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Appendix: Proposed Guidelines For Student Speech And Religious Observance In Public Schools

SECTION 1. CERTAIN DEFINITIONS

a. *Non-Instructional Period* — includes the time before the official start of the school day, the time immediately after the end of the school day, the time between classes, the lunch periods, and any period set aside for club meetings during the day.

b. *Student-Initiated* — means a speech or prayer selected or composed by a student enrolled in a public school. A speech or prayer is not student-initiated unless its selection, composition, or use is proposed by a student(s).

c. *Material Disruption* — activity that substantially interferes with the work or operation of the school, or which interrupts school activities, or involves substantial disorder, invasion, or impingement of rights of others. There must be specific facts upon which a school official can rely that would reasonably lead the official to forecast such substantial disruption or interference. Mere undifferentiated fear or apprehension of disturbance is not enough; school administrators must affirmatively show substantial facts reasonably supporting a forecast of likely disruption. Speculation about substantial disruption is insufficient grounds to proscribe student-initiated speech.

SECTION 2. PERSONS AFFECTED

Any student enrolled in a public elementary, middle or secondary school, college or university, located in this state, may engage in communicative activities on public school property or other property where school-related activities otherwise occur.

SECTION 3. SCOPE OF RIGHTS

This section provides for the exercise of rights to freedom of speech and the free exercise of religion, and informs students of the conditions which

this state's legislature deems essential to prevent interference with the obligation of public schools to provide educational services:

1. Public school students have constitutional rights and statutory rights to engage in expressive activity in school facilities, subject to reasonable boundaries outlined by these Guidelines. These boundaries include: (1) reasonable regulations of time, place and manner of speech; and (2) restrictions on content of speech which is unprotected by the Federal and State Constitutions, as more fully identified in Section 3(d) of these Guidelines.

a. *Speech.* Student speech consists of various communicative activities including spoken communication, singing, teaching, praying, written communication, distribution of pamphlets, the display of signs, photographs, objects, and pictures.

b. *Time and Place of Speech.* Personal intercommunication among students is an important part of the educational process. The right of expression is not limited to the classroom. Student speech, therefore, shall be permitted when a student is on campus during authorized hours: when he is in the cafeteria, on the playing field, during student sporting events, student club meetings, graduation commencement ceremonies, and any other place on campus the student is authorized to be.

c. *Manner of Speech.* Students may engage in communicative activities individually or collectively with other students. Students may communicate in silence or aloud. No person shall be compelled to engage in any speech. Student speech may be restricted only if the speech causes material disruption of normal school activities.

d. *Content.* Student speech shall not be restricted or denied because of its religious, political or philosophical content. Students, however, must realize that rights go hand in hand with responsibilities. Therefore, they should refrain from using speech to communicate vulgar, lewd, or indecent words that a reasonable person would deem improper for presentation to minors, because of sexual connotations or because profane language is not permitted on school property.

None of the above permissible restrictions on student speech or equal access shall be used as a pretext to deny in advance a student's right to engage in voluntary, student-initiated prayer or to alter or amend the content of any prayer. Furthermore, no rights or privileges otherwise extended to all individuals of the student body shall be denied to students wishing to exercise those rights and privileges in tandem with voluntary, student-initiated communicative activities.

2. Equal access for non-curricular student clubs and meetings is a form of protected speech and assembly. Students who wish to organize and conduct religious, political or philosophical clubs or prayer groups in public schools may do so under the Equal Access Act, 20 U.S.C §§ 4071-4074. Equal access includes all rights, privileges and benefits extended to other non-curricular student groups. Foregoing federal funds does not eliminate equal access rights as they are further protected by the United States Constitution, amend I, the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb., and state law.

a. Student meetings may not be denied on the basis of the religious, political, philosophical, or other content of the speech at such meetings.

b. The school must uniformly provide that the meeting is voluntary and student-initiated; there is no official sponsorship of the meeting; a faculty/staff member is present in a non-participatory capacity only; outside persons may address the clubs but may not lead the clubs, or attend them regularly.

c. Nothing contained in these guidelines shall be construed to allow clubs to form or meet which by their nature are deemed to be destructive to school operations. The limitations expressed here, however, shall not be construed to diminish the right of any student groups to maintain the religious, political, or philosophical purpose which the group was assembled. Thus, each club constitution and corresponding bylaws may provide for specific qualification for the officers of the club.

d. The facilities, resources and other rights and privileges of the school where the student club meets shall be available to student groups on the same basis that they are made available to other clubs.

e. Nothing in this section shall be interpreted to deny any other rights and privileges to students or persons protected by the First Amendment to the United States Constitution, the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb., or state law on public property or other property where school-related activities validly occur.

3. Students who violate either reasonable time, place, and manner regulations or the prohibitions of lewd and vulgar content guidelines may be subject to disciplinary action. If a student is disciplined for violation of this guideline, the student may appeal the decision in accord with the applicable student disciplinary procedures currently in effect.

4. Graduation commencement speeches containing a religious, political, philosophical, or other message, including voluntary, student-initiated prayer, are permitted provided that no school official partakes in sponsoring the religious message by choosing or constructing the speech or prayer or otherwise endorsing the religious message of the

student speaker. A student who selects and/or drafts and/or recites a religious speech or prayer personally or with other students, does so in a voluntary, student-initiated manner if accomplished without assistance from school staff. Student speakers may be chosen by faculty members so long as the content of the student's speech is not a criterion.

5. Holidays and traditions having a religious and secular basis may be observed in public school, including the classroom. Official recognition of religious holidays and traditions is permitted only in an objective manner. Therefore:

a. The historical and contemporary values and the origin of religious holidays may be explained in an unbiased and objective manner without sectarian indoctrination.

b. Music, art, literature and drama having religious themes are permitted as part of the curriculum for school-sponsored activities and programs if presented in an objective manner and as a traditional part of the cultural heritage of the particular holiday.

c. The presentation of symbols associated with a religion—Star of David, creche, cross, menorah, crescent, or other religious symbol—is permitted as a teaching aid when displayed as an example of the cultural religious heritage of the holiday and which use is temporary. Religious symbols displayed during a holiday or holidays must be accompanied by symbols representing the secular aspect of the holiday to avoid an endorsement of the holiday's religious message.

d. This section shall not be construed to limit the celebration or expression of purely religious meaning of holidays through student-initiated speech occurring during non-instructional time.

6. Students have the right to be excused from the school for the observation of religious ceremonies during normal instructional time. A student will only be permitted to do so, however, with the express written consent of his parent(s) or legal guardian(s). School districts must provide student leave to accommodate religious ceremonial functions, whether individually or collectively.

7. Religion may be an instructional topic only when taught in an entirely objective manner. An education without some instruction about religion and religious customs would be incomplete. The distinction between teaching about religion and inculcation of religion must be rigidly observed by public school staff. Therefore:

a. The inclusion of religious literature, music, drama, and the arts is permitted in the curriculum and in school activities provided it is

intrinsic to the learning experience in the various fields of study and is presented objectively.

b. Recognition of religious themes in the arts, literature, and history should be only as extensive as necessary for a balanced and comprehensive study of these areas. These studies should be presented objectively and never to inculcate.

c. Student-initiated responses to questions or assignments which reflect student beliefs or non-beliefs about a religious theme will be accommodated. Student-initiated responses to questions or in assignments may be expressed through compositions, photographs, drawings and paintings, dance, music, speech, and debate.

