

RELIGIOUS SCHOOLS

FIRST  LIBERTY

RELIGIOUS LIBERTY PROTECTION KIT

Guard Your Religious
School from Attack



FirstLiberty.org



DEAR FRIEND OF RELIGIOUS FREEDOM,

Thank you for your desire to protect **religious schools** against increasingly hostile legal threats to your freedom to believe and to act upon your beliefs. I hope you find this **Religious Liberty Protection Kit** a simple but high-quality tool for helping you guard the most precious freedom you or anyone in our society has: religious liberty, our first liberty in the Bill of Rights.

Please let us know any further way we can help you.

A handwritten signature in white ink that reads "Kelly Shackelford". The signature is fluid and cursive.

Kelly Shackelford, Esq.

President, CEO & Chief Counsel

FIRST LIBERTY INSTITUTE® RELIGIOUS LIBERTY PROTECTION KIT FOR RELIGIOUS SCHOOLS

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First Liberty Institute's Religious Liberty Protection Kit for Religious Schools provides general guidance to assist your school in response to current legal threats to religious freedom. This document does not create an attorney-client relationship, and it is not to be used as a substitute for legal advice from a licensed attorney. Because the law is constantly changing and each school's policies and documents are unique, First Liberty Institute and its attorneys do not warrant, either expressly or impliedly, that the law, cases, statutes, and rules discussed or cited in this guide have not been changed, amended, reversed, or revised. If you have a legal question or need legal advice, please contact an attorney. First Liberty Institute's attorneys may be contacted by requesting legal assistance at [FirstLiberty.org](https://www.FirstLiberty.org).

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INTRODUCTION

How can a religious school be proactive in protecting its legal right to operate according to its religious beliefs? What steps can we take today?

First Liberty Institute has advised hundreds of religious schools and ministries who ask these questions. Our guidance has helped them implement policies and procedures designed to maximize their rights under the law and shield them from unforeseen legal threats and challenges. First Liberty Institute is a nationwide, nonprofit law firm dedicated to protecting religious freedom for all Americans, at no cost to our clients. Our President and CEO, Kelly Shackelford, has over 30 years of experience defending the constitutional rights of organizations like yours.

We have carefully summarized our recommendations over the years to develop this Religious Liberty Protection Kit for Religious Schools. In it, you will find guidance to help schools review and, if necessary, revise their governing documents to maximize their freedom to operate according to their beliefs. It is organized into six general topics that represent some of the most frequent issues that arise for religious schools. Because we most often receive questions from schools belonging to Christian denominations, many of the examples in this Protection Kit will be most relevant for those schools. Nevertheless, our mission is to protect religious liberty for all Americans, and the legal principles given in this guide are applicable to religious communities of all faiths.

Thank you for the important work you do in educating the next generation and for your interest in protecting your school's religious liberty – our First Amendment's First Liberty.

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Mission Statement

What is the purpose or mission of your school?

In order to invoke religious liberty protections under state or federal law, your school should make it clear that it is, in fact, a religious school with a faith-based mission or purpose. The mere fact that your school has a religious sounding name or was founded as a faith-based school may not be enough. If it is not clear that your school is religious, then it may not be afforded all of the available protections under the law.

The U.S. Constitution, as well as local, state, and federal laws, provide protections that generally enable religious organizations, including religious schools, to operate according to their sincerely held religious beliefs. [2] The analysis will vary based on the specific context, but the U.S. Supreme Court has found faith-based mission statements to be relevant. [3]

Organizations sometimes ask us whether they should become more secular or more religious. It may seem obvious, but organizations can run into legal issues if they do not clearly choose an identity. It is the best practice for a faith-based school to embrace its religious identity, leaving no doubt that it is entitled to invoke available religious liberty protections.

Consequently, we encourage your school to adopt a mission or purpose statement that clearly explains your faith-based goals. This idea can be expressed in multiple ways. We list one example below, but there is no need to adopt this precise language. The idea is to simply and accurately convey the religious mission of your school and that your faith-based mission permeates all you do.

Example Mission Statement

[School's] mission is to provide its students with a quality education and a firm foundation in the [religious] faith. All of [School's] activities are designed to further this mission and ultimately to glorify God.



Mission Statement

Citations:

2. Such as the First Amendment to the U.S. Constitution, the federal Religious Freedom Restoration Act, and some state Religious Freedom and Restoration Acts.

