



Religious Accommodation in the Army: Advising the Command

OCCH/USACHCS



LEARNING OBJECTIVES

Terminal Learning Objective: Unit ministry teams and chaplain sections capable of advising Soldiers and leaders on religious accommodation in accordance with current law and Army policy and procedures.

Enabling Learning Objective: Inform training participants of legal and policy background and recent procedural changes in regard to religious accommodation so all understand their roles and are capable of performing tasks in accordance with policy and approved procedures.

Changes to the Army Religious Accommodation process impact leaders at multiple echelons across the Army.



REFERENCES

- Title 42, United States Code § 2000bb- 1 (Religious Freedom Restoration Act).
- Title 10, United States Code § 774 (Religious apparel: wearing while in uniform).
- Attorney General Memorandum on Religious Liberty, 6 October 2017.
- Department of Defense Instruction 1300.17 (Accommodation of Religious Practices Within the Military Services), February 10, 2009, Incorporating Change 1, Effective January 22, 2014.
- Army Directive (AD) 2016-34 (Processing Religious Accommodation Requests Requiring a Waiver to Army Uniform or Grooming Policies), 6 October 2016.
- Army Directive (AD) 2017-03 (Policy for Brigade-Level Approval of Certain Requests for Religious Accommodation), January 3, 2017.
- Army Regulation (AR) 600-20 (Army Command Policy), para 5-6 (Accommodating Religious Practices) 6 November 2014.
- Army Regulation (AR) 670-1 (Wear and Appearance of Army Uniforms and Insignia), 25 May 2017.
- Army Techniques Publication (ATP) 1-05.04 Religious Support and Internal Advisement, March 2017

Religious Accommodation Policy, Process, and Instructions are codified in DoD and Army Policy, Instructions, Directives, and Regulations.



AGENDA

- Introduction: Chaplain Corps Roles
- Legal Foundations of Religious Accommodation (RA)
- Army RA Policy
 - Potential Types
 - Routine Cases
 - Medical
 - Uniform/Grooming Standards
- Chaplains' General RA **Advisory Role**
- Chaplains' Specific RA **Formal Interviewer Role**
- Training Scenarios



INTRODUCTION

- The Chaplain Corps advises commands at all echelons on matters of religion (FM 1-05, AR 165-1).
- Religious accommodation (RA) procedures and policy have recently been significantly modified.
- Religious support personnel must maintain familiarity with RA law and policy to fulfill:
 - General responsibility to advise Army leaders and Soldiers on religious exercise in military contexts, *and*
 - Specific procedural responsibilities to conduct interviews as part of formal individual RA requests.



LEGAL FOUNDATIONS - CONSTITUTIONAL

The U.S. Constitution's First Amendment is our nation's centuries-old legal foundation for religious freedom and accommodation undergirding all U.S. laws and policies, to include Department of Defense and U.S. Army policy on religious accommodation.

Defense of freedom is a central reason for the very existence of a U.S. Army.

Religious freedom is so highly valued by our nation, *accommodations* are made for diverse religious expression in federal law and policy where military service would otherwise require stricter uniformity.



The First Amendment

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

Religious accommodation is founded upon the "free exercise" clause in the First Amendment to the U.S. Constitution.



LEGAL FOUNDATIONS

*Congress shall make no law respecting the establishment of religion or prohibiting the **free exercise** thereof.*

First Amendment, U.S. Constitution

*The government may substantially burden a person's **exercise of religion** only if it demonstrates that application of the burden to the person—*

*(1) is in furtherance of a **compelling governmental interest**; and
(2) is the **least restrictive means** of furthering that compelling governmental interest.*

Religious Freedom Restoration Act (**RFRA**),
42 U.S.C. § 2000bb–2000bb-4



LEGAL FOUNDATIONS

- To the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all government activity.
- The free exercise of religion includes the right to *act* or *abstain from action* in accordance with one's religious beliefs.
- Government may not officially favor or disfavor particular religious groups.

