

LIBERTY INSTITUTE®

# RELIGIOUS LIBERTY PROTECTION KIT

*-for-*

## STUDENTS AND TEACHERS

---

HOW YOU CAN EXERCISE  
YOUR LEGAL RIGHTS  
IN PUBLIC SCHOOL

FIRST



LIBERTY





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.

A handwritten signature in black ink that reads "Kelly Shackelford". The signature is fluid and cursive, with a large, stylized "K" and "S".

Kelly Shackelford, Esq.  
President, CEO & Chief Counsel

## **LIBERTY INSTITUTE® RELIGIOUS LIBERTY PROTECTION KIT FOR STUDENTS AND TEACHERS**

Cover and page design: David Malphurs

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# WHY STUDENTS AND TEACHERS NEED TO KNOW THEIR RELIGIOUS RIGHTS

*“Knowledge of your  
rights breeds confidence.”*

Students and teachers often don't practice their faith in public schools because they believe it is illegal to do so. Others fear opposition within the schools and by activist legal groups.

This is tragic and unnecessary. **U.S. Supreme Court decisions and other laws grant broad religious liberty rights to students and teachers in public school.** It's also tragic because religious influence is needed more than ever. Crime and suicide rates are rising in our schools while academic scores and career readiness are falling.

The information in this **Religious Liberty Protection Kit** addresses these problems. Knowledge of your rights—and the fact that lawyers are available to protect your rights—breeds confidence. It can empower students and teachers to **exercise faith without fear.**

**Imagine what that could mean.** Imagine an America where public school students do routinely pray, read Scripture, and openly express their faith in schools without fear of opposition by school authorities. Imagine an America where public schools do protect faith as a daily, positive aspect of student life. Imagine public schools where vibrant religious influence—spread from student to student—dramatically cuts the rates of drug abuse, crime, out-of-wedlock births, suicide, and falling academic scores and decisively begins to restore moral order.

**Students' lives** can change as religious liberty and religious influence spreads. **Schools** can change for the better if they will accept, and even embrace, freedom of religious expression. **Communities and society** can improve as fewer students are trapped in destructive behavior and more graduate to contribute to our free society.

In short, religious freedom in education can change America, countering the current moral erosion and creating a brighter future for the coming generation.

## **QUICK START:**

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

1. Students and educators do have First Amendment religious rights inside public schools.
2. Students can speak about their faith even when teachers must be neutral.
3. Schools cannot treat religious activity differently than other activity.
4. Students can pray during lunch, recess, or other designated free time.
5. Students can pray silently during a school's moment of silence.
6. Students can read the Bible or other religious materials at school.
7. Students can share their faith with fellow students.
8. Schools can acknowledge religion.
9. 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' COMPLETE GUIDE TO RELIGIOUS RIGHTS IN PUBLIC SCHOOL

For an online version of these documents go to:  
[FirstLiberty.org/kits](http://FirstLiberty.org/kits)

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.

## General Principles

It is well established that students have First Amendment rights in public schools. Because public schools are dedicated places for learning, however, courts apply students[1]’ rights differently than in other contexts.

There is an **important distinction between government speech** (the speech of the school district and its employees) and private student speech. Although there are some limits that apply to government speech, the Constitution fully protects a student[2]’s private religious expression.[3]

The First Amendment **prohibits a school district and its employees from being hostile toward religious beliefs and expression**. The proper role of a school district is to remain neutral and accommodating toward private religious beliefs. Unlike the government, students may promote specific religious beliefs or practices.[4] [5]

As one U.S. Court of Appeals 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]

## Prayer, Scripture Reading, and Discussion of Religion During Non-Instructional Time

Public schools must treat religious expression such as prayer, reading the Bible, and religious discussion the same way they treat similar nonreligious expression.[7]

### ***Can students pray during lunch, recess, or other designated free time?***

Yes, 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 similar 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.” [8]

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.”[9]

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 has

to allow students to pray, as long as the prayers are not disruptive.[10] [11]

***Can students silently pray during a school's moment of silence?***

Yes, 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.[12]

***Can students read religious materials at school?***

Yes, 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, as long as the materials do not create a substantial disruption.[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.

***Can students verbally share their faith with fellow students?***

Yes, if a school allows students to freely converse with each other about various topics during non-instructional time, then students can also share their faith verbally with fellow students.[14] In other words, 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 specifically prohibit students from speaking to each other about religion and faith.

