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Is Prayer Allowed in Public Schools?

The answer to whether prayer is legally allowed in public schools is “yes” in certain situations, but “no” in others. This question features the interplay between two clauses in the First Amendment which combine to protect the “free exercise” of religion and guarantee that the government may not “establish” a religion.

Despite well-settled legal principles, it is a popular misconception, even among some school officials, that the Establishment Clause forbids all religious activity, including any prayer, in public schools or other public places. This is a misunderstanding of the Establishment Clause and directly contradicts the Free Exercise Clause. Rather, these clauses mean that government cannot compel students to refrain from praying, just as the government may not compel students to pray. The Supreme Court has made it clear that “there 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.”¹

It is imperative that school officials understand the boundaries of their authority and respect the rights of students to express their private religious views. “The Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities.”²

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¹ *Bd. of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (plurality). [Note: *Mergens* was an ACLJ case, argued and won at the Supreme Court by ACLJ Chief Counsel Jay Sekulow.]

² *Mergens*, 496 U.S. at 248 (plurality) (quoting *McDaniel v. Paty*, 435 U.S. 618, 641 (1978) (Brennan, J., concurring in judgment)). Students understand that “schools do not endorse everything they fail to censor.” *Mergens*, 496 U.S. at 250 (plurality).

What is Allowed?

The Court ruled in *Tinker* that students and teachers do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”³ Likewise, “nothing in the Constitution . . . prohibits any public school student from voluntarily praying at any time before, during, or after the school day.”⁴

The government cannot forbid private speech because of its content, even if that content is religious. Prayer and worship are protected by the First Amendment of the U.S. Constitution.⁵

Students may, of course, pray silently to themselves wherever they are. Further, nothing in the Constitution stops students from gathering to pray at school as long as it does not “materially and substantially interfere” with the instruction or operation of the school, for instance, by interrupting class. Public school students have the right to discuss religious beliefs, and even share religious materials, with their peers between classes, at break, at lunch, and before and after school, anywhere on school grounds where students have a right to be. Schools can only prohibit protected speech by students when it “materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school.”⁶

What is Not Allowed?

Official school sanctioned religious messages, school-sponsored prayers, or school-mandated prayers are typically not allowed under current Supreme Court precedent. For instance, in *Lee v. Weisman*, 505 U.S. 577 (1992), the Supreme Court held that school officials violated the Establishment Clause by inviting clergy to give prayers at a graduation ceremony, but the Court limited this decision to the particular facts that the school organized the prayer at the graduation ceremony. Similarly, in *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), the Court concluded that the Establishment Clause prohibits school officials from facilitating prayer at school functions such as school football games. However, in its decision in the *Santa Fe* case, the Court specifically noted that not every instance in which a religious message or invocation is offered during a school event will violate the Establishment Clause.⁷

However, even in these cases the Supreme Court noted that student-led religious speech can be constitutional depending on the particular facts and circumstances of the situation. For instance, in *Lee*, Justice Souter noted that religious students may “organize a privately sponsored baccalaureate if they desire the company of likeminded students.”⁸ In *Santa Fe*, the Court noted that despite its ruling, voluntary prayer remained permissible “at any time before, during or after the school day.”⁹

³ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969)

⁴ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000).

⁵ *Widmar v. Vincent*, 545 US 263, 269 (1981).

⁶ *Tinker*, 393 U.S. at 509–12.

⁷ *Santa Fe*, 530 U.S. at 302.

⁸ *Lee*, 505 U.S. at 629 (Souter, J., concurring)

⁹ *Santa Fe*, 530 U.S. at 313.