

School Chaplain Information Packet

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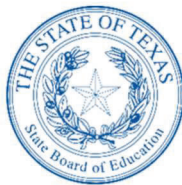
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JULIE PICKREN



TEXAS STATE BOARD OF EDUCATION

District 7

School Board Trustee,

Thank you for your service to the parents, students, and taxpayers of your school district. I am honored to represent and serve 2,500,000 Texans in 10,000 square miles of southeast Texas. Constituents have reached out concerning Chaplains in schools and I would like to provide information for you to make a well-informed decision.

The Texas School Chaplain Act, passed by the 88th Legislature, was signed into law in June 2023. The Act created a new chapter in Texas Education Code, TEC 23, for employment and volunteer purposes of school chaplains. Chapter 23 is solely for the employment of Chaplains, so they do not compete with any other district employment or volunteer positions.

The funding and duties of School Chaplains is found in Texas Education Code 48.115 and lists the following responsibilities you may employ or contract with School Chaplains to provide services, that are funded through school safety and security allotment and grants.

1. Prevention and treatment programs relating to addressing adverse childhood experiences.
2. The prevention, identification, and management of threats and emergencies.
3. Utilized for restorative discipline and restorative justice practices.
4. Provide mental health, behavioral health services, counseling, and social work services.
5. Developing and implementing mental health programs, culturally relevant instruction, and restorative justice programs.
6. Provide services and programs for suicide prevention, intervention, and post-vention.
7. School Chaplains may also function as a school guardian.



District Address
3422 Business Ceneter Drive
-- Suit 106-7
Pearland, TX 77584



JULIE PICKREN



TEXAS STATE BOARD OF EDUCATION

District 7

Throughout America Chaplains have been a great resource for suicide prevention and post-treatment. In March 2023, The U.S. Navy announced a record number of suicides. The Department of Defense who has an incredible amount of funding and access to every mental health professional, response to the high suicide rate was to add 3,000 Chaplains for the military.

Additionally, the Texas Prison System utilizes Chaplains for the benefit of inmates, guards, and our society. Texas has one of the lowest recidivism rates, the amount of people who return to prison, in the nation. Prison Chaplains, who are given the responsibility of prisoner's spiritual care by the state, are a contributing factor to the low recidivism rate and the successful restorative justice practices of the state.

Taxpayer funded Chaplains are legal and Constitutional throughout our state and nation and are employed by airports, hospitals, U.S. Department of Defense, federal and state prisons, U.S. Congress, Texas Senate and House of Representatives, fire departments, police departments, and The CIA.

School Chaplains do not hold a license by the state or federal government because it is unconstitutional for the government to license a member of clergy due to The Establishment Clause of The U.S. Constitution. However, the state and federal government does credential Chaplain organizations and there are many Chaplain organizations that hold state and federal credentials.

Additionally, in June 2022, The U.S. Supreme Court ruled in *Kennedy v. Bremerton School District*, all school district employees have a protected First Amendment Right to pray at school and/or on district property, thus allowing prayer in schools.

God Bless Texas,
Julie Pickren



District Address
3422 Business Center Drive
- Suite 106-7
Pearland, TX 77584

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX
jonathan@mitchell.law

July 23, 2023

Re: The Constitutionality of School Chaplains Under Senate Bill No. 763

Dear Superintendent and School Board Members:

I write in response to the ACLU's letter of June 26, 2023,¹ which threatens your school district with lawsuits if it decides to employ chaplains under Senate Bill 763. The ACLU claims that the presence of chaplains in public schools would violate the Establishment Clause, and it implies your school district will lose in court if anyone challenges the constitutionality of the practice. The ACLU's claims are false, and you should not allow its threats to influence your decisions.

The Establishment Clause says that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I. Making chaplains available to public-school students is not an "establishment" of religion if the students remain free to decide whether they will use the chaplain's services. The only circumstance in which the presence of a public-school chaplain could violate the Supreme Court's establishment-clause doctrine is if a school coerces its students to participate in chaplain-related programs or activities. *See Kennedy v. Bremerton School District*, 142 S. Ct. 2407, 2429 (2022) ("[G]overnment may not . . . make a religious observance compulsory . . . may not coerce anyone to attend church, nor may it force citizens to engage in a formal religious exercise." (citations and internal quotation marks omitted)). In the absence of coercion, there is no Establishment Clause violation and no reason to fear lawsuits from the ACLU.

If your school decides to employ or accept chaplains under Senate Bill 763, it would be prudent to adopt a policy making clear that no student may be coerced to use the services or programs offered by the chaplain's office, and that any student involvement with the chaplain must be purely voluntary. My law offices would be happy to advise or assist a school district considering a policy of this sort. But even without an official anti-coercion policy, there can be no Establishment Clause violation and no reason to fear a lawsuit unless actual coercion occurs.

1. The letter of June 26, 2023, is signed by leaders from the American Civil Liberties Union Program on Freedom of Religion and Belief, the American Civil Liberties Union of Texas, Americans United for Separation of Church and State, and the Freedom from Religion Foundation. For simplicity and ease of exposition, I will refer to the letter of June 26, 2023, as "the ACLU's letter" and will refer to the signatories collectively as "the ACLU."

