



A Student's Constitutional Right to Pray, Read the Bible, and Discuss Religion during Non-Instructional Time

General Principles

It is well established that students have First Amendment rights in public schools.¹ Because public schools are dedicated places for learning, however, courts apply students' 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.² Although there are some limits that apply to government speech, the Constitution fully protects a student'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.⁴ Unlike the government, students may promote specific religious beliefs or practices.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

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

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).

Frequently Asked Questions

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 non-religious activities. In other words, the school must treat religious expression, such as prayer, in the same way that it treats similar non-religious 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 non-religious activities.⁹

As long as the prayer is student-initiated and not substantially disruptive to the school environment,¹⁰ schools may not restrict or punish students from praying or expressing their faith, even in front of non-believers.¹¹ 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, either individually or in a group, as long as the prayers are not disruptive.

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

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; 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 (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.

Can students read the Bible or other religious materials at school?

Yes, during non-instructional time, students can read the Bible or other religious materials to the extent that the school allows students to read similar non-religious materials.¹³ The First Amendment prohibits schools from treating religious materials differently from non-religious materials, as long as the materials do not create a substantial disruption.

For example, if schools allow students to bring books from home to read during free time, then the school cannot prevent students from bringing a Bible and reading it 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.

*Liberty Institute is committed to defending the religious rights of students in public schools. This information is only intended to provide general guidance and should not be construed as legal advice. To request specific legal help, please visit:
<http://www.libertyinstitute.org/take-action/request-legal/>*

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”).