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, as long as it is not substantially disruptive.

## 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 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 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 is different from 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**

***Can students pray, either individually or as a group, at a school athletic competition (such as a football game), student assembly, or other extracurricular activity when school officials (teachers or administrators) are not involved?***

Yes, if the students are voluntarily praying without any involvement by a school official (teacher, administrator, etc.), then 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 is prohibited from discriminating against students who wish to engage in religious speech or pray together during this time. The school cannot treat conversations about religion differently than conversations about movies, friendships, or any other similar nonreligious speech. [19]

***Can a school district 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?***

Yes, students can pray or speak about religion when a school has policies in place that allow students to speak, the policies are neutral toward religion (by neither encouraging nor discouraging religious speech or prayer), the school does not control the content of the student speech, and it is clear that the speech is the students' and not the school's.

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 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. Additionally, under these policies, the First Amendment prohibits the school from disallowing a student from engaging in religious expression since the speech is private religious 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 (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 (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]

### **Christmas in the Public Schools**

***Can a school refer to "Christmas" and have a "Christmas party," or must the school have only "holidays" and "holiday parties"?***

Christmas is perfectly fine, so long as the school is not celebrating Christmas for the purpose of furthering Christianity. 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;[29] "holiday parties" are legally acceptable as well.[30]

### ***Can a public school display Christmas decorations?***

Yes, a school district may include the temporary use of decorations and symbols to demonstrate the cultural and religious heritage of the Christmas 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]

### ***Can a school include religious Christmas music, art, or drama in a school play or performance?***

Yes, 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 Christmas. 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] [35] [36]

### ***Can students give out Christmas gifts with religious messages at school parties?***

If students are allowed to distribute gifts at a school party, then the students may not be prohibited from giving out their gifts just because the gift includes a religious message.[37] 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 in the Third Circuit, which consists of Delaware, New Jersey, and Pennsylvania, and in the Sixth Circuit, which consists of 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.

### ***Can students express their faith in classroom and homework assignments?***

Yes. The First Amendment protects a student's private work and the school may not prevent students from expressing their faith in their assignments. See "Student Religious Expression in Class Assignments" above for the U.S. Department of Education policy. Applying this policy to the holiday season, if a teacher instructs the students to write a story about the winter season, students may write about Christmas or Hanukkah as much as they may write about sledding or ice skating.

### ***Can teachers and other school employees discuss religion?***

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.”[38]

Similarly, outside of the school day, school officials are allowed to participate in private religious events, such as Christmas parties, in their personal capacities. 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.[39] [40]

1. *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).

2. *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).

3. *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. *See Pinette*, 515 U.S. at 760.

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); see also *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 845-46 (1995).

8. *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.

9. 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) (emphasis added).

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

11. *Chandler*, 230 F.3d at 1317.

12. 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).

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. 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). [http://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html).

16. See *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 828-29, 845-46 (1995); *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. 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) (emphasis added).

21. *Id.*

22. 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) (emphasis added).

23. *Cole v. Oroville Union High Sch.*, 228 F.3d 1092, 1103-05 (9th Cir. 2000).

24. *Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 981-82 (9th Cir. 2003).

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 (10th Cir. 1997); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995).
35. *Bauchman*, 132 F.3d. at 554.
36. *Duncanville Indep. Sch. Dist.*, 70 F.3d at 407-08.
37. *Morgan*, 659 F.3d at 410, 412.
38. *Id.*
39. *Id.*
40. *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).

# TEACHERS' COMPLETE GUIDE TO RELIGIOUS RIGHTS IN PUBLIC SCHOOL

*Can a teacher express his or her faith during the workday and in public forums?*

## **Short Answer:**

For the most part, yes, you have a right to express your faith during these times.

## **Legal Answer:**

The Supreme Court of the United States 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.”[1]

Teachers and administrators engaging in non-disruptive religious expression[2] unrelated to the scope of their official duties and professional capacity, and generally not in the presence of students[3], are protected by the First Amendment.[4] For example, a school cannot create a sweeping policy to prohibit all written or oral religious advocacy among its employees[5], or retaliate against a teacher for writing a religious-based letter to the local newspaper[6], or prohibit employees from wearing religious jewelry[7];

## **Case Precedent:**

1. *Tinker v. Des Moines Independent School District*, 393 U.S. 503, 506 (1969).

