Religion in the Public Schools

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Legal Background

Several federal and state laws form the foundation that guides public school districts in navigating the complex area of religion in schools.

First Amendment

The First Amendment to the U.S. Constitution states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . . ." U.S. Const. amend. I. The First Amendment applies to school districts as political subdivisions of the state through the Fourteenth Amendment. *Engel v. Vitale*, 370 U.S. 421 (1962). Together, these laws protect private religious expression but prohibit government action to establish, advance, or coerce religion in the public schools.

Plaintiffs may sue the government for violations of the First Amendment through 42 U.S.C. § 1983 (Section 1983).

Establishment Clause

The First Amendment Establishment Clause, "Congress shall make no law respecting an establishment of religion . . . ," prohibits school districts and their employees from establishing religion. U.S. Const. amend. I. Schools must not advance, coerce, or endorse a particular religion or religion over non-religion. *Cnty. of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573 (1989). The U.S. Supreme Court has exercised special vigilance over compliance with the Establishment Clause in elementary and secondary schools because "families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family." *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).

Historically, courts have used different tests to determine whether a governmental entity has violated the Establishment Clause. The first test developed by the U.S. Supreme Court was referred to as the *Lemon* test from *Lemon v. Kurtzman*. The *Lemon* test applies three factors. To avoid a violation of the Establishment Clause, governmental action (1) must have a secular purpose, (2) must have a primary effect that neither advances nor inhibits religion, and (3) must not foster an excessive government entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602 (1971). In subsequent cases, the Court expanded on the *Lemon* test, holding that a school district must not persuade or compel a student to participate in a religious exercise or endorse religion in the public schools. *Lee v. Weisman*, 505 U.S. 577 (1992); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000).

In more recent cases, the Court declined to follow *Lemon*, replacing the endorsement test with other factors such as the history of longstanding monuments and practices. *See American Legion v. American Humanist Assoc.*, 139 S. Ct. 2067 (2019) (holding 32-foot-tall Christian cross on public land did not violate Establishment Clause due to longstanding history and significance); *also see Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811 (2014)(holding prayer by local clergy before city council meetings did not violate Establishment Clause because the practice comported with American tradition and did not coerce participation). In 2022, the Court decisively overturned *Lemon* in *Kennedy v. Bremerton School District*, a case involving an assistant high school football coach in Washington who successfully asserted a constitutional right to kneel and pray on the 50-yard line after football games. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (June 27, 2022).

Regardless of the test used, courts have consistently held that government action may not attempt to coerce a student to participate in a religious exercise. *Lee v. Weisman*, 505 U.S. 577 (1992).

For more information about how courts interpret the Establishment Clause in school district settings, see TASB Legal Services' Prayer at School Board Meetings.

Free Exercise Clause

The First Amendment Free Exercise Clause, "Congress shall make no law . . . prohibiting the free exercise [of religion]," prohibits districts and their employees from unduly burdening a person's free exercise of religion. U.S. Const. amend. I. The Free Exercise Clause prohibits the government from passing laws or establishing practices that specifically target adherents of particular faiths. *Emp. Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872 (1990).

In *Employment Division, Department of Human Resources of Oregon v. Smith*, a case involving the application of a controlled substances law to Native Americans who engaged in the ritualistic use of peyote, the U.S. Supreme Court held that a neutral, generally applicable government law or practice will withstand a federal Free Exercise Clause challenge if that law or practice is reasonably related to a legitimate state interest. In coming to its conclusion that the Native Americans were not entitled to an exemption based on their religious beliefs, the Court distinguished prior cases in which the Court had granted exemptions from state regulations by stating that those cases involved other constitutional claims, such as free speech claims, in addition to free exercise claims. The Court referred to the claims as *hybrid* claims and implied that hybrid claims are subject to a higher standard of review. *Emp. Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872 (1990).

