February 5, 2026

GUIDANCE ON CONSTITUTIONALLY PROTECTED PRAYER AND RELIGIOUS EXPRESSION IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

Section 8524(a) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act and codified at 20 U.S.C. § 7904(a), requires the Secretary of Education to issue guidance to state educational agencies (SEAs), local educational agencies (LEAs), and the public on constitutionally protected prayer in public elementary and secondary schools. In addition, section 8524(b) requires that, as a condition of receiving ESEA funds, an LEA must certify in writing to its SEA that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary schools and secondary schools, as detailed in the Secretary's issued guidance.

The purpose of this updated guidance is to provide information on the current state of the law concerning prayer and religious expression in public schools. This updated guidance supersedes and replaces the Department of Education's *Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools* (2023) issued under Secretary Miguel Cardona. That document is no longer in effect.

This guidance is divided into four parts. Part I provides an overview of the certification process. Part II provides an overview of the law governing prayer in public schools, particularly in light of the most recent Supreme Court ruling directly on point, *Kennedy v. Bremerton School District*.[1] Part III provides guidance on specific scenarios involving students, teachers, employees, and the public. Part IV concludes. This analysis also takes into account a 1995 presidential memorandum, "Memorandum on Religious Expression in Public Schools," 2 Pub. Papers 1083 (July 12, 1995), and a 1998 Department of Education memorandum, Richard W. Riley, U.S. Secretary of Education, "Religious Expression in Public Schools: A Statement of Principles" (June 1998).

The Department's Office of the General Counsel and the Office of Legal Counsel in the U.S. Department of Justice have verified that this updated guidance reflects the current state of the law concerning constitutionally protected prayer in public elementary and secondary schools. This updated guidance will be made available on the Department of Education's website (www.ed.gov).

[1] 597 U.S. 507 (2022).

I. The Section 8524 Certification and Enforcement Process

To receive funds under the ESEA, an LEA must certify in writing to its SEA that no policy of the LEA prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools, as detailed in Parts II, III, and IV of this updated guidance. An LEA must provide this certification to the SEA by October 1 of each year during which the LEA participates in an ESEA program.

Each SEA should establish a process by which its LEAs may provide the necessary certification. There is no specific Federal form that an LEA must use in providing this certification to its SEA. The certification may be provided as part of the application process for ESEA programs, or separately, and in whatever form the SEA finds most appropriate, as long as the certification is in writing and clearly states that the LEA has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools, as detailed in this updated guidance.

Section 8524(b) of the ESEA also requires that, by November 1 of each year, each SEA must send to the Secretary a list of those LEAs that have not filed the required certification or that have been the subject of a complaint to the SEA alleging that the LEA has a policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools. The SEA must provide a process for filing a complaint against an LEA that allegedly denies a person, including a student or employee, the right to participate in constitutionally protected prayer. To the extent the SEA has notice of a public legal charge or complaint, such as a lawsuit filed against an LEA alleging that the LEA denied a person the right to participate in constitutionally protected prayer, the SEA must report the complaint to the Secretary. The SEA must report all complaints that are filed through the process the SEA provides, including complaints that the SEA may deem meritless, to the Secretary.

This list should be emailed to EDFaith@ed.gov, cc'ing OESEGrants@ed.gov. If an SEA is providing Personally Identifiable Information (PII) in relation to a complaint, the email must be encrypted. If an SEA is unable to electronically send the certifications, please email EDFaith@ed.gov, cc'ing OESEGrants@ed.gov, to identify an alternative delivery method.

The SEA's submission should describe what investigation and/or enforcement action the SEA has initiated with respect to each listed LEA and the status of the investigation or action. The SEA should not send the LEA certifications to the Secretary but should maintain these records in accordance with its usual records retention policy.

Under section 8524(c) of the ESEA, the Secretary is authorized and directed to effectuate compliance with this section by issuing, and securing compliance with, rules or orders with respect to an LEA that fails to certify, or is found to have certified in bad faith, that no policy of the LEA prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary schools and secondary schools. The General Education Provisions Act also authorizes the Secretary to bring enforcement actions against recipients of Federal education funds that are

not in compliance with any requirement of law applicable to such funds.[2] Such measures include withholding funds until the recipient comes into compliance.

