

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

**MINOR I DOE  
through parent PARENT I DOE**

and

**MINOR II DOE  
through parent PARENT II DOE,**

Plaintiffs,

v.

**Case No. 3:08-cv-00361-MCR-EMT**

**SCHOOL BOARD FOR SANTA ROSA  
COUNTY, FLORIDA. et. al.,**

Defendants,

v.

**CHRISTIAN EDUCATORS  
ASSOCIATION INTERNATIONAL**

Defendant-Intervenor.

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**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT-INTERVENOR CHRISTIAN EDUCATORS  
ASSOCIATION INTERNATIONAL'S MOTION TO INTERVENE**

## INTRODUCTION

Defendant-Intervenor CHRISTIAN EDUCATORS ASSOCIATION INTERNATIONAL (“CEAI”) seeks to intervene in a representative capacity on behalf of its members that are employed by the School District of Santa Rosa County, Florida (“School District”). CEAI’s members have a direct interest in the outcome of this litigation that necessitates their involvement in this lawsuit. CEAI is a non-profit religious association with a mission to “serve the educational community by encouraging, equipping and empowering Christian educators serving in public and private schools.” *See* Christian Educators Association International, *Who We Are?* <http://www.ceai.org/> (last visited June 10, 2009). CEAI’s membership consists of classroom teachers, administrators, and para-professionals in education, including some who are employees of the School District, and who are now subject to the Consent Order entered by the Court.

Intervention should be granted for the following reasons: CEAI’s application for intervention is timely; CEAI has an interest relating to the transaction that is the subject of the action; the disposition of the action may, as a practical matter, impair or impede CEAI’s ability to protect its interest; and CEAI’s interest cannot be adequately represented by existing parties to the suit. *See* Fed. R. Civ. P. 24(a)(2); *Stallworth v. Monsanto Co.*, 558 F.2d 257, 264-267 (5th Cir. 1977).

## I. CEAI'S APPLICATION FOR INTERVENTION IS TIMELY.

CEAI's application for intervention satisfies the first prong of Rule 24(a)(2) in that it is timely filed. The courts weigh four factors when deciding upon the timeliness of intervention: (1) how long the would-be intervenor knew or reasonably should have known of its interest before applying to intervene; (2) any prejudice that the intervention would cause to the parties already involved in the case; (3) the prejudice a denial of the application for intervention would cause to the would-be intervenor; and (4) the existence of unusual circumstances advocating for or against a determination that the application is timely. *Angel Flight of GA v. Angel Flight America, Inc.*, 272 Fed. Appx. 817, 819 (11th Cir. 2008); *United States v. Jefferson County*, 720 F.2d 1511, 1516 (11th Cir. 1983).

A Defendant-Intervenor knows or reasonably should know of its interest in a lawsuit when it fathoms or ought to perceive the "potential impact" that the suit may have on its interest. *Stallworth*, 558 F.2d at 267. A Defendant-Intervenor must move to intervene within a reasonable time after acquiring this actual or constructive knowledge. In cases where a Defendant-Intervenor seeks to challenge the terms of a consent order, the time for intervention begins to run when the consent order is entered and the terms of the consent order are disclosed to the Defendant-Intervenor. *See id.*

In *Stallworth*, the district court for the Northern District of Florida had entered a remedial Consent Order. The plaintiffs were minority race employees of Monsanto Company who brought a class action against their employer under Section 1 of the Civil Rights Act of

1866 and Title VII of the Civil Rights Act of 1964. 558 F.2d at 260. The parties to the action jointly requested a remedial consent order from the trial court and the court entered the proposed order. 558 F.2d at 261. After the remedial consent order was entered, it was disseminated to the other company employees through an inter-office memorandum. *Id.* at 267. Approximately one month later, a group of majority race employees moved to intervene in the case because their seniority rights were deprived by the trial court's consent order. *Id.* The intervenors had not recognized their interests and the importance of the case until the consent order was entered. *Id.* The former Fifth Circuit held that the intervenors discharged their duty to act quickly by filing their petition approximately "one month after learning of their interest in the case." *Id.* The Fifth Circuit thus reversed for abuse of discretion the trial court's contrary conclusion that the intervention was untimely. *Id.* at 266-68.

