



STUDENT RIGHTS HANDBOOK

K-12 AND UNIVERSITY



A Guide to Constitutionally Protected
RELIGIOUS FREEDOM on Campus



YOU DON'T HAVE TO LEAVE
YOUR FAITH
AT HOME



ALLIANCE DEFENDING
FREEDOM

FOR FAITH. FOR JUSTICE.

Alliance Defending Freedom (ADF) is an alliance-building, non-profit, legal organization that advocates for the right of people to freely live out their faith.

The experienced team of ADF education attorneys has litigated hundreds of cases against public schools throughout the nation, enabling students to freely express their faith through each stage of their education, from kindergarten through college. These cases have secured students' rights to speak publicly about their faith, distribute religious literature, and hold religious events, as well as exercise their collective right to form religious student groups and enjoy equal access to school facilities and funding.

ADF is dedicated to ensuring that Christians remain free in their educational pursuits. The purpose of this handbook is to inform students, parents, teachers, and coaches about their legal rights within a public school setting. **Parts I-III** focus primarily on students' rights within the K-12 environment, while **Part IV** focuses on situations that may arise for students within the public university setting.

As you review this handbook, if you feel that you or your child have been discriminated against because of your faith, or simply have further questions about your rights, ADF is here to help. Please email ADF at legalhelp@ADFlegal.org or call **1-800-835-5233**. The ADF website also features a variety of resources pertaining to the protection of students' rights, and can be found at ADFlegal.org.

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PART I

WHAT RIGHTS DO INDIVIDUAL K-12 STUDENTS HAVE TO EXPRESS THEIR FAITH AT SCHOOL?

The First Amendment to the U.S. Constitution, which states that “Congress shall make no law . . . abridging the freedom of speech” or “prohibiting the free exercise” of religion, protects students’ right to engage in religious expression and freely exercise their faith. Government bodies, including public schools, are thus prohibited from singling out religious speech or religious conduct for discriminatory treatment.¹ As the Supreme Court has explained, “[s]tudents in school, as well as out of school, are ‘persons’ under our Constitution. They are possessed of fundamental rights which the State must respect.”²

Accordingly, public schools may not suppress or exclude student speech simply because it is religious or contains a religious perspective.³ Nonetheless, many students face hostility and censorship in expressing their faith. The following information covers common questions regarding students’ individual right to express their faith within a public school setting.

QUESTION

Do students have the First Amendment right to express their religious beliefs at school?

ANSWER

Students retain their First Amendment liberties while on a school campus. They have the right to share their beliefs, pray, evangelize, read Scripture, and invite students to participate in such activities so long as they are voluntary, student initiated, and not disruptive or coercive. A school may not prohibit student expression during non-instructional time unless it (1) materially and substantially interferes with the operation of the school, or (2) infringes on the rights of other students.⁴ A school may not prohibit student expression solely because others might find it offensive.⁵

QUESTION

Can students express their religious beliefs during class or in an assignment?

ANSWER

While in class, students are free to express their religious views in a class discussion or as part of an assignment (such as an oral presentation or written essay), so long as the expression is relevant to the subject under consideration and meets the requirements of the assignment. School officials cannot prohibit religious expression in class unless they have a legitimate educational purpose for doing so.⁶

QUESTION

Can students distribute religious material at school?

ANSWER

Yes, students have the right to distribute religious and nonreligious material at school during non-instructional time.⁷ Of course, schools may bar any material that (1) materially and substantially interferes with the operation of the school, or (2) infringes on the rights of other students.⁸ But schools may not ban student literature distribution outright nor may they restrict literature based on its religious content or viewpoint.⁹ For example, schools cannot bar students from distributing Christmas gift bags or invitations to religious events (i.e., a youth activity sponsored by a church) – which are considered private speech – simply because they contain religious content.¹⁰ But schools are permitted to enact reasonable time, place, and manner regulations; for example, a requirement that students distribute free literature to the general student population during non-instructional time.

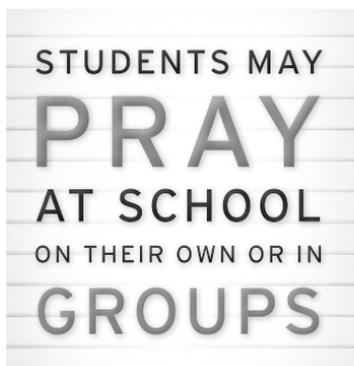
**SCHOOLS
MAY NOT
RESTRICT
LITERATURE BASED ON
RELIGIOUS
VIEWPOINT**

QUESTION

Can students advertise religious events at school?

ANSWER

Students may post signs on walls and bulletin boards and make announcements over public address systems about religious events at school to the same extent they may advertise similar secular activities. If students are, for example, allowed to post signs or make announcements regarding non-curricular events, such as the Day of Silence, students may similarly advertise religious events, such as See You at the Pole.¹¹



QUESTION

Can students pray at school?

ANSWER

Since prayer is private speech, students may engage in it at school, as long as it would not appear that the

school endorsed it.¹² Thus, students may pray at school on their own or in groups during non-instructional time so long as it is not disruptive. Students can, for example, pray over their meals in the cafeteria and even join with other students to pray around the flagpole before the start of school.

QUESTION

Can students pray at their school graduation or hold baccalaureate ceremonies?

ANSWER

The constitutionality of a graduation message, including a religious message, hinges on whether it is considered private speech – or, in other words, whether an objective observer would view the message as a “state endorsement of prayer in public schools.”¹³ A school policy containing the following elements should prevent any appearance of endorsement: (1) The school creates a time at graduation for a student to speak on a matter of his or her own choosing; (2) Neutral criteria determine which student(s) is (are) allowed to speak during this time; (3) There is no involvement or prior review of the speaker’s message by the school or school staff; and (4) Students are instructed that their speech may not materially and substantially interfere with the graduation ceremony, or be vulgar, lewd or obscene.¹⁴

Similarly, a school may permit a baccalaureate ceremony with religious content on its property when the event is sponsored and organized solely by private parties and when the school opens up its facilities to community groups generally. A private religious event that happens to be graduation related simply does not pose a constitutional problem.

QUESTION

Can students offer a prayer before the beginning of a sporting event?

ANSWER

Private speech even at school-related functions is protected by the Constitution. Courts have held that school policies which equate all student religious speech with State speech go too far and actually violate an individual's free speech rights.¹⁵ A school does not need to prohibit private religious speech in public places in order to avoid violating the Establishment Clause.¹⁶ The test is whether the prayer is genuinely student initiated and student led, and not part of a school policy which encourages or endorses it. Similar to the guidelines noted above for graduation, a school can allow a pre-game message to be given by a neutrally-selected student, and the message chosen by the student, whether religious or not, should be permissible. This should prevent any appearance of endorsement regarding student messages, including those that are religious in nature. Students, including those on sports teams, are also permitted to pray together before or after sporting events, provided the prayer is student initiated and student led.

**THE TEST
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GENUINELY
STUDENT-INITIATED
AND STUDENT-LED.**

QUESTION

Can students wear religious clothing to school?

ANSWER

Schools may not single out religious clothing or articles (such as Rosary beads) or clothing displaying a religious message for unfavorable treatment. Students may wear religious clothing required by their religion to the extent that other like articles of dress are permitted. Clothing or jewelry bearing a religious message is treated as speech, and cannot be restricted unless it (1) materially and substantially interferes with the operation of the school, or (2) infringes on the rights of other students.¹⁷

QUESTION

Does the so-called “separation of church and state” justify restrictions on student religious expression?

ANSWER

Schools cannot claim that the so-called “separation of church and state” or the First Amendment’s Establishment Clause justifies banning religious expression on campus. The school does not endorse private student speech. Indeed, courts have made it very clear that the school’s obligation is to educate the audience about the First Amendment, not silence the speaker out of fear that the audience will misperceive that the school, by allowing the speech, is endorsing it.¹⁸

QUESTION

Can students leave campus during the school day to participate in religious instructional activities?