If an LEA fails to file the required certification or is found to have a policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary schools and secondary schools, the SEA should ensure compliance in accordance with its regular enforcement procedures.

II. Principles Governing Religious Expression and Prayer

Under current Supreme Court precedent interpreting the First Amendment's Free Speech, Free Exercise, and Establishment Clauses,[3] all members of a public school community have a constitutional right to religious expression in public schools, including a right to engage in prayer, so long as the school does not compel others to participate in or otherwise affirm that religious expression, and so long as the individuals in question do not engage in such religious expression as part of the official activity of the school itself. It follows that public schools, school officials, and teachers may not suppress such religious expression, but also may not coerce it.

One body of precedent undergirding these principles includes *West Virginia Board of Education v. Barnette*,[4] *Wisconsin* v. *Yoder*,[5] and the Court's 2025 decision in *Mahmoud v. Taylor*.[6] In *Barnette*, families that were Jehovah's Witnesses objected to a state law requiring their children to salute the flag because the flag represented a "graven image" under their religious precepts.[7] The Supreme Court agreed that the law was unconstitutional, holding that a public school could not coerce students to engage in speech or action contrary to their faith, even if the speech or action would typically be regarded as secular.[8] In *Yoder*, Amish families objected to a state law requiring their children to attend school through age sixteen, arguing that secular high schools would cause their children to develop in ways inconsistent with "Amish values and the Amish way of life."[9] Again, the Supreme Court invalidated the law, holding in effect that it is not only direct coercion that might violate religious freedom but also "substantially interfering with the religious development of the Amish child" by instructional material and cultural pressure that "contravene[]the basic religious tenets and practice of the Amish faith, both as to the parent and the child."[10]

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[2] 20 U.S.C. §§ 1234c–1234e.

[3] The relevant portions of the First Amendment provide that "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. The Supreme Court has held that the Fourteenth Amendment makes these provisions applicable to all levels of government—Federal, State, and local—and to all types of governmental policies and activities. *See Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

[4] 319 U.S. 624 (1943).

[5] 406 U.S. 205 (1972).

[6] 606 U.S. 522 (2025).

[7] 319 U.S. at 642.

[8] *Accord 303 Creative LLC v. Elenis*, 600 U.S. 570, 602-03 (2023) (permitting an individual to refuse on religious grounds to produce a website for a same-sex couple notwithstanding state antidiscrimination law, on the grounds that a state may not "force an individual to speak in ways that align with its views but defy her conscience").

[9] 406 U.S. at 211.

[10] *Id.* at 218.

In *Mahmoud*, which discusses *Barnette* and *Yoder* at length, families of diverse religious faiths objected to a mandatory public elementary school curriculum endorsing homosexual unions and transgender identities, arguing that their religious convictions conflicted with that curriculum's messages about sexuality and gender identity. The Supreme Court again agreed, holding that a public school "burdens the religious exercise of parents when it requires them to submit their children to instruction that poses 'a very real threat of undermining' the religious beliefs and practices that the parents wish to instill."[11] The Court in *Mahmoud* also concluded that strict scrutiny always applies when the burden on religious freedom "is of the same character as that imposed in *Yoder*,"[12] regardless of whether the school policy is neutral and generally applicable; that the schools' asserted interests in an orderly educational environment (by avoiding opt-outs) and providing a supportive environment for LGBTQ+ students (in a context, as the Court pointed out, that would deny a supportive environment to religious students) fell short of a compelling and narrowly tailored state interest; and that the possibility of religious parents sending their children to private schools does not relieve public schools of their constitutional obligation to accommodate families' religious faith. Finally, the Court noted that younger children are more susceptible to pressure and manipulation than older children, and that "educational requirements targeted toward very young children . . . may be analyzed differently from educational requirements for high school students."[13]

