

Policies

Westerly Public Schools Guidance on Constitutionally Protected Prayer

No. 2100

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Introduction

Section 9524 of the Elementary and Secondary Education Act (“ESEA”) of 1965, as amended by the No Child Left Behind Act of 2001, requires the Secretary to issue guidance on constitutionally protected prayer in public elementary and secondary schools. In addition, Section 9524 requires that, as a condition of receiving ESEA funds, a local educational agency (“LEA”) must certify in writing to its State educational agency (“SEA”) that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as set forth in this guidance.

The Section 9524 Certification Process

In order to receive funds under the ESEA, Westerly Public Schools must certify in writing to the Rhode Island Department of Education (RIDE) that no policy of WPS prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance. WPS must provide this certification to RIDE by October 1 of each year during which WPS participates in an ESEA program.

Prayer During Noninstructional 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. Among other things, students may read their Bibles or other scriptures, say grace before meals, and pray or study religious materials with fellow students during recess, the lunch hour, or other non-instructional time to the same extent that they may engage in nonreligious activities. While school authorities may impose rules of order and pedagogical restrictions on student activities, they may not discriminate against student prayer or religious speech in applying such rules and restrictions.

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—for example, by advertising in a student

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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, during these periods of time. Teachers and other school employees may neither encourage nor discourage students from praying during such time periods.

Accommodation of Prayer During Instructional Time

It has long been established that 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. Similarly, 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 school officials 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 circumstances, based on federal or state constitutional law or pursuant to state statutes, schools may be required to make accommodations that relieve substantial

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burdens on students' religious exercise. Schools officials are therefore encouraged to consult with their attorneys regarding such obligations.

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 primary control over the content of their 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 endorses 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.

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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.

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