Moreover, a non-party's knowledge that a case exists does not automatically mean that the non-party has notice of an interest in that case. *Howard v. McLucas*, 782 F.2d 956, 959 (11th Cir. 1986). According to *Howard*, courts "cannot impute knowledge that a person's interests are at stake from mere knowledge that an action is pending." 782 F.2d at 959. Instead, the would-be intervenor must have "appreciation of the potential adverse effect an adjudication of that action might have on [its] interests." *Jefferson County*, 720 F.2d at 1516. In *Howard*, the court permitted a party to intervene as a plaintiff after a consent decree was preliminarily approved approximately forty-three days earlier. 782 F.2d at 958. The court reasoned that a broad prayer for relief in a complaint does not put a non-party on notice of an interest. *Id.*

Similar to the intervenors in *Stallworth* and *Howard*, CEAI neither knew nor ought reasonably to have known of its members' interest in this action simply because a case was pending between Plaintiffs and Defendants. While CEAI's members might reasonably have expected an order requiring employees of the School District to not violate the constitutional rights of students, and to not violate the Establishment Clause while on the job, they had no reasonable expectation that the Court would enter a Consent Order infringing upon their free speech and free exercise rights, or requiring them to violate the Establishment Clause by actively demonstrating hostility toward, and engaging in censorship of, the religious speech and viewpoints of students and third parties. The relief obtained by Plaintiffs in the Consent Order far exceeds the relief sought in the Complaint, the terms of the preliminary injunction, and any relief that the Court could have entered in a ruling on the merits. Like the intervenors in *Stallworth*, CEAI did not recognize its members' interest until the Consent Order had been entered and its terms were distributed to CEAI members via inter-office memorandum on May 22, 2009.

Similar to the intervenors in *Stallworth*, CEAI has applied to intervene approximately one month after its members were provided notice that the Consent Order was entered. Likewise, CEAI has applied to intervene at about the same time as the intervenor in *Howard*, who took approximately forty-three days to apply. In sum, CEAI has acted quickly and timely to intervene after it gained knowledge of its interest in this action.

Additionally, no party can claim any unfair prejudice due to the timing of this motion. According to the court in *Stallworth*, "the prejudice to the original parties to the litigation

that is relevant to the question of timeliness is only that prejudice which would result from the would-be intervenor's failure to request intervention as soon as he knew or reasonably should have known about his interest in the action." 558 F.2d at 265. It has only been approximately 56 days since the Consent Order was entered and 40 days since notice was sent to CEAI members. CEAI's intervention would not produce a harmful change to the existing parties. The existing parties have no legitimate interest in an unconstitutional order that abridges the constitutional rights of CEAI's members. No party will be unfairly prejudiced by the timing of this intervention.

Conversely, CEAI would suffer significant prejudice if its application for intervention were denied. A denial would bind CEAI with an order that negatively impacts its members' First Amendment rights. If CEAI's motion is denied, its attempt to gain redress for the infringement of its First Amendment rights would be delayed. Thus, CEAI and its members would suffer irreparable harm, because any violation of its First Amendment rights, even for minimal periods of time, constitutes irreparable harm. *See Cate v. Oldham*, 707 F.2d 1176, 1189 (11th Cir. 1983); *Deerfield Medical Center v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981); *Northeastern Florida Chapter of Ass'n of General Contractors v. City of Jacksonville, Florida*, 896 F.2d 1283, 1285 (11th Cir. 1990).

If CEAI is not permitted to intervene, CEAI would have to challenge the Order in a separate legal proceeding. In addition to the inefficiency and delay associated with that approach, CEAI would be further prejudiced because Plaintiffs and/or the School District would likely seek to defend their actions with reference to a court order entered in this case

without the participation of CEAI. The *status quo* would have been altered to CEAI's detriment, and CEAI would be prejudiced. During such time, CEAI and its members would be denied their First Amendment rights, for the loss of which there is no remedy at law. Accordingly, the disposition of this action can impair and impede CEAI's ability to protect and defend its interests.

