

What Is New With Prayer in Schools

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New Federal Guidance

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February 2026 U.S. Dept of Ed Guidance

- ❑ On February 5, 2026, and updated "Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools" was issued by the U.S. Department of Education
- ❑ It supersedes and replaces the Department's 2023 Guidance of the same title
- ❑ The Guidance has four sections:
 - I. Certification and Enforcement
 - II. Principles Governing Religious Expression and Prayer (the bulk of the document)
 - III. Scenarios
 - IV. Concluding Remarks

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I. Enforcement and Certification

- ❑ In order to receive federal funds, all public school districts must, by October 1, 2026, certify to their respective state education agencies, in writing, "that no policy of the [district] prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools..." as detailed in the Guidance document.
- ❑ There is no federal certification form; PED is required to establish a process by which districts can provide the necessary certification.
- ❑ PED is also obligated to create a process for filing a complaint against any district "that allegedly denies a person, including a student or employee, the right to participate in constitutionally protected prayer."
- ❑ By November 1 of each year, PED (and all other state education agencies) must send to the Secretary of Education a list of districts that have not filed the required certification or that have been the subject of a complaint "alleging that the [district] has a policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools."

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II. Principles Governing Religious Expression & Prayer

- ❑ In this section, the Guidance relies on 2022 Supreme Court decision to say that school employees, can engage in visible, personal prayer, in the presence of students, during times they are not acting in within the scope of their official duties, even in the workplace.
- ❑ “[A]ll members of a public school community have a constitutional right to religious expression in public schools, including a right to engage in prayer, *so long as the school [and its employee] does not compel others to participate in or otherwise affirm that religious expression, and so long as the individuals in question do not engage in such religious expression as part of the official activity of the school itself.*”
- ❑ While “public schools, school officials, and teachers may not suppress such religious expression, [they] also may not coerce it.”

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II. More Principles Governing Religious Expression

- ❑ The Guidance spends significant time on a 2025 Supreme Court decision which said that parents have a First Amendment right to direct their children’s education in accordance with their sincerely held religious beliefs so may opt their students out of curricular content with LGBTQ characters and themes.
- ❑ The Department of Education asserts in the guidance that this decision means parents can opt their children out any curricular content that is contrary to their sincerely held religious beliefs.
- ❑ The Guidance adds that while “public schools may not require students to pray, nor may a school engage in or sponsor prayer in such a way as to effectively implicate the school itself in a religious practice,” they must accommodate a child who is asserted that they are religiously required to pray at specified times of day, unless the district can show a compelling and narrowly tailored state interest that would preclude such an accommodation.

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II. Even More Principles

- ❑ In summarizing the Principles Guiding Religious Expression and Prayer in schools, the Guidance concludes by saying, in short:
 - ❑ Public schools have authority to regulate student speech that “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.”
 - ❑ It is unconstitutional for the actions of a public school district(or its employees) to “reflect[] hostility to religious people or their beliefs.”
 - ❑ Public schools cannot subject religious speech, including prayer, to more onerous restrictions than are imposed on similar secular speech or expression. Adds the Guidance, this means that any school support given to secular student clubs cannot be denied to religious student clubs without a compelling and nondiscriminatory reason.

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III. Scenario A

- ❑ The 2026 Guidance sets out six scenarios to assist districts applying the Principles:
 - ❑ Student Religious Expression:
 - ❑ While schools do not have to permit students to pray in ways that violate ordinary class rules or interrupt class instruction, they must allow “students to pray privately and quietly by themselves...in class, at an athletic event, or before a meal...[and to] pray in a speaking voice on the same terms as any other student might engage in non-religious speech.”
 - ❑ Also, students also must be allowed to dress in accordance with their religious faith, which could include wearing a cross necklace, a yarmulke, or a headscarf as an expression of their faith.

