

STUDENT RIGHTS AND RESPONSIBILITIES
STUDENT EXPRESSION

FNA
(LEGAL)

First Amendment

A district shall take no action respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition a board for a redress of grievances.
U.S. Const. Amend. I

Freedom of Speech

Students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. At school and school events, students have First Amendment rights, applied in light of the special characteristics of the school environment.

Student expression that is protected by the First Amendment may not be prohibited absent a showing that the expression will materially and substantially interfere with the operation of the school or the rights of others.

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969)
[See also FNCl]

The special characteristics of the school environment and the governmental interest in stopping student drug abuse allow a district to restrict student expression that it reasonably regards as promoting illegal drug use. *Morse v. Frederick*, 551 U.S. 393 (2007)

When a student threatens violence against a student body, such specific threatening speech to a school or its population is unprotected by the First Amendment: school officials may punish such speech without first collecting evidence sufficient to prove a reasonable belief that disruption would occur as a result of the speech. *Ponce v. Socorro Indep. Sch. Dist.*, 508 F.3d 765 (5th Cir. 2007)

The inculcation of fundamental values necessary to the maintenance of a democratic society is part of the work of the school. The First Amendment does not prevent school officials from determining that particular student expression is vulgar and lewd, and therefore contrary to the school's basic educational mission. *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986)

Public schools may have a special interest in regulating some off-campus student speech, however, the interest must be sufficient to overcome the student's interest in free expression. Circumstances that may implicate a school's regulatory interests include serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices. *Mahanoy Area School District v. B.L.*, 141 S.Ct. 2038 (2021)

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*Prayer at School
Activities*

A public school student has an absolute right to individually, voluntarily, and silently pray or meditate in school in a manner that does not disrupt the instructional or other activities of the school. A student shall not be required or coerced to engage in or refrain from such prayer or meditation during any school activity. *Education Code 25.901*

Nothing in the Constitution as interpreted by the U.S. Supreme Court prohibits any public school student from voluntarily praying at any time before, during, or after the school day. But the religious liberty protected by the Constitution is abridged when a district affirmatively sponsors the particular religious practice of prayer.

A district shall not adopt a policy that establishes an improper majoritarian election on religion and has the purpose and creates the perception of encouraging the delivery of prayer at a series of important school events.

Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000) (addressing school-sponsored, student-led prayer delivered over the public address system at high school football games) [For invocations and benedictions at commencement, see FMH.]

Federal Funds

As a condition of receiving federal funds under the Elementary and Secondary Education Act (ESEA), a district shall certify in writing to the Texas Education Agency (TEA) that no policy of the district prevents, or otherwise denies participation in, constitutionally protected prayer in public schools, as detailed in the guidance from the United States secretary of education regarding constitutionally protected prayer. The certification shall be provided by October 1 of each year.

By November 1 of each year, TEA shall report to the secretary a list of districts that have not filed the certification or against which complaints have been made to TEA that the district is not in compliance with this section. The secretary may issue and secure compliance with rules or orders with respect to a district that fails to certify, or is found to have certified in bad faith, that no policy of the district prevents, or otherwise denies participation in, constitutionally protected prayer in public schools.

20 U.S.C. 7904

**Expression of
Religious Viewpoints**

A district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious view-

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point expressed by the student on an otherwise permissible subject. *Education Code 25.151*

Policies

A district shall adopt and implement a local policy regarding a limited public forum and voluntary student expression of religious viewpoints. If a district voluntarily adopts and follows the model policy governing voluntary religious expression in public schools at Education Code 25.156, the district is in compliance with the provisions of Education Code Chapter 25, Subchapter E covered by the model policy.

A district shall adopt a policy that includes the establishment of a limited public forum for student speakers at all school events at which a student is to publicly speak. The policy regarding the limited public forum must also require a district to:

1. Provide the forum in a manner that does not discriminate against a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject;
2. Provide a method, based on neutral criteria, for the selection of student speakers at school events and graduation ceremonies;
3. Ensure that a student speaker does not engage in obscene, vulgar, offensively lewd, or indecent speech; and
4. State, in writing, orally, or both, that the student's speech does not reflect the endorsement, sponsorship, position, or expression of the district.

Student expression on an otherwise permissible subject may not be excluded from the limited public forum because the subject is expressed from a religious viewpoint.

Disclaimer

The disclaimer required by item 4, above, must be provided at all graduation ceremonies. A district must continue to provide the disclaimer at any other event in which a student speaks publicly for as long as a need exists to dispel confusion over the district's non-sponsorship of the student's speech.