ANSWER

Schools may permit students to leave the campus during school to attend religious instruction. Such programs, which are commonly known as “released time,” were upheld as constitutional by the Supreme Court over 60 years ago.¹⁹ The Court held that there was no constitutional violation because the released time instruction did not occur on school property, school officials did not coerce students into participating in the program, and the school did no more than to “accommodate their schedules to a program of outside religious instruction.”²⁰ However, it is ultimately left to the discretion of each school district to decide whether it will permit students to leave campus to attend released time programs.

There are many local and national organizations that sponsor released time programs. ADF encourages anyone interested to learn more about the programs offered in their area.²¹

QUESTION

Do students have the right to engage in religious expression during school-organized events such as a talent show?

ANSWER

Yes, just as a student has the constitutional right to express his or her religious beliefs in a class assignment, he or she generally has the right to do so at a school talent show.²² This is especially true when the selection of the talent belongs entirely to the student and participation in the talent show is completely voluntary. Because the talent is the student's personal expression, and not that of the school, it is subject to full protection under the First Amendment. Therefore, students can sing and dance to religious songs and perform instrumental religious music.

QUESTION

Is it permissible for students to be released during the school day to receive religious instruction?

ANSWER

Yes. The Supreme Court has repeatedly held that students may be excused from school to participate in off-campus religious instruction taught by non-school personnel. Known as "Released Time," tens of thousands of students across the country regularly participate in such programs during the school day. Some school districts have even agreed to allow students to receive elective credit for these programs.



PART II

**WHAT RIGHTS
DO RELIGIOUS CLUBS HAVE
TO ACCESS
SECONDARY SCHOOL
FACILITIES?**

The rights of religious student clubs in public secondary schools are protected by the First Amendment to the U.S. Constitution and the Equal Access Act (“the Act”), passed by Congress in 1984.²³ The basic purpose of the Act is to put religious clubs on equal footing with all other student clubs by allowing them the same privileges and access to school facilities that other recognized student clubs enjoy.²⁴ Once the school recognizes a single noncurriculum-related club, it is said to have created a “limited open forum,” triggering the Act and entitling all other qualified student clubs (like a Bible Club) to the same access and benefits of school facilities enjoyed by any other noncurriculum club.²⁵

A “qualified student club” is one that is student initiated and student led. Faculty can be involved only to monitor, facilitate, or supervise, and non-school persons cannot be regularly and directly involved in the meetings.²⁶ The school still retains the ability to regulate and restrict clubs that “materially and substantially interfere with the orderly conduct of educational activities within the school.”²⁷ Schools also have the right to “maintain order and discipline on school premises, to protect the

well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.”²⁸

The rights of religious student clubs also stem from the First Amendment to the United States Constitution, which offers protection beyond that which the Act provides.²⁹ Religious student clubs are allowed in public schools because there is a difference between “government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.”³⁰ Public Schools cannot exclude certain clubs based on their religious viewpoints or practices.³¹ Once a school allows access to any student club, school officials cannot deny recognition or benefits to other clubs based on students’ desire to exercise their religious freedom.³² The following information addresses some common questions regarding the right of religious student clubs to express their faith in public schools.

QUESTION

Can religious clubs hold meetings on campus?

ANSWER

In general, the Act says that meetings of recognized non-curriculum related clubs, like religious clubs, may take place on campus “during noninstructional time.”³³ “Noninstructional time” means “time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.”³⁴ Although attendance at school during certain hours is

mandatory, courts will look at the actual activity taking place and evaluate whether the activity is voluntary and/or related to school instruction, even though students are required to be

**PUBLIC SCHOOLS
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BASED ON THEIR
RELIGIOUS
VIEWPOINTS.**

on campus during the time period.³⁵ For example, if students may choose from a variety of activities (such as club participation, free time, or seeking assistance from a teacher) during a student activity or lunch period, this should not be considered instructional time because

students may only receive instruction if they so choose.³⁶ The important aspect of the meeting is that it is voluntary, not as to whether students have to be at school during that time, but whether they may choose to attend the meeting itself.³⁷

More specifically, a school may limit the time and place it allows recognized non-curriculum clubs to meet on its campus, but it must treat all student clubs equally.³⁸ Usually, clubs meet during a school's activity hour, just before or after school, or during lunch. Each of these time periods are permitted by the U.S. Constitution and the Act. However, a school may limit time periods as long as it applies the same rule to all clubs. For example, the school could say that no clubs may use the cafeteria after school, or clubs meeting before school cannot meet earlier than an hour before school starts.

QUESTION

Can religious clubs use school equipment, such as audio/visual or sports equipment?

ANSWER

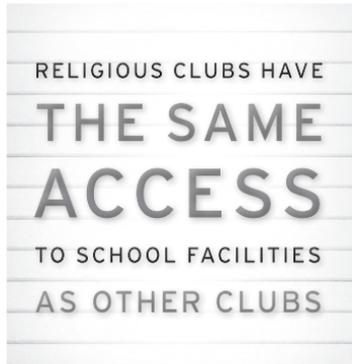
Under the Act, the school is not required “to expend public funds beyond the incidental cost of providing the space for student-initiated meetings.”³⁹ But under the First Amendment, if the school allows secular clubs to use supplies or equipment such as audio/visual or transportation equipment that clearly fall outside the incidental costs of providing a meeting place, these benefits must be made available to religious clubs as well.⁴⁰ In other words, if the school allows a recognized student club to use supplies and equipment, then it is a violation of religious clubs’ free speech rights to deny them the same use based on the religious nature of their speech.⁴¹ Courts have made it clear that equal access is not endorsement of religion, and students have the maturity to understand that principle.⁴² Granting equal access to religious clubs ensures neutrality, rather than showing any partiality of the school.⁴³ Furthermore, if any partiality is inferred, it is the fault of the school, because “the school itself has control over any impressions it gives its students”⁴⁴ and can easily make clear that religious clubs’ activities are not school endorsed. Therefore, allowing equal access to school equipment does not amount to an improper endorsement of religion by the school.

QUESTION

How may a religious club advertise for its meetings and other events?

ANSWER

Under the First Amendment and the Act, every club that meets the Act's requirements and is a recognized student club is allowed the same access to the school's facilities as every other recognized club. This includes access to public address



systems, bulletin boards, the school newspaper, and other avenues that schools allow students to use to advertise meetings and other events.⁴⁵

Students also have First Amendment free speech rights to distribute religious literature. But schools may “impose content-neutral time, place, and manner restrictions” on student clubs’ advertisements.⁴⁶ For instance, it may require all flyers for club activities to be posted on a certain bulletin board to avoid clutter (so long as all clubs are treated equally).

QUESTION

Can religious clubs get funding from the school for their activities?

ANSWER

School funding for general student activities may come out of the Associated Student Body (ASB) budget or other student organizational funds that come from student fees. In that scenario, the school cannot discriminate against recognized religious student clubs by denying them equal access to funds simply because of their religious viewpoint.⁴⁷ If other recognized clubs are allowed to access ASB funds and participate in activities such as fundraisers and other events, a recognized religious student club must have the same opportunities.

QUESTION

Can club meetings be held on campus if the student club is not recognized by the school?

ANSWER

Depending on a school's policies and procedures, student clubs typically need to go through an application process to become an officially recognized student organization. Once the club is approved as a recognized organization, the club must be provided access to facilities, funding, and other privileges to the same degree afforded other student organizations. The school may not place restrictions on a religious club's ability to function as a student organization based on its religious point of view.

QUESTION

Can religious clubs have specific expectations of their members, such as they must identify as a Christian or must adhere to a certain code of conduct?

ANSWER

Yes, the First Amendment protects the right of student clubs to select their members and leaders based upon their adherence to the club's beliefs.⁴⁸ The Supreme Court recently established that the First Amendment prevents the government from "interfering with the freedom of religious groups to select" those who "convey[] [their] message and carry[] out [their] mission."⁴⁹ When religious student clubs select individuals who share their religious beliefs to be voting members and leaders, they are exercising this religious freedom. Thus, schools violate the rights of religious students by requiring them to abandon their right to associate with persons who share their beliefs as a condition to receiving recognition as a student club.⁵⁰

QUESTION

If the school does not recognize any non-curricular student clubs, is there a way to hold religious club meetings?