The ACLU's letter acknowledges that the constitutionality of public-school chaplains hinges on the presence or absence of coercion, yet it claims that the mere presence of a chaplain in a public school is inherently coercive and indoctrinating. That is nonsense. A student who voluntarily seeks a school chaplain on his own accord is not being "coerced" or "indoctrinated," unless one is prepared to reject the notion of free will and claim that all human action is determined by pre-existing causes. And the current membership of the Supreme Court will not be amenable to the theory of coercion in the ACLU's letter. There was a time not long ago when a Supreme Court majority might be receptive to the ACLU's arguments, when moderately separationist jurists like Sandra Day O'Connor and Anthony Kennedy controlled the outcomes in Establishment Clause cases. *See, e.g., Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). But those days are over. President Trump's recent appointments to the Supreme Court and the Fifth Circuit have cemented conservative supermajorities, which are intent on rolling back the separationist doctrines that the ACLU and like-minded judges have been propagating for the last 50 years. Just last year, the Roberts Court recognized the overruling of *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the crown jewel of separationist jurisprudence, and declared that coercion rather than separationism would be the touchstone in future Establishment Clause litigation. *See Kennedy*, 142 S. Ct. at 2427 ("[T]his Court long ago abandoned *Lemon* and its endorsement test offshoot."). If the ACLU believes that the current members of the Supreme Court or the Fifth Circuit will disapprove the employment of school chaplains or find their presence inherently "coercive," then we should welcome the opportunity to have the federal judiciary set them straight.

There may be other reasons not to employ a school chaplain, and I take no position on whether your school district should make a chaplain available to students. But your decision should be based solely on whether you and your constituents think public-school chaplains are a good idea. Do not allow your decisions to be influenced by idle threats from organizations that are struggling to stay relevant now that they no longer have a Supreme Court majority that supports their views.

Please do not hesitate to call my office or e-mail me if you would like to discuss any of this further.

Sincerely,

A handwritten signature in black ink that reads "Jonathan F. Mitchell". The signature is written in a cursive, slightly stylized font. The first name "Jonathan" is written with a large, looped 'J'. The last name "Mitchell" is written with a large, looped 'M' and a trailing flourish.

JONATHAN F. MITCHELL
Mitchell Law PLLC



10/10/2023

ALBANY
NEW YORK

1701 N. Congress Avenue
Austin, Texas 78701

ATLANTIC CITY
NEW JERSEY

BALTIMORE
MARYLAND

Re: Constitutionality of chaplains in public schools

BILOXI
MISSISSIPPI

Dear Members of the Texas State Board of Education,

BOSTON
MASSACHUSETTS

The purpose of this letter is address the constitutionality of recently passed SB 763, which allows for public schools to utilize chaplains as school counselors.

CHICAGO
ILLINOIS

By way of introduction, Pacific Justice Institute is a non-profit law firm specializing in the areas of religious freedom, parental rights and other civil liberties.

CINCINNATI
OHIO

Extensive United States Supreme Court precedent would support the utilization of chaplains in public schools without violating the Establishment Clause of the First Amendment.

COEUR D'ALENE
IDAHO

Beginning with *Marsh v. Chambers* in 1983, the Supreme Court determined that maintaining the history and tradition of prayer prior to a legislative session is so important that it does not violate the Establishment Clause.

COLUMBUS
OHIO

Later, in *Katcoff v. Marsh*, the Court found that military chaplain programs do not violate the Establishment Clause. The Court found in this case that while military personnel are not home and able to access their usual places of worship, the chaplaincy program was a substitute. To not to provide such substitutes would be hostile toward religion rather than neutral, violating the First Amendment.

DENVER
COLORADO

More recently in 2022, the Court discarded the longstanding Lemon Test in *Kennedy v. Bremerton School District*. Under the Lemon Test, the Court would examine whether the government or a law violated the Establishment Clause. The three prong test included whether the proposed activity had a clear secular purpose, whether the primary effect of the aid would advance or inhibit religion, and whether the aid would create an excessive governmental entanglement with religion. By eliminating the use of the Lemon Test, the court emphasized that the Free Exercise Clause is expansive and the Establishment Clause is more narrow. As such, any government activity must be viewed in light of this expansive view of the Free Exercise Clause.

DETROIT
MICHIGAN

Finally, both *Espinoza v. Montana Department of Revenue* and *Carson v. Makin* in 2020 and 2022 respectively, clearly stated that government funding of religious schools is not an establishment clause problem. If government funding is generally provided to schools, religious schools cannot be discriminated against.

GALVESTON
TEXAS

HONOLULU
HAWAII

HOUSTON
TEXAS

MIAMI
FLORIDA

MILWAUKEE
WISCONSIN

NASHVILLE
TENNESSEE

NEW YORK
NEW YORK

PHILADELPHIA
PENNSYLVANIA

RENO
NEVADA

SACRAMENTO
CALIFORNIA

SALEM
OREGON

SAN FRANCISCO
CALIFORNIA

SANTA ANA
CALIFORNIA

SEATTLE
WASHINGTON

TRI CITIES
WASHINGTON

TUCSON
ARIZONA

Based on the above interpretations of the Establishment Clause, particularly by the current Supreme Court, as well as history and tradition, Texas' use of chaplains in the public school setting would survive a constitutional challenge.

Very truly yours,



Brad Dacus
PACIFIC JUSTICE INSTITUTE
9851 Horn Rd., Ste. 115
Sacramento, CA 95827

Tel. (916) 857-6900
E-mail: prez@pji.org

There is a New Birth of Freedom for Religious Liberty in America!

Kelly Shackleford, CEO and Chief Counsel of First Liberty, a premier legal organization, said, “There is *incredibly good news* about religious freedom in America, and very few pastors know about it. He went on to say, “There have been some *major, major* victories in the last 13 months. A lot of you have heard about the Coach Kennedy case where the coach went on his knees at the end of each football game to pray and thank God for the game. He was fired for that, and the case went all the way to the Supreme Court. The Supreme Court ruled this violated his freedom of speech and religion.”