3. See, e.g., *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 701 (2014).

Statement of Beliefs

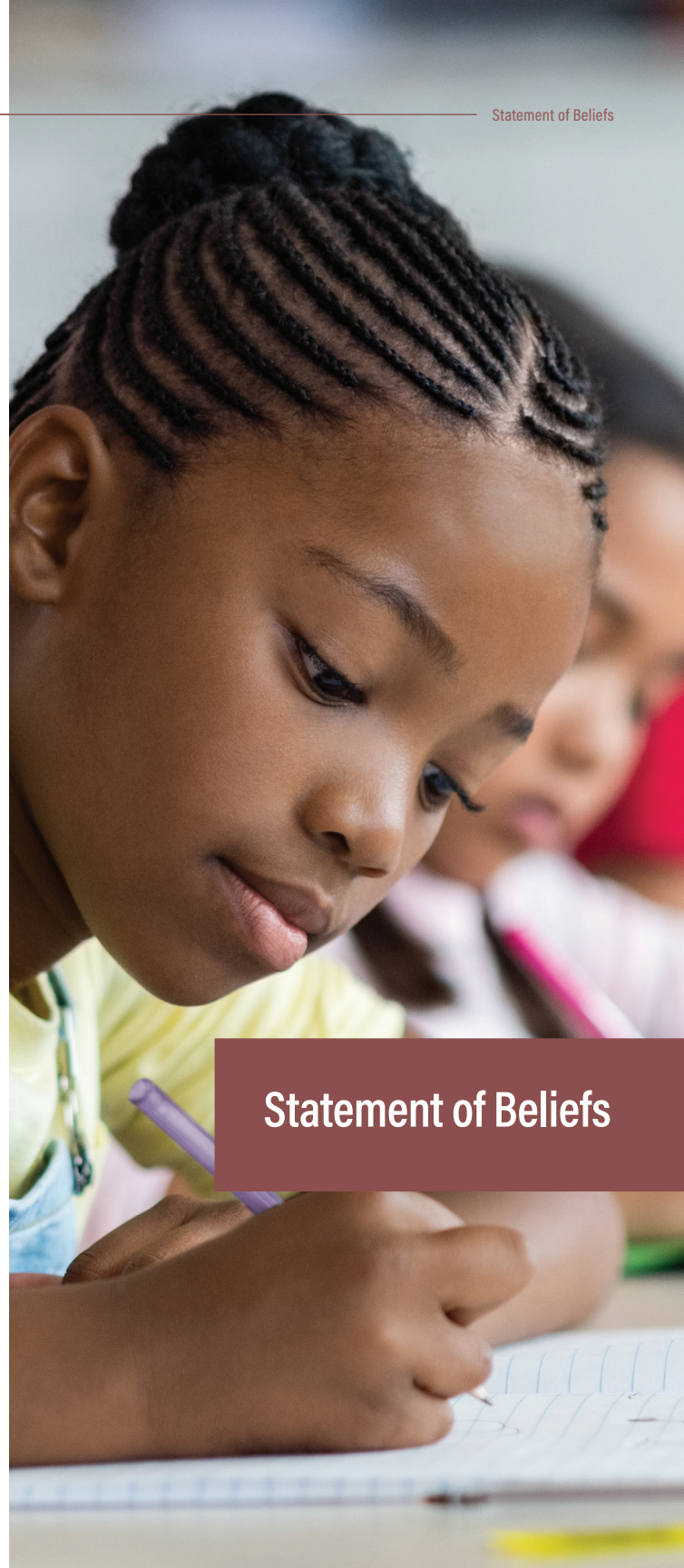
The First Amendment and other federal laws generally protect the right of religious organizations to operate in communities that share a set of religious beliefs. For this reason, faith-based schools should formally adopt a Statement of Beliefs to clearly state their core religious beliefs. This is sometimes called a Statement of Faith or a Doctrinal Statement. Having a clear Statement of Beliefs will further establish a school as a faith-based entity, entitled to religious liberty protections related to those beliefs.

How to Implement Your Statement of Beliefs

Bylaws promulgate the organization's governance rules. We generally recommend that your Statement of Beliefs should be set out in full in the Bylaws, not incorporated by reference or as a stand-alone policy.

The decision for how else to implement your Statement of Beliefs is unique to each school and largely depends upon the goals of the school. Ministries differ widely with respect to who is held accountable to faith-based standards, what those standards are, and how they are implemented. For instance, some outreach-oriented schools may wish to hold only certain employees to its standards of faith and not to hold students or families to such standards. Conversely, other schools may seek to foster a close-knit community in which everyone personally adheres to the same set of beliefs.

The most important point is clarity and consistency. If you intend to hold members of community (e.g., board members, employees, parents, and students) accountable for abiding by certain beliefs, be clear and upfront about what those beliefs are, what your school's expectations are with respect to standards regarding those beliefs, and apply those standards in a fair and consistent way.

**Statement of Beliefs**

Rights of Conscience in Healthcare Generally

In addition to the general religious liberty protections mentioned above, there are some healthcare conscience protections that protect any religious objection in the healthcare field regardless of the specific nature of the objection. That is, the religious objection does not have to be about abortion, sterilization, or euthanasia, for example, in order to receive protection under these statutes. As such, these protections are applicable to all of the more specific topics discussed throughout this *Religious Liberty Protection Kit for Healthcare Professionals*, as well as to unique situations that do not have a specific conscience protection law.

What to Include in Your Statement of Beliefs

It is essential to include the core religious beliefs of your school in your Statement of Beliefs. For example, Christian schools may choose to adopt the Apostles' Creed, Nicene Creed, or another summary of their key doctrinal beliefs.

