



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

May 15, 2023

Dear Chief State School Officers and District and School Leaders:

Since the nation's founding, our country has recognized the importance of religious freedom, including the freedom of individuals to pray. The First Amendment to our Constitution protects free speech and religious liberty, including by prohibiting any governmental establishment of religion and protecting the free exercise of faith. The Biden-Harris Administration takes seriously the leadership role it must play within this latest chapter of our nation's history to protect these rights. As President Biden has said: "We must continue our work to ensure that people of all faiths—or none—are treated as full participants in society, equal in rights and dignity. We can only fully realize the freedom we wish for ourselves by helping to ensure liberty for all."

Guaranteeing religious freedom in and outside of public schools has been and continues to be vital to the strength of our country and our democracy. The U.S. Department of Education (the Department) believes that every student, teacher, and school employee must be guaranteed the fullest protections afforded by the Constitution.

I am writing to you today to provide updated guidance regarding constitutionally protected prayer and religious expression in public elementary and secondary schools. Prayer and other forms of religious exercise and expression continue to be practices of deep significance to many students, teachers, coaches, and other school employees across a range of diverse faiths and backgrounds. The Department last issued such guidance on January 16, 2020. Since then, the U.S. Supreme Court and other federal and state courts have further considered the scope of fundamental First Amendment protections and addressed their application in public schools. In particular, the Supreme Court's decision in *Kennedy v. Bremerton School District*¹ has resulted in increased discussion nationwide about prayer and religious expression in public schools. The *Kennedy* decision involved a public high school football coach who was suspended for having offered a brief personal prayer on the field after games on three occasions. The Supreme Court held that such prayer was private speech and that the school had not offered a sufficient justification for restricting it.

Given recent developments, it is important that school districts and the public have an accurate understanding of the current state of the law and the scope of public schools' authority to regulate the way in which teachers, coaches, and other school employees may engage in religious expression in the presence of the students under their care. For instance, the guidance continues to recognize the important legal principle that school employees may take part in protected religious expression such as prayer, even during their workday, at a time when it is permissible to engage in other private conduct. School employees may not, however, pressure students to join in that personal religious expression.

The Department is providing this revised guidance as required by section 8524(a) of the Elementary and Secondary Education Act of 1965 (ESEA), codified at 20 U.S.C. § 7904(a). This updated guidance is similar to guidance that the Department promulgated in 2003 and in 2020, and that President Clinton issued in 1995. The prior guidance discussed how constitutional

¹ 142 S. Ct. 2407 (2022).

principles apply in various educational contexts such as prayer during non-instructional time, accommodation of prayer during instructional time, prayer at graduation, moments of silence, the gathering of religious student groups for prayer, and the rights and responsibilities of teachers and other school employees. The updated guidance retains much of that discussion because the state of the law has not changed materially in many of those contexts.


The Department appreciates the efforts made by state and local leaders to comply with the certification process for compliance outlined in the Department's guidance. Consistent with prior guidance, each local educational agency (LEA) must continue to file annually the statutorily required certification with their state educational agency (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 Section II of the updated guidance related to prayer.² Also, each SEA must continue to send to the Department by November 1 of each year a list of those LEAs that either have not made the requisite certification to the SEA or that have been the subject of a complaint regarding constitutionally protected prayer.

The Department's Office of the General Counsel and the U.S. Department of Justice's Office of Legal Counsel have both verified that this updated guidance reflects the current state of the law concerning constitutionally protected prayer in public elementary and secondary schools. The guidance will be made publicly available on the Department's website at https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html. For additional information about the updated guidance, please contact the Department's Office of Elementary and Secondary Education at OESE@ed.gov.

Protecting First Amendment freedoms in public schools is essential to our democracy. The Department strives to foster welcoming and inclusive learning environments for all students. Such environments are fundamental to the principle of religious freedom and necessarily entail respecting rights to engage appropriately in private prayer and religious expression in public schools. Schools are uniquely positioned to assist youth in developing the critical and necessary skills that foster such a culture of respect. As such, I encourage you to widely disseminate this guidance among educators, students, and parents in order to ensure all are well informed regarding their constitutional rights. Public schools and school districts can also contact the Department-funded regional [Equity Assistance Centers](#) to request technical assistance, including teacher training, in matters related to religion in their schools.

I look forward to working with you to ensure that our nation's schools welcome people of all faiths and beliefs.

Sincerely,

A handwritten signature in blue ink that reads "Miguel A. Cardona". The signature is fluid and cursive, with the first name being the most prominent.

Miguel A. Cardona, Ed.D.
U.S. Secretary of Education

² Although LEAs are not required to certify compliance with Sections III and IV of the guidance related to religious expression other than prayer, the Department urges LEAs and SEAs to take care to continue to apply the governing constitutional and statutory principles in those contexts as well.