Kelly Shackleford added, “Most people don’t know that within that decision a major precedence has been set, the overturning of the *Lemon Case.” A Supreme Court (1971) ruled in the Lemon Case for strict separation of church and state. As a result, we have seen attacks on Christmas nativity scenes, Ten Commandment monuments, and prayer being banned at school board meetings. Thirteen months ago, the Lemon Case was struck down by the Supreme Court; it is no longer the law!” Kelley Shackleford said, “Crosses (as monuments) can come back up. The Ten Commandments can come out of the closet. Prayer can occur at school board meetings. Students and players can pray together after a game, and coaches can join them.”

Kelly Shackleford continued, “For 50 years, because of the Lemon Case, people have been trained that they cannot do all things regarding faith and its expression in public. That is no longer the case! **Everything is shifted, but the problem is people do not know it.** Now everybody can restore faith in their own community. All they have to do is walk in the freedom God has given them. **People have more religious freedom now than they have ever had in their lifetime because of these cases.**” Kelly Shackleford went on to say, “**The land has already been won. God is already ahead of us. We just need to occupy it...Just realize that God is doing something dramatic right now. He is placing freedom in your hand if you will just exercise it.**” (Emphasis added.)

*(The Supreme Court Case – Kurtzman (1971) v. Lemon, often cited as the Lemon Case)

Source of article: <https://youtu.be/t1quRbbFh3U> & Firstlibertylive.com

What Has Changed?

Because of the recent Supreme Court rulings, *you can now pray after a game.*

Because of the recent Supreme Court rulings, *you can put religious books in public libraries.*

Because of the recent Supreme Court rulings, *you can pray in school.*

Because of the recent Supreme Court rulings, *you can pray in public.*

Because of the recent Supreme Court rulings, *you can keep a Bible on your desk.*

Source: Restoring Faith in America (RFIA.org)

North American Mission Board - Support for School Chaplaincy

Chaplain Provider for the Southern Baptist Convention (SBC)

From: Carver, Doug <dcarver@namb.net>
Sent: Tuesday, April 18, 2023 7:59 PM
To: Rocky Malloy <rmalloy@missiongeneration.org>
Cc: Bond, Brent <bbond@namb.net>
Subject: Re: Testimony for School Chaplains

Greetings, Rocky

Thanks for your recent invitation to join you in support of Texas House Bill 3614 relating to allowing school districts to employ chaplains to perform the duties of school counselor. Although we were unable to physically join you for the public hearing of HR3614, we extend our prayerful support to you and other Chaplaincy advocates during the April 20 hearing.

Chaplaincy is one of the fastest growing ministries in the United States. The Chaplaincy Team of the North American Mission Board believes chaplains fulfill a sacred calling to accompany, provide or advise religious and spiritual support in any context outside the walls of a church – including public education.

Our Chaplaincy Team fulfills the Chaplaincy ministry assignment of the Southern Baptist Convention (SBC) and supports Southern Baptist churches, associations, and state conventions like the Southern Baptist Texas Convention and the Baptist General Convention of Texas. The SBC is comprised of over 47,000 autonomous churches associated by friendly cooperation in the faith and fellowship of the gospel. This cooperative relationship allows for differences of opinions, especially political views, across the SBC.

I am unaware of John Litzler's legislative representation of Texas Baptists' policy. We recommended a chaplaincy subject matter expert from the Texas Baptist community so they could provide more credibility among Texas legislators regarding the HB 3614 public hearing. I'm sorry that didn't work out.

Again, we pray the hearing goes well and that your efforts bear fruit for the advancement of the Kingdom of God.

Sincerely in Christ,

Dr. Doug Carver



Douglas L. Carver, D.Min.

Chaplain (Major General), US Army, Retired
Executive Director of Chaplaincy
North American Mission Board
Alpharetta, GA 30022 | USA
W: 770.410.6330 | C: 703.859.1322
NAMB.net

NSCA

P.O. Box 720746,
Norman OK 73070-4574
(405) 831.3299

Chaplain Fact Sheet pg. 1

**NATIONAL SCHOOL
CHAPLAIN ASSOCIATION**

www.campuschaplains.org



Trained chaplains in 30,000 schools in 23 countries

Improved: Teacher Retention, School Safety, Graduation Rates, Grades

Decreased: Teen Pregnancies, Dropouts, Bullying, Substance Abuse

Zero: Suicides Reported after two years or more in the program



Chaplain Fact Sheet pg. 2

Texas School Chaplain Bill permits the option of a full-time campus Chaplain

- SB 763 - Senator Mayes Middleton, Sponsor and Champion
- HB 3614 - Representative Cole Hefner, Sponsor and Champion

"U.S. Chaplains have honored the historic separation of church and state as they represent God in state institutions. Additionally, people who have interacted with a Chaplain almost universally ascribe positive characteristics to that person, with 95% calling them compassionate and roughly nine in 10 recalling them being good listeners, spiritual, helpful, trustworthy, and knowledgeable."

- Gallup Poll

What are the Unique Qualifications of School Chaplains?

- Trained in situational awareness and risk assessment
- Provide another layer of school security
- Safe space for teachers and students
- Provide non-religious spiritual care
- Liaison between staff and parents
- Acquainted with referral agencies
- Confidential counseling
- Trained in trauma care
- Represent God

Are Chaplains legal in public schools? **YES**

Chaplains serve in many publically funded institutions.

Will funding School Chaplains open Pandora's Box flooding our school with woke clergy? **NO**

According to U.S. Military data, 91% of Chaplains are Protestant, 7% are Catholic, and 2% are everything else including Christian Chaplains.

Will School Chaplains require more funding from the state? **NO**

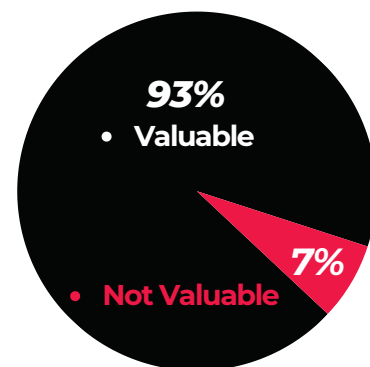
School Chaplains are funded through local ISD-level mental health and school safety funding.