2. *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 966 (9th Cir. 2011); *Tucker v. State of California Dept. of Educ.*, 97 F.3d 1204, 1210 (9th Cir. 1996).

3. *See Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001) (“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); *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 967-68 (9th Cir. 2011); *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); *Pelozo 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 School District* 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).

4. *Garcetti v. Ceballos*, 547 U.S. 410, 418-22 (2006).

5. *Tucker v. State of California Dept. of Educ.*, 97 F.3d 1204 (9th Cir. 1996).

6. *See Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, Will Cty., Ill.*, 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).

7. *Nichol v. Arin Intermediate Unit 28*, 268 F. Supp. 2d 536 (W.D. Penn. 2003); *but see Berry v. Dep't of Soc. Servs.*, 447 F.3d 642, 652 (9th Cir. 2006) (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).

## ***Can an employer discriminate against a teacher based on religion?***

### **Short Answer:**

No, your employer cannot discriminate against you.

### **Legal Answer:**

The Civil Rights Act of 1964 provides that "it shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . . ."

Under this law, your employer cannot take any negative action against you because you are religious. Specifically, if other teachers are allowed to discuss various topics in the employee-

only areas of the school, a school official cannot reprimand you for speaking about your faith there, unless it proves disruptive to the operation of the school. If teachers are allowed to wear jewelry, then you have a right to wear a cross to school without being required to hide it.

**Case Precedent:**

*Civil Rights Act of 1964*, § 703 (a)(1), 42 U.S.C. § 2000e-2(a)(1).

*Garcetti v. Ceballos*, 547 U.S. 410, 418–22 (2006); *Rankin v. McPherson*, 483 U.S. 378, 388 (1987).

*Nichol v. Arin Intermediate Unit 28*, 268 F. Supp. 2d 536 (W.D. Penn. 2003).

***Must an employer accommodate a teacher's religious faith?***

**Short Answer:**

Yes, your employer must accommodate your faith.

**Legal Answer:**

Additionally, Title VII of the Civil Rights Act requires employers to accommodate their employees' religious practices. In order to fall under the protection of Title VII, an employee must: (1) hold a sincere religious belief that conflicts with an employment requirement; (2) inform the employer about the conflict; and (3) be discharged, disciplined, or subjected to discriminatory treatment for failure to comply with the conflicting employment requirement.[1]

If your religious beliefs require you to share your faith with those around you or abstain from working certain days of the week, you are free to responsibly practice your beliefs without discrimination by your employer. If your employer has a policy that prohibits such religious practices, you should inform your employer of your sincerely held religious belief that conflicts with the policy. An employer must take steps to reasonably accommodate your religious needs. [2]

However, your employer is not required to accommodate your religious needs if doing so would be an undue hardship.[3] Undue hardship



must be more than a mere inconvenience. Furthermore, schools may not attempt to hide behind “neutral rules”; employers must actively seek to accommodate an employee’s religious needs.[4] Because every situation is unique, it is important to contact First Liberty regarding the type of accommodation you should expect from your employer.

### **Case Precedent:**

1. *Dixon v. The Hallmark Cos., Inc.*, 627 F.3d 849, 855 (11th Cir. 2010); *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993); *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).
2. *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).
3. *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).
4. *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).

### ***Is a teacher protected from harassment from co-workers and supervisors based on his/her religious beliefs?***

#### **Short Answer:**

Yes, you have the right to be free from harassment because of your religious beliefs.

#### **Legal Answer:**

Not only must your employer accommodate your religious needs, your employer must also take steps to protect you from harassment for your religious beliefs and practice. First, just as discussed before, your employer must take steps to accommodate your religious needs, including protecting you from harassment by co-workers and supervisors because of your religion. Second, your employer must also protect you from a hostile work environment.[1] The Supreme Court described a hostile work environment as one in which “the workplace is permeated

with ‘discriminatory intimidation, ridicule, and insult,’ that is ‘sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.’”[2] Not only must you believe the environment is abusive, it must also be objectively abusive, such that a reasonable person in your position would also find it abusive.[3] This requires more than “the run-of-the-mill boorish, juvenile, or annoying behavior that is not uncommon in American workplaces”[4] or “simple teasing, offhand comments, and isolated incidents (unless extremely serious).”[5]

Because this is a fact-intensive determination and all the circumstances must be considered, no precise test is available to determine whether an environment is “hostile” or “abusive.”[6] Therefore, please contact First Liberty regarding whether your work environment is sufficiently abusive to constitute a hostile work environment.

