

## WHY A MODEL POLICY

The Texas Schoolchildren's Religious Liberties Act has a safe harbor model policy included as a part of the Act. School districts are not required to adopt the recommended model policy. A school district may chose to draft its own policy, but its policy must comply with all aspects of the Act. The only way to assure compliance with the Act is to adopt the safe harbor model policy, and then a school district can be assured that it is in compliance with all matters covered under the model policy. Kelly Coghlan drafted the Schoolchildren's Religious Liberties Act and the model policy part of the Act. Before adding the model policy to this Act, an earlier version of the model policy was tested in a number of school districts from Texas to Illinois. It took a number of years to develop the model policy to the point of it being ready to include in the Act, and here is the background:

In 2003, the U.S. Department of Education issued "Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools" ("Prayer Guidance"). As a condition to obtaining federal funds, each school district in America must annually certify that it "has no policy [that] prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools *as set forth in this guidance.*"

The Prayer Guidance makes it clear that voluntary prayer and other faith-based expression publicly stated by students over school microphones is allowable at student assemblies, extracurricular events and graduations if an appropriate student speaker policy has been enacted by the school district.

So why didn't school districts rush to adopt an appropriate policy? Primarily because most school's lawyers are not constitutional specialists and did not feel that they had the legal expertise to draft such a policy.

Recognizing this vacuum, Kelly Coghlan, one of the attorneys who helped the U.S. Department of Education formulate the Prayer Guidance, drafted a model policy that translated the Prayer Guidance into a workable local policy for adoption by all school districts in the United States. A number of school districts, from Texas to Illinois, adopted the model policy and now have a 4-6 year operating history under the model policy upon which the model policy of the Texas Schoolchildren's Religious Liberties Act is based. This is what has been said about the model policy:

*“Our Texas school district adopted the model policy drafted by Kelly Coghlan (who also drafted the Texas School Children’s Religious Liberties Act) and has had it in place for over 6 years. The School Board adopted the policy to try to bring our school district in line with the law. The model policy we adopted is of the same type and structure as the model policy that is part of the new Texas Act.*

*During my entire time as Superintendent of Hamlin ISD, there was never a single instance of any abuse by a student speaker under the policy. Students have been very respectful of the opportunity to publicly speak. And, to my knowledge, there has never been any abuse of the privilege arising out of this right of student expression under the policy.*

*The model policy has allowed our District to be neutral in matters of religion by neither promoting nor prohibiting the voluntary expression of students’ religious viewpoints on otherwise permissible subjects. Although there have been students who have elected to publicly express prayerful and other religious viewpoints at graduations and other events, we have had no problems, abuses, or complaints regarding the model policy.”* Curt Parsons, Superintendent, Hamlin Independent School District, Hamlin, Texas.

*“Our School District adopted the model policy more than four years ago. Although the ACLU is very active in our Illinois community and once successfully sued our school district, the ACLU has expressed no objection to the model policy or to the students’ voluntary expressions of faith under the policy.*

*The model policy translates the U.S. Department of Education’s ‘Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools’ into practical terms that can be adopted as a local policy for all school districts. With clear guidance provided by the model policy, it showed us how to remain neutral in matters of student’s religious viewpoints and how to assure that the private expression of any such religious viewpoints, if any, were not attributable to the school district.*

*With no prompting from the school, our experience has been that once students realized that they would not be punished for expressing a religious viewpoint on otherwise permissible subjects there were students who elected to voluntarily express prayerful and other religious viewpoints at graduations, opening of morning announcements and other school events. Illinois isn’t exactly the Bible Belt, so this was somewhat surprising.*

*We believe that allowing students to publicly speak before school audiences is a valuable educational growth experience for students. After more than four years of experience, we have had no problems concerning the model policy. We have never had a student abuse the privilege, embarrass the school district, or in any way misuse or exploit any speaking opportunities. We have had no complaints regarding the model policy or its implementation.*

*Based upon our excellent four+ year experience operating under the model policy, I can recommend adoption of the model policy by other school districts.”* Lee Edwards, Superintendent, Washington Community High School District, Washington, Illinois.

*“I’ve been the attorney and legal advisor for many of the major school districts in Texas (including Aldine I.S.D., Alief I.S.D., Alvin I.S.D., Anahuac I.S.D., A&M Consolidated I.S.D., Atlanta I.S.D., Austin I.S.D., Baytown I.S.D., Bryan I.S.D., Cleveland I.S.D., Cold Springs I.S.D., Conroe I.S.D., Crosby I.S.D., Cy-Fair I.S.D., Dickinson I.S.D., Fort Bend I.S.D., Friendswood I.S.D., Georgetown I.S.D., Hearne I.S.D., Henderson I.S.D., Houston I.S.D., Lubbock I.S.D., Madisonville I.S.D., Montgomery I.S.D., Nacogdoches I.S.D., New Caney I.S.D., Northwest Houston, Spring Branch I.S.D., Sulpher Springs I.S.D., Warren I.S.D., Wichita Falls I.S.D., and others, as well as school districts in Florida and Georgia). I am told that no other attorney has represented more Texas school districts than I have over my career. I have carefully analyzed the Texas Act and model policy and recommend adoption of the model policy by every school district in Texas. It is my opinion that this is the best piece of legislation for school districts that has been introduced in the past 50 years.”* Joe Reynolds, named one of 5 best lawyers over 50 years by the Texas State Bar, American College of Trial Lawyers, partner of Bracewell, Reynolds & Patterson (successor of Bracewell & Giuliani), founder of Reynolds, White, Allen & Cook, former Assistant Attorney General of Texas, 16-year member of Texas A&M Board of Regents.

*“I see no problem with these policies.”* Edward Piña, President of the San Antonio Chapter of the ACLU and Vice President of Legal Affairs for the ACLU of Texas. [Discussing model policy upon which the model policy contained in the School Children’s Religious Liberties Act is based].

*“The policy Coghlan suggests appears to be constitutional on its face.”* Schwartz & Eichelbaum, P.C., law firm. [Discussing model policy upon

which the model policy contained in the School Children's Religious Liberties Act is based].

*"I see nothing [in the model policy] that bothers me in any constitutionally-interested sense."* Mark Weldon Whitten, President of the Greater Houston Area Chapter of Americans United for Separation of Church and State. [Discussing model policy upon which the model policy contained in the School Children's Religious Liberties Act is based].

*"This is as close as I've seen anything yet to a solution...."* Shellie Hoffman, Director of Legal Services, Texas Association of School Boards, Texas Education News, Vol. 3, Issue 31. [Discussing model policy upon which the model policy contained in the School Children's Religious Liberties Act is based].

*"Perhaps if our school district had had these student speaker policies in 1997 and students knew that they were permitted to publicly pray for their school and classmates during the year, and had done so, the atmosphere would have been different and we wouldn't have had 9 students shot by 11<sup>th</sup> grader Luke Woodham setting off an unprecedented 18 month avalanche of massacres in America's public schools leaving 101 gun-downed by students. When you make schools religion-free zones, other things take its place."* Dr. William Dodson, Superintendent, Pearl Public School District, Pearl, Mississippi.

*"The First Amendment...does not convert our schools into religion-free zones...[and] does not require students to leave their religion at the schoolhouse door."* United States President William J. Clinton, speech at James Madison High School, Vienna, Virginia.