Attorney General Memo, *Federal Law Protections for Religious Liberty*, 6 Oct 17



LEGAL FOUNDATIONS

- **The strict scrutiny standard applicable to RFRA is exceptionally demanding...**
Only those interests of the highest order can outweigh legitimate claims to the free exercise of religion...
Even if the federal government could show the necessary interest, it would also have to show that its chosen restriction on free exercise is the least restrictive means of achieving that interest. That analysis requires government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative...
- **RFRA does not permit the federal government to second-guess the reasonableness of a religious belief.**

Attorney General Memo, Federal Law Protections for Religious Liberty, 6 Oct 17



ARMY RELIGIOUS ACCOMMODATION (RA) POLICY

*“The DoD places **a high value** on the rights of members of the Military Services to observe the tenets of their respective religions or to observe no religion at all.”*

DoD Instruction 1300.17, Change 1, 22 Jan 14

*“The Army places **a high value** on the rights of its Soldiers to observe the tenets of their respective religions or to observe no religion at all.”*

Direct quote taken from:

- AR 600-20, *Army Command Policy*, 6 Nov 14
- Army Directive 2016-34, 6 Oct 16
- Army Directive 2017-03, 3 Jan 17
- ATP 1-05.04, *Religious Support and Internal Advisement*, 23 Mar 17



ARMY RA POLICY

*“The Army will approve requests for accommodation of religious practices, unless accommodation will adversely affect **military necessity**...”*

- AR 600-20, Army Command Policy, 6 Nov 14
- Army Directive 2016-34, 6 Oct 16
- Army Directive 2017-03, 3 Jan 17



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Military necessity may be sufficient “compelling government interest” to deny or restrict an accommodation request. Army policy lists the following types of *military necessity* that may, depending on the level of adverse impact, justify a partial or full denial of an individual RA request:

- **Unit or individual readiness**
- **Good order and discipline**
- **Health**
- **Safety**



ARMY RA POLICY: Potential Types of RA

WORSHIP PRACTICES

DIETARY PRACTICES

MEDICAL

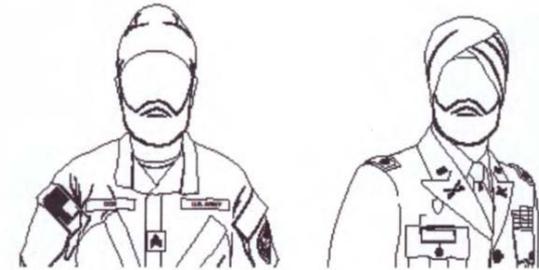
UNIFORM*

GROOMING*

RELIGIOUS OBSERVANCE

RELIGIOUS SPEECH/ABSTENTIONS

(3) Hair worn under the turban or under-turban is not subject to AR 670-1 standards, but may not fall over the ears or eyebrows or touch the collar while in uniform. When the Soldier is wearing an Advanced Combat Helmet or other protective headgear with the under-turban, the bulk of the hair will be repositioned or adjusted to ensure proper fit.



(3) Hair underneath the hijab must be worn in a hairstyle authorized for the Soldier in AR 670-1, paragraph 3-2. The bulk of the Soldier's hair and hijab may not impair the ability to wear required headgear, the Advanced Combat Helmet, or other protective equipment; impede the ability to operate an assigned weapon, military equipment, or machinery; or interfere with the ability to perform the Soldier's military duties.



****Recent changes detailed in the 2016 and 2017 Army Directives and AR 670-1 only affect uniform and grooming accommodations.***



ARMY RA POLICY: Routine Cases

- AR 600-20, para. 5-6 governs all routine RA requests that do **NOT** **require a waiver** to Army-wide policy and regulations (*such as uniform and grooming standards of AR 670-1*).
- These routine cases are staffed for **unit commander decision** within 10 working days of a RA request.
 - **Approvals:** Commanders may approve these routine RA requests formally (in writing) or informally. For informal RA requests, the command simply assists the Soldier in completing actions necessary for the accommodation (e.g., adjustment of duty rosters, obtaining separate rations). Written RA approvals generally remain in effect until revoked in writing.
 - **Denials:** Denials of routine RA requests require commanders to afford Soldiers opportunity to submit a written appeal through each higher level of command IAW AR 600-20, para. 5-6i(5). A formal chaplain interview memorandum and a legal review accompany all appeal packets.

RA requests are frequently and routinely approved in the Army at local command levels.
Legal review and chaplain interviews are not required for routine approvals.



ARMY RA POLICY: Medical

- AR 600-20, para. 5-6h(3) governs processing of medical RA requests. Medical RA requests may involve beliefs in self-care and prohibitions against immunizations, blood transfusions, or surgery.
- **Medical boards** appointed by medical treatment facility (MTF) commanders are required when Soldiers refuse treatment for religious reasons. These boards are chaired by a member of the medical corps, include a chaplain, and must provide Soldiers the opportunity to appear before the board and submit written materials.
- Medical RA boards consider the effect on the Soldier's health and ability to carry out assigned tasks, the health of others, and the military medical system.