#### **Case Precedent:**

1. *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 116 (2002).
2. *Id.* (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)); *Morris v. City of Colo. Springs*, 666 F.3d 654, 664 (10th Cir. 2012).
3. *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75 (1998); *Morris v. City of Colo. Springs*, 666 F.3d 654, 664 (10th Cir. 2012); *EEOC v. Sunbelt Rentals, Inc.*, 521 F.3d 306, 315 (4th Cir. 2008).
4. *Morris v. City of Colo. Springs*, 666 F.3d 654, 664 (10th Cir. 2012).
5. *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998).
6. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22-23 (1993); *Hernandez v. Valley View Hosp. Ass’n*, 684 F.3d 950, 957-58 (10th Cir. 2012).

### ***Can a teacher hold employee prayer groups or Bible studies on campus?***

#### **Short Answer:**

Generally, yes, you have a right to hold employee religious meetings on campus.

#### **Legal Answer:**

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.[1] 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. [2] 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.”[3] 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 Bible study.[4]

### **Case Precedent:**

1. *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).

2. *Berry v. Dep’t of Soc. Servs.*, 447 F.3d 642, 654 (9th Cir.2006).

3. “Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools,” U.S. Department of Education (Feb. 7, 2003)-- [http://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html); *see also* <http://www2.ed.gov/policy/gen/guid/significant-guidance.html>.

4. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993).

### ***Can a teacher participate in baccalaureate ceremonies?***

#### **Short Answer:**

Yes, you have a right to participate in these ceremonies.

#### **Legal Answer:**

Educators have the right to attend and participate in their personal capacities in privately sponsored baccalaureate ceremonies. The Department of Education issued specific guidelines making this clear to all school district in the United States.[1]

### **Case Precedent:**

[1] “Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools,” U.S. Department of Education (Feb. 7, 2003)-- [http://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html); *see also* <http://www2.ed.gov/policy/gen/guid/significant-guidance.html>.

If a public school censors or prohibits your religious speech, expression or practice, and you are unsure if the public school’s actions violate your First Amendment freedoms, contact First Liberty at:

**[FirstLiberty.org/request-legal-help](http://FirstLiberty.org/request-legal-help)**

## TOP LAWYERS WILL DEFEND YOU

*“Schools that violate  
religious rights often quickly  
back down.”*

Knowing your rights is one thing. Standing up for them is another. Thankfully, you can do both.

Across America, students and teachers of faith are asserting their rights against the baseless challenges of uninformed authorities, and these students and teachers are winning. Most frequently, the victories come without court action. Since the law is clear, schools that violate religious rights often quickly back down in the face of an explanatory letter from a knowledgeable attorney.

Liz Loverde was told she couldn't have a Bible club in her high school. Giovanni Rubeo was told he couldn't read his Bible in class. MacKenzie Fraiser was told she couldn't include a Bible verse in an assignment. Angela Hildenbrand was told she couldn't include God in her graduation ceremony. These public school students all successfully defended their rights, and they are just the tip of a growing iceberg made up of students and teachers who found top-ranked lawyers—at no cost—to represent them.

First Liberty is the nation's largest legal organization in the nation dedicated solely to defending and restoring religious liberty in America. First Liberty has more than a 90 percent win rate, and has won at every court level

First Liberty employs **top-rated staff attorneys**, each of whom can coordinate top national **volunteer litigators from 24 of the largest 50 law firms** from every area of America and every key legal specialization. Volunteer litigators include:

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**Former Solicitor Generals of the United States**

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**A former U.S. Special Prosecutor**

**Former state Solicitors General**

Attorneys defend religious liberty *pro bono* (at no charge).