After *Smith*, the District Court for the Eastern District of Texas applied the "highest level of scrutiny" to parents' claims alleging that a school district's hair length policy infringed upon several fundamental rights, including the free exercise of religion, and undermined the ability of the parents' and students' tribe to direct the students' religious upbringing. *Al. & Coushatta Tribes of Tex. v. Trs. of Big Sandy Indep. Sch. Dist.*, 817 F. Supp. 1319 (E.D. Tex. 1993) (mem.).

On appeal, the Fifth Circuit Court of Appeals declined to comment on the district court's interpretation of *Smith* and the hybrid rights claims, instead remanding the case in light of the federal Religious Freedom Restoration Act, which was later ruled unconstitutional. *Al. & Coushatta Tribes of Tex. v. Trs. of Big Sandy Indep. Sch. Dist.*, 20 F.3d 469 (5th Cir. 1994) (per curiam).

Subsequent Fifth Circuit cases have not clarified the level of scrutiny applicable to free exercise hybrid rights cases. In *Littlefield v. Forney Independent School District*, the Fifth Circuit rejected plaintiffs' argument that the court should apply a strict scrutiny analysis to their challenge of the district's uniform policy; the court instead applied a rational basis test to determine whether the district had violated parents' fundamental right to direct their children's upbringing. *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275 (5th Cir. 2001). The court specifically declined to consider the plaintiffs' hybrid rights claim, which had been rejected by the district court.

Governmental Neutrality

The U.S. Supreme Court has opined that together the Establishment Clause and the Free Exercise Clause dictate that the role of government should be neutral toward religion. For example, after the State of Missouri's Department of Natural Resources excluded a church preschool from a grant program designed to help qualified nonprofit organizations purchase and install playground surfaces made from recycled tires, Trinity Lutheran Church sued in federal court, alleging that the Department's policy violated the Free Exercise Clause of the First Amendment. The federal district court and the Eighth Circuit both upheld the Department's decision based on a state constitutional provision prohibiting the use of public funds for religious purposes. The U.S. Supreme Court overturned the lower court's decision. Writing for the majority, Chief Justice Roberts explained that a governmental policy places a penalty on the free exercise of religion when it requires a member of a religion to choose between religious beliefs and receiving a public benefit. Since the Department's policy penalized the free exercise of religion, the Court applied the most rigorous scrutiny to the policy, according to which only a state interest of "the highest order" could justify the policy. According to the Court, the Department's interest in maintaining the antiestablishment principles of the state constitution was not compelling enough to justify the policy. Therefore, the Court held that denying the grant to the Trinity Lutheran Church violated the Free Exercise Clause. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017).

The U.S. Supreme Court revisited the Free Exercise Clause in 2018. After a bakery owner expressed a religious objection to providing a wedding cake for the ceremony of a same-sex couple, the couple filed a complaint under the Colorado Anti-Discrimination Act (CADA), which prohibits denying the goods or services of a place of business to an individual on the basis of sexual orientation or other protected status. The Colorado Civil Rights Commission determined that the bakery owner had violated CADA, and Colorado state courts affirmed. The bakery owner appealed, arguing that applying CADA to compel him to make wedding cakes for same-sex couples would violate his First Amendment rights to free speech and free exercise of religion. The U.S. Supreme Court positioned the case as a conflict between Colorado's nondiscrimination statute and the fundamental rights protected by the First Amendment. The

Free Exercise Clause requires a governmental entity to act with neutrality towards an individual's sincerely held religious beliefs. A majority of the justices held that the Commission failed to meet this standard. Stating that the Free Exercise Clause prohibits even "subtle departures from neutrality" on religious matters, Justice Kennedy wrote that the Commission's treatment of Phillips was inconsistent with the First Amendment's requirement that laws be applied neutrally with respect to religion. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018).

Parental Rights

Parents have a fundamental interest in being able to opt out of the public school system and educate their children in a private setting. Once parents enroll their children in the state's system of public schools, however, parents and students must generally accept the state's decisions regarding curriculum and operations.