Soldiers' medical RA requests are processed through unit commanders, MTF commanders, medical boards, and the Surgeon General

ARMY RA POLICY: Medical



- **The medical board and MTF commander may approve most RA medical requests.** If the board finds instead that the medical care is needed and the Soldier continues to refuse the prescribed care, board proceedings are forwarded to the Surgeon General (TSG) for approval/disapproval.
- Medical treatment may be deferred pending final decision on whether to approve the medical RA request in the discretion of the unit and MTF commander, with consideration of time constraints for the Soldier to recuperate without receiving immediate military medical care.
- **Immunizations:** Unlike other medical RA requests, requests to refuse immunizations are only approved or disapproved by TSG IAW further procedures described at AR 600-20, para 5-6h(3)(e).



ARMY RA POLICY: Uniform/Grooming Standards

Two recent Army Directives modified some of the processing provisions of AR 600-20, para. 5-6 for RAs to uniform and grooming standards. These provisions are expected to be fully incorporated in future revisions of AR 600-20.

- **Army Directive (AD) 2016-34**: Includes provisions for RA requests prior to entry into the Army (**pre-accession RA requests**).
- **Army Directive (AD) 2017-03**: Allows brigade-level/O-6 commanders to approve certain types of uniform and grooming RA requests.

Note that RA requests are not required for categories of authorized wear of religious jewelry, headgear, and other apparel that are already specifically authorized under the provisions of AR 670-1.

The two recent Army Directives only affect processing of RA exceptions to Army uniform and grooming standards. Processing other RA requests is not affected.



ARMY RA POLICY: Uniform/Grooming Standards

Army Directive (AD) 2016-34

- Authorizes procedures for **pre-accession RA requests**. AD 2016-34 allows otherwise qualified applicants to submit written RA requests for exception to AR 670-1 uniform and grooming standards prior to enlistment contracts, Senior Reserve Officers' Training Corps program contracts, or prior to accepting U.S. Military Academy or direct commission appointments.
- Requires immediate command notification to HQDA, DCS, G-1 at usarmy.pentagon.hqda-dcs-g-1.mbx.command-policy@mail.mil.
- Each pre-accession RA request packet to include:
 - individual's written request with enclosures,
 - chaplain interview memorandum (described below),
 - legal review,
 - chain of command recommendations.
- Approved by Secretary of the Army (or designee)



ARMY RA POLICY: Uniform/Grooming Standards

Army Directive (AD) 2017-03

- Authorizes **brigade (BDE)-level approval of three types of RA requests:**
 - **The wear of a hijab;**
 - **The wear of a beard;**
 - **The wear of a turban or under-turban/patka,**
with uncut beard and uncut hair.
- Requires immediate command notification to HQDA, DCS, G-1 at usarmy.pentagon.hqda-dcs-g-1.mbx.command-policy@mail.mil.
- BDE-level/O-6 commanders will approve such RA requests unless:
 - the request is not based on a sincerely held religious belief, or
 - a hazard is identified that cannot be mitigated by reasonable measures after coordinating with the branch or MOS proponent.



ARMY RA POLICY: Uniform/Grooming Standards

Army Directive (AD) 2017-03

- Complete formal RA request packets for these BDE-level commander approvals should include:
 - Soldier's written request with enclosures
 - Chaplain interview memorandum (described below)
 - Legal review
 - Chain of command recommendations.
- Further provisions of AD 2017-03 include certain training and duty position limitations for Soldiers receiving RA for wear of beards.
- While AD 2017-3 governs how these RA requests are approved, AR 670-1 describes further detailed standards on how these hijabs, turbans, and beards are to be worn applicable once the RA is approved by the BDE-level commander.



ARMY RA POLICY: Uniform/Grooming Standards

Four Categories of RA Uniform/Grooming

- The preceding slides describe how different standards/procedures apply based upon four different types of uniform/grooming RA. Initially determining uniform/grooming RA types according to the following four categories can assist UMTs in RA advisement:

CATEGORY 1: *No Request Required.* Specifically permitted by AR 670-1.

CATEGORY 2: *Any-Commander Approvals If No AR 670-1 Waiver Required.*

If RA requestor merely seeks exception from local standards/uniformity rather than waiver from Army-wide policy/regulations, any commander may approve these formal or informal requests. See AR 600-20, para 5-6h(4)(i).

CATEGORY 3: *BDE-Level Commander Approvals from AR 670-1 Standards.*

Only for specified waivers for hijabs, beards, turbans with uncut beard/hair IAW AD 2017-03 and AR 670-1.