We highly recommend that faith-based schools' Statement of Beliefs also clarify their beliefs with respect to the most contested and controversial issues of today, if your school takes a position on these issues. Religious beliefs related to the sanctity of life, marriage, gender, and sexual conduct are most likely to come into conflict with prevailing cultural norms and therefore are most susceptible to threats of litigation. Some example language on these topics is included below to illustrate one way in which these ideas can be expressed.

If your school is denominationally affiliated, you could adopt the pre-existing doctrinal or theological statements of your denomination to explain the sincerely-held religious beliefs of your school. If you take this approach, it is preferable to repeat such statements in full, rather than simply adopting them by reference, for clarity. By contrast, non-denominational, multi-denominational, or ecumenical schools often will be best served by promulgating their own Statement of Beliefs to avoid ambiguity about the core beliefs of their schools.

We also recommend that your Statement of Beliefs also

include three key clauses: a residual clause, a final-authority clause, and a voluntary-termination clause.

Residual Clause

Because your Statement of Beliefs may not be able to anticipate all potential religious issues that may arise, we recommend including a residual clause providing for unexpressed, material religious beliefs of your organization.

Example Language for Christian Schools: This Statement of Beliefs does not exhaust the extent of our religious beliefs. The Bible, as the inspired and infallible Word of God, speaks with final authority concerning truth, morality, and the proper conduct of human affairs.

Statement of Final Authority

We recommend that your school's Bylaws identify the final human authority who will promulgate, interpret, and enforce religious policies for your school. Usually, a school's Board of Directors will act as this authority. Having a final authority specified will help resolve issues should any ambiguity arise regarding a school's Statement of Beliefs or Faith-based Code of Conduct.

Example Language for Christian Schools: For purposes of the organization's faith, doctrine, practice, discipline, and policy, the Board of Directors is the organization's final interpretive authority on the Bible's meaning and application.

Contractual Voluntary-Termination Clause

If you require employees to affirm that they personally adhere to your Statement of Beliefs, including a voluntary-termination clause provides an agreed-upon procedure in the event an employee's beliefs change.

Example Language for Christian Schools: I sincerely adopt this Statement of Beliefs as containing the system of doctrine taught in the Bible and agree that if at any time I find myself out of accord with this Statement of Beliefs, that I will, on my own initiative, make known to the organization's executive leadership the change that has taken place in my views since my last written affirmation of this statement of faith

and, if requested, quietly and voluntarily remove myself from employment of the organization. I understand and affirm that this requirement is a material term and a condition precedent to my continued employment with the organization. [5]

Example Christian Statement of Beliefs on the Sanctity of Life

We believe that all matters of faith and conduct must be evaluated on the basis of Holy Scripture, which is our inspired, infallible, and inerrant guide. (2 Timothy 3:16-17) Because Holy Scripture speaks to creation and human life, it is imperative that we correctly understand, articulate, and abide by what Holy Scripture teaches on this matter.

We believe that every human life is sacred because God has created mankind in His image and that human life begins at fertilization. We believe every human life must be recognized, respected, and protected as having the rights of a person and the inviolable right to life.

God created each person's inmost being, knitting each person together in his mother's womb. (Psalm 139:13) As God's individualized and personal creation, each person is fearfully and wonderfully made. (Psalm 139:14) God has ordained all the days of each person's life before they came to be. (Psalm 139:16)

We are strongly committed to the preservation and defense of unborn human life, which compels our religious, moral, and ethical duty to defend unborn human life.

Example Christian Statement of Beliefs on Marriage, Gender, and Sexuality

We believe that all matters of faith and conduct must be evaluated on the basis of Holy Scripture, which is our infallible guide. (2 Timothy 3:16-17) Since the Holy Bible does speak to the nature of human beings and their sexuality, it is imperative that we correctly understand, articulate, and abide by what the Bible teaches on these matters.

We believe that God created mankind in His image: male and female, sexually different but with equal personal dignity. We believe that individuals should affirm their biological sex

and refrain from any attempts to physically change, alter, or disagree with their biological sex. (Genesis 1:26-28, Romans 1:26-32, 1 Corinthians 6:9-11)

We are committed to the home and family as set forth in Holy Scripture. We believe God has ordained and created marriage to exist between one man and one woman, with absolute marital fidelity. Consequently, we believe that individuals should refrain from any sexual conduct or acts outside of this marital relationship. (Genesis 1:27, Genesis 2:24, Matthew 19:4-6, Mark 10:5-9, Romans 1:26-27, 1 Corinthians 6:9-11, Ephesians 5:25-27, Revelation 19:7-9, Revelation 21:2)

It is our firm conviction that we uphold the dignity of each individual as we embrace the unchanging and longstanding principles of scriptural truth.

Citations:

4. See, e.g., *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991) (“Congress intended the explicit exemptions to Title VII to enable religious organizations to create and maintain communities composed solely of individuals faithful to their doctrinal practices”).

5. See Office of the Stated Clerk, General Assembly of the Presbyterian Church in America, *The Book of Church Order of the Presbyterian Church in America*, 24-6 (2019).