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III. Scenario B

- ❑ Religious Expression in Student Groups:
 - ❑ Non-disruptive student prayer or religious expression that is not disruptive and does not infringe on the rights of others can occur in student groups, and must be permitted and supported on the same terms as for non-religious groups.
 - ❑ Schools may not: 1) prefer religious expression over secular expression in student groups; 2) prefer secular student groups to religious student groups; or 3) discriminate among religious groups of different faiths in student group decisions.

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III. Scenario C

- ❑ Religious Expression at School Events:
 - ❑ Public schools may not sponsor or organize compulsory prayer at official events including ceremonies, assemblies, graduations, or sporting events.
 - ❑ No person—student, teacher, or anyone else—may deliver prayers on behalf of the school, or in manner that attendance at the prayer is, or reasonably appears to be, mandatory.
 - ❑ Districts must allow individual participants in school events to individually engage in prayer, and to voluntarily join one another in such prayer, so long as they do not coerce the participation of others or speak on behalf of the school or district.

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III. Scenario D

- ❑ Religious Expression at School Events:
 - ❑ If districts allow students to speak on any topic at events like assemblies and graduations, student-initiated religious remarks must be treated the same as other permissible speech. So, for instance, a valedictorian may thank God in her graduation speech but she may not require those in attendance to bow their heads in prayer and thank God with her.
 - ❑ Student event speakers should not be selected in a manner that favors or disfavors religious perspectives and viewpoints.
 - ❑ Student speakers who are selected based on neutral criteria and who have primary control over the content of their expression as they are not speaking for the school. But when public school officials are speaking in their official capacities or if they have control over the content of student speech, that speech is attributable to the school, so it may not include prayer or specific religious or anti-religious content.
 - ❑ To ensure the risk of perception that a school endorses student religious speech that is not actually attributable to the school, written or verbal neutral disclaimers can be made to clarify that such speech is the speaker's and not the school's.

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III. Scenario E

- ❑ Religious Expression in Assignments:
 - ❑ Public school teachers cannot require students to pray or otherwise affirm religious beliefs as part of classroom instruction or written or oral assignments.
 - ❑ But, teachers must allow students to discuss their religious beliefs in presentations, homework, exams, or other assignments without discriminating based on the student's religious perspective, or their lack of religious belief or perspective.
 - ❑ All student schoolwork and assignments must be judged by ordinary academic standards of substance and relevance, regardless of content.
 - ❑ So, for instance, if a teacher assigns students to write a poem, and a student submits a poem in the form of a prayer, it should be judged on the basis of academic standards, such as literary quality, and not penalized or rewarded on account of its religious content.

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III. Scenario F

- ❑ Religious Expression by Public School Employees:
 - ❑ The Guidance relies on a 2022 Supreme Court case to take a broad-reaching position that employees “must be permitted to pray while at work on the same terms as students, unless such prayer acts to coerce others into joining in or affirming their prayer or functions as the official speech of the school as an institution.”
 - ❑ School employees and officials cannot deliver prayers on behalf of the school or in contexts that students cannot opt out of.
 - ❑ For example, says the Guidance, a teacher may bow her head to say grace before lunch, and students might voluntarily join her, but she may not instruct students to pray with her, pressure them to pray with her, or create an atmosphere in which students are favored if they pray with her.
 - ❑ School employees may also dress in accordance with their religious faith.

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III. Scenario G

- ❑ Discipline and Harassment:
 - ❑ Public schools are entitled to maintain ordinary discipline and must protect students from targeted harassment, even if the harassing student or students claim to have a religious basis for their actions.
 - ❑ But, adds the Guidance, schools must carefully distinguish general expressions of religiously grounded beliefs from targeted harassment, threats, or advocacy of unlawful physical violence toward individuals or groups, which may create a hostile environment. If the conduct reflects sincere religious belief and merely “offends others” but is not targeted harassment, threats, or advocacy of unlawful physical violence, then it is “typically protected speech.”