CATEGORY 4: *Secretary of the Army (or Designee) Approvals.* All other waivers of Army-wide policies/regulations IAW AD 2016-34 and AR 600-20.



TWO CHAPLAIN CORPUS ROLES IN RA

- Chaplains must understand Army RA policy to competently fulfill two distinct roles they perform and supervise at all command echelons.
- Distinguishing the two different roles is important due to differences in the ability to offer confidential/privileged communications, dependent upon the role being performed. Misunderstanding about confidentiality risks loss of Soldier/leader trust in chaplain counsel.
- The two roles described in the following slides are the Chaplains':
 - General RA **Advisory Role** (*Internal Advisement*)
 - Specific RA **Formal Interviewer Role**



Chaplains' General RA Advisory Role

- Chaplains must be prepared to advise commands at all echelons on all matters of religion generally, to include “the religious needs of assigned personnel.” (AR 165-1, para 3-3).
- **Internal Advisement.** This general advisory role on all unit religious matters such as RA is the *internal advisement* capability described in ATP 1-05.04, *Religious Support and Internal Advisement* (23 Mar 17). Internal advisement is defined as “a required religious support capability that advises on religion, morals, and morale within units, and ethical decision making of the command” (ATP 1-05.04, para. 1-6).
- Authoritative guidance on the Chaplain Corps RA advisory role is fully provided in Chapter 1 and Appendix A of ATP 1-05.04.



Chaplains' General RA Advisory Role

- Internal advisement is provided not only to the command and staff, but also to individual Soldiers seeking advice regarding appropriate exercise of religious belief and practice.
- Chaplains are able to offer **full confidentiality to advice provided in this general RA “internal advisement” role** for one-on-one RA discussions as a “matter of conscience” IAW Mil. Rule of Evid. 503.
- Chaplain advisors serving in general RA advisory roles help Army leaders understand this support of free exercise of religion as a value extending beyond mere compliance with minimal legal requirements:

*“[I]nternal advisement supports commanders' and leaders' awareness of free exercise values **not merely for reason of legal compliance**. Free exercise of religion also serves end state purposes related to the Army mission of **sustaining Soldiers' short and long term readiness, building ethical and moral strength and motivation to meet present and future challenges.**”*

ATP 1-05.04, para. 1-6



Chaplains' Specific RA Formal Interviewer Role

- **A Chaplain RA Formal Interview:** A chaplain-conducted formal RA interview (with accompanying memorandum) is a specifically defined requirement for certain types of RA requests. This role is distinct from the broad general advisory role unit chaplains fulfill for both the command and its Soldiers on RA matters.
- **When Required:** This chaplain formal interview of Soldiers requesting RA is required in the following instances:
 - a) All RA requests re: **uniform and grooming standards.**
 - b) All RA requests re: **immunizations.**
 - c) All RA **appeals** to higher levels of command.
- **Purpose:** The purpose of the interview is **limited** to addressing:
 - a) The **religious basis** of the Soldier's RA request, and
 - b) The **sincerity** of the Soldier's RA request.



Chaplains' Specific RA Formal Interviewer Role

- **The unit chaplain need not be the interviewing chaplain.** Interviews **may take place telephonically** by either a unit chaplain *“or other chaplain determined by the senior chaplain present.”* This “senior chaplain” need not be *physically* present, but able to adequately coordinate with the local unit to determine an appropriate chaplain interviewer.
- **Information provided during formal RA interviews are NOT confidential or privileged.** Chaplains at the beginning of the interview must ensure interviewees understand and acknowledge that interview information will be provided to the command.
- **Chaplains other than the RA requestor’s own unit chaplain should often provide the formal chaplain interview.** This helps avoid actual or perceived conflicts of interest, especially where confidential counselor-advisor relationships already exist between a requestor and the unit chaplain.



Chaplains' RA Formal Interview Memorandum:

The Interview Memorandum

Required: The appointed formal interviewing chaplain must provide a memorandum stating the interview occurred, and address:

- The **religious basis** of the request.
- The **sincerity** of the request.

Optional: The chaplain may recommend approval/disapproval, but is not required to do so.

Sample Formal Chaplain Interview Memorandum

MEMORANDUM FOR O-6 level commander for Brigade-level request or General Court Martial Convening Authority for AR 670-1 waiver request

SUBJECT: Religious Accommodation Request Chaplain Interview – Requestor's Rank (if applicable) Name, Unit (if applicable)

1. On [date] I conducted a [n] [telephonic] [in-person] interview with [requestor] regarding [his] [her] request for religious accommodation.