Employment Policies

Employment Policies

The majority of lawsuits challenging a faith-based school's right to operate in accordance with its religious beliefs occur in the employment context. Consequently, it is of the utmost importance to review and revise your school's employment policies, found in employee application forms, offer letters, contracts, handbooks, job descriptions, and codes of conduct.

Many religious organizations and ministries seek to operate in communities that share a common faith. Consequently, many ministries hold their employees to standards of conduct based upon their sincere religious beliefs. For these organizations, we recommend that the Statement of Beliefs and Faith-based Code of Conduct should be set out in full in employee contracts. They should be on or near the first page of the employee handbook. Employees should be required to sign agreement with the Statement of Beliefs before filling out applications for employment or concurrently with those applications.

We will first briefly summarize the current legal landscape with respect to federal employment non-discrimination law, and then we will provide our top employment law recommendations for religious schools.

Summary of the Legal Landscape

Title VII of the Civil Rights Act of 1964, as amended, is a federal law that prohibits employment discrimination on the basis of sex, race, color, national origin, and religion. By a congressional amendment, the prohibition on sex discrimination also forbids pregnancy discrimination. [6] In an opinion issued on June 15, 2020, the United States Supreme Court held that the prohibition on sex discrimination also includes a prohibition on sexual orientation and transgender status discrimination. [7] Title VII presumptively applies to organizations that employ 15 or more employees. [8]

With respect to Title VII, there are three main protections available specifically for religious employers, such as faith-based schools: (1) the ministerial exception derived from the First Amendment to the U.S. Constitution; (2) the statutory religious employer exemption given in the text of Title VII itself; and (3) the Religious Freedom Restoration Act. [9] There may

be other available protections, such as religious organizations' general right to autonomy, their right to be free from excessive government entanglement in their affairs, and the bona fide occupational qualification statutory exception. We focus here on the three main lines of defense and how a school may amend its documents, policies, or procedures to be shielded by existing protections.

First, the ministerial exception should provide a complete defense to most federal employment discrimination lawsuits involving a religious organization's "ministers." In 2012, the U.S. Supreme Court unanimously held that the First Amendment's ministerial exception protects the right of religious organizations, including religious schools, to choose their "ministers." [10] The term "minister" includes more than just the pastor of a church, and can include teachers at a faith-based school under certain conditions. In 2020, the Supreme Court reaffirmed that the ministerial exception applies to teachers at religious schools who perform "vital religious duties." [11] This includes elementary school teachers who teach religion to their students in addition to teaching other subjects. [12] Job descriptions at your school should accurately explain the ministerial nature of all positions that perform vital religious duties.

Second, the statutory religious employer exemption in Title VII provides that religious organizations may consider religion while making employment decisions in order to make sure that they employ only people who are faithful to their doctrinal practices and/or who can carry out their religious missions. [13] It is widely recognized that this provision provides a complete bar to any lawsuits claiming discrimination on the basis of religion for any position in the organization – whether or not the position is considered ministerial. [14] That means that Christian schools are free to hire only Christians, or to prefer Christians in hiring, and these schools cannot be sued for religious discrimination.

There is debate over whether this statutory provision also provides a defense to claims of sex discrimination where the religious organization's employment decision is based on the employee's failure to live up to the organization's Statement of Beliefs or Faith-based Code of Conduct on issues of sexual morality. In 2017, the U.S. Department of Justice [15] took the position that because Title VII defines "religion" broadly to include "all aspects of religious observance and practice, as well

as belief," [16] religious organizations may choose to "employ only persons whose beliefs and conduct are consistent with the employer's religious precepts." [17] Thus, the statutory exemption may provide a defense to some claims of sex discrimination. Because this is a potential line of defense, if the school maintains a Faith-based Code of Conduct, it should include clear standards regarding moral transgressions that could lead to adverse employment actions, applying them consistently and equally.

Finally, the Religious Freedom Restoration Act ("RFRA") may provide some protections for religious schools. RFRA prohibits the federal government from imposing a substantial burden on religious exercise unless it can demonstrate a compelling reason for its action that is narrowly tailored to be the least restrictive means of achieving its goals. [18]

In addition to federal law, it is important to also consider any applicable state and local employment discrimination laws, as these may be more restrictive.

Recommended Employment Non-Discrimination Policy Statement

When choosing an employment non-discrimination statement to include in your employee handbook, most generic examples you will find have not been formatted for faith-based employers. Although you should not be able to waive your First Amendment rights, it is preferable to state your employment non-discrimination policy in a way that does not purport to waive any religious liberty rights. The employment non-discrimination statement should be consistent wherever it appears.

Some example language is below. This language may need to be adjusted depending upon any applicable state or local employment non-discrimination laws. And employers should not include in their non-discrimination policy statement any verbiage about not discriminating based on religion or sexual orientation or gender identity.

All employment decisions of [School] are made to further [School's] mission to [Mission Statement]. [School] is an equal opportunity employer and does not discriminate on any basis covered by applicable law. As a nonprofit faith-

based employer, [School] reserves the right to carefully and fully explore the religious values, faith, personal conduct, and convictions of applicants and employees in order to employ only those individuals who support, advance, and live in a manner consistent with the school's Statement of Beliefs and Faith-based Code of Conduct.