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IV. Discipline and Harassment

- ❑ Public schools are entitled to maintain ordinary discipline and must protect students from targeted harassment, even if the harassing student or students claim to have a religious basis for their actions.
- ❑ But, adds the Guidance, schools must be careful to distinguish general expressions of religiously grounded beliefs from targeted harassment, threats, or advocacy of unlawful physical violence toward individuals or groups, which may create a hostile environment.
- ❑ If the conduct reflects sincere religious belief, and “only offends others” but is not targeted harassment, threats, or advocacy of unlawful physical violence, then it is “typically protected speech.”

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What Does the Law Say?

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The First Amendment

- ❑ The Establishment Clause

- ❑ freedom *from* religion:

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

- ❑ The Free Exercise Clause

- ❑ freedom *of* religion

“ . . . or prohibiting the free exercise thereof; . . .”

- ❑ The Free Speech Clause

- ❑ freedom of expression

“ . . . or abridging the freedom of speech.”

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Says the Supreme Court

- ❑ There is “a crucial difference between the state endorsing religious speech, which the Establishment Clause forbids and private religious speech which the Free Speech and Free Exercise Clauses protect.”

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The Establishment Clause & Schools

- ❑ This is about what the government (the District) can do.
- ❑ The aim of the Establishment Clause is to prevent a majoritarian government from “establishing” religion and thereby imposing particular religious beliefs on individuals.
- ❑ So, to avoid unconstitutional establishment of religion, the government action at issue must not:
 - ❑ Persuade, compel, or coerce anyone to pray or participate in a religious exercise.
 - ❑ Endorse religion in public schools.
 - ❑ Make religious observance compulsory.
 - ❑ Compel students to engage in formal religious exercise.
 - ❑ Favor one religion over another.

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The Free Exercise Clause

- ❑ This is about the right to private religious (or non-religious) practice.
- ❑ Under the Exercise Clause, the government may not abridge an individual’s free exercise of a sincerely held religious belief without a compelling governmental interest.
- ❑ However, governmental bodies may adopt and apply neutral, generally applicable laws and rules.

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The Free Speech Clause

- ❑ This is about private speech.
- ❑ The Supreme Court has said that students and teachers do not completely lose their rights to freedom of speech and freedom of expression, though there are constitutionally valid reasons to regulate their speech under some circumstances.

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School Sponsored Religious Expression and Prayer

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School Sponsored Prayer is Prohibited

- ❑ Supreme Court has ruled that:
 - ❑ Daily classroom and PA system invocation of God's blessings in state-mandated prayer was an unconstitutional 'religious activity', "wholly inconsistent with Establishment of Religion Clause of Constitution."
 - ❑ However, federal courts have upheld mandatory moment of silence.

Engel v. Vitale, 370 U.S. 421 (1962).

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What if the Student Gives the Prayer?

- ❑ A public school may not allow a prayer to be given over the public address system before school begins or during the school day, even if such prayer is given by a student volunteer.

Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203 (1963); *Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1981), *aff'd mem.*, 455 U.S. 913, (1982).

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Prayer at Graduation Ceremonies

- ❑ Neither the school district, nor district-invited speakers, nor students can give invocations at graduation ceremonies.
 - ❑ Students in attendance would either be or feel compelled by District to engage in a religious activity in which they objected.
 - ❑ Prayers at graduation give the impression of being school-sponsored.
- ❑ Schools CAN allow private groups to sponsor optional baccalaureate services, and use school facilities, consistent with non-school use policies.

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

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Prayer During Extra-Curricular Activities

- ❑ Prayer at football games
 - ❑ A school-sponsored prayer by a student over the loudspeaker prior to football games violates the Establishment Clause because it was coercive. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000).
 - ❑ Factors :
 - ❑ Gave the appearance of school sponsorship;
 - ❑ Not truly optional (e.g. cheerleaders, band, team members);
 - ❑ Result was an unconstitutional religious majoritarian rule.
- ❑ Other activities
 - ❑ The holding in *Santa Fe* extends to other activities, including graduation and extracurriculars.

