

## U.S. Department of Education Issues Updated Guidance on Prayer and Religious Expression in Public Schools

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**Written by:**  
Sloan R. Simmons  
Partner  
Sacramento

Helen M. Silva  
Associate  
San Luis Obispo

Based upon what appears to be an expanded view of the Supreme Court's opinion in *Kennedy v. Bremerton School District*, the U.S. Department of Education (Department) has issued a new Guidance on Prayer and Religious Expression in Public Schools (2026 Guidance). The 2026 Guidance replaces the Department's Guidance Regarding Religious Expression in Public School issued in 2023 (2023 Guidance). (Lozano Smith's 2022 Client News Brief on *Kennedy* may be accessed [here](#).)

### Some Guidance Remains Unchanged

The 2026 Guidance provides similar direction to that described in the 2023 Guidance, affirming that:

- Students have broad constitutional rights concerning religious expression and prayer, while schools have the authority to regulate speech that materially disrupts classwork or involves substantial disorder or invasion of the rights of others;
- Students may express their religious beliefs in assignments free from discrimination, and assignments must be judged by ordinary academic standards of substance and relevance;
- While school employees have a constitutional right to pray, they cannot compel others to participate in prayer and cannot engage in prayer as part of the official capacity of the school itself;
- Schools must permit and support religious student groups in the same manner as non-religious groups; and
- Schools may not organize prayer at school events, but when student speakers at public events are selected on the basis of content-neutral, evenhanded criteria and the speaker retains primary control over the content of their expression, the speaker's religious expression is not reasonably attributable to the school and therefore may not be restricted because of its religious content (but school officials may make neutral disclaimers to clarify the speech is the speaker's and not the school's speech).

## Updated Guidance Appears More Expansive Regarding Right to Pray by Staff

The 2023 Guidance interpreted *Kennedy* as allowing teachers to engage in private, non-demonstrative prayer while on duty at times when other school staff are permitted to engage in non-religious expression and activities. Any religious expression or activity by a staff member must not compel, coerce, persuade, or encourage students to join in the religious activity. School employees, when acting in their official capacities as representatives of the school, are prohibited by the First Amendment from actively participating in prayer with students.

However, the 2026 Guidance specifically and separately addresses religious expression by public school employees. Citing *Kennedy*, the 2026 Guidance states, “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.” It further states that teachers “don’t have to pray behind closed doors.” According to the 2026 Guidance, teachers must be permitted to pray, unless prayer acts to coerce or functions as official speech. Visible, personal prayer, even if there is voluntary student participation, does not itself constitute coercion. The 2026 Guidance describes a specific scenario where a teacher bows her head to say grace before lunch. According to the guidance, students may join her, 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.

The 2026 Guidance also expresses an expanded view of the right to prayer stating that, while schools may not sponsor or organize compulsory prayer at official events, they must permit participants, including teachers, officials, and employees, the individual right to engage in prayer and join one another in prayer (provided they do not coerce participation or speak on behalf of the school).

## Religious Beliefs and Offense

The 2026 Guidance summarizes case law to support the idea that parents and children have a constitutional right to participate in public schooling in ways consistent with their sincere understanding of what their religious faith requires. Therefore, schools cannot coerce or pressure a student to engage in speech or affirm viewpoints that violate their sincere religious beliefs. The 2026 Guidance also addresses religious beliefs that could be offensive to others, stating that speech that reflects sincere religious beliefs and does not constitute targeted harassment, threats, or advocacy of unlawful physical violence, even if it offends, is typically protected, distinguishing general expressions of religiously-grounded beliefs from targeted harassment.

The 2026 Guidance concludes by repeating the 2023 Guidance recommendation that schools should maintain a stance of neutrality and accommodation toward all faiths and hostility toward none.

## Takeaways

The 2026 Guidance includes a more expansive view on employees’ rights to engage in religious expression, citing recent case law as having affirmed employees’ right to pray during school, in front of students, and with students, so long as they are not requiring or encouraging participation or speaking in their official capacity. While this new guidance is framed as being based upon *Kennedy*, the Supreme Court’s opinion in *Kennedy* has not been understood to sweep quite so broadly. Rather, the

Court's holding in *Kennedy* has generally been understood to stand for the proposition that private, non-demonstrative prayer by a school employee does not violate the Establishment Clause and is generally protected by the Free Exercise Clause, assuming other non-religious expression and activities are otherwise permitted by school staff during the same time period. To the extent the 2026 Guidance appears broader than this holding, a legal challenge to the guidance is perhaps likely, and school districts should engage with their legal counsel before fully implementing all aspects of the guidance relative to prayer by teachers or other school staff.

The 2026 Guidance also specifically discusses religious beliefs that some might find offensive, stating that students could make such statements, so long as the statements are not targeted harassment. Schools cannot coerce students into affirming viewpoints that violate their sincere religious beliefs.

School officials should review their policies to ensure that they permit religious expression consistent with governing precedent, including *Kennedy*. As noted above, *Kennedy* is generally understood as having a narrower effect regarding prayer by school staff than that expressed in the 2026 Guidance.

If you have any questions about the 2026 Guidance on Prayer and Religious Expression in Public Schools, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#) and [LinkedIn](#), or download our [mobile app](#).

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