

## KNOW YOUR RIGHTS!

The ACLU of Texas is a nonprofit, non-partisan organization dedicated to defending and preserving individual rights and civil liberties set forth in the Bill of Rights against government intrusion. The ACLU of Texas advocates for policies that respect the civil rights and civil liberties of *all* Texans, and provides public education as a service to the community and to encourage all Texans to exercise their rights. This fact sheet on religious freedom is intended for students, parents, and teachers who want to understand current law on prayer in public schools. However, this sheet does not cover every nuance of the law surrounding school prayer and **should not be taken as legal advice**. If you have specific legal questions, consult an attorney or the ACLU of Texas.

## RELIGIOUS FREEDOM IN TEXAS PUBLIC SCHOOLS

Students have a right to pray voluntarily in school alone or with friends at any time that does not disrupt classes.<sup>1</sup> However, schools cannot require students to participate in prayer or organize prayer activities, and all prayer in school must be student-initiated. *Students* have the right to pray in school. Schools and school officials do not have the right to coerce students into praying in school.

## YOUR RIGHT TO PRAY ... OR NOT

Students of all religions (Christian, Jewish, Muslim, and others) have the right to practice their religion at school. That right is protected by the First Amendment and by the Texas Religious Freedom Restoration Act.<sup>2</sup> Religious items and dress such as rosaries, yarmulkes, long hair or facial hair, and hijabs are also entitled to protection.

The same constitutional amendment that ensures students have religious freedom to practice and express their faith through prayer also protects students from their schools forcing any religion or prayer on them. In *Engel v. Vitale*, the Supreme Court said that schools have no right to compel conformity under the Establishment Clause by telling children when and how to pray.<sup>3</sup> The government cannot show a preference for any particular religion or for religion in general over the beliefs of nonreligious people.<sup>4</sup> Furthermore, the State of Texas protects students' right to pray in school by requiring schools to treat expression of religious beliefs the same way the school treats expressions of secular beliefs.<sup>5</sup> In other words, schools must be viewpoint-neutral when establishing limits on student expression.<sup>6</sup>

## LAWS

The right to pray is protected by the U.S. Constitution.

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech....”<sup>7</sup>

The First Amendment of the U.S. Constitution protects your religious freedom through three distinct but equally important clauses:

- ◆ The **Establishment Clause** ensures that the government cannot favor any particular religious belief or religion over non-belief.
- ◆ The **Free Exercise Clause** ensures that individuals have the right to practice their religious beliefs, free from interference from the government.
- ◆ The **Free Speech Clause** ensures that the government allows individuals to express their views, including religious ones, but does allow some guidelines and restrictions on expression.

Texas' Religious Viewpoints Anti-Discrimination Act (“RVAA”) also protects students' religious freedom by requiring schools to treat students' voluntary expression of a religious viewpoint in the same manner as a secular or other viewpoint.<sup>8</sup>

## IF YOUR RIGHTS ARE BEING VIOLATED

If you believe that you are being denied your right to pray, or if you feel you're being forced to participate in prayer against your will, contact the ACLU of Texas. Visit our website at <http://www.aclutx.org/> and click “Request Legal Assistance” to submit a complaint.

## RESOURCES

<http://www.aclu.org/religion-belief/religion-and-schools>  
<http://www.firstamendmentcenter.org/>

## CONTACT US

ACLU Foundation of Texas  
P.O. Box 12905, Austin, TX 78711-2905  
(512) 478-7300; (512) 478-7303 fax  
[www.aclutx.org](http://www.aclutx.org)

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# FREEDOM OF RELIGION

## STUDENTS' RELIGIOUS RIGHTS AT SCHOOL



## RESTRICTIONS ON EXPRESSION

Though students have a constitutional right to express their views, schools are allowed to restrict that expression in a viewpoint-neutral way.<sup>9</sup> Expression that may be a material interference or a substantial disruption in class or school activities can also be restricted by the school.<sup>10</sup>

### Q&A

#### ***Do I have the right to pray at school?***

Yes. You have the right to pray at school, whatever your religion.<sup>11</sup> Your right is protected by the First Amendment to the U.S. Constitution so long as you are simply expressing your faith as an individual or with your friends. However, if students, parents, and members of the public might reasonably perceive your expression to bear the endorsement or approval of the school and it occurs in the context of a curricular activity, the school may limit your religious expression.<sup>12</sup>

#### ***Is prayer at graduation or at athletic events allowed?***

Maybe. If the prayer is student-sponsored then it is allowed but school-sponsored prayer is not allowed.

Your school cannot sponsor or endorse prayer at a graduation, a football game, or any other school-sponsored event, like induction into the National Honor Society, or Annual Athletic Banquet. School prayer, even if it is nonsectarian, cannot be forced upon people who do not wish to have the government tell them what prayers to hear. Nonsectarian prayer is prayer that does not call upon any specific deity like Jesus, Allah or Vishnu.

When a school sponsors a prayer at a graduation ceremony, the school is coercing nonbelievers into participating in the prayer, which violates the Establishment Clause.<sup>13</sup> However, current Texas law says that students may choose to pray, or talk about their religious faith in a graduation or similar speech<sup>14</sup> but such prayer is not constitutional unless the school is absolutely clear that it does not sponsor or endorse the students' religious speech.<sup>15</sup> Therefore, at a minimum, school administrators cannot encourage students to pray or dictate, suggest, or edit the religious content of what a student should say, and they must include a disclaimer on graduation or other event programs indicating that they do not sponsor student speech.