Carter v. Broadlawns - Public funds may pay Chaplains serving public institutions upheld. (U.S. Supreme Court 1971)

Kenney v. Bremerton School District - Religious Expression including prayer upheld (U.S. Supreme Court 2022) overturning Lemon v. Kurtzman 03 U.S. 602 (1971)

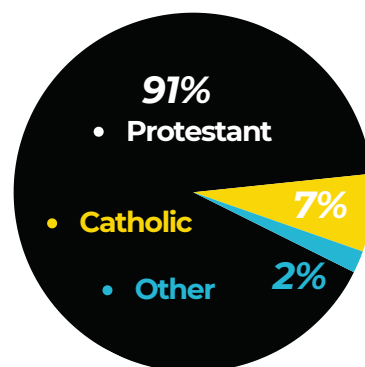
Adult - Chaplain Interaction

<https://www.christiancentury.org/article/new-poll-documents-role-and-influence-chaplains>



Military Chaplain Profile

<https://militaryatheists.org/demographics>



Most people reported that chaplain interaction was valuable.

CHAPLAINCY RESULTS



IMPROVED

- Motivation and Goal Setting
- Inter-student Relationships
- Student-Teacher Relations
- Respect for Authorities
- Problem-solving
- School Safety
- Self-respect
- Confidence
- Grades



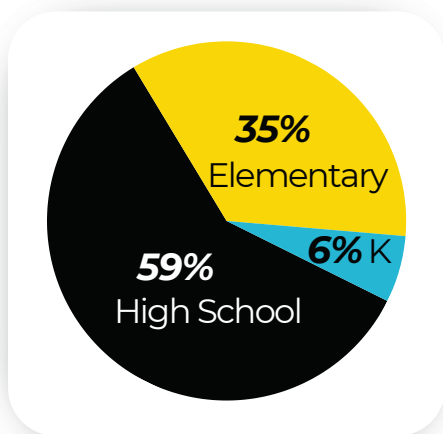
DECREASED

- Reported Violence at School and Home
- Alcohol & Drug Consumption
- Discipline Issues
- Bullying

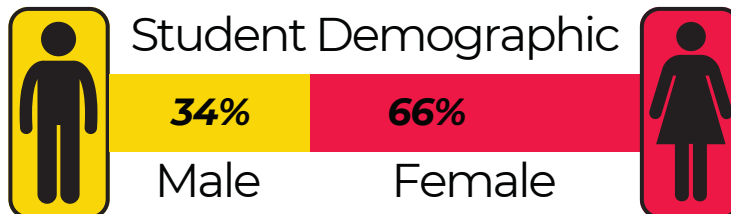
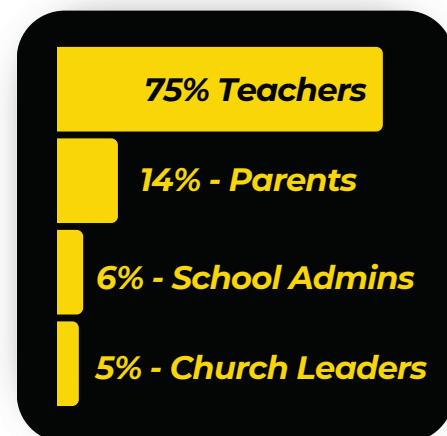
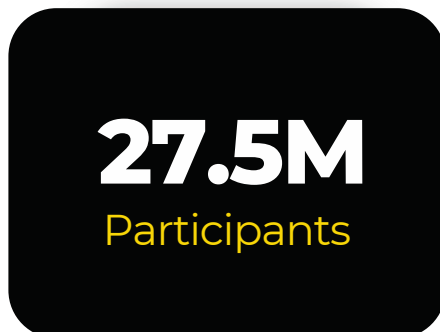
Chaplain Profile

30,531 Schools

23 Countries



89%
Of principals say
chaplains are important
to school community



EVERY WEEK Chaplains have **74,207** formal conversations plus **29,683** in-class Bible studies with students

• **UP** - 37% High School Graduations • **DOWN** - 80% Teen Pregnancies • **ZERO** - Reported Suicides

Conversations Topics Reported by Chaplains

• Peer pressure	92%	• Loneliness	51%
• Family issues	87%	• Physical abuse	49%
• Anger	84%	• Sexual abuse	49%
• Grief and loss	75%	• Suicide	31%
• Spiritual issues	73%	• Academic issues	28%
• Self-esteem	72%	• Violence	25%
• Social inclusion	69%	• Substance abuse	24%
• Self-image	64%	• Trafficking	20%
• Bullying	63%	• Authority issues	18%
• Depression	57%	• Sexuality	14%

Improved

- Motivation and Goal Setting
- Inter-student Relationships
- Student-Teacher Relations
- Respect for Authorities
- Problem-solving
- School Safety
- Self-respect
- Confidence
- Grades

Decreased

- Alcohol & Drug Consumption
- Discipline Issues
- School Violence
- Bullying

Chaplains provide Biblical counsel, spiritual care and support for staff, parents, and guardians creating a wholesome cooperative learning environment.



About Us

Expert Witness Available for Testimony

ROCKY MALLOY

Author, Speaker, Educator, and Activist for Children's Rights

Founder & CEO of the National School Chaplain Association (NSCA)



The Texas Chaplain Act became law on September 1st, 2023, bringing God, faith, and prayer back to public education. This landmark legislation is based on the international accomplishments of NSCA, which trained and certified chaplains to serve over 27 million PK-12 students and adults.

