, teachers and other school employees are acting in their official capacities and must remain neutral toward religion. As stated above, school district employees can discuss the historical and cultural role of religion as part of a secular program of education.

Teachers and other school employees can only promote religion when not acting in their official capacities. According to the U.S. Department of Education:

[teachers may] 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.[36]

Similarly, outside of the school day, school officials are allowed to participate in private religious events. This is even true when the private religious event takes place on school grounds before or after school hours. For example, if a church group rents out a classroom after school hours for a Christmas party, the teacher may attend, just like any other private citizen.[37]

Moreover, if the school allows teachers to meet during non-instructional time in school facilities for various social purposes, such as meeting for social organizations or conversations on any topic, then the school is prohibited from barring the use of school facilities for employee-only prayer groups during non-instructional time.[38] However, if the school policy prohibits all “non-business related activity” in a particular room and does not use the room for multiple purposes, it can probably exclude employee prayer groups from that room.[39] According to the Department of Education, “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 activity.”[40] Likewise, if the school allows outside groups or individuals to use school

facilities for meetings, then the school must give teachers the same access to school facilities for religious meetings.[41]

For the most part, a teacher may express his or her faith during the workday and in public forums. The U.S. Supreme Court clearly articulated that:

First Amendment rights, applied in light of special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.[42]

Teachers and administrators engaging in non-disruptive religious expression[43] unrelated to the scope of their official duties and professional capacity, and generally not coercive to students,[44] are protected by the First Amendment. [45] For example, a school cannot create a sweeping policy to prohibit all written or oral religious advocacy among its employees,[46] or retaliate against a teacher for writing a religious-based letter to the local newspaper,[47] or prohibit employees from wearing religious attire or jewelry.[48]

### Case Precedent:

36. U.S. Dep't of Educ., Guidance on Prayer, *supra* note 7.

37. *Wigg v. Sioux Falls Sch. Dist.* 49-5, 382 F.3d 807, 815 (8th Cir. 2004) (holding that a teacher may participate in a religious, after-school program on school grounds in her capacity as a private citizen).

38. *Compare Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001) (where school opens facilities for “variety of purposes” then it cannot prohibit use by a person or organization for religious purposes), with *Berry v. Dep't of Soc. Servs.*, 447 F.3d 642, 654 (9th Cir. 2006) (where Department of Social Services does not open particular room for “multiple purposes” but only for business-related purposes, it can prohibit its use for employee prayer meetings).

39. *Berry*, 447 F.3d at 654.

40. U.S. Dep't of Educ., Guidance on Prayer, *supra* note 7.

41. *Good News Club*, 533 U.S. at 98.

42. *Tinker*, 393 U.S. at 506.

43. *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 966 (9th Cir. 2011); *Tucker v. Cal. Dep't of Educ.*, 97 F.3d 1204, 1210 (9th Cir. 1996).

44. See *Good News Club*, 533 U.S. at 112 (“We have said that a state interest in avoiding an Establishment Clause violation ‘may be characterized

as compelling,’ and therefore may justify content-based discrimination.” (citation omitted)); *Poway Unified Sch. Dist.*, 658 F.3d at 967-68; *Roberts v. Madigan*, 921 F.2d 1047, 1056-58 (10th Cir. 1990) (upholding school policy prohibiting teacher from placing Bible on his desk, reading Bible during silent reading period, and stocking two Christian books on shelves, because together they might give students the impression of state endorsement of religion); *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994) (upholding school policy prohibiting teacher from speaking with students about religion any time the students are on campus, including lunch break and the time before, between, and after classes); but see *Wigg v. Sioux Falls Sch. Dist.* 49-5, 382 F.3d 807 (8th Cir. 2004) (holding that a teacher’s participation in an after-school religious club is protected free speech and does not violate the Establishment Clause).

45. *Garcetti v. Ceballos*, 547 U.S. 410, 418-22 (2006); *Kennedy v. Bremerton Sch. Dist.*, 991 F.3d 1004, 1015-17 (9th Cir. 2021).

46. *Tucker*, 97 F.3d at 1204.

47. See *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 572-73 (1968) (striking down school’s firing of a teacher for writing newspaper editorial criticizing the Board of Education’s allocation of funds); but see *Dixon v. Univ. of Toledo*, 842 F.Supp.2d 1044, 1049-53 (N.D. Ohio 2012) (upholding university decision to fire Associate VP for Human Resources for writing newspaper editorial referencing her religious views on homosexuality, based on her policy-related position, “speculative” damage that might occur to the university, and a “presumptive insubordination” rule based on her speech conflicting with the position of the school).

48. *Nichol v. Arin Intermediate Unit 28*, 268 F. Supp. 2d 536 (W.D. Penn. 2003); but see *Berry*, 447 F.3d at 652 (upholding government agency’s policy prohibiting the display of religious items in employee’s cubicle because clients might reasonably interpret them as government endorsement of religion).