ANSWER

First, it must be certain that there are, in fact, no extracurricular student clubs meeting on campus. In past cases, schools have labeled certain clubs “curriculum-related,” which were actually determined by a court to be non-curricular student clubs.⁵¹ If the school has allowed at least one non-curricular student club to meet and use school facilities and equipment, it must allow other non-curricular clubs an equal opportunity to do so.

If the school legitimately does not allow any student-led, non-curricular clubs on campus, a request to use school facilities as an off-campus, private group may still be allowed. If the school allows community groups to use its facilities, it may have established parameters covering the types of groups and activities allowed. As long as the group meets the criteria, the school must not discriminate against a club based on its religious speech.⁵² Students may also “meet” informally during lunch and before or after school in the same manner other students may gather to socialize.

QUESTION

What recourse does a religious club have if the school refuses to recognize it as a student club?

ANSWER

If the school denies a religious club equal access to resources or facilities, or has established restrictions that infringe upon freedoms of speech or religion, the student (and, if necessary, the parents) should meet with the principal or dean to discuss the matter and request a resolution. ADF can provide documentation to help explain the law. Should school officials still refuse to adjust their policy or practice, ADF can write a letter on the student's behalf to ask that the school officials correct their actions, and then look into the possibility of litigation in court if the school persists in its unlawful conduct.



QUESTION

Can schools place restrictions based on religious content?

ANSWER

Schools cannot censor the speech of student groups simply because the speech is religious. A school can only place restrictions on speech content if the regulation is necessary to serve a compelling state interest and the rules are narrowly drawn for that purpose.⁵³ Generally, that means that any policies regulating speech should be content-neutral and geared towards

**SCHOOLS CANNOT
PROHIBIT
RELIGIOUS CLUBS
FROM USING
RELIGIOUS WORDS OR
SYMBOLS**

ensuring a safe, non-disruptive educational environment. But prohibitions against using certain words or wearing items that have religious significance are viewpoint based and considered discriminatory under the First Amendment.⁵⁴

Schools cannot prohibit religious clubs from using religious words or symbols on their advertisements and other documents distributed to students, unless the speech causes a material and substantial disruption.



PART III

**WHAT CAN STUDENTS,
COACHES, AND TEACHERS
DO AS PART OF
A RELIGIOUS CLUB
ON CAMPUS?**

Students in official student clubs, as private individuals, possess broad freedom to engage in religious speech on campus under the Equal Access Act and the First Amendment. But these clubs must be student initiated and student lead. That means coaches', teachers', and other adults' ability to attend, lead, or participate in school-recognized clubs is limited. Clubs that want teachers, coaches, and other adults to play a greater role in their activities may operate before or after school as community groups.

The following information addresses some common questions regarding students', coaches', teachers', and other adults' participation in religious clubs on campus.

QUESTION

What can a religious club talk about during its meetings?

ANSWER

Students are free to discuss any issues and engage in any religious speech they desire at meetings. The school does not have control over the content of the meeting, even though the meeting takes place on the school's campus. The school is obligated under the Equal Access Act and the First Amendment to provide equal access to all recognized student clubs, regardless of the content of their meetings, unless they "materially and substantially" disrupt the educational process.⁵⁵ Since the meetings take place during non-instructional time, there is little, if any, danger that the educational process would be materially and substantially disrupted by religious activities. Therefore, students may pray, sing songs, read the Bible, and evangelize others during their meetings.

It is important to note that there is a restriction for teachers or coaches who attend meetings of clubs officially recognized by the school. Since teachers and coaches are school employees, their speech may be considered endorsed by the school, which raises Establishment Clause concerns. The Act states that school officials may be "present...only in a nonparticipatory capacity."⁵⁶

CLUB LEADERS

QUESTION

Who can be a leader of a religious club?

ANSWER

The Act specifies that school-recognized clubs must be “voluntary and student initiated, ... there [can be] no sponsorship of the meeting by the school, ... [and] employees or agents of the school or government [may be] present at religious meetings *only in a nonparticipatory capacity* (emphasis added).”⁵⁷ Students may serve as club leaders and participate without restriction. But teachers and coaches, including those who serve as faculty advisors, may only attend meetings of recognized clubs to monitor, facilitate, and/or supervise. It is up to school officials, not the students, to make it clear that the club is student led.⁵⁸

The Act also provides that “nonschool persons may not direct, conduct, control, or regularly attend activities of [recognized] student groups.”⁵⁹ Therefore, if a parent or some other person who does not either attend the school or work at the school wants to be involved in club meetings, they can only do so in a facilitative manner, and cannot regularly attend or lead the meetings.

If a religious club wants a greater degree of leadership from its faculty advisor or another outside person, it has the choice to not register as a recognized student club. In that case, the club

will still be able to use the campus for meetings as an outside community group, provided outside groups are permitted to use school facilities. But the club may not receive the same access to benefits, such as bulletin board and equipment usage, that the school allows recognized student clubs.

QUESTION

Can a religious club be considered a Community Group, rather than a Recognized Student Club, so that teachers and coaches can be more involved?

ANSWER

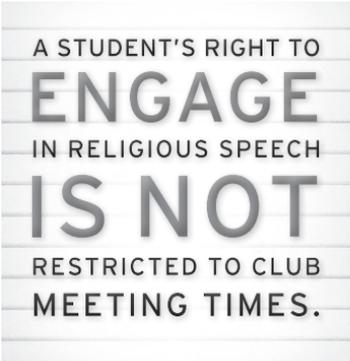
If religious clubs would rather meet as a community group than a recognized student club, then the proper procedures set forth by the school would need to be followed. Becoming a community group will mean that there are fewer restrictions on teacher, coach, and parent involvement, so teachers and coaches can lead meetings and participate in any and all religious speech.⁶⁰ But it also means that the club is giving up the benefits of being a recognized student club, including access to advertising avenues, school funding, and the ability to meet on campus during the school's activity period.

QUESTION

What can students who serve as religious club leaders do on campus?

ANSWER

Students are allowed to freely pray and discuss religious ideas during their meetings, as discussed above. Their rights of free speech and free exercise of religion are protected by the First



A STUDENT'S RIGHT TO
ENGAGE
IN RELIGIOUS SPEECH
IS NOT
RESTRICTED TO CLUB
MEETING TIMES.

Amendment and cannot be taken away by public schools. This rule applies even if a student is in a position of leadership, as long as the position does not require the student to speak on behalf of the school.

A student's right to engage in religious speech is not restricted to club meeting times. The First Amendment right of free speech extends to students as individuals wherever they are on campus, as long as they do not interfere with school activities or the rights of other students.⁶¹

QUESTION

Can religious clubs invite outside speakers to meetings?

ANSWER

Outside speakers are permissible at religious club meetings, and they can speak on any topic. A club inviting speakers to supplement their presentation must follow the school's policies related to recognized student clubs' use of school facilities. Promotion of the event must make it clear that attendance is purely voluntary, and that the speaker is hosted and endorsed by the student club, not the school.

**OUTSIDE
SPEAKERS
ARE PERMISSIBLE
AT RELIGIOUS
CLUB
MEETINGS.**

A school may decide to reserve use of its facilities for certain general groups or topics, but it cannot exclude religious views or otherwise "regulat[e] speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."⁶² To do so is considered viewpoint discrimination, which violates freedom-of-speech rights and is unconstitutional.⁶³

COACHES & TEACHERS

Generally, coaches and teachers are free to talk about religion in an objective manner.⁶⁴ But when acting as a school employee, they must be more careful when engaging in a discussion of their own religious beliefs with students, whether or not that is part of a student meeting. Courts have two main concerns with school employees' speech that do not arise with student speech.

The first is a concern that it will appear that the school endorses the teacher's religious views. Courts have held that, simply because of the teacher's position in the school, "a teacher's speech can be taken as directly and deliberately representative of the school."⁶⁵ If this happens when a teacher or coach engages in religious speech, concerns arise under the Establishment Clause.

The second concern is that because teachers give grades, and similarly, coaches evaluate athletes, when teachers and coaches share their religious beliefs, it could have a coercive effect on students.⁶⁶ Students and student athletes may feel that if they shared the religious views of their teacher or coach, they would be given an advantage; or conversely, if they did not share the same views, then they would be penalized by receiving lower grades or being "put on the bench."

