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Overview of Student Constitutional Rights

Public school students retain their constitutionally protected right to freedom of speech, expression, and assembly – including the right to have Bible clubs on campus. At the ACLJ, we continue to focus a large part of our work on ensuring that students’ free speech and religious liberties are respected in the classroom setting.

The Supreme Court consistently has held that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). It is well settled that religious speech is protected by the First Amendment of the Constitution, even when that speech is taking place on the public school campus. *Widmar v. Vincent*, 454 U.S. 263, 269 (1981) (citing *Heffron v. Int. ’l Soc’y for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981)). Supreme Court “precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.” *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995). In fact, the right to persuade, advocate, or evangelize a religious viewpoint implicates the very reason the First Amendment was adopted. Accordingly, the Constitution forbids school officials from censoring student speech because of the religious content of that speech.

School officials can only restrict student speech if it will “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.” *Tinker*, 393 U.S. at 509 (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966)). (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966)). “When [a student] is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions.” *Id.* at 512-13. Thus, students have the right to discuss religious beliefs, and even share religious materials, with their peers between classes, at break, at lunch, and before and after school.

Religious Clubs

In addition to the protections the Constitution provides to students, the Equal Access Act requires that Christian students be allowed to meet on campus in the same way as other students groups. *Bd. of Educ. v. Mergens*, 496 U.S. 226, 235 (1990); *Widmar*, 454 U.S. at 265 (requiring an “equal access” policy on college campuses on Constitutional grounds). Three factors

determine whether school officials are compelled to recognize student religious clubs: 1) does the school receive any federal funds; 2) is the school a public secondary school as defined by state law; and 3) does the school allow any non-curriculum clubs to meet on campus? *Mergens*, 496 U.S. at 233, 239-40. The Supreme Court has defined a “non-curriculum related student group” as “any student group that does not directly relate to the body of courses offered by the school.” The Court also determined that a student group is curriculum related

if the subject matter of the group is actually taught, or will soon be taught, in a regularly offered course; if the subject matter of the group concerns the body of courses as a whole; if participation in the group is required for a particular course; or if participation in the group results in academic credit.

Id. at 239-40.

If the answer to these questions is yes, federal law compels school officials to provide equal access to students who want to organize and conduct Bible clubs and student prayer groups, as long as these religious clubs are student initiated and student run. Thus, if such federally funded secondary schools permit non-curricular clubs such as Interact, Zonta, 4-H, Chess Club, and other service-type clubs to meet and hold events on campus, those schools must also permit Bible clubs and prayer groups to meet to the same extent. “Official recognition allows student clubs to be part of the student activities program and carries with it access to the school newspaper, bulletin boards, the public address system, and the annual Club Fair.” *Id.* at 247.

Assignments

The U.S. Department of Education’s “Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools” states:

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school.

Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools, U.S. DEPT. OF EDUC. (Jan. 16, 2020), http://www.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html.

Thus, for example, if students are instructed to write an essay about their best friend, they are constitutionally permitted to write an essay explaining that their best friend is Jesus Christ and why they consider him to be their best friend, and their work “should be judged on the basis of academic standards (such as literary quality) and neither penalized nor rewarded on account of its religious content.” *Id.*

Evangelism

Students' rights are not limited to their interaction with other believers in religious clubs on campus. Their First Amendment rights include the right to distribute Gospel tracts during non-instructional time, the right to wear shirts with overtly Christian messages and symbols, and the right to pray and discuss matters of religion with other students. Further, schools may not prevent students from bringing their Bibles to school. In fact, school officials must allow students to read their Bibles during free time, even if that free time occurs during class. Unless a student is participating in activities that are disruptive, the school must allow them to continue.

The Supreme Court has long recognized that the free distribution of literature, and religious literature in particular, is a form of expression protected by the United States Constitution. *See Heffron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640 (1981); *Lovell v. City of Griffin*, 303 U.S. 444 (1938). "This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits." *Murdock v. Pennsylvania*, 319 U.S. 105, 109 (1943).

School officials may only prevent a student from distributing religious tracts and the like if it would cause a material and substantial disruption of school discipline. *Tinker*, 393 U.S. at 509. However, it is not enough for school officials to fear that allowing religious speech will offend some members of the community. Where a student wishes to peacefully distribute free literature on school grounds during non-instructional time, there simply is nothing which "might reasonably [lead] school authorities to forecast substantial disruption of or material interference with school activities." *Id.* at 514.

Moreover, as a general proposition, the activities of student evangelists in a public school do not present any Establishment Clause problems. *Mergens*, 496 U.S. at 249-50. The Supreme Court has made it clear that "there 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." *Id.* at 250.

Prayer

In addition, students are constitutionally permitted to pray in school, regardless of whether it is silently before a test, over a meal in the cafeteria, or with fellow students during non-instructional time. In fact, the U.S. Department of Education requires every public school that receives federal funding to certify "that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools," including "see you at the pole" gatherings before school." *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, U.S. Dept. of Educ. (Jan. 16, 2020), https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html.

In sum, students have the constitutionally protected freedom to:

- Meet with Other Students for Prayer, Bible Study, and Worship
- Wear Clothing Depicting Religious Messages and Symbols
- Express Religious Beliefs on Campus

- Share Religious Tracts on Campus
- Pray Voluntarily, Including Gathering Around the School Flagpole to Pray
- Carry a Bible or Other Religious Literature
- Prepare School Assignments and Projects Expressing a Religious Perspective
- Observe Religious Holidays on Campus
- Organize Religious Clubs
- Live According to Their Religious Beliefs While on Campus

As the Supreme Court has stated, “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools,” *Shelton v. Tucker*, 364 U.S. 479, 487 (1960), and the ACLJ will continue to vigorously fight to protect these freedoms.