



Connecticut Association of Boards of Education

Jody I Goeler, Senior Staff Associate for Policy Service

PRESENTS POLICY HIGHLIGHTS

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Religion in Public Schools

By now, many currently engaged in our nation's public schools are familiar with the Supreme Court decision released on June 27, 2022: *Kennedy v. Bremerton School District*. The court reversed the decision of the U.S. Court of Appeals for the 9th Circuit in a 6-3 ruling, holding that a high school football coach praying on-field after a football game was protected speech under the First Amendment. In this case, which concerned religious expression at a public school and the Constitution's establishment clause, the Court held that the coach praying on-field after the game is an activity protected by the First Amendment.

This case tested two assumptions, frequently considered by boards of education and school administrators:

1. Whether a public-school employee who says a brief, quiet prayer by himself while at school and visible to students is engaged in government speech that lacks any First Amendment protection;
2. Whether assuming that such religious expression is private and protected by the Free Speech and Free Exercise Clauses, the Establishment Clause nevertheless compels public schools to prohibit it.

With the Supreme Court's majority siding with the high school football coach who prayed on the field with his students, it causes district leaders to test their assumptions on matters related to religion in public schools. Issues that were perhaps easily decided prior to June of 2022, are likely to now require calls to the board attorney to assist in deliberations to determine legally defensible positions.

Predictably, as administrators grapple with the impact of the *Bremerton* decision, various officials across the country are looking to test cases that may bring similar "friendly" decisions from the current Supreme Court. In one such case, 32 plaintiffs, including 14 public school parents, four public school teachers, and three faith leaders, have filed a case with Oklahoma's Supreme Court against the state's elected superintendent of public instruction arguing his requirement for schools to teach the Bible and using state funds to purchase them for public schools as this mandate "represents governmental preference for one religion over another (*This State Requires Schools to Teach the Bible. Parents Teachers Are Suing*, Brooke Schultz, Education Week, October 18, 2024).

In another case testing the church-state divide, Louisiana Governor, Jeff Landry, signed a bill requiring all public schools in the state to display a copy of the Ten Commandments in every classroom. This law is also being challenged in court. As lawyers representing the plaintiffs challenging these recent actions argue that such mandates are an erosion of church-state separation, it's easy to understand that decisions once appearing easy to make, now bring doubt.

In the October 2, 2024 edition of Education Week, Evie Blad provides guidance in response to frequently asked questions on the topics of religion in school, the separation of church and state, and school prayer. The author notes that while under the U.S. Constitution, public schools cannot promote or advance any particular religion, and they must respect the individual religious beliefs of students and staff, "what that looks like in practice raises complex questions and spirited debate about topics such as prayer and freedom of speech-and how those dovetail with larger issues of curriculum and school climate. Following are excerpts most applicable to Connecticut district leaders.

Is prayer allowed in schools? Yes. Students of all religious backgrounds can pray at school when not engaged in school activities or instruction, and teachers and administrators can neither sanction nor discourage such prayers. Students of all faiths have the right to organize prayers on campus, the federal guidance says, as long as those activities don't disrupt school activities. Any limitations schools set must be applied consistently to religious and nonreligious speech, and they must not favor a particular religion.

Can teachers pray at school? Yes, in some cases. Like students, teachers can independently and voluntarily during non-instructional hours, but they may not require students to pray as part of class or school-sponsored extracurricular activities. However, it's important to determine the line between private religious expression and sanctioned religious activities. Such a determination may require legal consultation.

The Kennedy v. Bremerton School District centered on a high school football coach who sued the district after administrators told him to discontinue his practice of praying on the 50-yard line immediately following each game after students, players, and even coaches began to join him. Concerned that the highly visible practice would appear to be school-sponsored, and that students would feel a sense of implicit coercion, the school board asked the coach to move his prayers to an alternate location. When the coach continued his prayers on the field, the school board placed him on administrative leave and declined to renew his contract.

In the landmark decision, the Supreme Court sided with the coach, ruling that his prayers were private speech protected by the First Amendment and that the Constitution neither requires nor permits schools to suppress such religious expression by employees to avoid the appearance of sanctioned religious practices. The decision effectively overruled to long-held view that public policies and practices violated the establishment clause if they aren't primarily secular in purpose, if they promote or inhibit religion, and if they represent an "excessive entanglement" between church and state, thus creating a confusing landscape for districts.

Can schools require students with religious objections to say the Pledge of Allegiance? No. Students who do not wish to say the pledge, for religious or ideological reasons may stand silently and abstain.

Are students allowed to form religious clubs and organizations? Yes. Students may form religious groups under the same school rules that govern non-religious student organizations. Schools must give student religious clubs and organizations the same access to facilities and rights to publicize their activities they give to nonreligious groups.

Can schools require students to read the Bible and other religious texts? Yes, but only for academic purposes. Courts have held that, while academic lessons on the Bible and other religious texts, like the Quran, are permissible, devotional readings in public schools violate the establishment clause in the First Amendment. (With the current case involving the Oklahoma superintendent for instruction's directive to districts to teach the Bible and for the state to procure the purchase of a chosen text, this will be worth watching.)

What protections should schools provide Buddhist, Jewish, Muslim, and Sikh students?

Federal civil rights officials expect schools to protect students of all religious backgrounds from discrimination or harassment based on their faith. Under Title VI, schools must protect students who are Jewish, Muslim, Buddhist, Sikh, or of any other faith associated with a specific nationality or ethnic identity from bullying and harassment. Title VI protects people from discrimination based on race, color, or national origin.

Can schools display the Ten Commandments? Courts have said schools cannot display the Ten Commandments, but officials in Louisiana (in the aforementioned case) plan to challenge the issue

(Religion in Public Schools, Explained, Evie Blad, Education Week, October 2, 2024)

Please be mindful that this article should not be construed as legal advice. A district's board attorney is an important partner in determining the bounds of what may be legal.