When it comes to involvement with a religious club, teachers must be aware of separating their private religious speech from their role as a public employee to preserve the club's opportunity to exist on campus. While faculty may serve as advisors to a religious club, or gather with students outside of their school responsibilities to discuss personal views, they must prevent their support of religious clubs from coming across as favoritism toward participating students.

QUESTION

May coaches lead prayer at practices and games?

ANSWER

Since coaches are employees of the school, they may not lead prayer at either practices or games. The dangers of an appearance of school endorsement and fear of coercion are present with coaches as well as teachers, because coaches are also employees of the school and represent the school to the athletes during these times.⁶⁷ In addition, the possibility of athletes feeling compelled to participate in the religious activity is great.

Students may have their own times of prayer (as long as they initiate it and lead it) that take place immediately before or after practices and games, and the coach may be present at the place and time to maintain order and discipline.

QUESTION

How much involvement can faculty sponsors have in religious club meetings?

ANSWER

Many schools require each recognized student club to have a faculty sponsor. It is fine for a teacher or coach to fulfill this role, but it must be done in a way that is “nonparticipatory,” according to the Equal Access Act.⁶⁸ This means that all of the activities that students participate in as part of the meeting are led by students, and the teacher or coach is only there to supervise. As a faculty sponsor, the teacher or coach is still acting in his or her official capacity as a school employee and therefore cannot participate in religious speech with students. The fact that the teacher or coach is only there to supervise should be made clear by school officials, so students will not misunderstand or think that the school in any way endorses the religious club’s mission because of the presence of the teacher or coach.

QUESTION

Is there a way a coach or teacher can actively lead and participate in a religious club?

ANSWER

Yes. A coach or teacher can lead a religious club if it is not a recognized school club. Whether or not a school district recognizes student clubs, it may allow its facilities to be used

by community groups that have no affiliation with the district, such as the Boy Scouts, or various churches that may use school facilities during non-school hours. Religious clubs may request to use school facilities before or after hours as an independent community group. In that scenario, teachers may participate fully in meetings as individuals engaging in private speech, even if they are employed at that particular school.⁶⁹ A school cannot restrict employees from participating in religious-based activities that occur on their own time, outside of school-sponsored events or instruction.⁷⁰ But religious clubs that elect not to be recognized may not have the same rights and privileges given to recognized student clubs.

QUESTION

Can coaches meet with other coaches and teachers as a group?

ANSWER

Even though school employees may not take an active role in meetings of recognized student clubs, teachers and coaches in public schools may exchange ideas or even have prayer meetings with one another, absent student involvement. If teachers are allowed to hold meetings unrelated to school business on the school premises, then they must also be allowed to discuss religion, pray with one another, etc., when there are no students involved.⁷¹



PART IV

WHAT RIGHTS DO STUDENTS HAVE TO EXPRESS THEIR FAITH AND BELIEFS ON COLLEGE CAMPUSES?

The First Amendment to the U.S. Constitution, which states that “Congress shall make no law... abridging the freedom of speech” or “prohibiting the free exercise” of religion, protects students’ right to engage in religious or political expression and freely exercise their faith. Public colleges and universities are government bodies, so they cannot single out speech or conduct for discriminatory treatment simply because it is religious, pro-life, pro-marriage or political.⁷² As the Supreme Court has explained, “state colleges and universities are not enclaves immune from the sweep of the First Amendment.”⁷³ In fact, “the precedents of [the Supreme] Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large.”⁷⁴

Despite these protections, many college students face hostility and censorship in expressing their faith and beliefs. The following information addresses common questions regarding students’ rights to express their faith on campus.

QUESTION

What are a student's rights on campus?

ANSWER

Students benefit from even greater protection of their First Amendment rights on public college campuses than they do in public secondary schools. The First Amendment gives college students the right to express their personal religious beliefs on campus through speech, writing, leafleting, forums, concerts, visual or performing arts, and even silence. As government entities, public universities cannot legally enforce policies that discriminate against students on the basis of their religious beliefs, practices, and expression.

Generally speaking, college students can exercise the following rights on campus:

- **Freedom of Speech** – The U.S. Constitution protects the right to express personal religious and political beliefs in writing, speech, and visual or performing arts while at a public university.
- **Freedom of Association** – Religious and political student groups have the same right to associate on university campuses as any other group.
- **Free Exercise of Religious Beliefs** – Public universities cannot compel students to publicly advocate views and adopt values that are contrary to their beliefs.

- **Equal Access** – All recognized student groups have the same right to access resources a university has made available. This includes funding, meeting rooms, mail systems, or other campus resources.
- **Equal Opportunity** – Students have the right to be free from censorship, reprisal, or punishment for their beliefs. Students with religious or conservative beliefs should have the same chance at academic success, employment, and promotion.

SPEECH CODES

QUESTION

Can a public university tell a student not to speak on certain topics because they could be offensive?

ANSWER

No. Many public universities use unconstitutional speech codes on their campuses to censor students. They can be found in student handbooks, university policies, and even state regulations. By using terms like “offensive,” “demeaning,” and “uncomfortable,” these speech codes give administrators broad discretion to silence students, which is unconstitutional.⁷⁵

QUESTION

How can students find out if their university has a speech code?

ANSWER

Universities do not typically advertise their speech codes, so a student may need to search to find it. A student can likely find most speech codes in policies of boards of regents or trustees, student handbooks, student codes of conduct, or university-wide policies. When looking for a university speech code, it may be helpful to search for terms like “speech,” “expression,” “offensive,” “harassment,” or “demeaning,” in these documents. Sometimes, a university will use a bias incident reporting system that allows students to report when another person has offended them. ADF may also be used as a resource to determine whether a student’s university has a speech code.

QUESTION

What should students do if they discover their university has a speech code?

ANSWER

Take action. If a student finds that his or her university has a speech code (a third of public universities in the country do have one), a student can take steps to get it repealed. Possible steps include writing the administration or submitting an op-ed to the campus newspaper. A student can also hold an event

on campus that brings awareness to the problem that campus speech codes pose in suppressing student speech. A student may also contact ADF for support and other ideas.

QUESTION

Can a professor make a student take a stance on a particular issue?

ANSWER

Generally, no. Professors can ask a student to play “devil’s advocate” when completing a class assignment, test, or homework. But they cannot force him or her to take a particular

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position on an issue outside of the classroom, punish him or her for stating beliefs in an open-ended assignment, or invoke curriculum as a pretext for punishing him or her for religious beliefs.⁷⁶

An example of this is the case of a student named Emily Brooker. University

administrators and faculty directed her to participate in lobbying the Missouri State Legislature to support homosexual adoption as part of her course requirements for a degree in social work. When she refused to do so because of her beliefs, the university threatened to withhold her degree. No government entity has the right to tell students what to think, say, or feel.

SPEECH ZONES

QUESTION

Can a university isolate a student who wants to share a pro-life viewpoint to a remote part of campus?

ANSWER

Generally, no. Some universities use policies to create speech zones to restrict free speech. These policies sometimes provide for a speech zone on campus, but often that zone is so small or so far removed from the heart of campus that it is an ineffective area for sharing one's message.⁷⁷ Other campuses dramatically limit free speech to certain times of the day or week and often give administrators a right to review and approve materials before they are disseminated. In the scenario where campus officials have moved a student from a prominent spot on campus to a low-traffic area while sharing their beliefs, the university likely violated the student's freedom of speech and action should be taken.



QUESTION

How can students find out if their university has a speech zone?

ANSWER

Unlike speech codes, universities are likely to advertise their “free speech areas.” Speech zone policies can often be discovered by asking the student activities office where a student group can hold an event on campus. It is likely they will reference the “free speech area.” These policies may also be found on the university’s website by searching for terms like “solicitation,” “literature,” “expression,” “speech,” and “time, place, and manner.” ADF may also be utilized as a resource in helping students determine whether their university has a speech zone.

QUESTION

What should students do if their university has a speech zone?

ANSWER

Similar to speech codes, speech zones can infringe one’s First Amendment right to freedom of speech. If a university’s student activities office denies permission for a student to hold a “free-speech event” outside of the speech zone, further action should be taken. ADF can offer assistance in contacting the school to address the issue.