Rocky's entry into ministry began when his zeal to preach the Gospel and his high tolerance for risk landed him in the Sandinista Civil War in 1989. He met his beautiful wife and ministry partner, Joske, a Dutch nurse serving in the conflict. Together, they began ministering to war orphans - the victims of sex trafficking, organ harvesting, and slavery.

In 2021, Rocky and his family moved to Houston, Texas, with the vision of bringing the international successes of chaplaincy to U.S. public schools.

NSCA'S PROGRAM HIGHLIGHTS



RECOGNIZED BY THE DEPARTMENT OF DEFENSE

Federally recognized chaplain endorsement.



SEAMLESS INTEGRATION PROGRAM

5-Point campus integration process.



BOARD ACCOUNTABLE

National and regional oversight by NSCA's senior chaplain's board.



Your trusted provider

EXPERIENCE

The NSCA is the world's largest provider of certified school chaplains. Our operations span 23 countries and over 30,000 schools. Our experienced and caring school chaplains significantly impact the communities we serve, which includes over 27 million people.



Comprehensive training for PK-12 schools

QUALIFICATIONS

We offer the premier school chaplain certification program through our top-ranked, nationally accredited University Partner. As necessary staff, our NSCA School Chaplains are certified in three vital safety courses: Stop the Bleed, Active Shooter, and Personality Threat Assessment.



School Safety, Teacher Retention, Mental Health

SCHOOL BENEFITS

We provide nonjudgmental spiritual care and guidance for individuals experiencing anxiety, depression, hurt, or loss, which is a necessity for comprehensive mental health care. Schools with full-time chaplains have increased teacher retention and improved job performance.

The Unique Role of School Chaplains

Spiritual / Secular Caregiver

- Confidential Counseling
- Emergency First Aid
- Resource Officer
- Safety Officer
- Trauma Care
- Peacemaker
- Caregiver
- Liaison

Trained in situational awareness and risk assessment, identifying trafficking, abuse, and bullying. Provides religious / non-religious spiritual support and care. A bridge between staff and parents. Acquainted with referral agencies.

Chaplain Duties

1. Prevention and treatment programs relating to addressing adverse childhood experiences.
2. The prevention, identification, and management of threats and emergencies.
3. Utilized for restorative discipline and restorative justice practices.
4. Provide mental health, behavioral health services, counseling, and social work services.
5. Developing and implementing mental health programs, culturally relevant instruction, and restorative justice programs.
6. Provide services and programs for suicide prevention, intervention, and post-vention.
7. School Chaplains may also function as a school guardian.

Additional Responsibilities

- Prayer, counsel, and spiritual care for faculty, students, and their families
- Support after-school clubs and other student-lead faith activities
- Advise on moral and spiritual issues concerning school policies
- Assist school staff with theological and Biblical questions
- Lead informal Bible studies for school staff

How We Help

- Legal Representation*
- National Standards
- Parent Education
- Chaplain Certification
- DOD Recognition
- Advocacy

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MODEL SCHOOL CHAPLAINCY POLICY

INTRODUCTION

On June 18, 2023, Governor Greg Abbott signed Texas Senate Bill 763. The new law allows a public school district or an open-enrollment charter school to “employ or accept as a volunteer a chaplain to provide support, services, and programs for students”¹ Districts must vote by March 1, 2024, on whether to adopt a chaplaincy policy.² Adding a school chaplaincy program to existing student services can provide a diverse student community with well-rounded support. The model chaplaincy policies provided below are designed to guide districts in developing policies that serve students well and comply with the Constitution.

Government chaplaincy programs have a long history, and courts consistently uphold them in a wide variety of circumstances, including the military, prisons, hospitals, and legislative bodies.³ Chaplaincy programs provide crucial support services, recognizing that many individuals value the opportunity to seek support that is provided from a religious perspective.⁴ The Supreme Court repeatedly explains that the First Amendment’s Establishment Clause does not “‘compel the government to purge from the public sphere’ anything an objective observer could reasonably infer endorses or ‘partakes of the religious.’”⁵ Last year, in *Kennedy v. Bremerton School District*, the Supreme Court overruled a 50-year precedent, *Lemon v. Kurtzman*,⁶ which incorrectly held that government action that lacks a secular purpose, advances religion, or entangles the government with religion violated the Establishment Clause. That doctrine—the *Lemon*

¹ Act of Jun. 18, 2023, 88th Leg., R.S., S.B. 763 (to be codified as an amendment Tex. Educ. Code tit. 2, subd. D, Ch. 23 and § 48.115) (“SB 763”).

² *Id.*

³ See *Katcoff v. Marsh*, 755 F.2d 223 (2d Cir. 1985) (upholding military chaplaincy); *Marsh v. Chambers*, 463 U.S. 783 (1983) (upholding state legislature’s practice of opening sessions with prayers by a State-employed chaplain); *Theriault v. Silber*, 547 F.2d 1279 (5th Cir. 1977) (upholding prison chaplains); *Carter v. Broadlawns Med. Ctr.*, 857 F.2d 448 (8th Cir. 1988) (upholding public hospital chaplaincy); *Freedom From Religion Found. v. Mack*, 49 F.4th 941 (5th Cir. 2022) (upholding justice of the peace’s chaplaincy and courtroom prayer program); see also *Murray v. Buchanan*, 720 F.2d 689, 690 (D.C. Cir. 1983) (upholding public funding of congressional chaplains).

⁴ See, e.g., *Mack*, 49 F.4th at 944–45 (describing justice of the peace’s volunteer chaplaincy program).

⁵ *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2427 (2022) (quoting *Van Orden v. Perry*, 545 U.S. 677, 699 (2005) (Breyer, J., concurring in judgment)).