Education Code 25.152, .155

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. Homework and classroom assignments must be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by a district. Students may not be

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penalized or rewarded on account of the religious content of their work. *Education Code 25.153*

[For information on the study of religion, see EMI. For information on student religious groups and activities, see FNAB.]

**Designated Time for
Prayer and Religious
Reading**

The board may by record vote adopt a policy requiring every campus of the district to provide students and employees with an opportunity to participate in a period of prayer and reading of the Bible or other religious text on each school day.

Resolution

A board resolution to adopt the policy must read as follows:

“The (insert name of school district) shall adopt a policy requiring every campus of (insert name of district) to provide a period of prayer and reading of the Bible or other religious text as provided by Section 25.0823, Education Code.”

Policy
Requirements

A policy adopted above must:

1. Prohibit a student or employee of the district from being permitted to participate in the period of prayer and reading of the Bible or other religious text unless the employee or parent or guardian of the student submits to the district a signed consent form that includes:
 - a. An acknowledgment that the student or employee has a choice as to whether to participate in the period of prayer and reading of the Bible or other religious text;
 - b. A statement that the person has no objection to the student's or employee's participation in or hearing of the prayers or readings offered during the period; and
 - c. An express waiver of the person's right to bring a claim under state or federal law arising out of the adoption of a policy under this section, including a claim under the Establishment Clause of the First Amendment to the United States Constitution or a related state or federal law, releasing the district or school and district or school employees from liability for those claims brought in state or federal court;
2. Prohibit the provision of a prayer or reading of the Bible or other religious text over a public address system;
3. Specify that a period of prayer or reading of the Bible or other religious text may not be a substitute for instructional time; and

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4. Include provisions ensuring a prayer or reading of the Bible or other religious text is not provided in the physical presence of, within the hearing of, or in another manner which would constitute an injury in fact within the meaning of the United States or Texas Constitution on a person for whom a signed consent form has not been submitted or has been revoked.

In order to comply with the requirements above, the policy may require that the period of prayer and reading of the Bible or other religious text be provided:

1. Before normal school hours;
2. Only in classrooms or other areas in which a consent form has been submitted for every employee and student, which may include an entire district if a consent form has been submitted for each employee and student at the campus; or
3. By any other method recommended by the attorney general or legal counsel for the district or school.

Revocation of
Consent

An employee or parent or guardian of a student may revoke the person's consent provided above by informing the appropriate school administrator, as determined by the district. An employee or student for whom consent has been revoked may not participate in the period of prayer and reading of the Bible or other religious text until the employee or parent or guardian of the student submits to the district a new consent and remains bound by the waiver described above.

Attorney General
Assistance and
Defense

The attorney general, on request from the board, shall:

1. Provide advice on best methods for a district to comply with the requirements above;
2. Provide a model consent form that may be used for purposes of providing consent described above; and
3. Defend the district in a cause of action arising out of the adoption of a policy described above.

If the attorney general defends a district, the state is liable for the expenses, costs, judgments, or settlements of the claims arising out of the representation. The attorney general may settle or compromise any and all claims under this provision. The state may not be liable for any expenses, costs, judgments, or settlements of any claims arising out of the adoption of a policy described above against a district not being represented by the attorney general.

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Individual Right
Unaffected

Regardless of whether the board adopts a policy described above, this provision does not prohibit a student or employee of the district from participating in prayer or reading the Bible or other religious text during a period of the school day that is not designated as a period of prayer and reading of the Bible or other religious text.

Education Code 25.0823

**Patriotic
Observances**

A district may officially encourage students to express love for the United States by reciting historical documents or singing official anthems that contain religious references; such patriotic or ceremonial occasions do not constitute a school-sponsored religious exercise. *Engel v. Vitale*, 370 U.S. 421 (1962)

A district shall not, however, compel students to participate in patriotic observances. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943) (holding unconstitutional a requirement that students salute the United States flag and recite the Pledge of Allegiance)

[See EC for more information regarding the pledge of allegiance.]

Winter Celebrations

A district may educate students about the history of traditional winter celebrations, and allow students and district staff to offer traditional greetings regarding the celebrations, including:

1. "Merry Christmas";
2. "Happy Hanukkah"; and
3. "Happy holidays."

A district may display on school property scenes or symbols associated with traditional winter celebrations, including a menorah or a Christmas image such as a nativity scene or Christmas tree, if the display includes a scene or symbol of more than one religion or one religion and at least one secular scene or symbol.

A display relating to a traditional winter celebration may not include a message that encourages adherence to a particular religious belief.

Education Code 29.920