

At the Podium:
Student Speakers at Graduation
By Joy Baskin,
TASB Senior Attorney
Revised and Republished April 2005

Many questions, few answers

Conflicting decisions from various federal courts have created a general sense of confusion with respect to student speakers at school-sponsored events, particularly graduation. When a student takes the stage to give a commencement address, are his remarks his own—or is he a representative of the school district?

The following Q&A fills in some of the gaps with a brief overview of relevant court cases and guidance from the United States Department of Education. When these sources conflict or fail to offer an answer, TASB Legal Services offers school officials and school attorneys advice about how to minimize the risk of legal challenge.

Is it permissible for school officials to include an invocation or benediction on the program for a public school graduation ceremony?

No, not if the choice to include prayer on the program is made by school officials.

In 1992, in *Lee v. Weisman*,¹ the United States Supreme Court rejected a school district policy that allowed a principal to invite a member of the clergy to give an invocation at a middle school graduation ceremony. A majority of the Court held that because the principal decided to have an invocation, selected the clergy member, and directed the content of the prayer, the school district was so involved in organizing the religious activity that the district created a state-sponsored and state-directed religious exercise in a public school. This violated the Establishment Clause of the First Amendment, which prevents public school districts from organizing and directing prayer at school activities.

What if the prayer is “student initiated” because the student body or student representatives choose to place the prayer on the program?

It’s risky, because the relevant court decisions do not provide a clear answer.

In *Santa Fe Independent School District v. Doe*,² the Supreme Court held that a school district could not permit a prayer or other religious message to be delivered over the public address system at a football game when the surrounding circumstances demonstrated that the school district itself sponsored the message. The Court reached this conclusion despite the fact that prayers in question were delivered by a student volunteer. Citing its own precedent, the Court

¹ 505 U.S. 577, 112 S. Ct. 2649 (1992).

² 530 U.S. 290, 120 S. Ct. 2266 (2000). See also *Skarin v. Woodbine Cmty. Sch. Dist.*, 204 F. Supp. 2d 1195 (S.D. Iowa 2002) (enjoining school choir’s performance of the Lord’s Prayer at graduation ceremony).

explained that there is a “crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clause protect.”

Because the invocations in *Santa Fe* were authorized by official policy and took place on government property, at government-sponsored events, under the supervision of school employees, the Court refused to conclude that the pregame invocations could be considered “private speech.” Given the school district’s history, the Court believed that the purpose of the policy was to preserve a “state-sponsored religious practice.” The Court also took issue with the school district’s majority election system for deciding whether a prayer would be given and, if so, by whom. By establishing this mechanism, the district entrusted “the inherently nongovernmental subject of religion to a majoritarian vote.” Because the majoritarian election threatened to coerce those who did not wish to participate in a religious exercise, the election was unconstitutional.

The important question now is whether the Court’s decision in the *Santa Fe* case means that student-led prayer at graduation is also unconstitutional. Many would argue that, because the *Santa Fe* decision did not address graduation prayer, the Court’s decision did not undermine existing Fifth Circuit precedent allowing student-organized, student-led, nonsectarian, non-proselytizing prayer.³

On the other hand, many would argue that even though the Supreme Court did not directly address graduation prayer in *Santa Fe*, the reasoning in the Court’s decision applies to student-led prayer at graduation. For example, the Court’s concern about using a majoritarian election to decide whether a prayer will be given could apply equally to graduation prayer. Likewise, in *Santa Fe*, the Court concluded that student-led prayer at football games was actually school sponsored because of the district’s sponsorship of the event. The same could be said of graduation ceremonies.⁴

Clearly, a school district assumes a certain amount of risk by allowing students, either through a majoritarian election or through elected representatives, to place prayer as a designated item on the program for the graduation ceremony.

What if a student speaker, like a valedictorian, independently chooses to include a prayer or other religious content in his or her speech?

It depends on whether the student’s address is considered private speech or school-sponsored speech.

When students stand up at a graduation ceremony and address the audience, are they speaking for themselves or on behalf of the school? If a student’s speech is “school sponsored,” the

³ *Jones v. Clear Creek Indep. Sch. Dist.*, 977 F.2d 963 (5th Cir. 1992), *cert. denied*, 508 U.S. 967, 113 S. Ct. 2950 (1993). See also *Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274 (5th Cir.) (concluding that student-initiated prayer policies are constitutional only for graduation ceremonies), *cert. denied*, 519 U.S. 965, 117 S. Ct. 388 (1996).