Recommended Ministerial Job Descriptions

The First Amendment protects the right of religious ministries and schools to make employment decisions with respect to who leads the ministry and who conveys the faith.

Constitutional religious liberty protections are at their strongest with respect to "ministerial" positions. Essentially, because "ministers" are responsible for conveying the tenets of the faith, religious organizations are free to choose whoever they want to be a minister and that decision cannot be scrutinized by courts. Therefore, the First Amendment protects the employment relationship between a church and its minister from government intrusion and bars many employment related lawsuits.

The protection applies to more than just a minister or pastor at a church. Courts have held that it can also apply to teachers at Christian schools, [19] the music director at a church,[20] an organist at a church, [21] a minister at a faith-based hospital, [22] and a spiritual director at an IntersVarsity campus ministry. [23] Faith-based school administrators and teachers who perform vital religious duties also should be considered ministers.

Teachers at religious schools are often, but not always, considered to be ministers. The leading ministerial exemption cases are *Hosanna-Tabor* and *Our Lady of Guadalupe*. To decide who qualifies as a "minister," courts may consider several factors, such as an employee's title, religious training, and credentials, but the most important factor is "what an employee does" — whether they are responsible for performing "vital religious duties." [25] Because it goes to the core purpose of religious schools, educating students in the faith is generally considered an example of a vital religious duty.

Your school should carefully review your job descriptions and employment criteria to ensure that ministerial teacher and administrative positions accurately and sincerely reflect as

many ministerial factors as possible. When a position has religious duties or responsibilities, those should be included and explained in the job description. The more specificity with respect to religious duties, training, credentials, and other religious job requirements (including faith-based character requirements), the stronger the argument that the position is ministerial. Schools should also consider adding to job descriptions that employees have a duty to be an example of the believers (*1 Timothy 4:12*) to students, and, thus, teach the faith by conduct as well as by the spoken word.

One final note of caution. It is unlikely that courts would consider all employees of a religious school to be ministers. If a school claims that every position is ministerial, including janitorial positions, such claims could undermine its credibility. That said, many of a school's teachers and key administrators are responsible for teaching the faith to students and should be considered ministers.

Recommended Faith-based Code of Conduct for Employees

Ministries differ in how to approach moral issues. If a school intends to hold its employees to a Faith-based Code of Conduct, it is recommended that these requirements are clearly specified in advance.

Requiring employees to agree to abide by a Faith-based Code of Conduct each year has several advantages:

- Fair and clear expectations up front
- Dissuades ill-suited applicants from applying
- Helps ensure that a consistent procedure is followed in case of violations
- Provides proof of the faith-based tenets of the organization

Because federal law often allows faith-based organizations to make employment decisions consistent with their religious tenets, having these standards clearly stated and consistently applied provides a strong defense. Moral standards, such as a prohibition on non-marital sexual conduct, should be applied equally to male and female employees. The Faith-based Code of Conduct should be enforced consistently to avoid even the appearance of a double standard.

Your school's Faith-based Code of Conduct should be grounded in your Statement of Beliefs and should establish parameters for acceptable behavior. Such a code should include a preamble addressing the religious motivation for behavior addressed in the code using supporting scriptures, doctrines, and statements of faith. Schools may wish to address topics such as cheating, stealing, lying, dressing and using facilities not in conformance with one's biological sex, and engaging in sexual conduct or acts outside the marital union of one man and one woman.

Alternative Dispute Resolution

Employment agreements should set forth a procedure for resolving disputes, such as requiring alternative dispute resolution (ADR) in the form of mediation and binding arbitration rather than litigating in civil courts. Examples of Christian forums for this kind of dispute resolution include the Institute for Christian Conciliation, Peacemaker Ministries, and Christian Legal Society—Christian Conciliation.

Example ADR Language

The Parties must resolve any dispute, controversy, or claim arising out of or relating to this Agreement under the procedures and provisions set out in this Agreement. Those procedures and provisions are the exclusive mechanism for resolving any Dispute between the Parties.

Notice. A party must send written notice of any Dispute to the other party (the "Dispute Notice"). The Parties must then consult and negotiate in good faith in an attempt to resolve the Dispute set out in the Dispute Notice. If the Dispute is not resolved promptly, the Parties must then consult and negotiate in good faith in an attempt to resolve the Dispute set out in the Dispute Notice at an in-person meeting at a mutually agreeable place and time.

Mediation and Arbitration. If the Parties do not resolve the Dispute within 7 business days after the in-person meeting, the Parties must proceed to mediation and, if necessary, to legally binding arbitration in accordance with the Rules of Procedure for Christian Conciliation of the

Institute for Christian Conciliation (complete text of the Rules is available at www.iccpeace.com). Judgment upon an arbitration decision may be entered in any court of competent jurisdiction.

Waiver and Attorney's Fees. The Parties waive their right to a jury trial and to file a lawsuit in any civil court against each another for any Dispute, except to enforce an arbitration decision. If a party files a civil lawsuit except to enforce an arbitration decision, and the other party successfully compels arbitration regarding the Dispute, the compelling party is entitled to recover its reasonable and necessary attorney's fees and court costs for having had to compel arbitration.