## Legal Rights as a Public-School Employee

Federal employment discrimination law, Title VII of the Civil Rights Act of 1964 (“Title VII”), prohibits employers with 15 or more employees from discriminating on the basis of religion. [49] The law also provides that employers may not create a hostile work environment on the basis of religion, which means that employers cannot tolerate severe or pervasive harassment on the basis of religion.[50] Some states also provide similar protections applicable to employers with fewer than 15 employees. If you believe that you have experienced religious discrimination or harassment, we recommend that you reach out to an attorney to discuss filing a complaint with the Equal Employment Opportunity Commission or the appropriate state agency.

In this guide, we want to highlight another important protection for religious teachers and employees in the school environment—**the right to request a religious accommodation**. Title VII requires that employers grant reasonable religious accommodation requests unless doing so would cause an undue hardship on the business.[51] Undue hardship is currently defined as more than a *de minimis* cost to employers.[52] You have the right to ask for a religious accommodation when you may be called to do something on the job that violates your sincerely-held religious beliefs, including teaching curriculum or promoting topics that violate your faith.

Traditionally, religious accommodation requests have often been used for religious employees who cannot work on one day of the week in order to observe Sabbath or Shabbat or who require a modification to a grooming policy in order to wear a yarmulke, cross necklace, or hijab.[53] Some employers mistakenly believe that religious accommodations only include these kinds of requests. However, Title VII defines “religion” broadly to include all aspects of religious observance and belief.[54] Religious accommodations have been provided in a variety of circumstances. For instance, school districts may accommodate a teacher who needs to attend a religious event during the school day.[55]



## Legal Rights as a Public-School Employee

## How Do I Request a Religious Accommodation?

When requesting an accommodation, keep the following points in mind:

1. An employer is not likely to grant a religious accommodation request if they do not know that you need one.
2. Make your religious accommodation requests in writing, such as an emailed request, and retain a copy.
3. Clearly and concisely explain your religious beliefs and the accommodation that you are seeking.
4. Work with your employer to try to come up with a win-win solution.
5. Be polite and respectful at all times.

Increasingly, school districts are putting in place policies with respect to issues of gender and sexuality that conflict with some religious employees' beliefs on these issues. Religious teachers may wonder what their rights are in these circumstances. For more information on these issues, please see First Liberty's Religious Liberty Kit for Employees.

## Conclusion

If you have any questions, please seek legal assistance. First Liberty attorneys are standing by at [FirstLiberty.org](https://www.FirstLiberty.org) to help protect your rights to religious liberty at public schools.

## Case Precedent:

49. Note: This guide is directed toward religious employees at public schools. This guide does not apply to employees at religious schools. Religious schools have a right to create a community that shares a set of religious beliefs and thus can make employment decisions on the basis of religion. See 42 U.S.C. § 2000e-1(a); *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020); *Hosanna-Tabor Evangelical Lutheran Church Sch. v. EEOC*, 132 S. Ct. 694 (2012). For additional information, see First Liberty's Protection Kits for Religious Schools.

50. See 42 U.S.C. § 2000e-2(a)(1); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993); *Johnson v. Spencer Press of Maine, Inc.*, 364 F.3d 368, 376-77 (1st Cir. 2004).

51. 42 U.S.C. § 2000e(j); EEOC Guidelines on Discrimination Because of Religion, 29 C.F.R. § 1605.2(b).

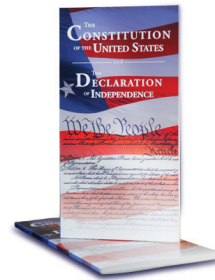
52. *Trans World Airlines v. Hardison*, 432 U.S. 63 (1977). *Buonanno v. AT&T Broadband, LLC*, 313 F. Supp. 2d 1069, 1081 (D. Colo. 2004) (noting the alleged hardship cannot be merely speculative).

53. See, e.g., *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015) (headscarf); *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359 (3d Cir. 1999) (beards).

54. 42 U.S.C. § 2000e(j).

55. See *Wangness v. Watertown Sch. Dist. No. 14-4 of Codington Cty., S. D.*, 541 F. Supp. 332, 337 (D.S.D. 1982).

## Additional FREE Resources



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## Coach Joe Kennedy

A school district in Washington fired high school football Coach Joe Kennedy because he knelt for a brief, silent prayer after games. First Liberty is fighting at the U.S. Supreme Court to vindicate Coach Joe's constitutional rights and set a precedent to protect all Americans from being fired because they live out their faith.



## 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.



## Toni Richardson

Toni worked as an educational technician for children with special needs, but was threatened with termination because she privately told a coworker she would pray for them. First Liberty stepped in, and the school district withdrew its threats of disciplinary action, acknowledging the First Amendment rights of all school employees "to express religious beliefs or use faith-based language at school."



## 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.



## Matthews v. Kountze ISD

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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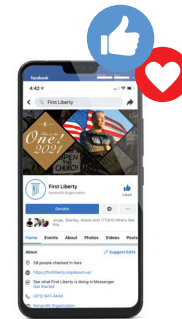
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 (972) 941-4444



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*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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