

MESSAGE TO TEXAS SCHOOL BOARDS

1. Texas is the first state to enact the “School Children’s Religious Liberties Act” (also known as the “Religious Viewpoints Antidiscrimination Act”) (hereinafter the “Act”). The Act goes into effect at the beginning of the 2007-2008 school year.
2. Every Texas school board member and superintendent should read the following documents (all of which can be printed from the website www.kellycoghlan.com):
 - a. Copy of New Act.
 - b. Governor’s Press Release.
 - c. About New Act: Religious Students’ Rights Clarified
 - d. Why adopt the Safe Harbor Model Policy
3. Between now and the beginning of the 2007-2008 school year, every Texas school district that is going to have a student speaker at any school function or event (including graduations) must either (1) adopt the safe harbor model policy recommended and included as a part of the Act, or (2) draft its own policy that must comply with all aspects and provisions of the new Act.
4. A safe harbor model policy (Sec. 25.156) is part of the actual statute. The model policy has the approval of the Texas Legislature as the recommended policy for school districts to adopt to comply with the new law. If a school district adopts and follows the State’s suggested model policy, the school district is automatically assured of being in compliance with the Act regarding all matters covered in the model policy. This is the only way that a school district will have this assurance.
5. 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. Additionally, before being included in the Act, the language of the model policy went through rigorous hearings before the Texas House of Representatives State Affairs Committee and the Texas Senate Education Committee and withstood scrutiny.
6. Adopting the Act’s model policy is the easiest, most cost effective, and least risky way to comply with the Texas Act. Furthermore, adopting the State’s recommended model policy assures the school 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 against any legal challenges.

7. Why would any district take the unnecessary risk when a viable, tested, and State approved policy is already part of the new law? As a part of the new Act, the model policy has the imprimatur of the Texas legislature, and thus of the citizens of Texas who elected such officials.
8. Bewilderingly, an untested and unapproved 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. The manufactured definitions that TASB has added are an apparent attempt to narrow the application of the law and to thwart the clear language, spirit and legislative intent of the Act. **It is the author's opinion that adoption of the TASB alternative policy will put a school in violation of the Act and open the school to legal claims.**
9. The Act's recommended 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.
10. 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.
11. In adopting any policy that comes before a school board (including the policy required under this Act), school officials may not be motivated by either of the following: (1) the hope that students will pray or express some other religious viewpoint, (2) the fear that students will pray or express some other religious viewpoint. Board members, superintendents and school officials are legally prohibited from considering either. Whether or not a student would ever use a speaking opportunity for prayerful or other religious speech, as opposed to similar secular or other speech, is speculation regarding which a school board and school officials must not indulge and must not interject into discussions or considerations.
12. Non-government citizens may talk all they want about how they support or oppose prayer and the expression of religious viewpoints, but school board members and school officials must avoid doing so and avoid making this a consideration in deliberations and decisions.
13. Why the drastic difference between what ordinary citizens can do as contrasted to what school board members and school officials can do? Because the First Amendment of the Constitution applies only to what government officials (school board members, superintendents, teachers, and the like) may or may not do in their official capacities. The prohibitions of the First Amendment do not apply to

actions of ordinary citizens. The Constitution does not prohibit individual citizens from doing acts that tend to establish religion. Only the government and government officials are required to be neutral on the topic of religion while acting in official governmental capacities.

14. Any school board meeting set to consider the issue of adoption of a policy under the new Act will likely draw those who wish to speak for or against "prayer" rather than secular reasons for having student speakers. The district might therefore take affirmative steps to protect itself from unfounded accusations later that the district has based its decisions upon religious or anti-religious arguments. At the beginning of the meeting, the district might read a prepared disclaimer (and enter it into the official record) that makes clear that the school district is not legally allowed to act with a religious or anti-religious purpose:

As citizens who address the board, you are free to express your views on religious subjects, the existence or non-existence of a Supreme Being, and any other matter on which you wish to address the school board. All citizens should feel free to share their views and concerns with their elected officials. School officials (including the superintendent and school board members), however, are legally prohibited from acting with a purpose to either encourage or discourage religion or religious expression. The school district, superintendent, and school board, must act, and will act, with strict neutrality regarding matters of religion, will not act with a religious or anti-religious purpose in considering and deciding matters that come before the board, and will make decisions based wholly upon secular considerations, as required by law.

Appropriate Points of Discussion and Consideration for School Board Members:

1. ISSUE: As a policy matter, should the school district allow student speakers at any of its school events (including graduations)?
 - a. Discuss: What are the educational and other secular reasons for prohibiting student speakers at school events? List them:
 - i. _____
 - ii. _____
 - b. Discuss: What are the educational and other secular reasons for permitting student speakers at school events? List them:
 - i. The opportunity presents educational opportunities for students in the areas of speech, English, grammar, and civics; ⁱ
 - ii. The opportunity gives students experience with speaking in public, organizing their thoughts, and making a concise oral presentation before an audience;
 - iii. The opportunity gives students a greater sense of ownership in their school's activities/events through student involvement;

- iv. The opportunity promotes a continuation of student maturity, growth, and education by placing additional responsibilities upon students;
- v. Introductions of various school events by students provide a method for marking the opening of school events that provide student participation and involvement;ⁱⁱ
- vi. Introductions of various school events by students provide a method of bringing the audience to order;
- vii. Introductions of various school events by students focus the audience on the purpose of the event;
- viii. In the case of graduations, there are certain students who have earned the right to speak.

ⁱ Rather than merely learning *about* speech, English, grammar, and civics, public speaking involves students in the actual *practice and application* of these subjects. Students involved in speaking at events have to organize their thoughts, author, prepare, practice, and deliver a concise oral presentation before a live audience, providing these students with valuable opportunities for learning and application of public speaking and presentation skills. See Emily Shartin, *The Holly Fest: A Time to Speak Clearly*, BOSTON GLOBE, Dec. 7, 2000, at 8 (discussing the benefits of public speaking and how the process and practice of articulating one's thoughts before an audience help high school students in other academic areas and in exam taking), 2000 WL 3358387. These speaking opportunities can be as educational and beneficial as any academic class. It would be wasteful to allow these events and activities to pass week after week without the school utilizing them as opportunities for its students to advance their communicative skills—which would surely prove important to them in whatever they choose to do after high school.

ⁱⁱ In public schools, students participate in numerous recurring activities having natural beginnings and endings, such as sporting events, graduations, assemblies, and the school day itself. Just prior to the start of each activity, there is usually noise, walking around, and talking. Attaining attention, silence, and focus normally requires some act to mark the beginning of each occasion.

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