ABOUT NEW ACT: RELIGIOUS STUDENTS' RIGHTS CLARIFIED
by Kelly Coghlan

Schools are not religion-free zones, school officials are not prayer-police, religious students are not enemies of the state, and the Texas Religious Viewpoints Antidiscrimination Act (also known as the Schoolchildren's Religious Liberties Act) makes that clear. The Act, which goes into effect at the beginning of the 2007-2008 school year, provides much needed guidance for school officials who have sometimes felt compelled to quash students' religious expressions for fear of lawsuits. The new law pulls together Supreme Court rulings into a format that is easy to understand and apply.

"This law is a victory for freedom and non-discrimination for every young Texan," said Rep. Charlie Howard who introduced the bill. "It is win-win for students, school administrators and teachers. No longer will a cloud of confusion obscure the rights to individual expression students enjoy under the U.S. Constitution. School officials need no longer fear the threat of lawsuits simply for allowing students to exercise their constitutional rights." Houston attorney Joe Reynolds, a 16-year member of the Texas A&M Board of Regents, who has represented more Texas school districts than any other attorney said "This is the best piece of legislation for school districts that has been introduced in the past 50 years."

This Act does not require or suggest that any child express a prayer or other religious viewpoint, it just protects them if they do. Whether or not a student will ever use a speaking opportunity to express a religious viewpoint on an otherwise permissible topic is a matter upon which school officials must not speculate, opine or discuss since school officials must remain neutral. Doing otherwise will land a school in constitutional hot water. However, parents, pastors, students, citizens and all other non-school-officials are free to encourage students to publicly pray and honor God whenever students have the opportunity to do so.

The first sentence of the Act (Sec. 25.151) provides that "A school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject." The remainder of the new law instructs school districts how to properly apply this legal declaration.

A safe harbor model policy (Sec. 25.156) for schools to include in their local policies is a part of the Act. If a school district adopts and follows the suggested model policy, the district is automatically assured of being in compliance with the Act regarding all matters covered in the model policy. Not only was the Act's model policy drafted and reviewed by numerous constitutional attorneys across the country, the policy was field-tested in a number of public school districts for up to 6 years from Texas to Illinois. Superintendents from two such school districts testified in the House and Senate that no student had abused or exploited any speaking opportunity, embarrassed the school district, or caused any lawsuit or complaint under the policy. Adopting the Act's model policy is the safest route for school districts and assures the district of help from the Texas Attorney General in the event of a facial challenge since the model policy is part of the Act. While a school is free to have TASB or others draft a policy, a school will be on its own to legally defend that policy. Why would any district take the unnecessary risk when a tested policy is already part of the law? Bewilderingly, an alternative policy has been submitted

to schools by TASB which significantly deviates from the Act's model policy. TASB has even added its own definitions having no cogent basis under the Act or in law. It is the author's opinion that adoption of the TASB alternative policy will put a school in violation of the Act and open that school to legal claims.

The Act's model policy covers the following subjects: Student Expression of Religious Viewpoints, Student Speakers at Non-Graduation Events, Student Speakers at Graduation Ceremonies, Religious Expressions in Class Assignments, and Freedom to Organize Religious Groups and Activities.

The Act establishes safeguards to assure that a student's religious viewpoint, if any, is not attributable to the school or mistaken as affirmatively sponsored by the school by requiring (1) limited public forums for student speakers, (2) selection of speakers based on neutral criteria, and (3) disclaimers to be read and/or printed clearly establishing the individual nature of the expressed viewpoint.

Section 25.152 requires the "establishment of a limited public forum for student speakers at all school events at which a student is to publicly speak" in order to, *inter alia*, "eliminate any actual or perceived affirmative school sponsorship or attribution to the district of a student's expression of a religious viewpoint, if any." The 2001 Supreme Court case of *Good News v. Milford Central School* holds: "[S]peech discussing otherwise permissible subjects cannot be excluded from a limited public forum on the ground that the subject is discussed from a religious viewpoint…. [Excluding a] religious perspective constitutes unconstitutional viewpoint discrimination." Thus, the Texas statute, by using the limited public forum format simply codifies the language of the Supreme Court.

Schools are not required to have student speakers for any occasion, and, thus, are not required to establish any limited public forums for student speakers. But if there are to be student speakers, a limited public forum is required. For schools that opt to adopt the model policy, a student speaker will publicly introduce the beginning of football games and the opening announcements/greetings for the school day (and any other events the school designates). From the inception of public education and football games, these two identified occasions have traditionally been introduced by student speakers; so nothing new here. Students are required to stick to the subjects/topics enumerated under the policy: "introductions must be related to the purpose of the event and to the purpose of marking the opening of the event, honoring the occasion, the participants, and those in attendance, bringing the audience to order, and focusing the audience on the purpose of the event." Under the model policy, the eligible student speakers are student council officers, senior class officers, captain(s) of the football team (and any other neutrally selected student leaders the school designates). Student speakers have normally been student leaders; so nothing novel here. Just as at graduations, not every student gets to speak. It has always been a great honor to have attained a student leadership position to be allowed to publicly address the school; and the model policy maintains that honor.

Why have student speakers? Public speaking fosters numerous educational benefits in established pedagogical areas such as Speech, English, Grammar, Drama and Civics. Students have to organize their thoughts, author, prepare, practice, and deliver a concise oral presentation before a live audience, providing valuable educational opportunities. What a waste to allow school events to pass without utilizing them as opportunities for students to advance their

communicative skills—important skills for any career. Some districts may be tempted to reduce or eliminate student speakers altogether, but this would not only be counter-educational but would likely stir up legal issues rather than avoid them. If a district's motivation for reducing or eliminating student speakers is to assure that no religious viewpoint will be expressed, that is an unconstitutional motivation inviting legal challenge.

Finally, sections 25.153 & 154 of the Act codify the almost identical language of sections of the U.S. Dept. of Education "Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools," drafted by the attorneys of the U.S. Dept. of Education and U.S. Dept. of Justice.

The Act is an anti-discrimination law protecting students' voluntary expressions of religious viewpoints to the same degree—no more and no less—as students' voluntary expressions of secular or other viewpoints on otherwise permissible subjects and topics. Religious children do not receive special rights, extra opportunity, preferential treatment or extra protection, just equal rights, equal opportunity, equal treatment and equal protection. That's fair.

[Coghlan is a Houston constitutional trial attorney and author of *Those Dangerous Student Prayers*. He has represented 159 students and parents as *amici curiae* before the U.S. Supreme Court on faith-based issues, obtained the first federal injunction preventing censorship of a student's voluntary public prayer in *Ward v. Santa Fe I.S.D.,* and is the legal author of the Religious Viewpoints Antidiscrimination Act. Website www.kellycoghlan.com. The article's contents are the personal opinions of the author and are not legal advice, warranties or representations]