

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 936
Ways and Means

(Delegate Serafini, *et al.*)

Education - Public Schools - Student Speech on Religious Issues

This bill requires a local board of education to treat a student's voluntary expression of a religious viewpoint in the same manner the board treats expression of a secular viewpoint. The bill establishes a model policy; each local board has to adopt a policy that is substantially identical to the model policy. The Attorney General may bring an action against a local board for a violation of the bill.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: Any increase in the workload of the District Court can be handled with existing budgeted resources.

Local Effect: Requiring each local board of education to adopt and follow a policy that treats a student's voluntary expression of a religious viewpoint in the same manner the board treats expression of a secular viewpoint does not materially affect local budgets. Any increase in circuit court proceedings as a result of litigation arising from the bill can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: If the subject is otherwise permissible, a local board of education may not discriminate against a student based on a religious viewpoint.

Policy Governing Religious Expression in Public Schools

A local board of education is required to adopt a policy that includes the establishment of a limited public forum for student speakers at school events at which a student is to speak publicly. The public forum must not discriminate against a student's voluntary expression of a religious viewpoint, if any.

The policy must include a method, based on neutral criteria, for the selection of student speakers at school events and graduation ceremonies. The policy must ensure that a student speaker does not engage in obscene, vulgar, offensively lewd, or indecent speech or promote illegal drug use. A disclaimer, that the student's speech does not reflect the endorsement, sponsorship, position, or expression of the district, must be stated in writing, orally, or both at all graduation ceremonies and any other event in which a student speaks publicly, for as long as a need exists to dispel confusion over the district's nonsponsorship of the student's speech.

A local board of education must adopt and follow the model policy governing religious expression in public schools specified in the bill, or a policy that is substantially identical. When the board adopts the model policy, it is in compliance with the bill.

Student Religious Expression in School Assignments

Student expression on an otherwise permissible subject may not be excluded from the limited public forum because the subject is expressed from a religious viewpoint. A student may express beliefs about religion in homework, artwork, and other written and oral school assignments free from discrimination based on the religious content of the student's submissions. In addition, a student may not be penalized or rewarded on account of the religious content of assignments and must be judged by ordinary academic standards of substance and relevance.

Student Religious Groups

Students may organize prayer groups, religious clubs, "see you at the pole" gatherings, or other religious gatherings before, during, and after school hours to the same extent that students are permitted to organize other noncurricular student activities and groups. These religious groups must be given the same access to school facilities for assembling as is given to other noncurricular groups without discrimination based on the religious content of the student's expression. The groups must also be allowed to advertise or announce meetings to the same extent that student groups that meet for secular activities are allowed to advertise or announce meetings.

Current Law: The Maryland Constitution requires that nothing prohibit or require making reference to, belief in, reliance upon, or invoking the aid of God or a Supreme Being in school.

Principals and teachers in each public elementary and secondary school may require all students to be present and participate in opening exercises on each morning of a school day and to meditate silently for approximately one minute. During this period, a student or teacher may read the Holy Scripture or pray.

Local boards of education may permit the use of public school facilities for religious or other lawful purposes.

The Code of Maryland Regulations states that all students in Maryland's schools have the right to educational environments that are safe, appropriate for academic achievement, and free from any form of harassment regardless of race, ethnicity, region, religion, gender, sexual orientation, language, socioeconomic status, age, or disability.

Background: According to an Attorney General's opinion from 1984, a public high school may adopt a policy allowing free time, during which student groups may engage in student-initiated religious activity in any area open to general student use during that time, but the school must remain wholly uninvolved in that religious activity.

In addition, to assure that the school's role is in fact limited to a constitutionally acceptable level of passive accommodation of religion, the following safeguards are necessary:

- the space being used for any religious activity – that is, the cafeteria, school yard, and (in the school's discretion) vacant classrooms – must be available to all individual students and student groups for any lawful, nondisruptive purpose;
- the policy must eliminate any need for school authorities to grant or refuse permission for a religious activity in a particular place or at a particular time;
- no teacher or other staff member may supervise, monitor, or participate in any religious activity, although school personnel may monitor the general vicinity against disorder;
- neither religious activities nor meetings of religious groups may be announced through any medium of communications controlled by the school; and

- persons other than students may not be permitted to participate in a religious activity.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Department of Education, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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