These cases, although not directly about school prayer, clarify the larger legal framework governing the relationship between public schools and matters of religious faith. First, the Court has, over eighty years, steadily upheld the constitutional rights of parents and their children to participate in public schooling (or not) in ways consistent with those parents' and students' sincere understanding of what their religious faith requires. This includes instances when the accommodation conflicts with ordinary school policy or curriculum and thus requires significant effort on the part of the school. Second, the Court has consistently required public schools to justify their burdens on religious faith under the strict scrutiny rubric, and has regarded many asserted state interests—including saluting the flag, getting an education through age sixteen, avoiding disruptions related to opt-outs, and providing a supportive environment to one group of students—as insufficient under that rubric. Third, the Court has consistently regarded the rights in question as belonging both to children and to their parents. Fourth, the Court has protected children's and parents' religious interests not only from direct coercion but also from indirect burdens, both curricular and cultural, on children's development and the religiously inflected values of their faith. Fifth, a public school may never force or pressure a child to declare or affirm something contrary to his or his family's religious beliefs.

These general principles, even if not specific to matters of prayer in school, carry implications for such prayer. If, for example, a child's religion required prayer at specified times of day, a public school would ordinarily have to accommodate that schedule. More broadly, children who sincerely feel or come from families that sincerely feel their religion demands prayer during the school day have a right to pray, unless the school can show a compelling and narrowly tailored state interest to the contrary.

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[11] 606 U.S. at 530 (quoting *Yoder*, 406 U.S. at 218).
[12] *Id.*
[13] *Id.* at 550.

Turning now to the body of precedent specifically addressing school prayer, public schools may not require students to pray, nor may a school engage in or sponsor prayer in such a way as to effectively implicate the school itself in a religious practice. The Court has, for example, held unconstitutional state laws and policies that require school officials to recite prayers in public schools,[14] feature clergy delivering prayers at graduation ceremonies,[15] establish a moment of silence aimed at encouraging prayer,[16] or allow student-led prayer over the school's public address system.[17] The Court has regarded such official forms of school prayer as implicitly coercive or an establishment of religion even where the prayer in question was non-sectarian or formally voluntary.

At the same time, the First Amendment's protections extend to both "'teachers and students,' neither of whom 'shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.'"[18] The Court has upheld the right, not only of students to pray, but also of public school teachers and officials to engage in individual acts of prayer—and to pray with students—during the conduct of their work. In the Court's most recent case on the issue, *Kennedy v. Bremerton School District*,[19] a high school football coach regularly prayed at the 50-yard line after games, and over time many of the players on his team came to join in the prayer. Notably, the school did not deny either the students' or the coach's right to pray: it instructed the coach in writing that students were free to engage in prayer and that he as a school employee also had a "right to freely exercise his religion," but that he should avoid "suggesting, encouraging (or discouraging), or supervising" prayer with students, as "on-the-job prayer" could lead a "reasonable observer" to perceive a "school endorsement of religious activities."[20]

Nonetheless, the Court in *Kennedy* held the coach's prayer to be protected under both the Free Speech and Free Exercise Clauses and not to violate the Establishment Clause. The critical factor, the Court explained, was "whether [the coach] offered his prayers while acting within the scope of his duties." He did not, both because the post-game period in question was one in which he was "free to attend briefly to personal matters" and because he was not "speak[ing] pursuant to government policy," "seeking to convey a government-created message," "instructing players, discussing strategy, encouraging better on-field performance," or otherwise "engag[ing] in speech the District paid him to produce as a coach."[21] Rather, the prayer was the coach's individual expression of faith, and the students who prayed with him were not required or pressured to pray. Furthermore, the Court clarified that the school district could not justify its disciplinary action against the coach based on an outmoded Establishment Clause test—namely, whether a reasonable observer would perceive a governmental endorsement of religion.[22] Rather, the constitutional question was whether the religious expression at issue would have been considered an

[14] *See Engel v. Vitale*, 370 U.S. 421, 433(1962); *accord Chamberlain v. Dade Cnty. Bd. of Pub. Instruction*, 377 U.S. 402, 402 (1964).
[15] *See Lee v. Weisman*, 505 U.S. 577, 593-94 (1992).
[16] *See Wallace v. Jaffree*, 472 U.S. 38, 59-61 (1985).
[17] *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 316 (2000).
[18] *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 527 (2022) (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)).
[19] 597 U.S. 507 (2022).
[20] *Id.* at 533 (internal quotation marks and alterations omitted).
[21] *Id.* at 530.
[22] *Id.* at 533–34.

establishment at the Founding. A public official's private prayer—even if made aloud in the context of his work, albeit not as part of the conduct of his duties—would not qualify.