[Use this para 2 for a brigade-level request pursuant to AD 2017-03]

2. [Requestor's name] requests a religious accommodation to wear [a beard] [a beard, turban, and uncut hair] [a hijab] in accordance with the standards provided in the enclosure to Army Directive 2017-03 (Policy for Brigade-Level Approval of Certain Requests for Religious Accommodation), 3 Jan 2017.

or

[Use this para 2 for a request requiring a waiver of AR 670-1]

2. [Requestor's name] requests a religious accommodation to wear describe the uniform and/or grooming accommodation requested. This request requires a waiver of Army Regulation (AR) 670-1 standards

3. Address the religious basis for the request.

4. Address sincerity of the request

5. Recommendation is optional

5 or 6. The point of contact for this memorandum is the undersigned at xxx-xxx-xxxx or xxx.xx.mil@mail.mil.

JOHN D. DOE
Chaplain (CPT) U.S. Army
Position



Scenario 1

A trainee arrives at Reception with T-shirts and underwear briefs he intends to wear with the uniform he will soon be issued. The T-shirts appear identical to those he will be issued. The briefs extend to the knee, but otherwise match the color of the t-shirts. The trainee identifies as a practicing Latter-day Saint. He associates wearing these items with sacred covenants he made with God. Remaining faithful to his covenants requires he wear them at all times, except when bathing or during PT. The reception Drill Sergeant informed him all personal items from home, to include these, must remain locked in a duffle bag until he graduates. The trainee is permitted to speak to a chaplain about the issue and appears for counseling. How does the UMT respond?



Scenario 2

A Jewish Soldier wearing a yarmulke that is concealed when he wears headgear outdoors is asked for a copy of the signed approval allowing him to do so. The Soldier admits he does not have written approval, but he is “pretty sure” it is allowed. He identifies other Jewish soldiers (none in his unit) who wear them. His NCO instructs him to remove it until he has signed documentation allowing him to wear it in uniform. The Soldier seeks out the UMT for help. How do you respond?



Scenario 3

A Soldier on his first day in the unit and who identifies with a branch within the Holiness tradition comes to PT formation wearing long sleeves and pants when everyone else is wearing the warm weather PT uniform (short sleeves and shorts). The Soldier explains modesty—remaining covered to wrists and ankles—is a religious practice he follows and is important to him. The Soldier and his First Line Supervisor seek out the UMT for help. How do you respond?



Scenario 4

A Soldier marries a Muslim and converts to Islam. She returns from leave (her honeymoon) wearing a *hijab* (head scarf) with both her PT and work uniforms. Her First Sergeant dismisses her from formations, stating she is out of uniform, and later provides her written, corrective counseling. The Soldier informs the First Sergeant *hijabs* are now allowed in the Army. The Soldier and the First Sergeant seek out the UMT for help. How do you respond?



Scenario 5

Your unit's Public Affairs NCO just PCSed from Germany. She is wearing a *khimara* and identifies with the *Hanfi Mussulman* branch of Islam. The Garrison Sergeant Major stops her in the PX food court, asks for her unit, and notifies her battalion Command Sergeant Major to address the issue. Her CSM informs her the article of clothing is not authorized. If she continues to wear it she will face UCMJ action. The Soldier seeks out the UMT for help. How do you respond?



Scenario 6

A Soldier identifies as Rastafarian and submits a request in writing for religious accommodation to wear dreadlocks. The Soldier is directed to the Unit Ministry Team to receive guidance. How do you respond?



Scenario 7

A Soldier identifies as Jewish and submits a request in writing for religious accommodation to observe the Sabbath. The Soldier requests whenever possible, by means of duty schedule adjustment and distributing workload with his team, his command exempts him from duty from sundown Friday until sundown Saturday. The Soldier is directed to the Unit Ministry Team to receive guidance. How do you respond?



Scenario 8

A Soldier assigned to daily office duties routinely shares his faith with co-workers during personal time and lunch breaks, and sometimes states that other religions are false and will not bring salvation. His supervisor heard a co-worker complain that they found this expression of his beliefs annoying and offensive. The supervisor, desiring to avoid workplace controversy, creates a new office rule: Proselytizing, evangelism, or critique of religions in the office is prohibited; religious conversations should occur only after duty hours. The Soldier comes to the chaplain saying his religion requires regularly sharing his faith with others. He wants to know if he has a right to do so, or if he could request an exception from the rule for religious reasons to continue to share his faith at the office to include expressing his own exclusive views on how his religion is the only true religion. The supervisor also says he wants to talk to you about limiting religious talk to the chapel.