> Providing public schools ranks at the very apex of the function of a State. Yet even this paramount responsibility [has been] made to yield to the right of parents to provide an equivalent education in a privately operated system . . . . [T]he values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society. Thus, a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children so long as they . . . 'prepare (them) for additional obligations.'
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> *Wi. v. Yoder*, 406 U.S. 205, 213-4 (1972) (citations omitted) (upholding a free exercise objection to compulsory high school education by Amish students).

In *Wisconsin v. Yoder*, the U. S. Supreme Court held that governmental actions that substantially burden a religious practice must be justified by a compelling governmental interest. "A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972).

In a more recent parental rights case, Karen Jo Barrow claimed she was denied a public school position because her children attended private school. Barrow argued that the Greenville ISD superintendent violated her First Amendment right and her family privacy right to select a private-school education for her children; her due process right to direct the upbringing of her children; and her free exercise right to provide a religious education for her children. The Fifth Circuit said,

> We will consider these three claims together: at bottom all aver that Barrow, a public-school employee, has a constitutionally-protected right to select a private-school education for her children. Our inquiry at this stage is limited to the question whether there is a recognized constitutional right and not whether that right is grounded in the First Amendment, the Fourteenth Amendment, or both.
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> *Barrow v. Greenville Indep. Sch. Dist.*, 332 F.3d 844, 847 (5th Cir. 2003).

On remand, the district court said that the Fifth Circuit did not view this as a hybrid rights claim; instead, according to the district court, the Fifth Circuit denied qualified immunity based on a parental rights claim "with two constitutional origins." *Barrow v. Greenville Indep. Sch. Dist.*, No. 3:00-CV-0913-D, 2005 WL 1867292 (N.D. Tex. Aug. 5, 2005) (mem.). After trial, a jury rejected Barrow's religious rights claim but found in favor of her on her parental rights claim. The superintendent appealed, and the Fifth Circuit again refused to identify the constitutional right violated or the level of scrutiny it should apply to the alleged violation; rather, the Fifth Circuit held that the superintendent had to show that Barrow's decision to place her children in private school materially and substantially interfered with the operation or effectiveness of the school's educational program. As the superintendent had failed to show that, the Fifth Circuit did not reach the question of which of Barrow's rights the superintendent had violated or what level of scrutiny to apply to the alleged violation. *Barrow v. Greenville Indep. Sch. Dist.*, No. 06-10123, 2007 WL 3085028 (5th Cir. Oct. 23, 2007).

For more information on the intersection between parental rights and instruction, see TASB Legal Services' Teaching about Religion in the Public Schools.

Free Speech Clause

The First Amendment also prohibits interference with an individual's freedom of speech under the Free Speech Clause: "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. The U.S. Supreme Court has held that private religious speech is protected under the Free Speech Clause. *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753 (1995). The free speech protections apply to both verbal speech and expressive conduct. *Spence v. Washington*, 418 U.S. 405 (1974).

Forum Analysis

The First Amendment free speech protections do not apply in all governmental settings simply because they are owned or controlled by the government. *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788 (1985); *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37 (1983). The degree to which the Free Speech Clause applies to a person's speech depends on the forum created by the government.

Courts have defined four different types of forums: traditional, designated, limited, and non-public. *Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330 (5th Cir. 2001) (per curiam); *also see Freedom from Religion Found. v. Abbott*, 955 F.3d 417 (5th Cir. 2020) (affirming forum analysis in *Chiu*). A *traditional public forum* includes locations, such as sidewalks and parks, where members of the public have historically been permitted to gather and speak on any topic. *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788 (1985); *see, e.g., Brister v. Faulkner*, 214 F.3d 675 (2000) (concluding that the sidewalk area between a university event center and city street was a traditional public forum because it was indistinguishable from city property).

School district property is almost never considered a traditional public forum. Even if it were, the district could exclude particular content if the district asserts a compelling governmental interest that is narrowly tailored to address that interest, a standard referred to as the *strict scrutiny* standard. The school district can also enforce viewpoint-neutral time, place, and manner restrictions to meet a compelling governmental interest if a sufficient number of alternative communication channels are available. *Perry Educ. Ass'n v. Perry Loc. Educator Ass'n*, 460 U.S. 37 (1983).