⁴ See, e.g., *Deveney v. Bd. of Educ. of the County of Kanawha*, 231 F. Supp. 2d 483 (S.D. W. Va. 2002) (enjoining student-delivered prayer selected by the student council).

school can control the student's message. Because schools have an educational mission, they can restrict the content of communications that carry the school's stamp of approval.⁵ Federal courts, including our Fifth Circuit, have upheld school officials' exercise of editorial control over religious content in students' speeches.⁶

For example, after two California high school seniors were selected to speak at graduation, they submitted their speeches for prior review by the principal in accordance with school policy. Both speeches contained sectarian Christian references. The principal asked the students to remove these references, and a lawsuit ensued. The Ninth Circuit Court of Appeals concluded that, even if asking the students to edit their speeches violated the students' First Amendment rights, the students' rights were outweighed by the school district's compelling interest in avoiding an establishment of religion. In the court's opinion, the students' speech "would have borne the imprint of the District" because of the supervisory control the school district exercised over the ceremony.⁷ In a later case, the Ninth Circuit affirmed this decision and clarified that the district's actions were not only permitted, but required, to avoid an unconstitutional establishment of religion.⁸

Most schools operating under this arrangement require student speakers to submit their speeches in advance for editorial review by school officials. Clearly, this offers the benefit of helping school officials maintain order and control during the graduation ceremony. A potential drawback, however, is the risk of legal challenge that the school district exercised too much, or too little, editorial control over student speeches.

An alternative arrangement is described in the United States Department of Education's "Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools."⁹ The guidance states, "Where student speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content." Under this arrangement, individual speakers are free to include religious content in their speeches. The religious content will not be attributed to the school district, and therefore will not cause an Establishment Clause violation.

For example, in *Adler v. Duval County School Board*, a Florida school district permitted its high schools to allow students selected by the graduating class to deliver brief opening or closing messages at their graduation ceremonies. The messages prepared by the selected students were

⁵ *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 108 S. Ct. 562 (1988).

⁶ See *Furley v. Aledo Indep. Sch. Dist.*, No. 4:99-CV-0416-A (N.D. Tex. Oct. 21, 1999) (concluding that school district's editorial control over sectarian references in student's prayer were appropriate in light of Fifth Circuit precedent permitting only nonsectarian, nonproselytizing prayers to be presented at high school graduation ceremonies), *aff'd without opinion*, 218 F.3d 743 (5th Cir. 2000).

⁷ *Cole v. Oroville Union High Sch. Dist.*, 228 F.3d 1092 (9th Cir. 2000), *cert. denied sub nom. Niemeyer v. Oroville High Sch. Dist.*, 532 U.S. 905, 121 S. Ct. 1228 (2001).

⁸ *Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979 (9th Cir.), *cert. denied*, 540 U.S. 817, 124 S. Ct. 78 (2003).

⁹ View the DOE guidance at www.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html. In order to receive funds under the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act, local school districts must certify that their local policies do not prevent or deny participation in constitutionally protected prayer as set forth in the DOE guidance. See www.tea.state.tx.us/nclb/.

not reviewed or monitored by the school district. Considering this policy in light of the Supreme Court's decision in *Santa Fe*, the Eleventh Circuit Court of Appeals concluded that the policy did not constitute an unconstitutional establishment of religion. The policy placed no restrictions on the students' identity or the content of their messages. Unlike the policy at issue in *Santa Fe*, the policy did not invite or encourage religious messages. And, although the policy did allow for majoritarian decision making, the policy did not "subject the issue of prayer to an up-or-down vote."¹⁰

In theory, such an arrangement frees the school district from any responsibility for the content of student speeches. Students may say anything they please, and school personnel do not have to actively monitor their content. This arrangement has not been successfully tested in our jurisdiction, however, and unanswered legal questions (like the ones raised below) leave open the possibility that student speech will be attributed to the school district.

