

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 267 (Senator Salling, *et al.*)
Education, Health, and Environmental Affairs

Public Schools - Voluntary Nonsectarian Prayer at School-Sponsored Student
Events

This bill requires a local board of education to allow nonsectarian student-initiated voluntary prayer during mandatory and voluntary school-sponsored student events, including assemblies, athletic events, graduation and commencement ceremonies, and any other school-sponsored student event.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: None.

Local Effect: None. Local school boards can make any required changes to school policies using existing resources.

Small Business Effect: None.

Analysis

Bill Summary: The purpose of the bill is to protect the freedom of speech and the right to free exercise of religion guaranteed by the First Amendment of the U.S. Constitution.

The bill does not diminish a student's or an individual's right to free speech or right to the free exercise of religion, including prayer, at a school-sponsored event that is not listed in the bill.

The exercise of the rights guaranteed in the bill may not be construed as an action by a public school, a local school system, the State, an instrumentality of the State, or a political subdivision to support, approve, or sanction the contents of a nonsectarian student-initiated voluntary prayer; promote or establish a religion or religious belief; or use property in an unconstitutional manner.

Further, if any provision of the bill or its application is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this bill that can be given effect without the invalid provision or application.

Current Law: Section 7-104 of the Education Article permits principals and teachers in each public elementary and secondary school to require all students to (1) be present and participate in daily opening exercises and (2) meditate silently for approximately one minute. During this period, a student or teacher may read the holy scripture or pray. There are no other provisions in State law specifically addressing school prayer.

Background: The Supreme Court's most recent decision on school prayer, *Santa Fe Independent School District v. Doe* (2000), upheld that court's longstanding position that voluntary prayer in public arenas is protected by the U.S. Constitution. However, state involvement in the methods, modes, or content of an individual's prayer violates the Establishment Clause of the First Amendment. As recently as 2003, the U.S. Department of Education has attempted to clarify these principles by issuing guidelines for state and local departments of education. Also, as a condition of receiving federal funds, the U.S. Department of Education requires local school systems to certify to state education departments that its policies do not prevent or otherwise deny participation in voluntary prayer.

According to the guidance provided by the U.S. Department of Education, public school officials may not decide that prayer should be included in school-sponsored events. However, while the U.S. Constitution forbids public school officials from directing or favoring prayer, students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Additional guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools by the U.S. Department of Education from 2003 can be found on the department's [website](#).

Not all religious speech that takes place in a public school or at a school-sponsored event is governmental speech. According to *Santa Fe Independent School District v. Doe* (2000), "nothing in the Constitution ... prohibits any public school student from voluntarily praying at any time before, during, or after the school day." To that end, students may engage in prayer together under the same conditions they may engage in other conversations or speech.

The U.S. Department of Education gives the following guidance regarding the selection of speakers for assemblies and extracurricular activities or graduation: “[s]tudent speakers at student assemblies and extracurricular activities such as sporting events may not be selected on a basis that either favors or disfavors religious speech,” and “[s]chool officials may not mandate or organize prayer at graduation or select speakers for such events in a manner that favors religious speech such as prayer.” For both types of speakers, the guidance continues:

“Where student speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content. By contrast, where school officials determine or substantially control the content of what is expressed, such speech is attributable to the school and may not include prayer or other specifically religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker’s and not the school’s.”

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): U.S. Department of Education, Department of Legislative Services

Fiscal Note History: First Reader - February 2, 2016
kb/rhh

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