A *designated public forum* is a forum that a school district intentionally opens to the general public to discuss matters of public concern. *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788 (1985). Like in the case of a traditional public forum, once designated, a school district may enforce reasonable time, place, and manner restrictions. *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788 (1985). Any content limitations are subject to the strict scrutiny standard. *Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330 (5th Cir. 2001) (per curiam). For example, when the City of Boston allowed members of the public to hold flag-raising ceremonies in a plaza near the city hall, the U.S. Supreme Court held that the City could not restrict the raising of a Christian flag because of religion. *Shurtleff v. City of Boston*, 142 S. Ct. 1583 (2022).

A *limited public forum* is a forum that a school district opens to a particular group of speakers or for discussion regarding a particular topic. *Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330 (5th Cir. 2001) (per curiam). Within a limited public forum, limits on expression must be viewpoint-neutral and reasonable in light of the purpose of the forum. The government may impose reasonable time, place, and manner restrictions, as long as these restrictions do not relate to the content of the expression. *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788 (1985).

To distinguish between a designated public forum and a limited public forum, courts consider two factors: (1) the intent of the school district regarding the forum, and (2) the forum's nature and compatibility with particular speech. The distinction is important because it determines whether the strict scrutiny or reasonableness standard is applied to a limitation on speech imposed by the school district. *Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330 (5th Cir.2001) (per curiam). Note that a school district may establish a designated public forum with respect to some speakers and types of speech and a limited public forum for others. *Justice for All v. Faulkner*, 410 F.3d 760 (5th Cir. 2005).

If a school district has not opened a public forum, it remains a *nonpublic forum*. Although limits on expression must be reasonable and viewpoint neutral even within a nonpublic forum, a school district will have greater discretion to control the content of speech within such a forum. *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788 (1985); *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37 (1983).

Student Speech

Students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Yet, "the First Amendment rights of students in the public schools are not automatically coextensive with the rights of adults in other settings, and must be applied in light of the special characteristics of the school environment." *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988).

Regulation of student expression is subject to different standards of scrutiny depending on the substance of the speech, the regulation's purpose, and the way in which the message is conveyed. *Morgan v. Plano Indep. Sch. Dist.*, 589 F.3d 740 (5th Cir. 2009).

Districts may restrict speech that bears the imprimatur of the school if those restrictions are reasonably related to legitimate pedagogical concerns, as described by the U.S. Supreme Court in *Hazelwood School District v. Kuhlmeier*. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988). Regulations that target the content or viewpoint of a student's private speech are subject to the substantial disruption standard set by the U.S. Supreme Court in *Tinker v. Des Moines Independent Community School District*. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.,* 393 U.S. 503 (1969). The time, place, and manner standard described by the Court in *United States v. O'Brien* applies to content and viewpoint neutral restrictions on private student speech. *United States v. O'Brien*, 391 U.S. 367 (1968); *Morgan v. Plano Indep. Sch. Dist.*, 589 F.3d 740 (5th Cir. 2009).

For more information on student issues, see TASB Legal Services' Student Religious Expression and Student Speakers at School Events.

Employee Speech

Employee speech is even more restricted than student speech. When employees of governmental entities are acting in their professional capacities, they do not have the same breadth of free speech rights that they do as everyday citizens. *Garcetti v. Ceballos*, 547 U.S. 410 (2006); *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563 (1968). However, public school employees may not coerce students to join in their religious expression or treat students differently because of religion. *See Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (June 27, 2022) (finding football coach had First Amendment right to pray privately on 50-yard line after football games where students were not coerced or required to join).

For more information on employment issues, see TASB Legal Services' Employee Religious Expression.

Fourteenth Amendment

The Fourteenth Amendment of the U.S. Constitution prohibits governmental entities from depriving individuals of their rights to life, liberty, or property without due process of law. U.S. Const. amend XIV. Plaintiffs may sue the government for violations of the Fourteenth Amendment through Section 1983. 42 U.S.C. § 1983.

The Fourteenth Amendment Due Process Clause prohibits school districts from depriving parents of their fundamental liberty right to dictate their children's care, custody, and control. A parent's rights are not absolute, however, and can be subject to reasonable regulation by school districts. Any regulation imposed by the district, such as a dress code regulation, must be rationally related to the district's fundamental educational mission. *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275 (5th Cir. 2001).

The Fourteenth Amendment also guarantees individuals equal protection of the law. U.S. Const. amend XIV. School districts are prohibited from purposefully treating particular individuals differently than other similarly situated individuals based on their religious beliefs. *Doe v. Cape Henlopen Sch. Dist.*, 759 F. Supp. 2d 522 (D. Del. 2011) (mem.).

Federal Statutes

Title IV of the Civil Rights Act of 1964: Title IV of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000c-2000c-9, grants the U.S. Attorney General the power to address discrimination on the basis of race, religion, and national origin in public schools.

Title VI of the Civil Rights Act of 1964: Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-7, prohibits discrimination on the basis of race, color, or national origin in any educational program or activity that receives federal funds. Though Title VI does not expressly prohibit discrimination based solely on religion, the U.S. Department of Education Office for Civil Rights interprets the statute to apply to situations where a religious group is the target of discrimination based on the group's actual or perceived ancestry or ethnic characteristics or actual or perceived citizenship or residency in a country with a distinct religious identity. U.S. Dep't of Educ., Dear Colleague Letter (Dec. 31, 2015).

Title VII of the Civil Rights Act of 1964: Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17, prohibits discrimination in employment: "It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion . . . ." 42 U.S.C. § 2000e-2.

For purposes of Title VII, the term *religion* includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business. 42 U.S.C. § 2000e(j).

Under Title VII, an employee or prospective employee can establish a prima facie case of religious accommodation discrimination by showing that (1) he or she has a bona fide religious belief that conflicts with an employment requirement; (2) he or she informed the employer of the belief; and (3) he or she suffered an adverse consequence for failure to comply with the employment requirement. If an employer offers the individual a reasonable accommodation, the employer has complied with Title VII; the employer need not show that each of the individual's suggested accommodations would result in undue hardship. *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60 (1986).

Equal Access Act: The Equal Access Act, 20 U.S.C. § 4071, requires that districts permit student clubs of a religious nature to meet on school property, subject to the same rules and privileges as other non-curricular student groups. In secondary schools, student-organized, student-led groups meet pursuant to school district policies established under the Act. 20 U.S.C. § 4071. Employees may be present at student religious meetings only in a non-participatory capacity. 20 U.S.C. § 4071(c)(3). In both elementary and secondary schools, community groups, including adult-led groups attended by students, such as the Good News Club or the Boy Scouts, meet on campus pursuant to school district policy.

Federal Guidance

U.S. Department of Education (DOE) Guidance: The DOE's Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools provides guidance regarding religious expression in schools.

To receive funds under the federal Elementary and Secondary Education Act local school districts must certify that their local policies do not prevent or deny participation in constitutionally protected prayer as set forth in related DOE guidance. U.S. DOE, Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools.

U.S. Equal Employment Opportunity Commission (EEOC) Compliance Manual: The EEOC Compliance Manual on Religious Discrimination provides guidance on handling employee complaints of religious discrimination.

Texas Law

Freedom of Worship Clause: The Texas Constitution Freedom of Worship Clause, Texas Constitution article I, section 6, offers protections similar to those offered by the First Amendment religious liberty clauses. The Freedom of Worship Clause forbids the preference of

one religion over another and offers protections for individual religious expression. Tex. Const. art. I, § 6. Under this provision, if a litigant shows that the exercise of his religious beliefs was substantially burdened by a school-imposed regulation or requirement, the district will be required to show a compelling state interest behind the regulation and the lack of a less restrictive, alternative means of meeting that interest. Some state appellate courts have observed that the Texas Constitution grants greater religious freedom than is provided by the United States Constitution. *Howell v. State*, 723 S.W.2d 755 (Tex. App.—Texarkana 1986, no writ). No court's decision appears to turn on the distinction, however, and the Texas Supreme Court has more recently assumed without deciding that the state and federal free exercise guarantees are coextensive. *Tilton v. Marshall*, 925 S.W.2d 672 (Tex. 1996).

Texas Equal Rights Amendment: The Texas Equal Rights Amendment, Texas Constitution article I, section 3a, prohibits discrimination on the basis of religion. Tex. Const. art. I, § 3a.

Religious Freedom Restoration Act: The Texas Religious Freedom Restoration Act (RFRA), Texas Civil Practice & Remedies Code chapter 110, prohibits a government agency from substantially burdening a person's free exercise of religion unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. Tex. Civ. Prac. & Rem. Code §§ 110.003, .009.

For purposes of RFRA, *free exercise of religion* means "an act or refusal to act that is substantially motivated by sincere religious belief. In determining whether an act or refusal to act is substantially motivated by sincere religious belief [. . .], it is not necessary to determine that the act or refusal to act is motivated by a central part or central requirement of the person's sincere religious belief." Tex. Civ. Prac. & Rem. Code § 110.001(a)(1).

In determining whether an interest is a compelling governmental interest under RFRA, a court shall give weight to the interpretation of *compelling interest* found in federal case law relating to the Free Exercise Clause. Tex. Civ. Prac. & Rem. Code § 110.001(b).

Possible remedies under RFRA include declaratory relief, injunctive relief, compensatory damages for pecuniary and nonpecuniary losses up to $10,000, and reasonable attorney's fees, court costs, and other expenses incurred in bringing the action. In most cases, a person may not file suit under RFRA unless the person has given the governmental agency written notice 60 days before bringing the action. Tex. Civ. Prac. & Rem. Code §§ 110.005-.006.

When analyzing whether a school rule may impose upon a student's religious practice, at least one court in Texas has applied RFRA. The Fifth Circuit Court of Appeals held that a Texas school district violated RFRA when the district required a Native American student to wear his long hair either in a bun or tuck it into his shirt while at school. The court held that requiring the Native American student to either wear his hair in a bun or tuck it into his shirt was a substantial burden on his free exercise of religion, and the school district's interests in teaching

hygiene, preventing disruptions, avoiding safety hazards, instilling discipline, asserting authority, and uniformity were not compelling interests that justified such a burden. *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248 (5th Cir. 2010).

Texas Commission on Human Rights Act: The Texas Commission on Human Rights Act, Texas Labor Code chapter 21, subchapter B, prohibits discrimination in employment based on religion. The protections of this law are comparable to those of Title VII. Tex. Lab. Code § 21.051; *Grant v. Joe Myers Toyota, Inc.*, 11 S.W.3d 419 (Tex. App.—Houston [14th Dist.] 2000, no pet).

Texas Civil Practice and Remedies Code chapter 106: Texas Civil Practice and Remedies Code chapter 106 prohibits discrimination on the basis of religion. Tex. Civ. Prac. & Rem. Code § 106.001(a).

Prohibited adverse actions by government: The Texas Government Code prohibits a governmental entity, including a school district, from taking adverse action against any person based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization. Tex. Gov't Code § 2400.002.

Texas Education Code provisions: In addition to the general prohibitions on religious discrimination, Texas law also includes several statutes that address specific issues relating to religious expression, such as excused absences to observe religious holy days, prayer led by student speakers, Bible courses, and exceptions to state immunization requirements. Tex. Educ. Code §§ 11.162 (school uniform exemption), 21.406 (educator absence), 25.082 (Pledge of Allegiance and moment of silence exemptions), .087 (religious holy days), .151-.153 (Religious Viewpoint Antidiscrimination Act), .901 (voluntary prayer), 26.010 (temporary removal), 28.011 (Bible course), 38.001 (immunization exemption); Tex. Health & Safety Code §§ 36.005, 37.002, 95.003 (exemptions from certain medical assessments).

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