

Pledge, Patriotism & Prayer in California Public Schools

A guide to the Rights of Students and Teachers

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Northern California

In the tumultuous times since September 11th, spontaneous displays of patriotism and prayer have erupted around the nation, thrusting questions about freedom of religion and expression in our public schools to the forefront of the agenda.

We have written this guide to answer key questions about the rights of students and teachers in California. Can you be punished for refusing to stand during the national anthem? Must teachers sign loyalty oaths when they take a job? When do religious expressions violate the separation of church and state? This guide seeks to answer these questions and more.

Please contact the ACLU for more information, or if you believe that your rights have been violated.

Pledge of Allegiance / Patriotic Songs / Flags / Prayer / Loyal Oaths / Other Religious Displays

PLEDGE OF ALLEGIANCE

Q. What's the history of the Pledge of Allegiance?

A. In October 1894, baptist minister Frances Bellamy wrote the Pledge of Allegiance for a Chicago ceremony celebrating the 400th anniversary of the discovery of America. In 1954, in the midst of the Cold War, Congress added the words "under God."

Q. Do California schools have to conduct Pledge of Allegiance ceremonies?

A. California's Education Code requires public elementary and secondary schools to conduct daily patriotic exercises, although schools may substitute other patriotic exercises for the Pledge of Allegiance. Local school boards are expected to adopt regulations on patriotic exercises.

Q. May students refuse to participate?

A. Yes. Until 1943, public schools expelled schoolchildren for refusing to salute the flag – and even prosecuted their parents for truancy. The victims were primarily Jehovah's Witnesses, whose faith forbids them from pledging allegiance to secular symbols. Then, during World War II, the image of schoolchildren pledging with a stiff-arm salute was reminiscent of Nazi youth and the United States Supreme Court ruled that compulsory flag salute violated the First Amendment. The right to free speech includes

PRAYER

Q. May school officials sponsor prayers or other religious exercises in school?

A. No. The U.S. Supreme Court ruled that school prayers and Bible readings are unconstitutional, even if they are nondenominational or voluntary. In class, students may study prayers and religious books if they are part of a course that does not promote any particular religion.

Q. What about prayers or religious references at school ceremonies?

A. The school authorities and the student body cannot allow either a religious leader or a student to give a prayer at graduation ceremonies or extracurricular school events. At the same time, the Constitution allows a speaker to include a brief religious reference in a public address.

Q. May students hold prayer rallies around the flagpole?

A. Yes. Students may hold informal prayer rallies on school grounds before or after school

LOYAL OATHS

Q. Must teachers sign loyalty oaths as a condition of employment?

A. California courts have upheld the right of schools to compel teachers to sign an "affirmative oath," that promises to uphold the

liberty to refrain from reciting words that do not reflect one's beliefs. Therefore, if students disagree with some of the statements in the Pledge, they may refuse to participate.

"The right to free speech includes liberty to refrain from reciting words that do not reflect one's beliefs."

Q. Do students have to stand during the Pledge?

A. No. Standing during the Pledge is itself a participation in the exercise and an affirmation of belief. The school may not compel a student to engage in this symbolic act.

Q. Can schools require students to leave the classroom if they refuse to take part?

A. No. Provided that students who decline to participate are quiet and do not engage in disruption, schools may not exclude them from the classroom.

Q. May students be barred from school activities for refusing to participate in the Pledge ceremony?

A. No. School authorities may not punish students for exercising their right to freedom of expression.

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Q. May teachers refuse to lead or participate in the Pledge of Allegiance?

A. Yes. Teachers also have First Amendment rights to refuse to participate in the Pledge.

Q. Is the expression "under God" in the Pledge constitutional?

A. Courts have ruled that the expression "under God" in the Pledge of Allegiance has lost by rote repetition any true religious meaning and does not violate religious freedom.

PATRIOTIC SONGS

Q. May schools require students to sing patriotic songs?

A. No. Just as schools cannot force students to recite patriotic words they do not believe, they cannot compel students to sing patriotic songs like "The Star Spangled Banner."

Constitution. However, schools may not require teachers to sign a "negative oath," which states that the teacher is not a member of certain organizations or does not advocate certain political principles.

Q. May conscientious objectors refuse to sign the affirmative loyalty oath?

A. No. Courts have ruled that the language of the oath is symbolic, and that the promise to defend the Constitution does not necessarily commit a teacher to taking up arms.

Q. May teachers refuse to sign the loyalty oath if it conflicts with their religion?

A. A court has ruled that teachers whose faith forbids them from signing loyalty oaths do not have to do so. Although this decision was grounded in a federal law that no longer exists, the California constitution should provide similar protection.

OTHER RELIGIOUS DISPLAYS

Q. Can schools hold a moment of silence?

A. It depends on the purpose of the moment of silence, and how it is carried out. If the only purpose is to promote religion then it is probably forbidden by the Constitution. But if the purpose is secular: to remember someone who has died or to think about world peace, for example, it is probably permitted.

Q. May schools allow religious pageants or displays?

A. The school may not allow religious displays on school property. Sometimes, however, it is not clear whether a display sends a religious message. While a cross or Nativity scene is not allowed, for example, a class may have a temporary Day of the Dead display as a cultural learning experience, despite the inclusion of religious artifacts.

Q. May student groups hold religious meetings on school property?

A. Yes, during non-class hours, if other student groups are also allowed to meet there. The federal Equal Access Act requires that the meetings be student-initiated; school staff may not sponsor or participate in religious clubs although they may be present to ensure order. People from outside the school may not lead, control, or regularly attend the meetings – although they can be invited speakers.

Q. May students hand out Bibles or other

Q. Do students have to stand during the national anthem or other patriotic songs?

A. No. Students may remain seated, as long as they are not disruptive.

Q. May patriotic songs with religious references, such as “America the Beautiful” and “God Bless America” be sung in schools?

A. Religious songs are permitted because the courts have found that sacred music is teaching about religion rather than religious indoctrination. Singing patriotic songs with religious references does not violate the separation of church and state if the songs are not intended as true religious exercises. However, religious songs may not dominate public school events and religious phrases that may be sung in patriotic songs should not stand alone on school walls. In a pluralistic state like California, teachers should be careful not to make students feel excluded if they do not share the dominant faith.

FLAGS

Q. May students be punished for flag desecration?

A. No. Provided that students are not injuring school property, they have the right to demonstrate and to engage in symbolic speech.

Q. Is it permitted to put emblems, such as peace signs, on to flags?

A. Yes

religious materials in school?

A. In California, a court upheld a school policy prohibiting distribution of religious literature. However, students around the country have filed lawsuits claiming that they have First Amendment rights to pass out religious materials if schools allow students to circulate other literature. The courts are divided but the trend seems to be that schools must allow students to pass out religious material on the same basis as other material.



Distributed by the ACLU of Northern California

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415-621-2488
(between 10am and 3pm Monday to Friday)**

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