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California Three Rs

Rights, Responsibility, and Respect

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School Prayer - Respecting the Nuances of the Law in Setting School Policy

by First Amendment Center

High-profile controversies and an often-divided populace place school prayer front and center in the culture war battles over religious liberty and public education. Despite these disputes, a consensus has been reached by a broad spectrum of religious liberty and education organizations. These consensus guidelines have even been adopted by the Department of Education for both of the last two administrations.

The legal history of school prayer began with the 1962 Supreme Court case of *Engel v. Vitale*. Arising from a New York policy requiring each school day to begin with a prayer drafted by the state Board of Regents, this case became the foundation for all other school-prayer cases. In it, Justice Hugo Black wrote:

"... the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government."

This idea that government is forbidden from instructing, guiding or even encouraging people towards any particular form of religious worship is at the core of modern establishment-clause jurisprudence. It is important to note that the violation of the establishment clause is not based on someone's being offended or being able to avoid the prayers, but instead on the government's involvement in and active promotion of a religious activity.

The high court next examined school prayer in the 1985 case of *Wallace v. Jaffree*. This controversy arose over a change to Alabama's moment-of-silence law to include a requirement that the moment of silence be for the purpose of "meditation or voluntary prayer." The Court found such a change was the result of a desire to return to government promotion of prayer in the schools, and struck the statute down. As the justices explained, a genuinely neutral moment of silence is appropriate, but any such legislation must have a secular purpose. Currently, many states and municipalities have laws requiring or allowing a moment of silence at the beginning of each school day.

In 1992, the Court again examined the question of school prayer in *Lee v. Weisman*. At issue was Providence, R.I.'s practice of routinely inviting local clergy to open and close middle school graduation ceremonies with prayers. A family objected to the practice and filed suit, and the case eventually worked its way to the Supreme Court. Justice Anthony Kennedy's majority opinion held that a graduation ceremony is a school-sponsored and -controlled event, and for school representatives to invite

someone to conduct a religious exercise, such as prayer, violates the establishment clause.

The school claimed that prayer at graduation was “of profound meaning to many students and parents throughout the country.” While Kennedy acknowledged such profound meaning did exist for many people, he did not find such rationale persuasive enough to overcome the establishment-clause prohibition against the government’s using religion for government purposes. He found the argument that graduation ceremonies were voluntary equally unpersuasive. Citing peer pressure on students to engage in school-sponsored religious exercises, Kennedy argued that:

“The principle that government may accommodate the free exercise of religion does not supersede the fundamental limitation imposed by the Establishment Clause. It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise.”

Finally, the most recent school-prayer case arose out of Texas. In the 2000 decision *Santa Fe v. Doe*, the Supreme Court held a school may not ask students to lead prayers over the public address system before football games. The Court found the situation in *Santa Fe* similar to the situation in the *Lee v. Weisman* case. *Santa Fe*’s practice was not a matter of private student speech, but of students speaking on behalf of and at the request of school officials. This factor changed the situation from being one of true private student speech to school-sponsored and -endorsed speech. This case demonstrated that schools cannot use a proxy, such as outside clergy or even students, to engage in activities they are themselves forbidden from practicing.

Principles

From these cases, certain general principles may be drawn. For one, school officials are prohibited by the establishment clause from promoting religion. Leading students in prayer is an example of promoting religion, even if school officials attempt to make the prayers “nonsectarian” or otherwise non-offensive. In most cases, this only makes the situation worse, in that it sends the message that “nonsectarian” approaches to prayer are approved by the state, while sectarian prayers are not.

Moment-of-Silence Initiatives

Despite the occasional flurry of inaccurate e-mails and the occasional political speech riling emotions, as shown above, most issues surrounding school-sponsored prayer are clearly established by the courts. One controversy still finding its way into court involves moment-of-silence legislation.