Maintaining the Consent Order without an opportunity for CEAI to intervene prejudices CEAI's members still further. The Consent Order actually requires CEAI members to violate the Establishment Clause by demonstrating hostility toward religious speech and religious viewpoints and actively infringe upon the First Amendment rights of students and other third parties involved with the public schools. These members bear the risk of being forced to defend themselves if sued by students or third parties for their actions under the Consent Order. Accordingly, beyond the automatic finding of irreparable harm that justifies the court's finding of prejudice, CEAI can show two additional grounds on which it would suffer prejudice if not allowed to intervene.

Therefore, CEAI has satisfied the timeliness prong for a Rule 24(a)(2) intervention.

## **II. CEAI HAS AN INTEREST IN THE SUBJECT OF THIS ACTION.**

Intervention in this case is needed to protect CEAI's rights and the rights of its members. The second prong of Rule 24(a)(2) requires the applicant to have an interest relating to the transaction that is the subject of the action. A would-be intervenor's interest must be "direct, substantial, [and] legally protectable." *United States v. S. Fla. Water Mgmt.*

*Dist.*, 922 F.2d 704, 707 (11th Cir. 1991) (quoting *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989)).

CEAI has a direct interest in the subject of this action which arises under the Constitution. If the Consent Order stands, the interests of CEAI and its members will be harmed. The Consent Order unconstitutionally infringes on the First Amendment rights of CEAI members and also requires them to violate the Constitution by violating the free speech rights of others.

During non-school hours and when voluntarily on school property, teachers are individual citizens and not actors of the state. As such, they enjoy the affirmative protection of the Free Speech and Free Exercise Clauses. In this context, since they are not actors of the state, they are not subject to the restrictions imposed by the Establishment Clause. *See e.g.*, *Good News Club v. Milford Central School*, 533 U.S. 98, 115 (2001) (“we have never extended our Establishment Clause jurisprudence to foreclose private religious conduct during nonschool hours merely because it takes place on school premises where elementary school children may be present”). *See also*, *Wigg v. Sioux Falls Sch. Dist.* 4-5, 382 F.3d 807, 814 (8th Cir. 2004).

In *Wigg*, relying on Eleventh Circuit precedent, the Eighth Circuit found that a school district policy prohibiting employees on their own time from participating in religious activities on school grounds unconstitutionally limits the employees’ First Amendment rights to engage in religious activities otherwise available to private citizens. *Id.* at 814-15 (“Even private speech occurring at school-related functions is constitutionally protected, therefore

private speech occurring at non-school functions held on school grounds must necessarily be afforded those same protections”) (citing *Chandler v. Siegelman*, 230 F.3d 1313, 1317 (11th Cir.2000)). This is especially noteworthy because the *Wigg* case was decided in the context of an elementary school teacher leading an evangelical after-school club directly after school, on the same campus where she taught during the day. *Id.* at 810-811.

Under the Consent Order, CEAI members in the District have been stripped of those rights. For example, Paragraph 3.(h) defines “School Officials” to include all employees of the School District at any School Event, without regard to whether they are acting within the course and scope of their employment, whether they are on the clock or on their own personal time, and whether or not they are required to be present. Their mere presence at any event held with the approval of another school employee makes the Consent Order binding on them. Obviously, a voluntary after-school religious club meeting on campus with the permission of school officials would constitute a School Event, and CEAI members would be prohibited from engaging in the religious speech and religious activities that any private citizen could engage in solely by virtue of the Consent Order.

Further, when private third parties use school facilities for religious events pursuant to School District policies with the approval of the appropriate District employee, such as weekend church services, that approval transforms the private event into a School Event, and, consequently, no district employee on his or her own private time may participate in any prayer or religious discourse, nor communicate any agreement with the prayer or discourse, during the church services. Those (and other provisions of the Consent Order) are

extraordinary encroachments upon the First Amendment rights of CEAI members, giving CEAI a direct interest in the subject matter of the action.

The Consent Order goes much farther than the Federal Guidelines for Religious Expression in Public Schools (“Federal Guidelines”) issued in May 1998 by the U.S. Department of Education as a summary of the law in this contentious area. (Copy attached as Exhibit A). The Federal Guidelines provide:

Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the establishment clause from soliciting or encouraging religious activity, and from participating in such activity with students. Teachers and administrators also are prohibited from discouraging activity because of its religious content, and from soliciting or encouraging antireligious activity.