⁶ 403 U.S. 602 (1971).

test—is no longer good law. Cases grounded in *Lemon*’s framework⁷ may no longer be controlling, as the Supreme Court “overrule[d] *Lemon v. Kurtzman*, and call[ed] into question decades of subsequent precedents that it deem[ed] offshoots of that decision.”⁸ Accordingly, perceived religious endorsement by the government is no longer the operative legal test. Instead, courts evaluate whether government action violates the Establishment Clause by reference “‘to historical practices and understandings’”⁹ at the time of the Founding. And, as mentioned above, courts have upheld government chaplaincies many times based on the history and tradition of these programs.

Of course, schools may not coerce students to engage in religious exercise,¹⁰ and therefore chaplain services should be strictly voluntary for students to use. However, in *Kennedy*, the Court rejected the notion that the mere presence of religious activity is somehow coercive.¹¹ Rather, the Court found no coercion “where there is no evidence anyone sought to persuade or force students to participate[.]”¹²

First Liberty provides the following model policies as general guidance to assist school boards in developing school chaplaincy policies in accordance with SB 763. 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 this is a developing area of law, 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. Likewise, First Liberty and its attorneys do not express any opinion as to how a court would rule in a particular case. First Liberty encourages school districts considering adopting a chaplaincy policy to contact First Liberty at FirstLiberty.org for a legal consultation that is adapted to your unique situation.

⁷ See, e.g., *Edwards v. Aguillard*, 482 U.S. 578 (1987); *Epperson v. Arkansas*, 393 U.S. 97 (1968); *Doe v. Porter*, 370 F.3d 558 (6th Cir. 2004); *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160 (7th Cir. 1993); *Busch v. Marple Newton Sch. Dist.*, 567 F.3d 89 (3d Cir. 2009); *Oxford v. Beaumont Indep. Sch. Dist.*, 224 F. Supp. 2d 1099 (E.D. Tex. 2022).

⁸ *Kennedy*, 142 S. Ct. at 2434 (Sotomayor, J., dissenting) (describing the majority opinion); *id.* at 2427–28 (“In place of *Lemon* and the endorsement test, this Court has instructed that the Establishment Clause must be interpreted by reference to historical practices and understandings.”) (cleaned up) (quotation omitted).

⁹ *Id.* at 2427 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)).

¹⁰ See *Lee v. Weisman*, 505 U.S. 577 (1992); *Engel v. Vitale*, 370 U.S. 421 (1962); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *McCullum v. Bd. of Educ.*, 333 U.S. 203 (1948).

¹¹ *Kennedy*, 142 S. Ct. at 2430–31.

¹² *Id.*

MODEL SCHOOL CHAPLAINCY POLICY VERSION 1 (EMPLOYED CHAPLAINS)

General

[School district] shall retain one or more chaplains as employees to provide chaplain support and services to the student body of the campuses or schools designated by *[school district]*.

The mental, emotional, social, physical, and spiritual challenges faced by today's students are immense. Concern about student mental health and physical safety is at an all-time high. For many students, the school environment may be the only opportunity they have to access the support, help, and care they need to meet these challenges. We have resources to help address some of these concerns, including counselors and dedicated teachers and staff to whom students may turn. Chaplains will serve as an additional student resource, recognizing that some students may be more comfortable or otherwise prefer to seek support from a chaplain.

It is solely the decision of the individual student whether to seek the support or services of a chaplain. All students are welcome to utilize a chaplain but no student may be required to do so.

All communications between a chaplain and a student intended by the student to be confidential are privileged and confidential, and that privilege and confidentiality may not be breached except as required by law.

Responsibilities

A chaplain's primary responsibility is to be present and available for any student who may seek such chaplain's help or care.

A chaplain will be a visible, integral member of the assigned school or campus. Such chaplain will support the school's students and student groups at their request and will work to develop positive, supportive relationships based on compassion and mutual respect with any students that so desire.

A chaplain will be present and visible both in the various activities in which students participate during the school day and the areas of the school or campus at which students are found. A chaplain may

refer students to other resources and personnel the school provides that might assist the students in any given situation.

A chaplain shall not proselytize or disparage any religion, belief, lack of belief, or faith group. A chaplain's provision of care, help, or counsel consistent with his beliefs or convictions to students who seek such care, help, or counsel is not proselytization or disparagement.

A chaplain shall not have disciplinary authority over students or student groups.

[School district] shall provide any chaplain with office space suitable for confidential interactions with students and visible to and accessible by the students of the campus or school served by such chaplain.

[School district] shall ensure all students of a campus or school a chaplain is assigned are aware of such chaplain, the location of the chaplain's office, their continuing opportunity to seek the chaplain's help or care, the means by which they can request and receive the chaplain's help or care, that their confidential interaction with the chaplain will remain confidential unless otherwise required by law, and that their choice to seek a chaplain's help or care is strictly and always voluntary.

The school board may hire or select a chaplain directly or delegate such hiring authority in accordance with board policy.

In all actions taken and decisions made pursuant to this policy, *[school district]* shall comply with Texas Education Code section 23.001 and other applicable state and federal law.

Qualifications

[Option 1: For purposes of this policy, a chaplain may be anyone whom the school board concludes can fulfill the roles and responsibilities described in this policy.]

[Option 2: For purposes of this policy, a chaplain shall be a person who obtains an ecclesiastical endorsement from his or her faith group certifying that such chaplain is:

1. A minister, rabbi, priest, imam, lay leader, or similar functionary of the faith group;
2. Qualified spiritually, morally, intellectually, and emotionally to serve as a chaplain for [*school district*];
3. Sensitive to religious pluralism and able to provide for the free exercise of religion by all students.]

In accordance with Texas Education Code section 23.001, state licensure or certification is not required, but chaplains must comply with criminal history record laws and have no history of offenses for which registering as a sex offender is necessary.