STARTING OR RENEWING A STUDENT GROUP

QUESTION

What steps can be taken to start a student group on campus?

ANSWER

A student interested in starting a student group on campus should first look for the university policies that govern how to start or renew a student group. They can usually be found in the student handbook or student organization handbook. The student activities office can also be a resource if the guidelines are not readily found. It is important to follow the guidelines exactly as they are written to avoid denial of group recognition because of a technicality.

The First Amendment protects the right to have a Christian, pro-life, or conservative student group on equal terms as all other groups on campus, so the university should not have a clause stating that it does not allow these types of groups on campus.⁷⁸ A new student group should then prepare a constitution and bylaws. These documents define, among other things, who can participate in the group, who can be a member, and who can be a leader. In past cases, some public universities have tried to require groups to accept any student as a member and leader, and call it “discrimination” if they did not. This is unconstitutional, as explained in the next question.

The purpose of placing limits on who is eligible to lead or vote in a group is to preserve the character of the group. For example, some Christian groups may ask officers to lead Bible studies. Those groups require their officers to agree with a statement of faith or to demonstrate a commitment to their faith. Doing so helps ensure the officers will be good representatives and will be able to teach others in accordance with the beliefs of the group. Diversity does not mean allowing anyone to do anything in the group. A group's individuality and demonstrated commitment to a faith or cause adds diversity to campus and should be welcomed by a public university.

If a university asks a student group to make changes to their constitution that alters the identity of the group, action should be taken. ADF can serve as a resource to address this issue.

QUESTION

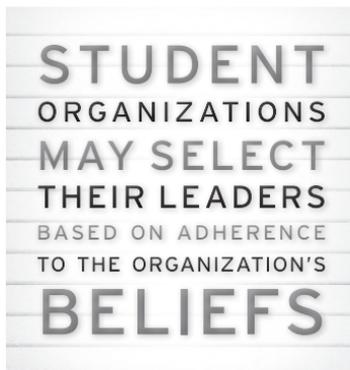
Is it constitutional for a university to dictate whether members or leaders of a religious group are chosen based on their beliefs?

ANSWER

Generally, no. Many public universities require student groups to adopt a nondiscrimination membership policy as a condition of receiving official school recognition. Such policies attempt to force a religious or political organization to accept as members and leaders persons who don't necessarily agree with the

organization's beliefs. For example, a Christian organization would be forced to accept as president an atheist student, while the College Republicans would be compelled to accept a left-leaning Democrat as its leader.

The First Amendment's Free Speech Clause protects the right of expressive associations, like student organizations at public universities, to select their members and leaders based upon their adherence to the organizations' beliefs.⁷⁹



Individuals must be free to join together for common causes without interference from the government. Conditioning access to university programs is an improper restraint on this freedom. For this reason, in most circumstances universities cannot expel religious groups from campus merely because they want their members or leaders to uphold faith-based standards of belief and conduct. Overly broad "nondiscrimination" policies violate student groups' rights of free speech and association.

If the university has an "all-comers" policy, which requires all student groups to open their membership to all students, with no exceptions, then the policy could be constitutional under current law, if very specific conditions are met.⁸⁰ Most universities don't have this extreme type of policy, and if they do it isn't often enforced on a consistent basis.

EQUAL ACCESS TO FACILITIES AND STUDENT FEES

QUESTION

Can a university deny a student group's room rental request because it is too "religious" or "political?"

ANSWER

No. Many administrators mistakenly believe that permitting expressions of faith means that the college or university is violating the so-called "separation of church and state." The Supreme Court has held for many years that the Constitution requires neutrality toward religion and forbids hostility.⁸¹ A group cannot be singled out for disparate treatment because it is religious or conservative.



QUESTION

Can a university deny a student group funding because its activities are “religious” or “sectarian?”

ANSWER

No. When a public university creates a mandatory student activity fee and then allocates a portion of the collected fees to fund student organization activities, it creates a public forum for student speech and must distribute the fees on a viewpoint neutral basis.⁸² Thus, a college may not rely on a group’s ideology, mission, purpose, or views as grounds for denying equal access to student activity fees. Policies that bar use of student activity fees for religious advocacy, sectarian activities, or worship violate this requirement.⁸³

QUESTION

Can one student really stand up to an entire college or university?

ANSWER

If a student believes his or her university may be violating a constitutionally protected right, he or she has every right to speak up. With the help of ADF, a student can pave the way for students across the country to live out their faith freely on campus.

FACULTY SPEECH

QUESTION

May a faculty member express his beliefs outside of the classroom?

ANSWER

Yes. The First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern.⁸⁴ But the government may to some extent regulate the speech of its employees because of its interest in performing its functions efficiently and effectively.⁸⁵ To receive First Amendment protection, a public university professor must show (1) he or she was speaking as a citizen; (2) "on a matter of public concern;" and (3) when balancing the university's interest in efficiency and effectiveness against his or her speech, his or her right to speak wins out.

When a public university professor expresses his or her beliefs outside of the classroom and outside of his or her job duties, he or she is speaking as a citizen.⁸⁶ Normally, when a public employee speaks pursuant to his or her job duties, he or she does not receive First Amendment protection.⁸⁷ But university professors are not governed by this "official duties" rule so long as they are engaged in teaching and scholarship, meaning that such speech does receive First Amendment protection.⁸⁸

A matter of public concern is one that touches upon “an issue of social, political, or other interest to a community.”⁸⁹ Speech will generally be considered a matter of public concern unless it falls within that “narrow spectrum” of speech that is purely of “personal concern,” such as a “private personnel grievance.”⁹⁰ The quintessential example of protected speech is the teacher who criticizes his or her public school’s policies and reveals official misconduct, like criticizing the school’s misinformation about and mismanagement of public funds.⁹¹ But the federal courts have found that speech on a matter of public concern also includes topics ranging from academic freedom,⁹² race discrimination,⁹³ and violations of civil rights,⁹⁴ to sex and gender,⁹⁵ hemp,⁹⁶ abortion,⁹⁷ homosexuality,⁹⁸ religion,⁹⁹ morality,¹⁰⁰ feminism,¹⁰¹ and campus culture.¹⁰²

Once a professor shows that his or her statements touch on a matter of public concern, “the burden shifts to the defendant to show that its legitimate administrative interests outweigh the plaintiff’s First Amendment rights.”¹⁰³ One of these interests is the university’s interest in “efficient provision of public services,”¹⁰⁴ but the university “must make a stronger showing of the potential for inefficiency or disruption when the employee’s speech involves a ‘more substantial[.]’ matter of public concern.”¹⁰⁵

Thus, a faculty member may express his or her beliefs outside the classroom so long as he or she is speaking as a citizen on a matter of public concern and it does not unduly disrupt the workplace.

QUESTION

May a faculty member talk about his or her beliefs in the classroom?

ANSWER

Professors may discuss issues germane to the subject matter of the course.¹⁰⁶ While the Supreme Court has not “determined what scope of First Amendment protection is to be given a public college professor’s classroom speech,”¹⁰⁷ “[i]t has long been recognized that the purpose of academic freedom is to preserve the ‘free marketplace of ideas’ and protect the individual professor’s classroom method from the arbitrary interference of university officials.”¹⁰⁸ A college may not straightjacket a professor and eliminate his or her ability to teach in the classroom. Because “[t]he First Amendment guarantees wide freedom in matters of adult public discourse,”¹⁰⁹ “discussion by adult students [and their professor] in a college classroom should not be restricted.”¹¹⁰ But this freedom is not unlimited. A good rule of thumb is that professors may share their thoughts on anything “germane” to the subject matter of the course.¹¹¹ For example, a professor cannot teach material used in contravention of university policy,¹¹² but a professor’s discussion of the social impact of words in a language course, even if those words may be offensive, is permitted.¹¹³ So long as a professor stays within the subject required by the curriculum, the First Amendment should protect his or her right to speak freely.

QUESTION

May a faculty member pursue research that others deem “controversial?”