After the *Engle v. Vitale* decision, many states began passing moment-of-silence laws. Some were expressly designed to allow a moment of silence during school hours in an effort to promote prayer in school. One such case was *Wallace v. Jaffree* in 1985, in which a moment-of-silence law was struck down owing to its impermissible purpose of advancing religion. Other states and localities passed moment-of-silence laws with permissible secular purposes such as providing a calming moment at the beginning of the school day or as a means of accommodating students needs to pray or otherwise engage in silent activity...

Students’ Expression Rights

But what of the right of students to pray at school? Many people are under the mistaken impression that the prohibition against government-imposed prayers applies to students as well. Just like other forms of student expression, student religious speech is protected. As the Court explains in *Tinker v. Des Moines*, “students do not shed their constitutional rights when they enter the school house gate.” These “constitutional rights” include a student’s right to pray alone or in groups, as long as they are not disruptive to the school environment. To prevent students from engaging in such non-disruptive activities would violate both their free exercise of religion and free-speech rights.

Although Supreme Court rulings clarify many school-prayer issues, some areas of contention still exist. The establishment clause prohibits school officials from promoting or leading students in prayer. The free-exercise

and free-speech clauses protect a student’s right to engage in religious speech, including prayer. So what should happen when a student engages in religious speech during a school-sponsored activity? In the case of Santa Fe v. Doe, the Supreme Court explained that when a school retains control over the location, schedule, and content of the student’s message, that message carries the imprimatur of the school.

Lower courts follow this principle by examining the level of control the school exercises over the actual speech in question. In the 2001 case of Adler v. Duval, the 11th U.S. Circuit Court of Appeals found that if schools use neutral criteria in selecting a student speaker and that speaker is given a truly open forum to say whatever he or she wishes, then the school is merely accommodating the student’s free-speech right. But if a school retains the right to review and modify a student’s comments, the courts often find the student’s speech attributable to the school. This was the result in the 9th Circuit case of Cole v. Oroville Union High School District in 2000.

Other Religious Expression

The First Amendment not only applies to prayer or other verbal religious expression, but also to other forms of religious messages during the school day. Educators may not require students to respond to assignments or classwork in religious ways. But students may include religious perspectives or ideas in their coursework, as long as such material meets the requirements of the assignment. The U.S. Department of Education released guidelines in 2000 with the following advice:

“Students may express their beliefs about religion in the form of homework, artwork, and other written and oral assignments free of discrimination based on the religious content of their submissions. 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.”

Other forms of student religious expression should be treated as any other type of student speech on campus. If a student’s private expression does not create a substantial disruption to the educational environment or infringe on the rights of others, the school should protect the student’s right to express himself or herself.

These guidelines were given additional support on Feb. 7, 2003, when the Department of Education issued a somewhat revised version — and warned that school districts failing to abide by them faced losing federal money.

“Even after repeated dissemination of guidelines, far too many school administrators still ignore their obligation to protect the religious-liberty rights of students,” said Charles Haynes, the First Amendment Center’s senior scholar. “Linking the guidelines to funding is a wake-up call that may finally push all schools to take the First Amendment seriously.”

The above information was taken from the First Amendment Center website with permission. It is accurate as of February 2004. For more information on religious liberty and public schools, please see The First Amendment Center website http://www.firstamendmentcenter.org/rel_liberty/index.aspx Here the case law and Frequently Asked Questions are posted for the convenience of the user.

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● **\$50 per person, includes lunch and materials**
● **Featured Speaker - John Ferguson, First Amendment Center**
● **Contact Peg Hill (909) 386-2611 for information**
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Common Ground Resources:

Finding Common Ground: A guide to Religious Liberty in Public Schools by Charles C. Haynes and Oliver Thomas. First Amendment Center, 2001.

This book has guidelines on how to handle a wide range of issues related to religious liberty and public schools.

First Amendment Center: Religious Liberty http://www.firstamendmentcenter.org/rel_liberty/index.aspx

This is an up-to-the-minute resource with current issues and court cases as well as the information in *Finding Common Ground*.

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For information on teaching about world religions, contact...

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