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Employee Religious Expression and Prayer



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Generally . . .

- ❑ Employees acting in their official capacity may not encourage or discourage student prayer, nor may they lead or participate in any prayer with students.
- ❑ Employees should not display religious imagery in classroom, without legitimate curricular purpose.
- ❑ Employees cannot speak about religious matters to other employees in a coercive manner.
- ❑ Employees may be directed to convey the District's curriculum and to refrain from expressing religious viewpoints in the classroom or discussing their religious beliefs with students.



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What is Permitted?

- ❑ Religious expression by employees or officials is generally permissible if it is private, voluntary, and on their own time.
- ❑ Teachers may also take part in religious activities such as prayer even during their workday at a time when staff are allowed to engage in other private conduct such as making a personal telephone call or handling personal email.
- ❑ A teacher assigned to an appropriate class, can teach *about* religion.
 - ❑ For example, the history of religion, comparative religion, the Bible (or other religious teachings) as literature, and the role of religion in the history of the United States and other countries.

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A Word of Caution

- ❑ US Supreme Court, in a 2022 decision, adds some caveats to consider:
 - ❑ Even if the religiously-oriented conduct occurred while an employee is on duty, if the period of time at issue is when staff “are free to attend briefly to personal [non-religious] matters,” and they are not in the presence of students, then the District may not restrict the employee’s religious expression. *Kennedy v. Bremerton*, 597 U.S. 507 (2022).
 - ❑ This is the decision cited broadly in the Guidance so ensure you understand the subtle distinctions to take from the case.

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Student Religious Expression and Prayer

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Private Student Prayer

- ❑ Under the Free Exercise Clause, individual students, like employees, have a protected right to pray privately (e.g., read Bibles, Torahs, Korans, 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 students may engage in nonreligious activities).
- ❑ Such prayers must be nondisruptive, non-coercive, and are subject to the same limitations as other, non-religious, student speech.
- ❑ Students may organize prayer groups, religious clubs, and "see you at the pole" gatherings before school to the same extent that students are permitted to organize other noncurricular student activities groups.

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More Private Student Prayer

- ❑ As long as it meets the assignment, students can express their beliefs about religion in homework, artwork, and other written and oral assignments and be judged by ordinary academic standards of substance and relevance and consistent with any legitimate pedagogical concerns identified of the school.
- ❑ Students can distribute religious literature to other students on the same terms as they can distribute other literature unrelated to school curriculum or activities.
- ❑ The District can set reasonable “time, place, and manner” restrictions on the distribution of ALL non-school literature. It cannot single out religious literature for special rules.

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Student Prayer at Events

- ❑ Remember: student prayer attributable to the District is prohibited.
- ❑ However, student graduation or event speakers that are selected for content-neutral criteria, and who retain primary control over the content of what they say, cannot be restricted because of its religious (or anti-religious) content and it may include prayer.
- ❑ Schools may want to put disclaimers in the program to clarify that such religious or nonreligious speech is that of the speaker and not the school.

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The Courts Specify....

- ❑ Schools cannot interfere with a student's exercise of his/her sincere religious belief, unless the interference is in furtherance of compelling governmental interest and the restriction is the least restrictive means of furthering that interest.
- ❑ *A.A. v. Needville Indep. Sch. Dist.*, 611 F.3d 248 (5th Cir. 2010) (holding that school's dress code substantially burdened student with sincere religious belief in wearing his hair visibly long.)
- ❑ Students may pray in the locker room or on the field, as long as the prayer is student-initiated and is not coercive to students who do not want to participate. *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995).
- ❑ School **could** regulate distribution of rubber fetus dolls that were being used to damage school property and disrupt classes. *Taylor v. Roswell Indep. Sch. District*, 713 F.3d 25 (10th Cir. 2013).

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