(Exhibit A, Federal Guidelines, p. 5) (emphasis added).

Nonetheless, in Paragraphs 3.(b), (g) and (h), 5.(a), 6., 6.(a), and 8. (a) and (b) of the Consent Order, teachers and school administrators are prohibited from encouraging religious activity or participating with students in such activity even when not acting in those capacities and while acting as private citizens, on their own time and with their personal resources. Further, teachers and school administrators are required by Paragraphs 3.(b), (g) and (h), 5.(b), (c), (e), (f) and (h), and 6. (c) to discourage students and others from religious activities solely because of its religious content and to themselves engage in anti-religious activity.

Moreover, the Federal Guidelines cautions that “Local school authorities possess substantial discretion to impose rules of order and other pedagogical restrictions on student

activities,” nonetheless “they may not structure or administer such rules to discriminate against religious activity or speech.” (Exhibit A, Federal Guidelines, p. 4). The Consent Order, however, requires Santa Rosa school authorities to structure and administer rules to discriminate against religious activities and speech. *See, e.g.*, Paragraphs 3.(b), (g) and (h), 5.(b), (c), (e), (f), (h) and 6.(c). For example, under Paragraph 5.(h), teachers are required to incorporate a prior restraint process and censor all student speech offered in their classes of religious content, even if pertinent to the subject matter of the assignment. That requirement runs counter to the First Amendment, as well as the Federal Guidelines which provide that:

students may express their beliefs about religion in the form of homework, artwork, and other written and oral assignments free of 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.

(Exhibit A, Federal Guidelines, p. 5).

In *Adler v. Duval County Sch. Bd.*, 250 F.3d 1330, 1338-39 (11th Cir. 2001) (en banc), *cert. denied*, 534 U.S. 1065 (2001), the Eleventh Circuit expressly approved of students selecting a message of their choice at school events (*e.g.*, athletic events, graduations, assemblies) without input, direction or censorship from school officials. However, in Paragraphs 5.(c) and 5.(f) of the Consent Order, school employees must prohibit students from including any prayer or religious discourse in conjunction with any event approved by a school employee. The Eleventh Circuit’s carefully balanced formulation in

*Adler* has effectively been outlawed by the Consent Order, and CEAI's members are required to comply with the Consent Order on pain of contempt.

It is, of course, now axiomatic that students do not shed their constitutional rights at the schoolhouse gate. The Eleventh Circuit has emphatically ruled that suppression of student-initiated religious speech is not permitted under the First Amendment:

[T]he discriminatory suppression of student initiated religious speech demonstrates not neutrality but hostility toward religion because the exclusion of religious ideas, symbols, and voices marginalizes religion. . . . Silence about a subject conveys a powerful message. When the public sphere is open to ideas and symbols representing nonreligious viewpoints, culture, and ideological commitment, to exclude all those whose basis is "religious" would profoundly distort public culture.

*Chandler v. James*, 180 F.3d 1254, 1261 (11th Cir. 1999) *cert. granted, vacated & remanded*, 530 U.S. 1256 (2000), *judgment reinstated*, 230 F.3d 1313 (11th Cir. 2000) (internal quotation citation omitted).

Accordingly, CEAI has a direct, substantial and legally protectable interest in this case. CEAI's interest is based on the constitutional rights of its members, which are the most direct, substantial and legally protectable interests one can have. The rights of free speech and the free exercise of religion are legally protected and guaranteed by the First Amendment. Therefore, CEAI has a direct interest in the subject of this action, and the second requirement for a Rule 24(a)(2) intervention is satisfied.

