



Key Takeaways—Education and School Board Law Webinar Vol. 7 (Religious Freedom in Public Schools)

The following are key takeaways from CALN’s Education and School Board Law webinar on June 27, 2025. The session covered free speech and religious liberty in public schools as protected by the First Amendment, *Kennedy v. Bremerton School District* (2022), *Mahmoud v. Taylor* (2025), Executive Order 13798 (“Promoting Free Speech and Religious Liberty”), and invocations at board meetings.

Please note: These summaries can provide you with helpful information, but they do not and are not intended to constitute legal advice or create an attorney-client relationship. Instead, they are for general informational purposes only. You are encouraged to contact your board attorney, or to hire a personal attorney, to obtain advice with respect to legal matters.

The First Amendment

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The narrative that the Constitution requires the “separation of church and state” is

false. *Kennedy v. Bremerton School District* (2022)

Question presented: Is a public school employee’s prayer following school sports activities protected religious exercise and speech, or can the public school employer prohibit it to avoid violating the Establishment Clause?

The clauses of the First Amendment are included together for a reason; they are meant to be complementary and taken together. Writing for the Supreme Court, Justice Gorsuch stated that learning how to tolerate speech or prayer of all kinds is “part of learning how to live in a pluralistic society,” and a trait of character essential to “a tolerant citizenry.” Coach Kennedy prayed following the end of the game, which was a time in which he did not have responsibilities for the team. Under those facts, he was engaging in religious exercise and free speech, and the school district was not engaging in the establishment of religion. His activities were, therefore, protected by the First Amendment.

Remember: tolerance for religious exercise and speech does not equate to the establishment of religion, and

religious exercise and speech should not be treated differently than secular exercise and speech.

Mahmoud v. Taylor (2025)

Montgomery County School District in Maryland is the 15th largest school district in the country. The board of education included nine LGBTQ+ books in a mandatory elementary school curriculum, without giving parents notice or the opportunity to opt their children out. Parents of various religions brought the case, arguing that:

- 1) the school board burdened their free exercise of religion,
- 2) the board's actions interfered with their right to direct the religious upbringing of their children,
- and 3) the board created a double standard by having an opt-out policy for other curriculum elements

Question presented: Do public schools burden parents' religious exercise when they compel elementary school children to participate in instruction on gender ideology and sexuality against their parents' religious convictions and without notice or opportunity to opt out?

This case was just decided on June 27, 2025, by a vote of 6-3 in favor of the parents. Writing for the Supreme Court, Justice Alito stated that the Court has long respected parents' right to direct the religious upbringing of their children, which was substantially interfered with in this case. The Court held that there was an objective danger to the free exercise of religion that the First Amendment was designed to prevent. Thus, the parents demonstrated a likelihood of prevailing in the case, and the school district was preliminarily enjoined from continuing to prohibit parents from opting their children out on religious grounds.

Helpful Considerations for School Board Members

- Reject the false narrative that the Constitution requires “separation of church and state.” • Embrace religious exercise and speech by school students and staff, but refrain from promoting or leading religious activities.
- Respect parental rights to direct the religious upbringing of their children by including within board policy a right to prior notice and to opt out on religious grounds for lessons and assignments on gender ideology and sexuality, especially for elementary school students.
- You can conduct an invocation at the start of board meetings if you choose, but first adopt a board policy that ensures the invocation is legally compliant, and then hold the superintendent accountable to implement that policy.