

Office of Superintendent of Schools
Board Meeting of January 13, 1999

December 16, 1998

Office of School Board Attorney
Phyllis O. Douglas, Board Attorney

**SUBJECT: PROPOSED PROMULGATION OF NEW BOARD RULE: FINAL READING
6GX13- 6A-1.272, RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS**

The School Board of Miami-Dade County, Florida, announced on December 9, 1998, its intention to promulgate School Board Rule 6Gx13- 6A-1.272, Religious Expression in Public Schools, at the meeting of January 13, 1999.

The Notice of Intended Action was published in the *Miami Daily Business Review* on December 14, 1998 posted in various places for public information, and mailed to various organizations representing persons affected by the new rule and to individuals requesting notification.

The time to request a hearing or protest the adoption of this new rule has elapsed.

In accordance with the provisions of the Administrative Procedure Act, this new rule is presented to The School Board of Miami-Dade County, Florida, for adoption and authorization to file the rule in the official records of The School Board of Miami-Dade County, Florida.

Attached are the Notice of Intended Action and the proposed new rule.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, adopt new Board Rule 6GX13- 6A-1.272, Religious Expression in Public Schools, and authorize the Superintendent to file the rule with The School Board of Miami-Dade County, Florida, to be effective January 13, 1999.

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NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on December 9, 1998 its intention to promulgate new Board Rule 6Gx13- 6A-1.272, Religious Expression in Public Schools, at its meeting of January 13, 1999.

PURPOSE AND EFFECT: To adopt as part of the School Board Rules, the United States Department of Education's recommended guidelines entitled "Religious Expression in Public Schools."

SUMMARY: To promulgate new Board Rule 6Gx13- 6A-1.272, Religious Expression in Public Schools.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 230.22(2); 230.23(17); 230.23005(6); and 232.0225, F. S. (1998)

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 230.22(1); 230.23005(6); and 233.062, F. S. (1998)

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING OF January 13, 1999, which begins at 1:00 p.m. in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. Persons requesting such a hearing, or who wish to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by § 120.541(1), Fla. Stat., must do so in writing by January 4, 1999, to the Superintendent of Schools, Room 912, at the same address.

ANY PERSON WHO DECIDES TO APPEAL THE DECISION made by The School Board of Miami-Dade County, Florida, with respect to this action will need to ensure the preparation of a verbatim record of the proceedings, including the testimony and evidence upon which the appeal is to be based. (Section 286.0105, Fla. Stat.)

A COPY OF THE PROPOSED BOARD RULE is available for inspection and copying at cost by the public in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

Originator: Mr. Luis M. Garcia
Supervisor: Ms. Phyllis O. Douglas
Date: November 24, 1998

General Statement**RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS**

The following guidelines are submitted in order to eliminate the confusion that often surrounds the issue of religious expression in public schools. These guidelines are based on those promulgated by the Secretary of the United States Department of Education in August of 1995 and revised in May of 1997.

In developing these guidelines, the Secretary drew upon a document issued by numerous legal and religious organizations entitled "Religion in the Public Schools: A Joint Statement of Current Law." This Rule incorporates appropriate sections of this "Joint Statement." In addition to these guidelines, school officials, teachers, students, and parents are encouraged to review the aforementioned "Joint Statement" when confronted with issues concerning religion in public schools. School Board Rules 6Gx13- 6A-1.27 (*Nonacademic Activities--Bible Reading*), 6Gx13- 1D-1.012 (*Equal Access--Availability of Secondary School Facilities to Students for Meetings*), and relevant portions of the document entitled *Procedures for Promoting and Maintaining a Safe Learning Environment*, should also be consulted.

The following guidelines set forth a statement of principles addressing the extent to which religious expression and activity are permitted in the public schools and are adopted herein in an effort to assist school officials, teachers, students, and parents on this issue consistent with constitutional requirements.

- I. **Student prayer and religious discussion:** The Establishment Clause of the First Amendment does not prohibit purely private religious speech by students. Students therefore have the same right to engage in individual or group prayer and religious discussion during the school day as they do to engage in other comparable activity. For example, students may read their Bibles or other scriptures, say grace before meals, and pray before tests to the same extent they may engage in comparable nondisruptive activities. Local school authorities possess substantial discretion to impose rules of order and other pedagogical restrictions on student activities, but they may not structure or administer such rules to discriminate against religious activity or speech.

Generally, students may pray in a nondisruptive manner when not engaged in school activities or instruction, and subject to the rules that normally pertain in the applicable setting. Specifically, students in informal settings, such as cafeterias and hallways, may pray and

discuss their religious views with each other, subject to the same rules of order as apply to other student activities and speech. Students may also speak to, and attempt to persuade, their peers about religious topics just as they do with regard to political topics. School officials, however should intercede to stop student speech that constitutes harassment aimed at a student or a group of students.