First, can the handful of private speeches at a graduation ceremony truly constitute a "public forum?" In *Santa Fe*, the Supreme Court refused to characterize a single student chosen to address the crowd at home football games as a forum open for indiscriminate use by the public. Would additional speakers make a difference? Would a different selection process make a difference? The answer will not be certain until the courts have spoken further.

Second, even if a public forum for private speech were effectively created, would this absolve a school district of all responsibility for preventing an Establishment Clause violation? In a footnote in the *Santa Fe* opinion, the Supreme Court states, "[W]e have never held the mere creation of a public forum shields the government entity from scrutiny under the Establishment Clause."¹¹ Moreover, if a school attempted to limit religious speech within a public forum, could the school district defend against the free speech challenge that would certainly follow by claiming a "compelling interest" in avoiding an establishment of religion? Federal courts have disagreed on this issue.¹²

Finally, does your district really want to open a public forum at graduation? With narrow exceptions for speech that does not receive protection from the First Amendment, such as speech that is obscene or likely to cause a material disruption, speech within an open public forum cannot be censored by the school district.¹³ The DOE guidance implies that the creation of a public forum allows students to say anything they want, so students may choose to pray. But remember, *the students may say anything they want*. Before adopting this approach, school districts should consider realistically whether they are willing to open the door to any and all student speech.

¹⁰ *Adler v. Duval County Sch. Bd.*, 250 F.3d 1330 (11th Cir.), *cert. denied*, 534 U.S. 1065, 122 S. Ct. 664 (2001). See also *Chandler v. Sielgelman*, 230 F.3d 1313 (11th Cir. 2000) (reinstating, post-*Santa Fe*, previous decision that upheld Alabama statute allowing nonsectarian, nonproselytizing student-initiated prayer during school events), *cert. denied*, 533 U.S. 916, 121 S. Ct. 2521 (2001).

¹¹ *Santa Fe*, 530 U.S. at 303 n. 13, 120 S. Ct. at 2275 n.13.

¹² Compare *Adler*, 250 F.3d at 1342 (concluding that uncensored religious message at graduation was private speech and therefore not an Establishment Clause violation) with *Cole*, 228 F.3d at 1101 (concluding that school censorship of student's religious message at graduation was required to avoid an Establishment Clause violation, even if ceremony was a public forum).

¹³ See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 89 S. Ct. 733 (1969).

If we choose to retain control over student speeches, how should we communicate our guidelines to speakers?

In writing!

In order to protect the district against claims of selective enforcement or other forms of viewpoint discrimination, the district should adopt a set of written procedures detailing the restrictions and requirements for student speeches. For example, state clearly that students are considered representatives of the school district while making their presentations. Explain any content restrictions, including the requirement that content be secular. If students must submit their speeches for prior review, give a deadline. Finally, be consistent in your application of these restrictions and requirements.

If we open a public forum for private speech during graduation speeches, should we issue a disclaimer, clearly denying school district responsibility for the content of the speeches?

Yes, but it may not protect the district from an Establishment Clause violation.

The DOE guidance says, “To avoid any mistaken perception that a school endorses student or other private speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker’s and not the school’s.”¹⁴

If, however, a legal challenge arises, the existence of the disclaimer may not protect the district from an Establishment Clause violation.¹⁵ For example, if the circumstances surrounding the ceremony did not convince a court that a public forum had in fact been established, use of a disclaimer would not shield a district from liability.

Our district wants to retain control over the content of the graduation ceremonies, but our community supports the inclusion of religious elements in the program. Are there any other legal options?

The district may include a moment of silence in the graduation program, or a private group may sponsor a baccalaureate service.

A moment of silence can be included as part of the graduation ceremony, even if it is selected and organized by the school district. As long as the moment of silence is included for a secular purpose, like allowing an opportunity for reflection on this important occasion, then there is no Establishment Clause violation. If members of the audience privately choose to use the time to pray silently, that is their individual right.¹⁶

¹⁴ See DOE guidance at “Prayer at Graduation.”

¹⁵ See, e.g., *Lassonde*, 320 F.3d at 984-85 (“Although a disclaimer arguably distances school officials from ‘sponsoring’ the speech, it does not change the fact that proselytizing amounts to a religious practice that the school district may not coerce other students to participate in, even while looking the other way.”)

¹⁶ See DOE guidance at “Moments of Silence.”

In addition to the school-sponsored graduation ceremony, private groups, like local churches, may sponsor baccalaureate services. Obviously, these religious services cannot be sponsored by the school district. Depending on the terms of the district's equal access policy, however, students or outside groups may be allowed to hold these private ceremonies in school facilities. The district should take steps to ensure that students, parents, and members of the community understand that such ceremonies are not sponsored in any way by the school.¹⁷

Conclusion

With graduation season approaching, now is the time for school officials to review, and if necessary revisit, the board policies, administrative procedures, and local practices that govern commencement ceremonies. The task for each district is to select the approach that best suits the needs of the district in consultation with the district's legal counsel.

¹⁷ *Shumway v. Albany County Sch. Dist. No. 1 Bd. of Educ.*, 826 F. Supp. 1320 (D. Wyo. 1993); *Verbena United Methodist Church v. Chilton County Bd. of Educ.*, 765 F. Supp. 704 (M.D. Ala. 1991); *Randall v. Pegan*, 765 F. Supp. 793 (W.D.N.Y. 1991) (holding that after school board formally dissociated itself with baccalaureate service, the service could be held in the school auditorium).

TO: Members of the Senate Education Committee
FROM: Jackie Lain
DATE: May 15, 2007

School Boards develop and adopt policies for several reasons: they are required to by law or by the Texas Education Agency; the Texas Association of School Boards (TASB) recommends the adoption of a policy as essential to effective District governance and management; or because the school board wishes to make a statement in a particular policy area. There are two distinct sets of policies: LEGAL and LOCAL policies.

Legal Policies

The LEGAL policies track the language of the U.S. and Texas Constitutions, federal and state statutes including the Texas Education Code, Texas attorney general opinions, State Board of Education rules, the Texas Administrative Code and other regulations, as well as other sources of legal authority defining local school district governance.

Local Policies

The LOCAL policies add a district-specific dimension to the legal requirements. LOCAL policies generally expand on, or qualify, the legally referenced provisions and indicate the board of trustee's decisions regarding the topic.

Student Speech Policies

There are several different LEGAL and LOCAL policies that address student expression on campus. I have provided a summary of them below. Additionally, in many instances, student expression may be covered in administrative regulations instead of board policy (i.e., the procedure for picking graduation speakers is generally an administrative procedure).

Below is information about the three policies that contain guidance relevant to the issues addressed in HB 3678. *All school districts have adopted a local version of policies FNAA and FNAB.*

FNA(LEGAL): Student Rights and Responsibilities: **Student Expression**. This is a legal policy setting out the basic requirements of federal law for student expression. It provides the "umbrella" framework under which the local student expression policies operate.

FNAA(LEGAL) and FNAA(LOCAL): **Student Expression: Distribution of Non-school Literature**. These policies focus on distribution of literature. Most school districts permit students to distribute non-school literature on school grounds. "Distribution" takes many forms, such as passing out flyers about a youth group event, giving friends invitations to a birthday party, or bringing to school pamphlets for community organizations like Scouts or Little League.

A district is not required to permit the distribution of non-school literature on its property, but once it does, the Free Speech Clause limits the district's ability to refuse to allow distribution based solely on the content of the materials or the viewpoint of those distributing the materials. To ensure uniform practices across the district, TASB recommends that districts adopt an explicit board policy - a version of FNAA(LOCAL). This local policy can be very controversial -- for example, the "candy cane" case in Plano ISD focuses primarily on Plano ISD's FNAA(LOCAL) policy.

FNAB(LEGAL) and FNAB(LOCAL): **Student Expression: Use of School Facilities for Non-school Purposes**. These policies primarily deal with student expression through clubs and other student organizations. Most districts open their doors for "non-curriculum-related student groups"

to meet in school facilities during non-instructional time. School districts that permit student group use of their facilities need to consider a host of related legal and policy issues.

A district is not required to permit non-curriculum-related student groups to use its property. Once a district opens its doors, however, the Free Speech Clause of the First Amendment to the United States Constitution and other federal laws limit the district's ability to deny access to student groups based solely on their viewpoint or the content of their speech. The policies regulating the use of school facilities can be controversial as well -- certain groups (most commonly gay and lesbian student organizations) have challenged districts' practices using these policies .

Attached is a sample of an FNAA (LOCAL) and FNAB (LOCAL) policy for your review.

FIRST AMENDMENT

The District shall take no action respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Board for a redress of grievances.
U.S. Const. Amend. I

FREEDOM OF
SPEECH

Students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. At school and school events, students have First Amendment rights, applied in light of the special characteristics of the school environment.

Student expression that is protected by the First Amendment may not be prohibited absent a showing that the expression will materially and substantially interfere with the operation of the school or the rights of others.

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969)
[See also FNCI]

The inculcation of fundamental values necessary to the maintenance of a democratic society is part of the work of the school. The First Amendment does not prevent school officials from determining that particular student expression is vulgar and lewd, and therefore contrary to the school's basic educational mission. *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986)

PRAYER AT
SCHOOL
ACTIVITIES

A public school student has an absolute right to individually, voluntarily, and silently pray or meditate in school in a manner that does not disrupt the instructional or other activities of the school. A student shall not be required, encouraged, or coerced to engage in or refrain from such prayer or meditation during any school activity.
Education Code 25.901

Nothing in the Constitution as interpreted by the U.S. Supreme Court prohibits any public school student from voluntarily praying at any time before, during, or after the schoolday. But the religious liberty protected by the Constitution is abridged when the District affirmatively sponsors the particular religious practice of prayer.

The District shall not adopt a policy that establishes an improper majoritarian election on religion and has the purpose and creates the perception of encouraging the delivery of prayer at a series of important school events.

Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000) (addressing school-sponsored, student-led prayer delivered over the public address system at high school football games) [See also FMH]

FEDERAL FUNDS

As a condition of receiving certain federal funds, the District shall certify in writing to TEA that no policy of the District prevents, or

complaints have been made to IEA that the District is not in compliance with the paragraph above. The secretary may issue and secure compliance with rules or orders with respect to a district that fails to certify, or is found to have certified in bad faith, that no policy of the district prevents, or otherwise denies participation in, constitutionally protected prayer in public schools.

No Child Left Behind Act of 2001, 20 U.S.C. 7904

PATRIOTIC
OBSERVANCES

The District may officially encourage students to express love for the United States by reciting historical documents or singing official anthems that contain religious references; such patriotic or ceremonial occasions do not constitute a school-sponsored religious exercise. Engel v. Vitale, 370 U.S. 421 (1962)

The District shall not, however, compel students to participate in patriotic observances. West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943) (*holding unconstitutional a requirement that students salute the United States flag and recite the Pledge of Allegiance*)

STUDENT EXPRESSION
DISTRIBUTION OF NONSCHOOL LITERATURE

FNAA
(LOCAL)

Written or printed materials, handbills, photographs, pictures, films, tapes, or other visual or auditory materials not sponsored by the District or by a District-affiliated school-support organization shall not be sold, circulated, distributed, or posted on any District premises by any District student, except in accordance with this policy.

The District shall not be responsible for, nor shall the District endorse, the contents of any nonschool literature distributed by students.

For purposes of this policy, "distribution" means the circulation of more than ten copies of material from a source other than the District.

Materials distributed under the supervision of instructional personnel as a part of instruction or other authorized classroom activities shall not be considered nonschool literature and shall not be governed by this policy.

[For distribution of nonschool literature by nonstudents, see GKDA]

LIMITATIONS ON
CONTENT

Nonschool literature shall not be distributed by students on District property if:

1. The materials are obscene, vulgar, or otherwise inappropriate for the age and maturity of the audience.
2. The materials endorse actions endangering the health or safety of students.
3. The distribution of such materials would violate the intellectual property rights, privacy rights, or other rights of another person.
4. The materials contain defamatory statements about public figures or others.
5. The materials advocate imminent lawless or disruptive action and are likely to incite or produce such action.
6. The materials are hate literature or similar publications that scurrilously attack ethnic, religious, or racial groups or contain content aimed at creating hostility and violence; and the materials would materially and substantially interfere with school activities or the rights of others.
7. There is reasonable cause to believe that distribution of the nonschool literature would result in material and substantial interference with school activities or the rights of others.