Three other lines of precedent additionally bear on religious expression, including prayer, in public school.

First, public schools *do* have authority to regulate student speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others."[23] A teacher would be entitled, for example, to discipline a student who said a prayer aloud during a math class in such a way that other students could not hear the lesson. A school would likewise be not only entitled but required to protect Jewish students, for example, from a hostile environment if another group of students harassed them, even if the harassers claimed a religious basis for their speech or conduct.

Second, the Court has consistently held unconstitutional state action reflecting hostility to religious people or their beliefs, including where those beliefs touch on matters of intense political disagreement. In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*,[24] for example, a state determined that a baker had violated the state's antidiscrimination law by refusing on religious grounds to bake a cake for a same-sex wedding, with state officials calling the baker's religious beliefs "despicable," characterizing them as "discrimination," and comparing them to the views used to justify slavery and the Holocaust.[25] These comments evinced "clear and impermissible hostility toward the [baker's] sincere religious beliefs," the Court ruled.[26] Similarly, if a public school teacher called a student's religiously based view that marriage should be between one man and one woman "despicable" and lowered the student's grade in response, that teacher would demonstrate religious hostility and violate the student's constitutional rights.

Third, public schools cannot subject religious speech, including prayer, to more onerous restrictions than similar secular speech.[27] That is, a school may not discriminate against religious expression by subjecting it to different restrictions than it imposes on secular expression. If a student wanted to pray with a classmate during a time when students were permitted to talk amongst themselves, a teacher would not be entitled to require the praying students to stop or step outside. And, as the Court has ruled, a public school that provides school-based support for secular student clubs while denying that support to religious student clubs engages in unconstitutional viewpoint discrimination.[28]

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[23] *Mahanoy Area Sch. Dist. v. B. L. ex rel. Levy*, 594 U.S. 180, 188 (2021) (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969)).
[24] 584 U.S. 617 (2018).
[25] *Id.* at 635.
[26] *Id.* at 634.
[27] *See Kennedy*, 597 U.S. at 531 (explaining that "religious expression" cannot be treated "as second-class speech" compared to secular expression); *Fulton v. City of Philadelphia*, 593 U.S. 522, 534 (2021) ("A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way."); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 112 (2001); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393 (1993); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).
[28] *See Good News Club*, 533 U.S. at 112.

III. Specific Scenarios

For the sake of additional clarity, this section applies the above principles to a series of concrete scenarios that school officials might encounter.

A. Private Religious Expression by Students

Public schools must permit students to pray privately and quietly by themselves, whether in class, at an athletic event, or before a meal. Students may also pray in a speaking voice on the same terms as any other student might engage in non-religious speech. Schools need not allow students to pray in ways that violate ordinary class rules and interrupt class instruction.

These policies also apply when a student is off-campus but taking part in a school-sponsored event. A school may no more prohibit a student football player from praying before an away game than it could prevent him from praying before a home game.

Subject to the considerations discussed in Section III.F, students also may dress in accordance with their religious faith. For example, a student may wear a cross necklace, a yarmulke, or a headscarf as an expression of faith.

No public school, teacher, or school official should ever coerce or pressure a student to engage in speech or affirm a viewpoint that would violate the student's sincere religious beliefs.

B. Religious Expression in Student Groups

Student prayer might also occur in student groups. Public school officials must permit such prayer and support the student group on the same terms it supports non-religious groups. Schools should not prefer secular student groups to religious student groups or discriminate among religious groups of different faiths. A general principle of neutrality toward religion is advisable.