ANSWER

Yes. The U.S. Supreme Court has stated:

To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.¹¹⁴

These principles are not mere platitudes but reflect an understanding that the inherent job duties of college professors require protection by the First Amendment. Colleges assign professors to the classes they will teach and set the curriculum for those classes, but, ultimately, the professors assign reading, write and grade exams, lead daily classroom discussions, and answer students’ questions.¹¹⁵ The government may never discriminate against someone based on the viewpoint of his or her speech.¹¹⁶ The history of the public university itself shows that it is intended to be the “marketplace of ideas” where free thought and debate flourish.¹¹⁷ If a public university punishes a professor for the views he or she expresses in an article, in a speech, in a media appearance, or in the classroom, then he or she may have a claim for viewpoint discrimination or retaliation.¹¹⁸

GLOSSARY OF TERMS

Associated Student Body (ASB) Funds/Student

Organizational Funds – Funds derived from student fees.

Closed Forum – A forum where schools have the greatest discretion to restrict speech. Schools may disallow all student groups, or set neutral policies as to which groups are allowed, but cannot regulate or discriminate based on viewpoint.

Equal Access Act – A federal law granting recognized student clubs in public high schools equal access to school facilities and benefits, regardless of their religious or political views.
20 U.S.C. § 4071 et seq.

First Amendment –

Establishment Clause “Congress shall make no law respecting an establishment of religion,”

Free Exercise Clause “Congress shall make no law ... prohibiting the free exercise thereof,”

Free Speech Clause “Congress shall make no law ... abridging the freedom of speech,”

Limited Open Forum – Defined in the Equal Access Act as existing “whenever [a] school grants an offering to or opportunity for one or more noncurriculum related student groups [or clubs] to meet on school premises during noninstructional time.”
20 U.S.C. § 4071(b).

Limited Public Forum – A forum that is reserved for certain groups or the discussion of certain topics, but not limited in a way that discriminates against speech based on viewpoint. The limitations also must be reasonable in light of the forum’s purpose. *Good News Club v. Milford*, 533 U.S. 98, 106-07 (2001).

Matter of Public Concern – An issue that is of interest to the general public, not simply an internal workplace matter.

Noncurriculum Related Student Group – “Best interpreted broadly to mean any student group that does not *directly* relate to the body of courses offered by the school.” *Pope by Pope v. East Brunswick Bd. of Educ.*, 12 F.3d 1244, 1251 (3d Cir. 1993) (citing *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 239 (1990)). The *Pope* court also said that religious and political clubs by their nature are noncurriculum related. *Id.*

Noninstructional Time – “Time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.” 20 U.S.C. § 4072(4).

Nonschool Person – Anyone who is not affiliated with the school, as either an employee or a student.

Private Group/Community Group – A group that is not a recognized school club and whose access therefore is not protected by the Equal Access Act. The access of such groups will be evaluated under the First Amendment Free Speech Clause, depending on what type of forum the school has created for community groups (for example, open, limited open, closed – see this glossary for definitions).

Private Speech – Individual speech that is protected by the First Amendment.

Sponsorship – “Includes the act of promoting, leading, or participating in a meeting. The assignment of a teacher, administrator, or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting.”
20 U.S.C. § 4072(2).

END NOTES

- ¹ *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995).
- ² *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969).
- ³ *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 112 (2001); *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 250 (1990) (“[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise clauses protect.”).
- ⁴ *Tinker*, 393 U.S. at 509.
- ⁵ *Morse v. Frederick*, 127 S. Ct. 2618, 2629 (2007) [rejecting use of “offensiveness” standard for regulating student speech because “much political and religious speech might be perceived as offensive to some”]; *Nuxoll v. Indian Prairie Sch. Dist.*, 523 F.3d 668, 672 (7th Cir. 2008) (“[P]eople do not have a legal right to prevent criticism of their beliefs or for that matter their way of life.”).
- ⁶ *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988).
- ⁷ *Westfield High Sch. L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98, 114 (D. Mass. 2003) (“It is now textbook law” that students carry rights of expression, including the right to distribute literature); *Clark v. Dallas Indep. Sch. Dist.*, 806 F. Supp. 116, 119 (N.D. Tex. 1992) (“It is well settled that written expression is pure speech. . . . It is equally true that the guarantee of free speech encompasses the right to distribute written materials peacefully.”).
- ⁸ *K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 106 (3d Cir. 2013).
- ⁹ *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295 (7th Cir. 1993).
- ¹⁰ *United States v. Kokinda*, 497 U.S. 720, 734 (1990); *Tinker*, 393 U.S. at 508; *J.S. v. Holly Area Sch.*, 749 F. Supp. 2d 614, 623 (E.D. Mich. 2010) (“[A] blanket prohibition upon a student’s distribution of materials on the basis of religious viewpoint is not constitutionally permissible.”); *C.H. v. Bridgeton Bd. of Educ.*, No. 09-5815, 2010 WL 1644612, at *4 (D.N.J. Apr. 22, 2010) (“[I]f student speech is not lewd, school-sponsored, or advocating drug use, the speech can only be prohibited if it is likely to cause a disruption.”); *Wright v. Pulaski Cmty. Special Sch. Dist.*, 803 F. Supp. 2d 980, 983 (E.D. Ark. 2011) (“[T]he record is devoid of anything showing how the work of the school will be affected at all by the dissemination of flyers regarding church-sponsored activities, especially considering the vast array of materials presently circulated.”); *C.H.*, 2010 WL 1644612, at *9 (“[S]peech (leafleting) is described as the essence of the first amendment.” (quotation omitted)).
- ¹¹ *Good News Club*, 533 U.S. at 112; *Wright*, 803 F. Supp. 2d at 983 (“[T]he prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.” (quotation omitted)).
- ¹² See *Adler v. Duval Cnty. Sch. Bd.*, 206 F.3d 1070, 1082 (11th Cir. 2000); *Jones v. Clear Creek Indep. Sch. Dist.*, 977 F.2d 963, 969 (5th Cir. 1992); *Chandler v. Siegelman*, 230 F.3d 1313, 1317 (11th Cir. 2000).
- ¹³ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000).

¹⁴ *Tinker*, 393 U.S. at 509; *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 686 (1986). For an example of a constitutional graduation policy, see *Adler*, 206 F.3d at 1072. But see *Cole v. Niemeyer*, 228 F.3d 1092 (9th Cir. 2000) (the Ninth Circuit held that allowing a sectarian prayer and message at graduation would violate the Establishment Clause).

¹⁵ *Chandler*, 230 F.3d at 1316 (“The Free Exercise Clause does not permit the State to confine religious speech to whispers or banish it to broom closets. If it did, the exercise of one’s religion would not be free at all”).

¹⁶ *Id.*

¹⁷ *Tinker*, 393 U.S. at 509; *Jacobs v. Clark Cnty. Sch. Dist.*, 373 F. Supp. 2d 1162, 1172-73 [D. Nev. 2005] (ruling that “shirts bearing religious messages” qualify as “speech within the ambit of First Amendment protection”); *Chalifoux v. New Caney Indep. Sch. Dist.*, 976 F. Supp. 659, 665-66 [S.D. Tex. 1997] (finding that a Rosary is “akin to pure speech” and “a form of religious expression protected under the First Amendment”).

¹⁸ *Rusk v. Crestview Local Sch. Dist.*, 379 F.3d 418, 422 [6th Cir. 2004]; *Hedges*, 9 F.3d at 1300; *Hills v. Scottsdale Unified Sch. Dist. No. 48*, 329 F.3d 1044, 1055 [9th Cir. 2003].

¹⁹ *Zorach v. Clauson*, 343 U.S. 306 (1952).

²⁰ *Id.* at 315.

²¹ <http://www.schoolministries.org/>.

²² *O.T. ex rel. Turton v. Frenchtown Elementary Sch. Dist. Bd of Educ.*, 465 F. Supp. 2d 369, 381 [D.N.J. 2006] (finding that a school’s “refusal to allow [a second grade student] to perform the song “Awesome God” at the Frenchtown Elementary School talent show amounted to unlawful viewpoint discrimination”).

²³ 20 U.S.C. § 4071.

²⁴ *Mergens*, 496 U.S. at 238 (“[T]he purpose of granting equal access is to prohibit discrimination between religious or political clubs on the one hand and other noncurriculum-related student groups on the other....”).