Survival. The obligations of this section survive the expiration or termination of this Agreement.

Recommendations for Non-Employee Volunteers

The school should strongly consider requiring volunteers, such as parents assisting on field trips, to sign an agreement to adhere to the school's written conduct policies and Statements of Beliefs.

Citations:

6. 42 U.S.C. § 2000e(k).

7. *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1753 (2020) (holding "employers are prohibited from firing employees on the basis of homosexuality or transgender status").

8. 42 U.S.C. § 2000e(b).

9. *Bostock*, 140 S. Ct. at 1754 (listing these three religious liberty protections).

10. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 190 (2012).

11. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2066 (2020).

12. *Id.*

13. 42 U.S.C. § 2000e-1(a); 42 U.S.C. § 2000e-2(e)(2).

14. *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 327-28 (1987).

15. For a helpful elaboration on this argument by the Department of Justice, please see the DOJ's Religious Liberty Memorandum, available at <https://www.justice.gov/opa/press-release/file/1001891/>

download.

16. 42 U.S.C. § 2000e(j).

17. Little, 929 F.2d at 951; see also *Killinger v. Samford Univ.*, 113 F.3d 196, 198-200 (11th Cir. 1997).

18. 42 U.S.C. § 2000bb-1.

19. *Hosanna-Tabor*, 565 U.S. at 194.

20. *Cannata v. Cath. Diocese of Austin*, 700 F.3d 169, 170 (5th Cir. 2012).

21. *Sterlinski v. Cath. Bishop of Chi.*, 934 F.3d 568, 572 (7th Cir. 2019).

22. *Penn v. N.Y. Methodist Hosp.*, 884 F.3d 416, 418 (2d Cir. 2018).

23. *Conlon v. InterVarsity Christian Fellowship/USA*, 777 F.3d 829, 834-35 (6th Cir. 2015).

24. *Hosanna-Tabor*, 565 U.S. at 193; *Our Lady of Guadalupe*, 140 S. Ct. at 2066.

25. *Our Lady of Guadalupe*, 140 S. Ct. at 2064, 2066.

Student Admissions & Discipline

Your school should consider whether to require students or their parents to abide by the school's Statement of Beliefs or be held to a Faith-based Code of Conduct. Ethical expectations for students are often given in a school's parent-student handbooks.

Student Admissions

Your school should have well-defined admissions procedures that include clear enrollment requirements and disqualifications. It is recommended that criteria for eligibility and admissions are expressly grounded in your religious beliefs.

Private religious schools may include spiritual questions in the student and parent application. A school may state that enrollment plays a critical role in the culture and traditions of your school by cultivating and transmitting shared ideals and beliefs. Potential qualifications for enrollment at a Christian school may include: written profession or statement of faith in the Holy Bible and Jesus Christ; a written statement of faith in Jesus Christ and student's intent to pursue a life that will glorify God, with



Student Admissions & Discipline

His help; assent and adherence to your school's Statement of Beliefs. Schools may also wish to include questions that identify applications evidencing a lifestyle or belief system inconsistent with the institution's religious beliefs or mission.

Lastly, schools may request that potential students and families proceed with enrollment only if they are in agreement with, and willing to abide by the school's Statements of Beliefs and Faith-based Code of Conduct. In order to do so, you may wish to have potential students and/or their parents annually sign an agreement that they have received, read, and understand your school policies.

It is recommended for your school to explain the connection between its enrollment requirements and disqualifications and your school's religious mission, integrity, and purpose. State how its enrollment requirements or disqualifications will assist in the expression and dissemination of religious doctrine or instill religious values in existing students.

Student Discipline

Your school should establish clear disciplinary and removal procedures for students, as well as faculty, staff, volunteers, and board members, that are grounded in your religious beliefs. These procedures should be applied consistently. Timing, means, and administrative involvement should be established. Further, it is your school's prerogative to include policies relating to grace and reconciliation. Your school should identify any controversial issues deemed terminable for students. Simply put, your school must define what it intends to defend. If your school intends to discipline, expel, or refuse enrollment based on an issue, its written policies should expressly state a sincerely held religious belief on that issue. For instance, you may wish to delineate clear standards of conduct regarding sexual morality and other non-sexual behaviors (e.g. cheating, stealing, lying, etc.).

It is recommended that schools clearly specify that they have the right to discipline or ask a student to withdraw for any reason, but failure to comply with the Faith-based Code of Conduct will subject the student to disciplinary action and potential expulsion. In short, if your school intends to discipline in accordance with its religious beliefs, it should specify procedures in case of violations and apply them fairly and

consistently.

Example Language for Christian Schools

Enrollment plays a critical role in the culture and traditions of the school by cultivating and transmitting shared ideals and beliefs in community. [School] reserves the right to discipline or ask a student to withdraw for any reason, including failure to abide by [School's] Statement of Beliefs or other policies. Failure to comply with school policies may subject the student to disciplinary action, up to and including expulsion.

