LEGAL EXPLAINER #3

STUDENTS' RELIGIOUS FREEDOM RIGHTS IN PUBLIC SCHOOLS

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Students don't lose their constitutional rights when they go to school. That includes the right to practice their religion. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). The government's interest in education cannot override a student's religious freedom. *See Wisconsin v. Yoder*, 406 U.S. 205, 214-15 (1972).

Students have the right to:

- Talk about their faith
- Wear religious clothing
- Share religious materials
- Ask for religious accommodations
- Opt out of lessons that conflict with their faith
- Start and lead religious clubs or organizations
- Pray alone or with fellow students during the school day
- Express their beliefs about religion in their school work

What the Constitution Says

The First Amendment has two religion clauses:

- The Establishment Clause: Government cannot establish a religion.
- The Free Exercise Clause: Government cannot stop people from practicing their religion. U.S. Const. amend. I.

What is *not* in the Constitution is the phrase "separation of church and state."* The phrase originates from an 1802 letter Thomas Jefferson wrote to the Danbury Baptist Association, in which he sought to assure them that the newly formed federal government would not interfere with their religious liberty. The metaphor of a "wall of separation" was a reassurance of non-interference—not a command for government to wholly avoid religion altogether.

What Students Are Allowed To Do at School

The First Amendment protects students' right to express and practice their faith in public schools. Students may engage in religious activity at school on the same terms as any other non-religious activity. These rights are protected as long as the conduct is voluntary and does not materially and substantially disrupt the operation of the school day. Schools may not single out religious expression for different or less favorable treatment.

Students may pray and talk about their religion in school. They can do so on the same terms and conditions that they may engage in other conversations or activities unrelated to school curriculum. *See Tinker*, 393 U.S 503.

Students are free to bring religious texts to school and read them during non-instructional time. *See Board of Educ., of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226 (1990).

Students may express religious views in class discussions and assignments, so long as the expression is relevant to the topic and meets academic standards. *See Tinker*, 393 U.S 503; *Mergens*, 496 U.S. 226.

Students may form religious clubs and organizations, subject to the same guidelines as non-religious, non-curricular clubs. Religious clubs should be student-initiated and student-led. *Mergens*, 496 U.S. 226.

Students may be excused for religious holidays or ask for alternative assignments. Schools must generally say yes, especially if they allow for secular excuses. *See Fulton v. City of Philadelphia*, 593 U.S. 522 (2021) ("Where such a system of individual exemptions exists, the government may not refuse to extend that system to cases of religious hardship without a compelling reason.").

Additionally, in conjunction with parental rights, **students may opt out of instruction that conflicts with their religious beliefs.** *Mahmoud v. Taylor*, 606 U.S. ___ (2025).

* There is widespread misunderstanding in American culture about the separation of church and state. This phrase does not actually appear in the Constitution, nor does current law require such a rigid separation. The U.S. Supreme Court has rejected such a narrow approach. *See Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) ("the Constitution [does not] require complete separation of church and state").

What Public Schools Are Not Allowed to Do

Public schools are considered state actors for purposes of the First Amendment. This means they may not infringe on students' Free Exercise rights. *Mergens*, 496 U.S. 226; *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022) (holding that the prayers of a football coach on the field after games was private speech and that the school was not justified in restricting it). In addition, public schools are bound by the Establishment Clause, which prohibits denominational favoritism and requires neutrality. *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Indus. Rev. Comm'n*, 605 U.S. 238 (2025). The U.S. Supreme Court has ruled more specifically in several key contexts:

Schools cannot censor or discriminate against religion. Schools must treat student religious expression the same as non-religious speech. *Mergens*, 496 U.S. 226; *Kennedy*, 597 U.S. 507. Schools cannot show favoritism *or* hostility toward religion. *Catholic Charities Bureau*, 605 U.S. 238 (2025); *Larson v. Valente*, 456 U.S. 228 (1982); *Masterpiece Cakeshop v. Colo. C.R. Div.*, 584 U.S. 617 (2018).

School-sponsored or school-organized prayer is unconstitutional, even if led by a student. See *Lee v. Weisman*, 505 U.S 577 (1992); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000). However, this does not prevent students or teachers, acting in their capacity as private citizens, from praying voluntarily. *See Kennedy*, 597 U.S. 507.

Schools may teach about religion when it's part of history, literature, or culture—like explaining "In God We Trust" or singing religious songs at a Christmas concert. *See Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29 (2019); *Kennedy*, 597 U.S. 507; *Carson v. Makin*, 596 U.S. 767 (2022) ("A State need not subsidize private education… [b]ut once a State decides to do so, it cannot disqualify some private schools solely because they are religious.") (citing *Espinoza v. Mont. Dept. of Revenue*, 591 U.S. 464 (2020)).

Schools cannot block students from sharing religious materials. Students may pass out religious flyers if others are allowed to hand out secular ones—such as birthday invitations. *See Tinker*, 393 U.S 503; *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819 (1995); *Reed v. Town of Gilbert*, 576 U.S. 155 (2015).

Schools cannot deny religious accommodations when others get secular ones. If schools allow absences for sports or health appointments, they must do the same for religious observance. *Tandon v. Newsom*, 593 U.S. 61 (2021); *Fulton*, 593 U.S. 522; *Ramirez*, 595 U.S. 411; *Mahmoud*, 606 U.S. __ (2025).

School districts must certify in writing to the state educational agency that no policy of the district "prevents, or otherwise denies participation in, constitutionally protected prayer in public … schools." 20 U.S.C. § 7904(b).

WILL is a legal resource for parents, students, and school districts. If you believe your rights have been violated, you can contact us at www.will-law.org/contact-a-lawyer. Depending on your situation, we may be able to help further.