²⁵ 20 U.S.C. § 4071(b). The Act defines a “limited open forum” as existing in a public secondary school “whenever such school grants an offering to or opportunity for one or more noncurriculum-related student groups to meet on school premises during noninstructional time.” *Id.*

²⁶ 20 U.S.C. § 4071(c)(1)(3), (5).

²⁷ 20 U.S.C. § 4071(c)(4); cf. *Tinker*, 393 U.S. at 509; *Mergens*, 496 U.S. at 241.

²⁸ 20 U.S.C. § 4071(f); *Mergens*, 496 U.S. at 241.

²⁹ U.S. CONST. amend. I.

³⁰ *Prince v. Jacoby*, 303 F.3d 1074, 1094 [9th Cir. 2002] (quoting *Mergens*, 496 U.S. at 250 [emphasis added]). The Establishment, the Free Exercise, and the Free Speech Clauses read as follows: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech” U.S. CONST. amend. I.

³¹ See *Prince*, 303 F.3d at 1092.

³² *Id.* at 1091; see also *Good News Club*, 533 U.S. at 112; *Widmar v. Vincent*, 454 U.S. 263, 269 (1981).

³³ 20 U.S.C. § 4071(b).

³⁴ 20 U.S.C. § 4072(4).

³⁵ *Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211, 223 [3d Cir. 2003] (Interpretation should be “consistent with Congress’ intent to provide a low threshold for triggering the Act’s requirements.”) (quoting *Mergens*, 496 U.S. at 239, 240); see also *Ceniceros v. Bd. of Trs. of the San Diego Unified Sch. Dist.*, 106 F.3d 878 (9th Cir. 1996); *Mergens*, 496 U.S. at 251 (noting that the Act “avoids the problems of ... mandatory attendance requirements.”); compare *Prince*, 303 F.3d at 1088 (defining “noninstructional time” as when attendance is not required, but holding that the First Amendment requires schools to allow religious clubs to meet when other student clubs meet, even if that is during instructional time).

³⁶ *Donovan*, 336 F.3d at 223-24.

³⁷ *Id.* at 224; *Thompson v. Waynesboro Area Sch. Dist.*, 673 F. Supp. 1379, 1383 (M.D.Pa. 1987) (giving criteria for voluntariness as entirely student initiated, place set aside where student must go for the meeting, and student could reject any other choice of activity).

³⁸ See, e.g., *Prince*, 303 F.3d at 1082.

³⁹ 20 U.S.C. § 4071(d)(3); see also *Prince*, 303 F.3d at 1090.

⁴⁰ *Prince*, 303 F.3d at 1092 (“The School District’s restriction on access to facilities is based purely on the World Changer’s religious viewpoint in violation of the First Amendment.”).

⁴¹ In that case, the school has established a limited public forum by choosing to grant access to school equipment, and therefore “cannot deny access to some student groups because of their desire to exercise their First Amendment rights...” *Prince*, 303 F.3d at 1091-92 (citing *Widmar*, 454 U.S. at 269).

⁴² *Mergens*, 496 U.S. at 250 (“We think that secondary school students are mature enough and are likely to understand that a school does not endorse or support student speech that it merely permits on a nondiscriminatory basis.”).

⁴³ *Prince*, 303 F.3d at 1092; see also *Good News Club*, 533 U.S. at 114; *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 839 (1995).

⁴⁴ *Mergens*, 496 U.S. at 251; *Prince*, 303 F.3d at 1094.

⁴⁵ *Mergens*, 496 U.S. at 247; *Prince*, 303 F.3d at 1086-87, 1092.

⁴⁶ See *Thompson*, 673 F. Supp. at 1393 (holding that it was a violation of the students’ free speech to disallow the distribution of a religious student newspaper, but that the school also had authority to impose content-neutral time, place, and manner restrictions on the distribution).

⁴⁷ See *Prince*, 303 F.3d at 1094 (holding that withholding official recognition from a legitimate student club was discriminatory in that it denied equal access to ASB funds and charged them to participate in school fundraising activities based on the group’s Christian viewpoint).

⁴⁸ *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000) (“The forced inclusion of an unwanted person in a group infringes the group’s freedom of expressive association if the presence of that person affects in a significant way the group’s ability to advocate public or private viewpoints.”).

⁴⁹ *Hasanna-Tabor Evangelical Lutheran Church & Sch. v. Equal Emp’t Opportunity Comm’n*, 132 S. Ct. 694, 698 (2012).

⁵⁰ *Hsu v. Roslyn Union Free Sch. Dist.* No. 3, 85 F.3d 839 [2d Cir. 1996] (school district violated Equal Access Act, an analog to the First Amendment, when it conditioned a Christian student organization's access to a free speech forum on its willingness to abandon a requirement that its leaders share its Christian beliefs); *Christian Legal Soc'y v. Walker*, 453 F.3d 853 [7th Cir. 2006] (concluding a university violated the First Amendment when it conditioned access to a free speech forum on a Christian student organization's willingness to abandon its faith-based membership and leadership restrictions).

⁵¹ *Pope v. East Brunswick Bd. of Educ.*, 12 F.3d 1244, 1248 [3d Cir. 1993] (where a school allowed the Key Club access as a curriculum-based group, which the court deemed non-curricular; therefore, the school was found to have opened its forum to student groups).

⁵² See *Good News Club*, 533 U.S. at 112; *Lamb's Chapel v. Cir. Moriches Union Free Sch. Dist.*, 508 U.S. 384 [1993].

⁵³ *Widmar*, 454 U.S. at 270.

⁵⁴ *Chalifoux*, 976 F. Supp. at 670.

⁵⁵ 20 U.S.C. § 4071(c)(4); see also *Tinker*, 393 U.S. at 509.

⁵⁶ 20 U.S.C. § 4071(c)(3).

⁵⁷ 20 U.S.C. § 4071(c)(1)(3).

⁵⁸ See *Mergens*, 496 U.S. at 251 (noting that any fear of mistaken inference of endorsement by school officials is "largely self-imposed, because the school itself has control over any impressions it gives students."); see also *Widmar*, 454 U.S. at 274 n.14.

⁵⁹ 20 U.S.C. § 4071(c)(5).

⁶⁰ *Wigg v. Sioux Falls Sch. Dist.* 49-5, 382 F.3d 807, 815 [8th Cir. 2004] (concluding that an elementary school teacher had the right to "participat[e] in [an] after-school [religious] Club" because this activity "constitute[d] private speech").

⁶¹ *Slotterback v. Interboro Sch. Dist.*, 766 F. Supp. 280, 293 [E.D. Pa. 1991].

⁶² *Wigg*, 382 F.3d at 813 (citing *Rosenberger*, 515 U.S. at 829).

⁶³ *Rosenberger*, 515 U.S. at 828-29.

⁶⁴ *James v. Bd. of Educ.*, 461 F.2d 566, 574 [2d Cir. 1972].

⁶⁵ *Bishop v. Aronov*, 926 F.2d 1066, 1073 [11th Cir. 1991]; *Pelozo v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 [9th Cir. 1999].

⁶⁶ *Bishop*, 926 F.2d at 1074.

⁶⁷ *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 405 [5th Cir. 1995].

⁶⁸ 20 U.S.C. § 4071(c)(3).

⁶⁹ See *Wigg*, 382 F.3d at 814 (stating that school district’s policy of prohibiting all employees from participating in any religious-based programs, including those held after school hours on school grounds, requiring parental permission for student participation, under a broad school policy allowing community groups to use its facilities, was viewpoint discriminatory and therefore unconstitutional).

⁷⁰ *Id.* at 812 (“[A] school’s concern for avoiding accusations of establishment of religion [does not] justify inhibiting the free speech and association rights of employees after work hours when the relevant activity takes place on school property....”).

⁷¹ *Texas State Teachers Ass’n v. Garland Indep. Sch. Dist.*, 777 F.2d 1046, 1053-54 (5th Cir. 1085); *Tucker v. Cal. Dept. of Educ.*, 97 F.3d 1204, 1213 (9th Cir. 1996) (state school board could not restrict employee’s religious speech where students were not exposed to the speech).