In line with [School's] views on repentance and its understanding that all students are growing in their faith and may fall short of biblical standards of living, students that engage in conduct contrary to [School's] beliefs may be given an opportunity to remain at the school at [School's] discretion. If the [School] determines that the student is sincerely repentant and that allowing the student to stay would not damage the [School's] culture, the [School] may permit the student to remain at the school for a probationary period. At the end of the probation, [School] will determine whether the student may be fully reinstated at [School], or whether the student must withdraw/be expelled.

Facilities Use

It is recommended that your school's facilities use policy explain that everything that the school does, including the use of its facilities, is a part of its broader religious mission and all uses must be in accordance with the school's religious purpose.

In some jurisdictions, when private religious schools open their facilities, such as its athletic centers or gyms, to use for the general public, that activity may be considered a public accommodation. The analysis will vary widely by state. If a school rents its facilities for a fee, it may be advisable to rent at cost or at below market rates. This is because, in some jurisdictions, the more a rental is seen as a profit-seeking enterprise rather than a faith-based endeavor, the more likely a court may consider the activity to be subject to regulation. [26]

In light of these possibilities, we recommend that schools consider adopting facility use policies that limit the use of their facilities only to uses that accord with the school's religious tenets. A school may specify that its facilities are not open to the general public and that its facilities may not be used in ways that conflict with or not contrary to the school's faith or moral teachings. For instance, a school that opens its facilities for wedding ceremonies or receptions could specify that it is only available to students, faculty, and alumni, rather than to the general public. Alternatively, a school seeking to rent its athletic facilities could rent its facilities only for athletic purposes. We recommend including a signature block in facility use rental agreements acknowledging receipt, review, and assent to all the school policies, including the Statements of Beliefs.

Example Facilities Use Policy for Christian Schools

All [School] property and facilities (including furniture, fixtures, and equipment) are holy and set apart to worship God. (Colossians 3:17) [School] facilities are consecrated to our religious ministry and mission because they are a provision from God. Use of [School] property shall be



Facilities Use

for the propagation of the Christian faith, for fellowship, witnessing, religious teaching, and charity. Therefore, all use and occupancy of [School] property shall be limited to persons of our particular religion, the propagation of religion, or related religious purposes.

All activities on school property must cohere with the religious purpose of [School] and further its Christian mission, whether the activity has an overt liturgical religious purpose (preaching, worship services, Bible instruction, communion, baptism) or a non-liturgical religious purpose (social service, mentorship, community service, benevolence, charity, schools). [School] conducts all activities in order to advance or express its Christian mission, message and viewpoint. School facility use shall be exclusively conditioned on whether the use promotes [School]’s mission, message and viewpoint, as all facility usage is an opportunity to glorify God. In addition, school property is exclusively reserved for persons and organizations who agree to abide by [School]’s policies [List specific policies]. Likewise, [School] facilities are not generally open to the public and may not be used by persons or groups holding, advancing, or advocating beliefs that conflict with [School]’s faith or moral teachings – including but not limited to [School]’s Statement of Beliefs.

Any facilities that are made available to approved applicants for usage are meant to further [School]’s calling to minister to others, for charity and witnessing to our faith. For this reason, [School] property cannot be used for purposes that contradict the church’s beliefs. (2 Corinthians 6:3; and 14; 1 Thessalonians 5:22)

School property issues or disputes are directly related to religious doctrine and practice, as all facilities are utilized in a manner to advance or express [School]’s Christian mission, message, and viewpoint. (Colossians 3:17) In the event that school facility use departs in any way from [School]’s policies, [School]’s [Designated Authority] shall exclusively resolve any disputes. The [Designated Authority] alone may make inquiry into the religious law and usage of [School] facilities. [School] reserves the right to accept or deny any applicants who seek to utilize or reserve [School] facilities.

Citations:

26. See *Doe v. Cal. Lutheran High Sch. Ass’n*, 88 Cal. Rptr. 3d 475, 483 (Cal. Ct. App. 2009) (concluding that faith-based school was not a place of public accommodation, but some nonprofit organizations could be subject to the state’s law).

Government Funding

Title IX of the Education Amendments of 1972 is a federal law that prohibits sex discrimination for schools that receive federal financial assistance. [27] If your school receives any sort of federal financial assistance, such as tuition assistance for low income students, grants for school lunch programs, grants for technology or other resources, then Title IX’s provisions presumptively would apply to all of your school’s activities.

In light of the Supreme Court’s opinion in *Bostock v. Clayton County, Georgia*, the prohibition on sex discrimination may also be interpreted to include a prohibition on sexual orientation or gender identity discrimination. Under President Obama, the Department of Education issued guidelines stating that locker room and restroom usage, as well as overnight accommodations for field trips, must be allowed in accordance with a student’s gender identity rather than biological sex. [28] President Trump’s administration rescinded those guidelines. [29] President Biden is likely to return to the Obama policy, as indicated by his January 20, 2021 Executive Order. [30]

Importantly, there is a religious exemption that provides that Title IX does not apply to schools where there is a conflict with the school’s religious tenets. [31] Therefore, if the school receives any federal funding, it is important for the school to clearly specify its religious tenets regarding sexual conduct and gender expression in advance of any litigation.