Subject to the considerations in III.F, a public school cannot require a student group to adopt a particular viewpoint in order to be recognized by the school if the viewpoint violates the student members' religious beliefs. School officials also cannot express hostility toward religious student groups by demeaning their beliefs.

C. Religious Expression at School Events

Public schools may not sponsor or organize compulsory prayer at official events such as ceremonies, assemblies, graduations, or sporting events. No person—student, teacher, or otherwise—may deliver such prayers on behalf of the school or in such a way that attendance at the prayer is mandatory.

However, public schools must permit the participants in such events—including teachers and other school officials and employees—the individual right to engage in prayer, and to join one another in such prayer, provided they do not thereby coerce participation or speak on behalf of the school as an institution.

If a public school allows students to speak at assemblies, graduations, or other events based on neutral criteria, student-initiated religious remarks must be treated the same as other permissible speech. If, for example, a valedictorian wants to thank God in her graduation speech, she should be allowed to do so. She must not, however, require the assembly to bow their heads in prayer and thank God with her. Student speakers should not be selected on a basis that disfavors religious perspectives and viewpoints.

Where student speakers are selected on the basis of neutral criteria and retain primary control over the content of their expression, that expression is not attributable to the school. Where public school officials are speaking in their official capacities or substantially control the content of student speech, such speech is attributable to the school and may not include prayer or other specifically religious or anti-religious content. To avoid any mistaken perception that a school endorses student religious speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech is the speaker's and not the school's.

D. Religious Expression in Assignments

Public school teachers may not require students to pray or otherwise affirm religious beliefs as part of classroom instruction or written or oral assignments, even if it is part of an otherwise secular lesson.

Teachers must allow students to discuss their religious beliefs in presentations, homework, exams, or other assignments free from discrimination based on the student's religious perspective or lack thereof. 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. If, for example, a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards, such as literary quality, and neither penalized nor rewarded on account of its religious perspective.

E. Religious Expression by Public School Employees

Public school teachers and other officials and employees do not forfeit their First Amendment rights at the schoolhouse gate and need not pray behind closed doors. They must be permitted to pray while at work on the same terms as students, unless such prayer acts to coerce others into joining in or affirming their prayer or functions as the official speech of the school as an institution. Visible, personal prayer, even if there is voluntary student participation in such prayer, does not itself constitute coercion. But teachers and other school officials and employees should not deliver prayers on behalf of the school or in contexts that students cannot opt out of. For example, a teacher may bow her head to say grace before lunch, and students may join her in grace, but she may not instruct her class to pray with her, pressure them to pray with her, or create an atmosphere in which students are favored if they pray with her. Teachers and other school officials and employees, like students, may also dress in accordance with their religious faith.

F. Discipline and Harassment

Public schools are entitled to maintain ordinary discipline and are required to protect students from targeted harassment, even when the harassing student or students claim a religious basis for their actions. Schools should be careful, however, to distinguish general expressions of religiously grounded beliefs from targeted harassment, threats, or advocacy of unlawful physical violence toward individuals or groups, which may create a hostile environment. Speech that reflects sincere religious belief and does not constitute targeted harassment, threats, or advocacy of unlawful physical violence, even if it offends, is typically protected speech.

IV. Conclusion

Taking the above as a whole, the prudent course of action for school officials is to allow the individuals who make up a public school community to act and speak in accordance with their faith, provided they do not invade the rights of others, the school does not itself participate in religious action or speech as an institution, and the school does not favor secular over religious views or one religious view over another. This is not the familiar but legally unsound metaphor of a "wall of separation" between religious faith and public schools. It is rather a stance of neutrality among and accommodation toward all faiths, and hostility toward none, deeply rooted in our nation's history, traditions, and constitutional law—a stance that upholds our Constitution's "recognition of the important role that religion plays in the lives of many Americans."[29]

The Constitution does not enforce itself. Thank you for the central role you play in ensuring that our nation's public schools uphold the First Amendment.

Sincerely,

/s/
Joshua Kleinfeld
Chief Counsel
Office of the Secretary
United States Department of Education

[29] *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 63 (2019).