PRIOR REVIEW

All nonschool literature intended for distribution by students on school campuses or other District premises under this policy shall

EXCEPTIONS TO
PRIOR REVIEW

Prior review shall not be required for distribution of nonschool literature by District students only in the following circumstances:

1. Distribution of materials by a student to other attendees during a meeting of a noncurriculum-related student group authorized to meet at school during noninstructional time in accordance with FNAB(LOCAL); or
2. Distribution of nonschool materials in circumstances for which exceptions to prior review are authorized at GKDA(LOCAL).

Even when prior review is not required, all other provisions of this policy shall apply.

TIME, PLACE, AND
MANNER
RESTRICTIONS

Each campus principal shall designate times, locations, and means by which nonschool literature that is appropriate for distribution, as provided in this policy, may be made available or distributed by students to students or others at the principal's campus.

The Superintendent or designee shall designate times, locations, and means for distribution of nonschool literature by students at District facilities other than school campuses, in accordance with this policy.

VIOLATIONS OF
POLICY

Failure to comply with this policy regarding distribution of nonschool literature shall result in appropriate administrative action, including but not limited to confiscation of nonconforming materials, suspension of a noncurriculum-related student group's use of District facilities, and/or other disciplinary action in accordance with the Student Code of Conduct.

APPEALS

Decisions made by the administration in accordance with this policy may be appealed in accordance with FNG(LOCAL).

STUDENT EXPRESSION
USE OF SCHOOL FACILITIES FOR NONSCHOOL PURPOSES

FNAB
(LOCAL)

For purposes of the Equal Access Act, the District has established a limited open forum for secondary school students enrolled in the District. Each District secondary school campus shall offer an opportunity for noncurriculum-related student groups to meet on school premises during noninstructional time.

The District has not established a limited public forum for elementary school students to meet as noncurriculum-related student groups on school premises during noninstructional time. [See GKD for community access]

SPONSORSHIP

Noncurriculum-related student groups shall not be sponsored by the District and shall in no way imply to students or to the public that they are school-sponsored. All letterheads, flyers, posters, or other communications that identify the group shall contain a disclaimer of such sponsorship.

District personnel shall not promote, lead, or participate in the meetings of noncurriculum-related student groups.

[For student activities sponsored by the District and having subject matter and purposes directly related to the school's curriculum, see FM]

REQUESTS

To receive permission to meet on school premises during noninstructional time, interested students shall file a written request with the principal on a form provided by the District.

The students making the request shall indicate that they have read and understand the policies and rules governing nonsponsored, noncurriculum-related student groups and that the group will abide by those rules.

APPROVAL

The principal shall approve or reject the request within seven school days, subject to the availability of suitable meeting space and without regard to the religious, political, philosophical, or other content of the speech likely to be associated with the group's meetings.

Approval to meet as a nonsponsored, noncurriculum-related group shall be granted for one school year at a time, subject to the provisions of this policy.

MEETINGS

The principal shall designate noninstructional time for meetings of nonsponsored, noncurriculum-related student groups and shall assign each approved group an appropriate location and time.

EMPLOYEE MONITOR

The principal shall assign a District employee to attend and monitor each student group meeting. Monitors shall be present at meet-

STUDENT EXPRESSION		FNAB
USE OF SCHOOL FACILITIES FOR NONSCHOOL PURPOSES		(LOCAL)
	ings and activities in a nonparticipatory capacity to maintain order and protect school property.	
	No employee shall be required to monitor meetings at which the content of the speech would be objectionable to the employee.	
ANNOUNCEMENTS AND PUBLICITY	All nonsponsored, noncurriculum-related student groups shall be given access on the same basis for making announcements and publicizing their meetings and activities, in accordance with guidelines developed by the principal.	
	[For distribution of nonschool materials, see FNAA]	
VIOLATIONS	Failure of a student group to comply with applicable rules may result in loss of the right to meet on school premises.	
	In addition, students who violate applicable rules are subject to disciplinary action in accordance with the Student Code of Conduct.	
APPEALS	Decisions made by the administration in accordance with this policy may be appealed in accordance with FNG(LOCAL).	

Religious expression in public schools

Web Posted: 05/14/2007 11:03 PM CDT

J. Michael Parker

Express-News Religion Writer

Zach Van Veldhuizen believes Jesus should be honored in public schools. The MacArthur High School senior doesn't understand why prayers or other religious expressions at school-sponsored events would be a problem.