**III. THE DISPOSITION OF THIS ACTION MAY IMPAIR OR IMPEDE CEAI'S ABILITY TO PROTECT ITS INTEREST.**

The third prong of Rule 24(a)(2) requires an applicant to be so situated that the disposition of the action may, as a practical matter, impair or impede its ability to protect its interest. An intervenor satisfies this requirement if it has much at stake in a case and has an avenue of legal protection available to it upon acceptance into court proceedings. *United States v. S. Fla. Water Mgmt. Dist.*, 922 F.2d 704, 707 (11th Cir. 1991). As previously explained, if the Consent Order stands, CEAI and its members will continue to be permanently enjoined from exercising their First Amendment rights when on campus as private citizens, and compelled to violate the First Amendment rights of students and other third parties. CEAI's ability to defend its members' interests is already impaired and impeded. But CEAI has an avenue of legal protection available to it following its intervention in this lawsuit, including a motion under Rule 60(b)(5) and/or (6) to set aside the Consent Order. Such relief will give the Court its first opportunity to consider legal briefs on the proper scope of the Court's injunctive powers to protect the rights of the Plaintiffs without depriving the rights of both Defendants and the members of CEAI.

Any disposition of this case without consideration of arguments that only CEAI can make would severely and unfairly prejudice CEAI's ability to protect its members' interests. If CEAI is not permitted to intervene, CEAI would have to legally challenge the actions of this case in separate legal proceedings against Defendant School Board, which would be prejudicial for the reasons explained above.

CEAI is so situated that there is no other way, besides intervention, to effectively protect its members' interests. As such, it has satisfied the third prong of intervention required by Fed. R. Civ. P. 24(a)(2).

**IV. CEAI'S INTEREST WILL NOT BE ADEQUATELY PROTECTED BY THE EXISTING DEFENDANTS.**

The fourth and final prong of Rule 24(a)(2) intervention requires consideration of whether the interest of the Defendant-Intervenor will be adequately represented and protected by the existing Defendants. *See* Fed. R. Civ. P. 24(a)(2). CEAI has a legitimate interest in the protection of the individual and personal rights to free speech for its members as guaranteed by the United States Constitution. The "inadequate representation" requirement is satisfied if the intervenor shows that the representation of its interest by the current parties "*may be*" inadequate. *See Trbovich v. United Mine Workers*, 404 U.S. 528, 538 (1972) (emphasis added). The burden for making this showing "should be treated as minimal." *Id.*

If the Consent Order stands, CEAI members will be deprived of their constitutional rights. Obviously, these rights were not adequately protected up to this point in the litigation, because the interest of the District is not identical to that of CEAI. CEAI now has great interest in the outcome of this action, because the Consent Order strips its members of crucial constitutional rights. On the other hand, the Defendant School Board's interests concern defending itself within the context of the Establishment Clause and avoiding litigation. Political realities, the public interest, the costs of litigation, and the desire to settle are not the same for CEAI, a private entity with solely private interests, as they are for the named

Defendants. Because the interests and objectives of CEAI are not analogous to those of the Defendants, the Defendants cannot represent and protect, and clearly have not adequately represented and protected, the interests of CEAI and its members. CEAI should therefore be permitted to intervene in order to adequately protect the First Amendment rights of its members.

Moreover, the current Defendants *cannot* adequately represent the interests of CEAI, because CEAI has unique affirmative defenses that are personal to CEAI and unavailable to the School Board and the other named Defendants. The School Board cannot adequately raise arguments regarding the CEAI's First Amendment rights. CEAI's constitutional rights are personal. Only CEAI can raise the affirmative defense of the First Amendment rights of its members.

Accordingly, the fourth and final requirement of intervention under Rule 24(a)(2) is satisfied.

## **V. CONCLUSION**

For the foregoing reasons, Defendant-Intervenor Christian Educators Association International's Motion to Intervene should be granted.

Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the Court this 1st day of July, 2009. Service will be effectuated upon all parties of record by the Court's electronic notification system.

/s/ Horatio G. Mihet

Horatio G. Mihet

One of the attorneys for Defendant-Intervenor

Christian Educators Association International

**UNITED STATES DEPARTMENT OF EDUCATION  
THE SECRETARY**

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"...Schools do more than train children's minds. They also help to nurture their souls by reinforcing the values they learn at home and in their communities. I believe that one of the best ways we can help out schools to do this is by supporting students' rights to voluntarily practice their religious beliefs, including prayer in schools.... For more than 200 years, the First Amendment has protected our religious freedom and allowed many faiths to flourish in our homes, in our work place and in our schools. Clearly understood and sensibly applied, it works."