As an expert in religious liberty in the public schools, First Liberty has:

**Overtured a ban on graduation prayer—and a judge’s threat to jail students for mentioning God in their graduation speeches** (*U.S. Circuit Court of Appeals*)

**Ended bans on public school Bible clubs** (*multiple schools districts and states*)

**Stopped bans on Bible reading, religious expression, and prayer in schools** (*multiple schools districts and states*)

**Reversed incidents of religious discrimination in colleges** (*multiple states*)

**Won at the Equal Employment Opportunity Commission (EEOC) for a teacher** (*federal EEOC*)

**Reversed a ban on Bible verses on high school cheerleader’s run-through banners** (*State District Court*)

**Reversed a ban on teachers and students displaying Christmas cards**

**Reversed a ban on students sharing Christmas gifts with religious messages** (*U.S. Circuit Court of Appeals*)

**Reversed a ban on using Bible verses in class assignments** (*multiple states*)

If you believe your religious rights have been violated, contact First Liberty at **972.941.4444**, **legalrequests@FirstLiberty.org**, or **FirstLiberty.org**. Standing for your rights not only helps you, but strengthens your community and our society because religious influence is such a vital part of a free, strong America.

## HOW RELIGION IN SCHOOL IS GOOD FOR AMERICA

*“Dramatic connections  
between upward mobility and  
religious activity were found”*

**The future of a free, civil America depends upon religious activity.** From the beginning of our nation, America’s Founders asserted that a free, orderly, healthy republic would depend on religious activity—and thus religious freedom.

Modern social science confirms that critical measures of social health and freedom depend on religious activity. Prominent researcher Patrick F. Fagan, Ph.D., states, “A steadily growing body of evidence from the social sciences demonstrates that regular religious practice benefits individuals families, and communities, and thus the nation as a whole.”

**This is especially “mission-critical” in public education.** Ninety percent of families send their children to public schools: roughly 60 million children who are the future of America. Numerous peer-reviewed studies demonstrate that more religious activity among young people is associated with less pre-marital sex, out-of-wedlock birth, drug and alcohol abuse, crime, suicide, and academic failure—whereas less religious activity correlates to increases in such destructive trends. In Fagan’s extensive analysis of recent studies, he found:

*“Academic expectations, level of education attained, school attendance, and academic performance are all positively affected by religious practice. In two literature reviews conducted by Mark Regnerus of the University of Texas at Austin . . . math and reading scores correlated positively with more frequent religious practice.”*

Dramatic connections between upward mobility and religious activity were found in low-income and minority communities—and even for children living in broken homes. Public education is in crisis, and students and teachers are deprived of vital

religious activity that is proven to help. **Study after study documents the decline of American public education:** Spending per student has skyrocketed, yet academic scores have fallen while crime, suicide, and other crippling trends have risen. And the documented “mission-critical” factor of religious activity—such as prayer, Bible reading, and open religious expression—has declined in public schools.

**Expelling religious activity from school is devastating because school is the dominant force in students’ lives.** Students who go to church spend 30–60 hours per week in school or doing school-related activity, *compared to only 1–3 hours in church.* Church alone is not enough. If religious activity is banned from school, it will simply not exert the positive influence on church-going students it could; and none on unchurched students who otherwise might benefit. Further, it sends the signal that religion is a small, irrelevant “compartment” of life—not part of the “more important” “real world” of secularized school.

Most tragically, beneficial and legal religious activity has been expelled **because of the *widely held myth that courts have found it illegal.*** An annual study led by a Harvard-trained attorney for First Liberty found instances of unnecessary discrimination against religious activity in public schools nationwide. Constitutional attorneys at First Liberty have found more than 20 religious activities that are legal in school—yet too often banned because of the misperception that all or most religious activity is unconstitutional if done in public schools.

In response, First Liberty counters this misperception among students, parents and educators, including by winning legal matters where students’ rights are unlawfully challenged and then using these victories to widely educate other Americans about religious freedom in schools.

The goal is an America where faith is welcomed back into education, and our society as a whole reaps the benefits.



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First Liberty is our nation's largest legal organization solely dedicated to protecting religious liberty for all Americans, offering pro bono legal assistance to defend Americans' religious freedom in four vital areas:

**In our schools**

**For our churches**

**In our military**

**Throughout the public arena**

**(including government and the marketplace)**

First Liberty has guided people of faith through thousands of vital legal matters. 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.**

First Liberty is a non-profit legal firm and a tax-deductible organization supported by like-minded Americans. Because we leverage pro bono work from the highest-level attorneys in America, every dollar spent on legal costs can provide up to six times that much in legal impact. This strategy has resulted in more than a 90 percent win rate in securing religious liberty for our clients.

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