⁷² *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995).

⁷³ *Healy v. James*, 408 U.S. 169, 180 (1972).

⁷⁴ *Id.*

⁷⁵ *DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008); *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177, 1185 (6th Cir. 1995); *Coll. Republicans at S.F. State Univ. v. Reed*, 523 F. Supp. 2d 1005, 1021 (N.D. Cal. 2007); *Roberts v. Haragan*, 346 F. Supp. 2d 853, 872 (N.D. Tex. 2004).

⁷⁶ *Ward v. Polite*, 667 F.3d 727, 734 (6th Cir. 2012).

⁷⁷ *OSU Student Alliance v. Ray*, 699 F.3d 1053, 1062–63 (9th Cir. 2012); *Roberts*, 346 F. Supp. 2d at 872.

⁷⁸ See *Widmar v. Vincent*, 454 U.S.263, 269-70 (1981). (finding a public university cannot single out religious organizations for disadvantageous treatment).

⁷⁹ *Knox v. Serv. Emps. Int’l Union, Local 1000*, 132 S. Ct. 2277, 2288 (2012); *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000).

⁸⁰ *Christian Legal Soc’y v. Martinez*, 130 S. Ct. 2971 (2010).

⁸¹ *Widmar*, 454 U.S. at 268 n.5.

⁸² *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 233 (2000).

⁸³ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995); *Badger Catholic, Inc. v. Walsh*, 620 F.3d 775 (7th Cir. 2010).

⁸⁴ *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).

⁸⁵ *Garcetti v. Ceballos*, 547 U.S. 410, 420 (2006); *Connick v. Myers*, 461 U.S. 138, 147 (1983).

⁸⁶ See *Garcetti*, 547 U.S. at 425 (“We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.”); *Pickering*, 391 U.S. at 572–73 (finding teacher’s speech outside the classroom neither impeded her classroom duties, nor interfered with regular operation of the school).

⁸⁷ *Garcetti*, 547 U.S. at 421.

⁸⁸ See *Garcetti*, 547 U.S. at 425 (“We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.”); *Adams v. Trs. of Univ. of N.C.-Wilmington*, 640 F.3d 550, 562 (4th Cir. 2011) (“We are also persuaded that *Garcetti* would not apply in the academic context of a public university as represented by the facts of this case [i.e., a professor engaged in teaching and scholarship].”); *Demers v. Austin*, 746 F.3d 402, 412 (“*Garcetti* does not—indeed, consistent with the First Amendment, cannot—apply to teaching and academic writing that are performed pursuant to the official duties of a teacher or professor.”).

⁸⁹ *Ridpath v. Bd. of Governors Marshall Univ.*, 447 F.3d 292, 316 (4th Cir. 2006) [citations omitted].

⁹⁰ *Piver v. Pender Cnty. Bd. of Educ.*, 835 F.2d 1076, 1079 (4th Cir. 1987).

⁹¹ *Pickering*, 391 U.S. at 569–70; see *Givhan v. W. Line Consol. Sch. Dist.*, 439 U.S. 410, 412–13 (1979) (racial discrimination); *Perry*, 408 U.S. at 594–95, 598 (college administration and policies); *Daulton v. Affeldt*, 678 F.2d 487, 491 (4th Cir. 1982) (same); *Ridpath*, 447 F.3d at 317 (NCAA violations at state university).

⁹² See *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967) (“[A]cademic freedom . . . is of transcendent value to all of us and not merely to the teachers concerned.”). See, e.g., *Adams*, 640 F.3d at 565 (finding that “academic freedom” “plainly touched on issues of public, rather than private, concern”).

⁹³ See *Love-Lane v. Martin*, 355 F.3d 766, 782 (4th Cir. 2004) (“[P]rotesting race discrimination in a public school, [is] speaking out on a matter of public concern.”).

⁹⁴ See *Campbell v. Galloway*, 483 F.3d 258, 270 (4th Cir. 2007) (holding First Amendment protections not limited to conduct that violates Title VII). See, e.g., *Adams*, 640 F.3d at 565 (finding that “civil rights” “plainly touched on issues of public, rather than private, concern”).

⁹⁵ See *Roth v. United States*, 354 U.S. 476, 487 (1957) (stating that “sex . . . is one of the vital problems of . . . public concern.”); see *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 679 (6th Cir. 2001) (gender is public concern). See, e.g., *Adams*, 640 F.3d at 565 (finding that “sex” “plainly touched on issues of public, rather than private, concern”).

⁹⁶ See *Cockrel v. Shelby Cnty. Sch. Dist.*, 270 F.3d 1036, 1049 [2001] (guest speaker on hemp is teacher’s protected speech).

⁹⁷ See *Hennessy v. City of Melrose*, 194 F.3d 237, 246 (1st Cir. 1999) (holding that the appellants’ anti-abortion sentiments “clearly related to a subject of . . . public concern.”). See, e.g., *Adams*, 640 F.3d at 565 (finding that “abortion” “plainly touched on issues of public, rather than private, concern”).

⁹⁸ See *Scarborough v. Morgan Cnty. Bd. of Educ.*, 470 F.3d 250, 257 (6th Cir. 2006) (ruling plaintiff’s “speech on his religious views and on homosexuality are matters of public concern . . .”). See, e.g., *Adams*, 640 F.3d at 565 (finding that “religion” “plainly touched on issues of public, rather than private, concern”).

⁹⁹ *Bauer v. Sampson*, 261 F.3d 775, 784 (9th Cir. 2001).

¹⁰⁰ *Adams*, 640 F.3d at 565 (finding that “[insert the topic from prior sentence]” “plainly touched on issues of public, rather than private, concern”).

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- ¹⁰³ *Bauer v. Sampson*, 261 F.3d 775, 784 (9th Cir. 2001).
- ¹⁰⁴ *Ridpath*, 447 F.3d at 317.
- ¹⁰⁵ *Love-Lane*, 355 F.3d at 778.
- ¹⁰⁶ *Hardy*, 260 F.3d at 679.
- ¹⁰⁷ *Cohen v. San Bernardino Valley Coll.*, 92 F.3d 968, 971 (9th Cir. 1996).
- ¹⁰⁸ *Parate v. Isibor*, 868 F.2d 821, 830 (1989) (citing *Keyishian*, 385 U.S. at 603).
- ¹⁰⁹ *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986).
- ¹¹⁰ *DeJahn v. Temple Univ.*, 537 F.3d 301, 315 (3d Cir. 2008).
- ¹¹¹ *Piggee v. Carl Sandburg Coll.*, 464 F.3d 667, 672 (7th Cir. 2006); *Hardy*, 206 F.3d at 679.
- ¹¹² See *Edwards v. Cal. Univ. of Penn.*, 156 F.3d 488 (3d Cir. 1998) (holding a college may demand that instructors teach the curriculum assigned by the college). See, e.g., *Bishop*, 926 F.2d at 1074 (finding that a university may “reasonably control the content of its curriculum, particularly that content imparted during class time”).
- ¹¹³ *Hardy*, 260 F.3d at 679 (holding a college violated professor’s First Amendment rights for punishing him for discussing implications of language in communications course).
- ¹¹⁴ *Keyishian*, 385 U.S. at 603 (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957)).
- ¹¹⁵ See *Parate*, 868 F.2d at 828–30 (holding professor has First Amendment right to assign grades and evaluate students based on his independent professional judgment); accord *Brown v. Li*, 308 F.3d 939, 952 (9th Cir. 2002) (holding faculty had First Amendment right to not approve student’s thesis).
- ¹¹⁶ *Rosenberger*, 515 U.S. at 829.
- ¹¹⁷ *Keyishian*, 385 U.S. at 603
- ¹¹⁸ See, e.g., *Adams*, 640 F.3d at 560-66 (finding that a professor who was denied promotion to full professor based on views expressed in books, on-line columns, and media interviews had engage in protected speech and remanding for consideration of other elements of his First Amendment retaliation claim); Alliance Defending Freedom, Dr. Mike Adams, available at <http://www.adflegal.org/detailspages/client-stories-details/dr-mike-adams> (last visited Jul. 19, 2018) (describing how that professor prevailed at trial).

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