President Clinton  
May 30, 1998

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Dear American Educator,

Almost three years ago, President Clinton directed me, as U.S. Secretary of Education, in consultation with the Attorney General, to provide every public school district in America with a statement of principles addressing the extent to which religious expression and activity are permitted in our public schools. In accordance with the President's directive, I sent every school superintendent in the country guidelines on Religious Expression in Public Schools in August of 1995.

The purpose of promulgating these presidential guidelines was to end much of the confusion regarding religious expression in our nation's public schools that had developed over more than thirty years since the U.S. Supreme Court decision in 1962 regarding state sponsored school prayer. I believe that these guidelines have helped school officials, teachers, students and parents find a new common ground on the important issue of religious freedom consistent with constitutional requirements.

In July of 1996, for example, the Saint Louis School Board adopted a district wide policy using these guidelines. While the school district had previously allowed certain religious activities, it had never spelled them out before, resulting in a lawsuit over the right of a student to pray before lunch in the cafeteria. The creation of a clearly defined policy using the guidelines allowed the school board and the family of the student to arrive at a mutually satisfactory settlement.

In a case decided last year in a United States District Court in Alabama, (Chandler v. James) involving student initiated prayer at school related events, the court instructed the DeKalb County School District to maintain for circulation in the library of each school a copy of the presidential guidelines.

The great advantage of the presidential guidelines, however, is that they allow school districts to avoid contentious disputes by developing a common understanding among students, teachers, parents and the broader community that the First Amendment does in fact provide ample room for religious expression by students while at the same time maintaining freedom from government sponsored religion.

The development and use of these presidential guidelines were not and are not isolated activities. Rather, these guidelines are part of an ongoing and growing effort by educators and America's religious community to find a new common ground. In April of 1995, for example, thirty-five religious groups issued "Religion in the Public Schools: A Joint Statement of Current Law" that the Department drew from in developing its own guidelines. Following the release of the presidential guidelines, the National PTA and the Freedom Forum jointly published in 1996 "A Parent's Guide to Religion in the Public Schools" which put the guidelines into an easily understandable question and answer format.

In the last two years, I have held three religious-education summits to inform faith communities and educators about the guidelines and to encourage continued dialogue and cooperation within constitutional limits. Many religious communities have contacted local schools and school systems to offer their assistance because of the clarity provided by the guidelines. The United Methodist Church has provided reading tutors to many schools, and Hadassah and the Women's League for Conservative Judaism have both been extremely active in providing local schools with support for summer reading programs.

The guidelines we are releasing today are the same as originally issued in 1995, except that changes have been made in the sections on religious excusals and student garb to reflect the Supreme Court decision in *Boerne v. Flores* declaring the Religious Freedom Restoration Act unconstitutional as applied to actions of state and local governments.

These guidelines continue to reflect two basic and equally important obligations imposed on public school officials by the First Amendment. First, schools may not forbid students acting on their own from expressing their personal religious views or beliefs solely because they are of a religious nature. Schools may not discriminate against private religious expression by students, but must instead give students the same right to engage in religious activity and discussion as they have to engage in other comparable activity. Generally, this means that students may pray in a nondisruptive manner during the school day when they are not engaged in school activities and instruction, subject to the same rules of order that apply to other student speech.

At the same time, schools may not endorse religious activity or doctrine, nor may they coerce participation in religious activity. Among other things, of course, school administrators and teachers may not organize or encourage prayer exercises in the classroom. Teachers, coaches and other school officials who act as advisors to student groups must remain mindful that they cannot engage in or lead the religious activities of students.

And the right of religious expression in school does not include the right to have a "captive audience" listen, or to compel other students to participate. School officials should not permit student religious speech to turn into religious harassment aimed at a student or a small group of students. Students do not have the right to make repeated invitations to other students to participate in religious activity in the face of a request to stop.

The statement of principles set forth below derives from the First Amendment. Implementation of these principles, of course, will depend on specific factual contexts and will require careful consideration in particular cases.