MODEL SCHOOL CHAPLAINCY POLICY VERSION 2 (VOLUNTEER CHAPLAINS)

General

[School district] may accept one or more volunteer chaplains to provide support and services to the student body of the campuses or schools designated by *[school district]*.

The mental, emotional, social, physical, and spiritual challenges faced by today's students are immense. Concern about student mental health and physical safety is at an all-time high. For many students, the school environment may be the only opportunity they have to access the support, help, and care they need to meet these challenges. We have resources to help address some of these concerns, including counselors and dedicated teachers and staff to whom students may turn. Chaplains will serve as an additional student resource, recognizing that some students may be more comfortable or otherwise prefer to seek support from a chaplain.

It is solely the decision of the individual student whether to seek the support or services of a chaplain. All students are welcome to utilize a chaplain but no student may be required to do so.

All communications between a chaplain and a student intended by the student to be confidential are privileged and confidential, and that privilege and confidentiality may not be breached except as required by law.

Responsibilities

A chaplain's primary responsibility is to be present and available for any student who may seek such chaplain's help or care.

A chaplain will be a visible, integral member of the assigned school or campus. Such chaplain will support the school's students and student groups at their request and will work to develop positive, supportive relationships based on compassion and mutual respect with any students that so desire. A chaplain may refer students to other resources and personnel the school provides that might assist the students in any given situation.

A chaplain shall not proselytize or disparage any religion, belief, lack of belief, or faith group. A chaplain's provision of care, help, or counsel consistent with his beliefs or convictions to students who seek such care, help, or counsel is not proselytization or disparagement.

A chaplain shall not have disciplinary authority over students or student groups.

[School district] may provide any chaplain with office space suitable for confidential interactions with students.

[School district] shall notify all students of a campus or school in which a volunteer chaplain serves of their continuing opportunity to seek the chaplain's help or care, the means by which they can request and receive the chaplain's help or care, that their confidential interaction with the chaplain will remain confidential unless otherwise required by law, and that their choice to seek a chaplain's help or care is strictly and always voluntary.

The school board may select a chaplain directly or delegate such selection authority in accordance with board policy.

In all actions taken and decisions made pursuant to this policy, *[school district]* shall comply with Texas Education Code section 23.001 and other applicable state and federal law.

Qualifications

[Option 1: For purposes of this policy, a chaplain may be anyone whom the school board concludes can fulfill the roles and responsibilities described in this policy.]

[Option 2: For purposes of this policy, a chaplain shall be a person who obtains an ecclesiastical endorsement from his or her faith group certifying that such chaplain is:

1. A minister, rabbi, priest, imam, lay leader, or similar functionary of the faith group;
2. Qualified spiritually, morally, intellectually, and emotionally to serve as a chaplain for *[school district]*;

3. Sensitive to religious pluralism and able to provide for the free exercise of religion by all students.]

In accordance with Texas Education Code 23.001, state licensure or certification is not required, but chaplains must comply with criminal history record laws and have no history of offenses for which registering as a sex offender is necessary.

AN ACT

relating to allowing public schools to employ or accept as volunteers chaplains.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Education Code, is amended by adding Chapter 23 to read as follows:

CHAPTER 23. SCHOOL CHAPLAINS

Sec. 23.001. SCHOOL CHAPLAINS. (a) A school district or open-enrollment charter school may employ or accept as a volunteer a chaplain to provide support, services, and programs for students as assigned by the board of trustees of the district or the governing body of the school. A chaplain employed or volunteering under this chapter is not required to be certified by the State Board for Educator Certification.

(b) A school district or open-enrollment charter school that employs or accepts as a volunteer a chaplain under this chapter shall ensure that the chaplain complies with the applicable requirements under Subchapter C, Chapter 22, before the chaplain begins employment or volunteering at the district or school.

(c) A school district or open-enrollment charter school may not employ or accept as a volunteer a chaplain who has been convicted of or placed on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

SECTION 2. Section 48.115(b), Education Code, is amended to read as follows:

(b) Funds allocated under this section must be used to improve school safety and security, including costs associated with:

- (1) securing school facilities, including:
 - (A) improvements to school infrastructure;
 - (B) the use or installation of physical barriers;
 and
 - (C) the purchase and maintenance of:
 - (i) security cameras or other security equipment; and
 - (ii) technology, including communications systems or devices, that facilitates communication and information sharing between students, school personnel, and first responders in an emergency;
- (2) providing security for the district, including:
 - (A) employing school district peace officers, private security officers, and school marshals; and
 - (B) collaborating with local law enforcement agencies, such as entering into a memorandum of understanding for the assignment of school resource officers to schools in the district;
- (3) school safety and security training and planning, including:
 - (A) active shooter and emergency response training;
 - (B) prevention and treatment programs relating to addressing adverse childhood experiences; and
 - (C) the prevention, identification, and management of emergencies and threats, using evidence-based, effective prevention practices and including:
 - (i) providing licensed counselors, social

workers, chaplains, and individuals trained in restorative discipline and restorative justice practices;

(ii) providing mental health personnel and support, including chaplains;

(iii) providing behavioral health services, including services provided by chaplains;

(iv) establishing threat reporting systems; and

(v) developing and implementing programs focused on restorative justice practices, culturally relevant instruction, and providing mental health support, including support provided by chaplains; and

(4) providing programs related to suicide prevention, intervention, and postvention, including programs provided by chaplains.

SECTION 3. Each board of trustees of a school district and each governing body of an open-enrollment charter school shall take a record vote not later than six months after the effective date of this Act on whether to adopt a policy authorizing a campus of the district or school to employ or accept as a volunteer a chaplain under Chapter 23, Education Code, as added by this Act.

SECTION 4. This Act applies beginning with the 2023-2024 school year.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 763 passed the Senate on April 25, 2023, by the following vote: Yeas 18, Nays 12; May 11, 2023, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 15, 2023, House granted request of the Senate; May 23, 2023, Senate adopted Conference Committee Report by the following vote: Yeas 19, Nays 12.

