

# Colorado Springs School District 11



## Management Directive from the Superintendent

**Date:** July 1, 2014

**Subject:** Constitutionally Protected Prayer

**Management Directive #:** MD-J1

**Purpose:**

To provide guidance to principals regarding questions of the First Amendment covering protected prayer.

**Directive:**

The First Amendment to the United States Constitution (hereinafter referred to as the First Amendment) provides that "Congress shall make no law respecting an establishment of religion (the Establishment Clause), or prohibiting the free exercise thereof (the Free Exercise Clause)." The Fourteenth Amendment of the United States Constitution makes these provisions applicable to all levels of government, federal, state and local, and to all types of governmental policies and activities. The First Amendment establishes certain limits on the conduct of public school officials as it relates to religious activity, including prayer.

The United States Supreme Court has repeatedly held that the First Amendment requires public school officials to be neutral in their treatment of religion, showing neither favoritism toward nor hostility against religious expression such as prayer. The First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by private individuals. For example, teachers and other public school officials may not:

- lead their classes in prayer, devotional readings from any religious sacred writings, or other religious activities
- attempt to persuade or compel students to participate in prayer or other religious activities
- decide that prayer should be included in school-sponsored events (the Court invalidated a school's football game speaker policy on the ground that it was designed by school officials to result in pregame prayers)
- grant religious speakers preferential access to public audiences, or otherwise select public speakers on a basis that favors religious speech (the Court has held that public school officials violated the Constitution in inviting a member of the clergy to deliver a prayer at a graduation ceremony)

Although the Constitution forbids public school officials from directing or favoring prayer, students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," and the Court has made clear that "private religious speech is as fully protected under the Free Speech Clause as secular private expression."

Not all religious speech that takes place in the public schools or at school-sponsored events is governmental speech. Nothing in the Constitution prohibits any public school student from

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voluntarily praying at any time before, during, or after the school day, and students may pray with fellow students during the school day on the same terms and conditions that they may engage in other conversation or speech. School authorities may impose rules of order on student activities (including religious activities), but they may not structure or administer such rules to discriminate against student prayer or religious speech.

### **Application to Real-Life Scenarios**

***Prayer During Non-instructional Time:*** Students may pray when not engaged in school activities or instruction, subject to the same rules designed to prevent material disruption of the educational program that are applied to other privately initiated expressive activities. (i.e., read Bibles or scripture, say grace before meals, pray or read religious materials with fellow students during recess, lunch or other non-instructional time).

***Organized Prayer Groups and Activities:*** Students may organize prayer groups, religious clubs, and “see you at the pole” gatherings before school to the same extent that students are permitted to organize other non-curricular student activities groups. Such groups must be given the same access to school facilities for assembling as is given to other non-curricular groups, without discrimination because of the religious content of their expression. School authorities possess substantial discretion concerning whether to permit the use of school media for student advertising or announcements regarding non-curricular activities. However, where student groups that meet for nonreligious activities are permitted to advertise or announce their meetings (i.e. advertising in a student newspaper, making announcements on a student activities bulletin board or public address system, or handing out leaflets), school authorities may not discriminate against groups who meet to pray. School authorities may disclaim sponsorship of non-curricular groups and events, provided they administer such disclaimers in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

***Teachers, Administrators, and other School Employees:*** When acting in their official capacities as representatives of the state, teachers, school administrators, and other school employees are prohibited by the Establishment Clause from encouraging or discouraging prayer, and from actively participating in such activity with students. Teachers may, however, 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. Similarly, teachers may participate in their personal capacities in privately sponsored baccalaureate ceremonies.

***Moments of Silence:*** If a school has a “minute of silence” or other quiet periods during the school day, students are free to pray silently, or not to pray. School staff may neither encourage nor discourage students from praying during such time periods.

***Accommodation of Prayer During Instructional Time:*** Schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation in such instruction or penalize students for attending or not attending. Schools may excuse students from class to remove a significant burden on their religious exercise, where doing so would not impose material burdens on other students. For example, it would be lawful for schools to excuse Muslim students briefly from class to enable them to fulfill their religious obligations to pray during Ramadan.

Where schools have a practice of excusing students from class on the basis of parents’ requests for accommodation of nonreligious needs, religiously motivated requests for excusal may not be accorded less favorable treatment. In addition, in some circumstance, based on



federal or state constitutional law or pursuant to state statutes, schools may be required to make accommodations that relieve substantial burdens on students' religious exercise.

**Religious Expression and Prayer in Class Assignments:** 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.

**Student Assemblies and Extracurricular Events:** 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 anti-religious) 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 anti-religious) 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.

**Prayer at Graduation:** 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 control over the content of the expression, however, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content. To avoid any mistaken perception that a school endorsed 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.

**Baccalaureate Ceremonies:** School officials may not mandate or organize religious ceremonies. However, if a school makes its facilities and related services available to other private groups, it must make its facilities and services available on the same terms to organizers of privately sponsored religious baccalaureate ceremonies. In addition, a school may disclaim official endorsement of events sponsored by private groups, provided it does so in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

Signed:   
Dr. Nicholas M. Gledich  
Superintendent of Schools

Date: 9-28-16