In issuing these revised guidelines I encourage every school district to make sure that principals, teachers, students and parents are familiar with their content. To that end I offer three suggestions:

First, school districts should use these guidelines to revise or develop their own district wide policy regarding religious expression. In developing such a policy, school officials can engage parents, teachers, the various faith communities and the broader community in a positive dialogue to define a common ground that gives all parties the assurance that when questions do arise regarding religious expression the community is well prepared to apply these guidelines to specific cases. The Davis County School District in Farmington, Utah, is an example of a school district that has taken the affirmative step of developing such a policy.

At a time of increasing religious diversity in our country such a proactive step can help school districts create a framework of civility that reaffirms and strengthens the community consensus regarding religious liberty. School districts that do not make the effort to develop their own policy may find themselves unprepared for the intensity of the debate that can engage a community when positions harden around a live controversy involving religious expression in public schools.

Second, I encourage principals and administrators to take the additional step of making sure that teachers, so often on the front line of any dispute regarding religious expression, are fully informed about the guidelines. The Gwinnett County School system in Georgia, for example, begins every school year with workshops for teachers that include the distribution of these presidential guidelines. Our nation's schools of education can also do their part by ensuring that prospective teachers are knowledgeable about religious expression in the classroom.

Third, I encourage schools to actively take steps to inform parents and students about religious expression in school using these guidelines. The Carter County School District in Elizabethton, Tennessee, included the subject of religious expression in a character education program that it developed in the fall of 1997. This effort included sending home to every parent a copy of the "Parent's Guide to Religion in the Public Schools."

Help is available for those school districts that seek to develop policies on religious expression. I have enclosed a list of associations and groups that can provide information to school districts and parents who seek to learn more about religious expression in our nation's public schools.

In addition, citizens can turn to the U.S. Department of Education web site (<http://www.ed.gov>) for information about the guidelines and other activities of the Department that support the growing effort of educators and religious communities to support the education of our nation's children.

Finally, I encourage teachers and principals to see the First Amendment as something more than a piece of dry, old parchment locked away in the national attic gathering dust. It is a vital living principle, a call to action, and a demand that each generation reaffirm its connection to the basic idea that is America -- that we are a free people who protect our freedoms by respecting the freedom of others who differ from us.

Our history as a nation reflects the history of the Puritan, the Quaker, the Baptist, the Catholic, the Jew and many others fleeing persecution to find religious freedom in America. The United States remains the most successful experiment in religious freedom that the world has ever known because the First Amendment uniquely balances freedom of private religious belief and expression with freedom from state-imposed religious expression.

Public schools can neither foster religion nor preclude it. Our public schools must treat religion with fairness and respect and vigorously protect religious expression as well as the freedom of conscience of all other students. In so doing our public schools reaffirm the First Amendment and enrich the lives of their students.

I encourage you to share this information widely and in the most appropriate manner with your school community. Please accept my sincere thanks for your continuing work on behalf of all of America's children.

Sincerely,  
Richard W. Riley  
U.S. Secretary of Education

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## RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS

***Student prayer and religious discussion:*** The Establishment Clause of the First Amendment does not prohibit purely private religious speech by students. Students therefore have the same right to engage in individual or group prayer and religious discussion during the school day as they do to engage in other comparable activity. For example, students may read their Bibles or other scriptures, say grace before meals, and pray before tests to the same extent they may engage in comparable nondisruptive activities. Local school authorities possess substantial discretion to impose rules of order and other pedagogical restrictions on student activities, but they may not structure or administer such rules to discriminate against religious activity or speech.

Generally, students may pray in a nondisruptive manner when not engaged in school activities or instruction, and subject to the rules that normally pertain in the applicable setting. Specifically, students in informal settings, such as cafeterias and hallways, may pray and discuss their religious views with each other, subject to the same rules of order as apply to other student activities and speech. Students may also speak to, and attempt to persuade, their peers about religious topics just as they do with regard to political topics. School officials, however, should intercede to stop student speech that constitutes harassment aimed at a student or a group of students.

Students may also participate in before or after school events with religious content, such as "see you at the flag pole" gatherings, on the same terms as they may participate in other noncurriculum activities on school premises. School officials may neither discourage nor encourage participation in such an event.