Citations:

27. 20 U.S.C. § 1681(a).

28. U.S. Dep’t of Educ., Office for Civil Rights, Dear Colleague Letter, May 13, 2016, at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

29. U.S. Dep't of Educ., Office for Civil Rights, Dear Colleague Letter, Feb. 22, 2017, at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf>.

30. Exec. Order 13988, 86 Fed. Reg. 7023, Jan. 20, 2021, at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>.

31. Under 20 U.S.C. § 1681(a)(3), “this section [Title IX] shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization.”

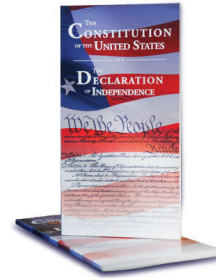
Conclusion

We hope this guide is a helpful resource for your school. If you have any questions, please seek legal assistance. First Liberty attorneys are standing by at Firstliberty.org to help protect your school's religious freedom.



Conclusion

Additional FREE Resources



Back to the Constitution: Learn it, Love it, Live it.

Today, there are many who like to blame the Constitution for our nation's problems. But the truth is, our Constitution is not the problem—it's the solution. Make America's Founders proud and take the source of your first freedom with you wherever you go!

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7 Facts About Religious Rights in the Workplace

Right now, attacks against people of faith in the workplace are at an all-time high. And what's worse, many employees allow themselves to become victims of religious discrimination due to their own lack of knowledge or pressure to conform—even though the law is on their side!

Don't wait until it happens to you. Equip yourself and your family to meet any challenge of your faith at your workplace with First Liberty's 7 Facts About Religious Rights in the Workplace. Assembled by First Liberty's expert legal team, this handy guide will allow you to live out your faith at work with confidence.

VISIT:
FIRSTLIBERTY.ORG/WORKPLACE-PROTECTION-KIT



Maine School Choice

First Liberty Institute and the Institute for Justice represent three Maine families who were told that they could not participate in the state's school choice program because they opted to send their children to religious schools. The U.S. Supreme Court agreed to hear the case, where we'll have an opportunity to argue that families should not be excluded from participating in widely available public benefits only because they choose religious schools for their children.



Central UTA - Jewish School

In Airmont, NY, village officials used discriminatory zoning tactics to prevent Central UTA, an Orthodox Jewish girls' school, from operating. After years of litigation, First Liberty helped the school secure a certificate of occupancy from the village. Now, the young girls are able to get bus transportation from their school district instead of walking along roads with no sidewalks.



Cambridge Christian School

Football players from two Christian schools, including our client, Cambridge Christian, were barred by government bureaucrats from praying over the loudspeaker at their state championship game taking place at Florida's historic Citrus Bowl. First Liberty won a critical victory for Cambridge Christian in federal appeals court, upholding the free speech and religious exercise rights of the school.



Elizabeth Turner

Elizabeth Turner—a valedictorian at Hillsdale High School just outside Ann Arbor, MI—was slated to speak at her graduation ceremony. But school principal told her referencing her faith in her speech was “not appropriate for a speech in a school public setting.” After First Liberty stepped in and clarified that the Constitution protects students' speech, the school reversed its decision and allowed Elizabeth to deliver her graduation speech in full, including references to her Christian faith.



Calvary Christian School of Excellence

During the COVID-19 pandemic, religious schools nationwide faced harsher restrictions than their secular counterparts. In Cameron County, TX, Cameron County officials initially issued an order prohibiting Calvary Christian School of Excellence from reopening, but quickly relented after action from First Liberty explaining that such an order was in violation of the Constitution and federal law.



Hannah Allen

Hannah Allen and several classmates prayed during lunch for one of their former classmates who had recently been in an accident. But the school principal told them they could only pray behind the stage curtain, when they were not in view of other students. First Liberty informed the school district of the constitutional rights of the students and requested a clarification of the school's policy. Soon after, school officials corrected their policy and Hannah is now allowed to pray publicly.

Resources Available

How to connect with us



FIRST  LIBERTY

Learn More on First Liberty's Website

Visit our website, where you'll find information on our cases, clients and breaking updates on religious liberty in America. Whether you want to learn more about our attorneys, leadership and staff, or if you need to request legal assistance, our website is a one-stop shop for everything you need to know about religious freedom.

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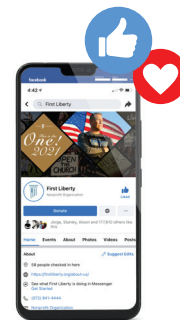


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If you believe your religious liberty has been threatened or violated, please contact us at:

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 (972) 941-4444



Keisha Russell

Counsel

First Liberty's Religious School Expert

First Liberty is our nation's largest legal organization solely dedicated to protecting religious liberty for all Americans. We have won cases at all court levels, including the United States Supreme Court, federal and state courts, and administrative courts and agencies. Victories are won through a nucleus of top-ranked staff attorneys who coordinate a national network of top litigators from firms that include 24 of the largest 50 in the world.



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