Students may also participate in before or after school events with religious content, such as "see you at the flag pole" gatherings, on the same terms as they may participate in other noncurriculum activities on school premises. School officials may neither discourage nor encourage participation in such an event.

The right to engage in voluntary prayer or religious discussion free from discrimination does not include the right to have a captive audience listen, or to compel other students to participate. Teachers and school administrators should ensure that no student is in any way coerced to participate in religious activity.

- II. **Graduation prayer and baccalaureates:** Under current Supreme Court decisions, school officials may not mandate or organize prayer at graduation, nor organize religious baccalaureate ceremonies. If a school generally opens its facilities to private groups, it must make its facilities available on the same terms to organizers of privately sponsored religious baccalaureate services. A school may not extend preferential treatment to baccalaureate ceremonies and may in some instances be obliged to disclaim official endorsement of such ceremonies.
- III. **Official neutrality regarding religious activity:** Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the establishment clause from soliciting or encouraging religious activity, and from participating in such activity with students. Teachers and administrators also are prohibited from discouraging activity because of its religious content, and from soliciting or encouraging antireligious activity.
- IV. **Teaching about religion:** Public schools may not provide religious instruction, but they may teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture)-as-literature, and the role of religion in the history

of the United States and other countries all are permissible public school subjects. Similarly, it is permissible to consider religious influences on art, music, literature, and social studies. Although public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of holidays, schools may not observe holidays as religious events or promote such observance by students.

- V. **Student assignments:** Students may express their beliefs about religion in the form of homework, artwork, and other written and oral assignments free of discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance, and against other legitimate pedagogical concerns identified by the school.
- VI. **Religious Literature:** Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. Schools may impose the same reasonable time, place, and manner or other constitutional restrictions on distribution of religious literature as they do on nonschool literature generally, but they may not single out religious literature for special regulation.
- VII. **Religious excusals:** Schools enjoy substantial discretion to excuse individual students from lessons that are objectionable to the student or the students' parents on religious or other conscientious grounds. Schools can exercise that authority in ways that would defuse many conflicts over curriculum content. School officials may neither encourage nor discourage students from availing themselves of an excusal option.
- VIII. **Released time:** Subject to § 232.0225, Fla.Stat. (1998), parents may request and be granted permission for absence of a student from school for religious instruction or religious holidays, provided that schools do not encourage or discourage participation or penalize those who do not attend. Schools may not allow religious instruction by outsiders on school premises during the school day.
- IX. **Teaching values:** Though schools must be neutral with respect to religion, they may play an active role with respect to teaching civic

values and virtue, and the moral code that holds us together as a community. The fact that some of these values are held also by religions does not make it unlawful to teach them in school.

- X. **Student garb:** Religious messages on T-shirts and the like may not be singled out for suppression. Students may wear religious attire, such as yarmulkes and head scarves, and they may not be forced to wear gym clothes that they regard, on religious grounds, as immodest.
- XI. **The Equal Access Act** is designed to ensure that, consistent with the First Amendment, student religious activities are accorded the same access to public school facilities as are student secular activities. Based on decisions of the Federal courts, as well as its interpretation of the Act, the Department of Justice has advised that the Act should be interpreted as providing, among other things, that:
- A. **General provisions:** Student religious groups at public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups. Under the Equal Access Act, a school receiving Federal funds that allows one or more student noncurriculum-related clubs to meet on its premises during noninstructional time may not refuse access to student religious groups.
- B. **Prayer services and worship services covered:** A meeting, as defined and protected by the Equal Access Act, may include a prayer service, Bible reading, or other worship exercise.
- C. **Equal access to means of publicizing meetings:** A school receiving Federal funds must allow student groups meeting under the Act to use the school media -- including the public address system, the school newspaper, and the school bulletin board -- to announce their meetings on the same terms as other noncurriculum-related student groups are allowed to use the school media. Any policy concerning the use of school media must be applied to all noncurriculum-related student groups in a nondiscriminatory matter. Schools, however, may inform students that certain groups are not school sponsored.

- D. **Lunch-time and recess covered:** A school creates a limited open forum under the Equal Access Act, triggering equal access rights for religious groups, when it allows students to meet during their lunch periods or other noninstructional time during the school day, as well as when it allows students to meet before and after the school day.

Specific Authority: 230.22(2); 230.23(17); 230.23005(6); and 232.0225 F.S.(1998)
Law implemented, Interpreted, or Made Specific: 230.22(1); 230.23005(6); and 233.062 F.S. (1998)

History
New:

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA