

Prayer in Schools

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The Law

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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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Board Prayer

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Prayer at School Board Meetings

- ❑ The Establishment Clause prohibits school boards from coercing, or attempting to coerce, anyone into supporting or participating in religion or a particular religious doctrine, or otherwise act in a way that would seem to establish a “government” religion or faith.
- ❑ But, there is a “Legislative Exception” to the Establishment Clause.
 - ❑ This exception says that Board prayer at school board meetings is more like “legislative prayers” which are permitted during the opening sessions of the legislative and other deliberative public bodies. *Marsh v. Chambers*, 463 U.S. 783 (1983).

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Limits on “Legislative Prayers”

- ❑ “To invoke Divine guidance on a public body entrusted with making the laws is not ... an establishment of religion or a step toward establishment; it is simply a tolerable acknowledgment of the beliefs widely held among the people of this country.” *Marsh v. Chambers*, 463 U.S. 783 (1983).
- ❑ The “legislative exception” applies to prayers at city council meetings so long as “there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or life.” *Town of Greece, N.Y. v. Galloway*, 572 U.S. 565 (2014).
 - ❑ Prayers that “denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion” may cross the constitutional line.
- ❑ Our own Tenth Circuit, has likewise said that “legislative prayer” “does not violate the Establishment Clause when it chooses a particular person to give invocational prayers,” so long as the prayer does not “proselytize a particular religious tenant or belief, or that aggressively advocates a specific religious creed, or that derogates another religious faith or doctrine.” *Snyder v. Murray City Corp.*, 159 F. 3d 1227 (10th Cir. 1998).

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The “Legislative Exception” & Students at School Board Meetings

- ❑ Outside New Mexico, the federal circuit courts are divided about whether school board prayers are constitutionally permissible under the “legislative exception.”
- ❑ Reason for that split: regular presence and even participation of students at school board meetings.
 - ❑ So be cautious, especially if you have student board members. Those courts have said:
 - ❑ Legislative exception may not apply *because it does* not adequately address “the need to protect students from government coercion in the form of endorsed or sponsored religion.”
 - ❑ Student presence may not be “technically mandatory,” but there is evidence of “involuntariness” and “coercion” based on consistent student attendance at meetings for reasons including disciplinary hearings, student government reports, awards and recognition, presentation of the colors by JROTC students, and participation in public comment.
 - ❑ Option for students to step out during opening prayer “is not a cure for a constitution violation.”



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School Sponsored 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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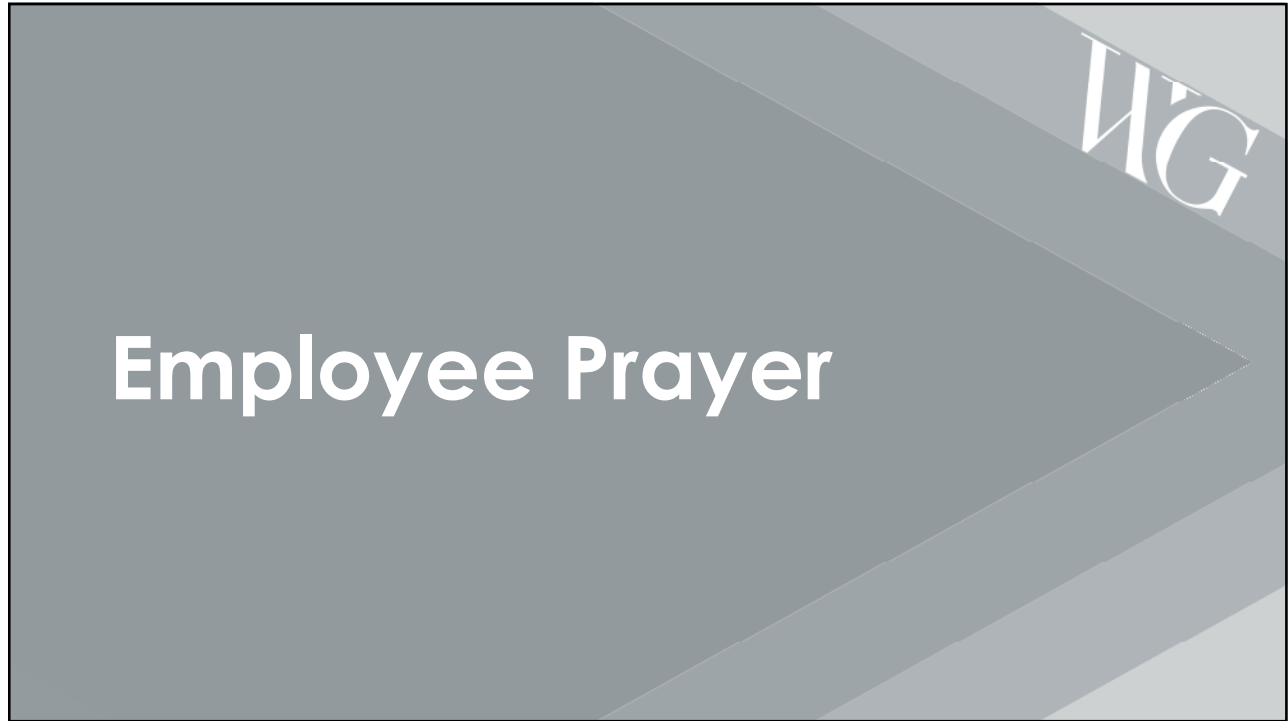
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Prayer During Extra-Curricular Activities

- ❑ 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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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 decision in summer of 2022 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 142 S. Ct. 2407 (2022).

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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 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).
 - ❑ Remember though, employees cannot lead or participate in such prayer.
 - ❑ 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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