The right to engage in voluntary prayer or religious discussion free from discrimination does not include the right to have a captive audience listen, or to compel other students to participate. Teachers and school administrators should ensure that no student is in any way coerced to participate in religious activity.

***Graduation prayer and baccalaureates:*** Under current Supreme Court decisions, school officials may not mandate or organize prayer at graduation, nor organize religious baccalaureate ceremonies. If a school generally opens its facilities to private groups, it must make its facilities available on the same terms to organizers of privately sponsored religious baccalaureate services. A school may not extend preferential treatment to baccalaureate ceremonies and may in some instances be obliged to disclaim official endorsement of such ceremonies.

Official neutrality regarding religious activity: Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the establishment clause from soliciting or encouraging religious activity, and from participating in such activity with students. Teachers and administrators also are prohibited from discouraging activity because of its religious content, and from soliciting or encouraging antireligious activity.

***Teaching about religion:*** Public schools may not provide religious instruction, but they may teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture)-as-literature, and the role of religion in the history of the United States and other countries all are permissible public school subjects. Similarly, it is permissible to consider religious influences on art, music, literature, and social studies. Although public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of holidays, schools may not observe holidays as religious events or promote such observance by students.

***Student assignments:*** Students may express their beliefs about religion in the form of homework, artwork, and other written and oral assignments free of 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.

**Religious literature:** Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. Schools may impose the same reasonable time, place, and manner or other constitutional restrictions on distribution of religious literature as they do on nonschool literature generally, but they may not single out religious literature for special regulation.

**Religious excusals:** Subject to applicable State laws, schools enjoy substantial discretion to excuse individual students from lessons that are objectionable to the student or the students' parents on religious or other conscientious grounds. However, students generally do not have a Federal right to be excused from lessons that may be inconsistent with their religious beliefs or practices. School officials may neither encourage nor discourage students from availing themselves of an excusal option.

**Released time:** Subject to applicable State laws, schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation or penalize those who do not attend. Schools may not allow religious instruction by outsiders on school premises during the school day.

**Teaching values:** Though schools must be neutral with respect to religion, they may play an active role with respect to teaching civic values and virtue, and the moral code that holds us together as a community. The fact that some of these values are held also by religions does not make it unlawful to teach them in school.

**Student garb:** Schools enjoy substantial discretion in adopting policies relating to student dress and school uniforms. Students generally have no Federal right to be exempted from religiously-neutral and generally applicable school dress rules based on their religious beliefs or practices; however, schools may not single out religious attire in general, or attire of a particular religion, for prohibition or regulation. Students may display religious messages on items of clothing to the same extent that they are permitted to display other comparable messages. Religious messages may not be singled out for suppression, but rather are subject to the same rules as generally apply to comparable messages.

## **THE EQUAL ACCESS ACT**

The Equal Access Act is designed to ensure that, consistent with the First Amendment, student religious activities are accorded the same access to public school facilities as are student secular activities. Based on decisions of the Federal courts, as well as its interpretations of the Act, the Department of Justice has advised that the Act should be interpreted as providing, among other things, that:

**General provisions:** Student religious groups at public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups. Under the Equal Access Act, a school receiving Federal funds that allows one or more student noncurriculum-related clubs to meet on its premises during noninstructional time may not refuse access to student religious groups.

Prayer services and worship exercises covered: A meeting, as defined and protected by the Equal Access Act, may include a prayer service, Bible reading, or other worship exercise.

***Equal access to means of publicizing meetings:*** A school receiving Federal funds must allow student groups meeting under the Act to use the school media -- including the public address system, the school newspaper, and the school bulletin board -- to announce their meetings on the same terms as other noncurriculum-related student groups are allowed to use the school media. Any policy concerning the use of school media must be applied to all noncurriculum-related student groups in a nondiscriminatory matter. Schools, however, may inform students that certain groups are not school sponsored.

***Lunch-time and recess covered:*** A school creates a limited open forum under the Equal Access Act, triggering equal access rights for religious groups, when it allows students to meet during their lunch periods or other noninstructional time during the school day, as well as when it allows students to meet before and after the school day.

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