

School Law Review

June 2023

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Education Department Issues Guidance on Religious Expression in Schools

On May 15, 2023, The United States Department of Education issued a "Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools" document. Coaches are referenced several times throughout the guidance, and it is likely that the guidance was issued in response to the decision of the Supreme Court of the United States in *Kennedy v. Bremerton School District*, which centered around a football coach engaging in private prayer at the end of each football game on the field.

The guidance opens with the reminder that when teachers, coaches, and other public school officials speak in their official capacities, they may not engage in prayer or promote religious views. However, the guidance notes that not everything a public school teacher, coach, or other official says in the workplace constitutes governmental speech. The guidance specifically states that where teachers, coaches, or other employees engage in personal speech, a school district may not prohibit them from doing so because the expression is religious in nature or because other observers, including students, might misperceive that the school is endorsing the expression. Absent some evidence that the teacher, coach, or other school official is pressuring or encouraging students to engage in religious expression, a school district has limited authority to regulate such speech. The guidance goes on to address such topics as prayer groups, religious expression during instructional time, moments of silence, student assemblies, teaching about religion, religious expression in school assignments or homework, excusal for religious activities, and baccalaureate ceremonies. A copy of the guidance can be found [here](#).

What this means for schools:

School districts may (and must, to avoid violating the Establishment Clause) restrict religious expression that suggests endorsement of religion or where the expression by staff is intended to compel or encourage student participation. However, staff remain free to engage in private religious expression such as private prayer, even when visible to others and even when it occurs at district sponsored activities. Of course, the devil is in the details, as they say. Confer with counsel as needed to interpret employee actions in light of the new guidance. 

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