Secretary of the Senate

I hereby certify that S.B. No. 763 passed the House, with amendments, on May 9, 2023, by the following vote: Yeas 89, Nays 58, one present not voting; May 15, 2023, House granted request of the Senate for appointment of Conference Committee; May 24, 2023, House adopted Conference Committee Report by the following vote: Yeas 84, Nays 60, one present not voting.

Chief Clerk of the House

Approved:

"SCHOOL CHAPLAIN" FUNDING
TEXAS EDUCATION CODE

Sec. 48.115. SCHOOL SAFETY ALLOTMENT. (a) Except as provided by Subsection (a-1), a school district is entitled to an annual allotment equal to the sum of the following amounts or a greater amount provided by appropriation:

(1) \$10 for each student in average daily attendance, plus \$1 for each student in average daily attendance per every \$50 by which the district's maximum basic allotment under Section [48.051](#) exceeds \$6,160, prorated as necessary; and

(2) \$15,000 per campus.

(a-1) A school district campus that provides only virtual instruction or utilizes only facilities not subject to the district's control is not included for purposes of determining a school district's allotment under Subsection (a).

(b) Funds allocated under this section must be used to improve school safety and security, including costs associated with:

(1) securing school facilities in accordance with the requirements of Section [37.351](#), including:

(A) improvements to school infrastructure;

(B) the use or installation of perimeter security fencing conducive to a public school learning environment or physical barriers, which may not include razor wire;

(C) exterior door and window safety and security upgrades, including exterior door numbering and locking systems and security film that provides resistance to a forced entry; and

(D) the purchase and maintenance of:

(i) security cameras and, if the district has already installed security cameras, other security equipment, including video surveillance as provided by Section [29.022](#); and

(ii) technology, including communications systems or devices, such as silent panic alert devices, two-way radios, or wireless Internet booster equipment, that facilitates communication and information sharing between students, school personnel, and first responders in an emergency;

(2) providing security for the district, including:

(A) employing school district peace officers, private security officers, and school marshals; and

(B) collaborating with local law enforcement agencies, such as entering into a memorandum of understanding for the assignment of school resource officers to schools in the district;

(3) school safety and security measures, including:

(A) active shooter and emergency response training;

(B) prevention and treatment programs relating to addressing adverse childhood experiences; and

(C) the prevention, identification, and management of emergencies and threats, using evidence-based, effective prevention practices and including:

(i) providing licensed counselors, social workers, chaplains, and individuals trained in restorative discipline and restorative justice practices;

(ii) providing mental health personnel and support, including chaplains;

(iii) providing behavioral health services, including services provided by chaplains;

(iv) establishing threat reporting systems; and

(v) developing and implementing programs focused on restorative justice practices, culturally relevant instruction, and providing mental health support, including support provided by chaplains;

(4) providing programs related to suicide prevention, intervention, and postvention, including programs provided by chaplains; and

(5) employing a school safety director and other personnel to manage and monitor school safety initiatives and the implementation of school safety requirements for the district.

(b-1) The agency may designate certain technologies that a school district, in using funds allocated under this section, may purchase only from a vendor approved by the agency.

(b-2) If the agency, in coordination with the Texas School Safety Center, determines that entering into a statewide contract with a vendor for the provision of a technology designated under Subsection (b-1) would result in cost savings to school districts, the agency may, after receiving approval from the Legislative Budget Board and office of the governor, enter into a contract with a vendor to provide the technology to each district that uses funds allocated under this section to purchase that technology.

(c) A school district may use funds allocated under this section for equipment or software that is used for a school safety and security purpose and an instructional purpose, provided that the instructional use does not compromise the safety and security purpose of the equipment or software.

(c-1) The agency, or if designated by the agency, the Texas School Safety Center, shall establish and publish a directory of approved vendors of school safety technology and equipment a school district may select from when using funds allocated under this section. If a school district uses funds allocated under this section to purchase technology or equipment from a vendor that is not included in the directory, the district must solicit bids from at least three vendors before completing the purchase.

(d) The commissioner shall annually publish a report regarding funds allocated under this section including the programs, personnel, and resources purchased by districts using funds under this section and other purposes for which the funds were used.

(e) Notwithstanding any other law, a school district may use funds allocated under this section to provide training to a person authorized by the district to carry a firearm on a district campus.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. [11](#)), Sec. 20, eff. June 6, 2019. Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 806 (H.B. [1525](#)), Sec. 31, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 896 (H.B. [3](#)), Sec. 23, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1142 (S.B. [763](#)), Sec. 2, eff. September 1, 2023.

EDUCATION CODE

TITLE 2. PUBLIC EDUCATION

SUBTITLE D. EDUCATORS AND SCHOOL DISTRICT EMPLOYEES AND VOLUNTEERS

CHAPTER 23. SCHOOL CHAPLAINS

Sec. 23.001. SCHOOL CHAPLAINS. (a) A school district or open-enrollment charter school may employ or accept as a volunteer a chaplain to provide support, services, and programs for students as assigned by the board of trustees of the district or the governing body of the school. A chaplain employed or volunteering under this chapter is not required to be certified by the State Board for Educator Certification.

(b) A school district or open-enrollment charter school that employs or accepts as a volunteer a chaplain under this chapter shall ensure that the chaplain complies with the applicable requirements under Subchapter C, Chapter 22, before the chaplain begins employment or volunteering at the district or school.

(c) A school district or open-enrollment charter school may not employ or accept as a volunteer a chaplain who has been convicted of or placed on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

Added by Acts 2023, 88th Leg., R.S., Ch. 1142 (S.B. 763), Sec. 1, eff. September 1, 2023.