But Katina Rajunov, a Clark High School senior, believes that religious messages given at school-sponsored events might make students of differing faiths feel excluded.

Enter the Texas Legislature, which has joined the fray most commonly the province of school district officials, who often face a conundrum in the religious freedoms of students.

The Religious Viewpoints Anti-Discrimination Act, passed May 1 by the Texas House and expected to pass the Senate possibly this week before being signed into law by Gov. Rick Perry, would require Texas public school districts to adopt policies specifically allowing spontaneous religious expression by students.

The provision would create a "limited open forum" — an opportunity for students to speak about religious issues on the same basis as they're allowed to speak about other topics.

It states that if a student speaker at a sports event, a school assembly or a graduation ceremony elects to spontaneously express a religious viewpoint while speaking on an otherwise permissible topic, school officials must treat the religious content the same as it would secular content.

It also would require policies that allow religious expression in artwork, homework or other assignments and allow religious clubs or prayer groups to meet in school facilities on the same basis as other students groups use them.

Van Veldhuizen, a Fellowship of Christian Athletes leader at his school, said he believes prayer has been largely pushed out of public schools, so those who want to pray openly need legal protection.

"If I screamed out my belief, that would be wrong," he said, "but if I do it in a polite, gentle way and say how God has changed my life, I don't see why anybody would find that offensive."

But Rajunov, who is Jewish, does.

She has no objection to allowing religious groups to use school facilities the same way nonreligious groups do, but she doesn't like the idea of anyone at an official school event having to listen to prayers and beliefs of any one particular religious tradition.

"If it represents one religion, it excludes all the others, even if the school or the district isn't actively endorsing it," she said.

Raj Singh, a senior at O'Connor High School who is a Sikh, said he doesn't believe speakers at large school-sponsored events should use such occasions for religious purposes.

"I don't mind people expressing their beliefs — but they shouldn't do it as public speakers. It's not fair to others."

Hunter Ellis, a Clark High School senior who belongs to a student Bible study group, said he doesn't see any problem with the bill.

"Students should be allowed to give their religious viewpoints or maybe read a few Bible verses — in a toned-down way, not to try to convert others," he said.

Rep. Charlie Howard, R-Sugar Land, who introduced the bill in the House, said students who have strong religious faith have the right to express it.

"It would confer no new rights and would remove no existing rights," Howard said of the bill.

But two specialists in First Amendment law disagreed over the public-speaking provision.

University of Michigan law Professor Doug Laycock, who has represented the American Civil Liberties Union in litigation on First Amendment issues, said the bill's language reflects existing law.

For example, students already can conduct so-called "See You at the Pole" events to pray before or after school or have Bible study or prayer meetings in school facilities on the same basis as other groups. But he said creating a "limited public forum" at mass school events and letting randomly selected student leaders give religious messages breaks new ground that the Supreme Court hasn't decided.

Current law requires official school events to be secular because the school controls the program. Students attending are a "captive audience," and a student's speech to a mass audience isn't private, he said.

"In any district where most student speakers would open events with prayer, the bill essentially forces students of other faiths and of no faith to participate in evangelical prayer services," Laycock said.

Frank Manion, a lawyer for the American Center for Law and Justice, which defends Christians' religious and civil liberties, said that while the policy could be abused, that doesn't mean it will be.

"If you had a Christian prayer every time a school had an event, you'd wonder if this wasn't really just a sham," Manion said. "But we don't outlaw freedom of speech just because some people abuse it."

Van Alstyne Independent School District Superintendent Alan Seay, who attended the recent House debate, said he wants the assurance that his district complies with Supreme Court mandates.

"If a Muslim student speaker wanted to say a prayer to Allah or speak about how Allah has influenced his life, Christian parents might object and sue the district," he said. "This bill would free districts from having to be word police and to censor everything a kid said."

But Brian Woods, assistant superintendent for secondary education at Northside Independent School District, said balancing competing rights of student speakers and student audiences is "very much a no-win situation" for districts.

"Limited open forums," he said, usually are student-led groups meeting in school facilities, not mass events.

"For large gatherings, we like to review what a student speaker is going to say before he says it. That's appropriate whatever the message, not because it might be religious.

"If a student chose to convey a message and we couldn't prohibit it, that would take away a lot of control," Woods said.