And of course, any student can pray privately, at anytime, at graduation or anywhere else, as long as she or he is not disrupting other students.<sup>16</sup>

#### ***My coach holds a prayer circle with members of my sports team before games. This makes me uncomfortable because my religious views conflict with the rest of the team's. Is the coach violating my rights?***

Yes. Even if such prayers don't make you uncomfortable, your coach and teachers may not lead student prayer because doing so is coercive and sends the message that the school prefers or endorses a religious view.<sup>17</sup> However, if some members of the team wish to meet before games in order to pray, they have that right as individuals as long as they do not receive school endorsement or sponsorship.<sup>18</sup> Teachers, coaches and other school employees are strictly forbidden from using their status as government authority figures to promote any religion to students.

#### ***So if teachers can't lead prayers, can they invite clergy or students to lead them instead?***

No. The Supreme Court held in *Lee v. Weisman* that a school violates the Establishment Clause when it invites an outside member of the clergy to deliver a prayer at any school event like graduation, because the students are coerced to participate in a religious exercise.<sup>19</sup> When a Texas school tried to get around that rule by having students vote on whether to have a prayer and who would give it at football games, the ACLU of Texas fought the school all the way to the Supreme Court. In that case, *Santa Fe Independent School District v. Doe*, the Court held that by setting up an election and providing a student with the stage to lead prayer at football games, the school was still coercing students to pray.<sup>20</sup> In addition, the election itself was unconstitutional because allowing the majority of students to decide whether or not to pray gave school administrators unconstitutional power to coerce students in the minority into hearing or participating in prayer that conflicts with their religious beliefs.<sup>21</sup>

#### ***Is my school allowed to require a "moment of silence" at the start of the school day?***

Yes. Schools are allowed to have a moment of silence as long as the practice was not adopted to advance religion and it does not communicate the message that prayer is the officially preferred activity during the

moment of silence.<sup>22</sup> For example, in one case, a teacher violated the Establishment Clause when she collected prayer requests, began the moment of silence by saying "Let us pray," and finished it by saying "Amen."<sup>23</sup>

While some laws requiring moments of silence in other states have been held unconstitutional because the legislative history showed that the law itself was adopted for the purpose of advancing religion,<sup>24</sup> under the current Texas Education Code, a moment of silence is not only permitted, but required.<sup>25</sup> According to Texas law, during the one-minute period, each student may, as the student chooses, reflect, pray, meditate, or engage in any other silent activity that is not likely to interfere with or distract another student.<sup>26</sup>

#### ***What about "See You at the Pole" events, where students meet at the flagpole to pray?***

"See You at the Pole" and similar events, where students meet at a pre-arranged location on school grounds to pray together, may be allowed as long as they are student-organized optional events, do not occur during regular school hours, and students are not required to attend.<sup>27</sup>

#### ***What can I do if someone is making me pray?***

Take very detailed notes. Speak to an adult whom you trust, like your parents, a teacher, counselor, coach, or principal. With their help, find out how to make a complaint to the school. Contact the ACLU of Texas (see the back page).

<sup>1</sup> Tex. Educ. Code § 25.901. See also *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512-13 (1969).

<sup>2</sup> Tex. Civ. Prac. & Rem. Code § 110.003.

<sup>3</sup> *Engel v. Vitale*, 370 U.S. 421, 430-36 (1962).

<sup>4</sup> See *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985).

<sup>5</sup> Tex. Educ. Code § 25.151-156 (Vernon 2010).

<sup>6</sup> See *id.*

<sup>7</sup> U.S. Const. amend. I.

<sup>8</sup> Tex. Educ. Code § 25.151-156.

<sup>9</sup> Tex. Educ. Code § 25.151-156.

<sup>10</sup> See *Tinker*, 393 U.S. at 511.

<sup>11</sup> *Id.* § 25.901. See also *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000).

<sup>12</sup> *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271 (1988).

<sup>13</sup> *Lee v. Weisman*, 505 U.S. 577, 587, 594-95 (1992).

<sup>14</sup> Tex. Educ. Code. § 25.151.

<sup>15</sup> *Santa Fe*, 530 U.S. at 313; *Weisman*, 505 U.S. 577.

<sup>16</sup> *Santa Fe*, 530 U.S. at 313.

<sup>17</sup> *Sch. Dist. of Abington Township v. Schempp*, 374 U.S. 203, 223-25 (1963);

*Santa Fe*, 530 U.S. at 310-13.

<sup>18</sup> *Santa Fe*, 530 U.S. at 313.

<sup>19</sup> *Weisman*, 505 U.S. 577.

<sup>20</sup> *Santa Fe*, 530 U.S. at 317.

<sup>21</sup> *Id.* at 316-17.

<sup>22</sup> *Croft v. Governor of Texas*, 562 F.3d 735 (5th Cir. 2009).

<sup>23</sup> *Holloman ex rel. Holloman v. Harlan*, 370 F.3d 1252, 1285-89 (11th Cir. 2004).

<sup>24</sup> *Wallace*, 472 U.S. at 59-61.

<sup>25</sup> *Tex. Educ. Code*. §§ 25.082(b)-(d).

<sup>26</sup> *Id.* § 25.082(d).

<sup>27</sup> *Id.* § 25.154; Equal Access Act, 20 U.S.C. § 4071 *et seq.*