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Bibles in Public Schools

Introduction

In general, public schools cannot ban students from bringing Bibles to school. The First Amendment Free Exercise and Free Speech clauses provide the constitutional foundation for this.¹ The Supreme Court of the United States, moreover, has explained in no uncertain terms that First Amendment protections apply to public school teachers and students.² The U.S. Department of Education’s *Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools* is consistent here as well.³

The First Amendment

The First Amendment to the United States Constitution reads in relevant part: “Congress shall make no law . . . prohibiting the free exercise thereof [i.e., of religion]; or abridging the freedom of speech”⁴ These two clauses “work in tandem” and are referred to as the Free Exercise and Free Speech clauses.⁵ The Supreme Court of the United States explained their roles as follows: “Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities.”⁶

The Supreme Court of the United States

In *Tinker v. Des Moines Independent Community School District* (“*Tinker*”), the Supreme Court of the United States made clear that First Amendment protections extend to public school

¹ U.S. CONST. amend I.

² *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

³ *Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools*, U.S. DEP’T OF EDUC. (May 15, 2023), https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html [hereinafter *DOE Guidance*].

⁴ U.S. CONST. amend I. Importantly, “[t]he Supreme Court has held that the Fourteenth Amendment makes these [First Amendment] provisions applicable to States and localities . . . and therefore they apply to the actions of public schools.” *DOE Guidance*, *supra* note 3; *see, e.g., Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947) (“[T]he Fourteenth Amendment was interpreted to make the prohibitions of the First [Amendment] applicable to state action abridging religious freedom.”); *see also, Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

⁵ *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022).

⁶ *Id.*

teachers and students.⁷ In this regard, the Supreme Court wrote, “[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”⁸

The Supreme Court further explained that “state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students.”⁹ In fact, “[i]n the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.”¹⁰ The Supreme Court recognized that “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”¹¹

The Supreme Court continued:

The principle of these cases is not confined to the supervised and ordained discussion which takes place in the classroom. The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an inevitable part of the process of attending school; it is also an important part of the educational process. A student’s rights, therefore, do not embrace merely the classroom hours. *When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects . . .*¹²

Certainly, these First Amendment protections extend to students who bring their Bibles to school.¹³ As the Supreme Court emphasized in *Capitol Square Review and Advisory Board v. Pinette*, “private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.”¹⁴

Despite these strong First Amendment protections, reasonable limits have been established to ensure that public schools, for example, operate efficiently. The Supreme Court explained these limits this way:

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would “materially and

⁷ 393 U.S. 503, 506 (1969).

⁸ *Id.*

⁹ *Id.* at 511.

¹⁰ *Id.*

¹¹ *Id.* at 512 (citation omitted) (quotation marks omitted).

¹² *Id.* at 512-13 (emphasis added).

¹³ *Bring Your Bible to School Day* is one example of students exercising their constitutionally protected rights. *Bring Your Bible to School Day: Your Complete Guide to BYB*, FOCUS ON THE FAM., <https://www.focusonthefamily.com/live-it/live-it-complete-guide/> (last visited May 24, 2024).

¹⁴ 515 U.S. 753, 760 (1995).

substantially interfere with the requirements of appropriate discipline in the operation of the school,” the prohibition cannot be sustained.¹⁵

Even though the burden of proof seems to fall on school officials “to justify prohibition of a particular expression of opinion,”¹⁶ students must still behave respectfully and honorably while at school.

The U.S. Department of Education Guidance

On May 15, 2023, the U.S. Department of Education released its *Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools* (“DOE Guidance”).¹⁷ The DOE Guidance states that the First Amendment does not convert “public schools into religion-free zones, or requires students, teachers, or other school officials to leave their private religious expression behind at the schoolhouse door.”¹⁸ Schools “may not discriminate against private religious expression by students, teachers, or other employees.”¹⁹

Also, the DOE Guidance cites to *Santa Fe Independent School District v. Doe* where the Supreme Court of the United States explained that “nothing in the Constitution as interpreted by this Court prohibits any public school student from voluntarily praying at any time before, during, or after the schoolday.”²⁰ This reasoning logically extends to include voluntary Bible reading before, during, and after school as well. Students may, therefore, “pray [or read their Bibles] with fellow students during the school day on the same terms and conditions that they may engage in other comparable conversations or activities.”²¹

The DOE Guidance further explains that students “may read from religious materials [Bibles, for example] . . . or study religious materials with fellow students during non-instructional time (such as recess or the lunch hour) to the same extent that they may engage in nonreligious activities.”²² Students also “may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious perspective of their submissions.”²³ For example, “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)”²⁴

Conclusion

In general, public schools cannot ban students from bringing Bibles to school. The First

¹⁵ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969).

¹⁶ *Id.*

¹⁷ *DOE Guidance*, *supra* note 3.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*; 530 U.S. 290, 313 (2000).

²¹ *DOE Guidance*, *supra* note 3.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

Amendment, the Supreme Court of the United States, and the DOE Guidance provide the framework to ensure that this right for public school students is protected. As mentioned, though reasonable limits have been established to ensure public schools operate efficiently, the burden of proof seems to fall on school officials “to justify prohibition of a particular expression of opinion.”²⁵ Nevertheless, students should always behave respectfully and responsibly while on school grounds.

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²⁵ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969).