Religious Expression in Public Schools

The question is not, Will religious controversy hit your school? but rather, Will you be adequately grounded in knowledge about the law when it does? As communities have become more culturally diverse, the number of disagreements regarding the role and place of religion in schools has increased. Consequently, every principal must know the current legal status of religious expression. This Legal Memorandum highlights the most likely focal points of this conflict.

The appropriate relationship of religion and public schools is a sensitive and controversial issue that has divided U.S. citizens and become one of the most contentious legal topics in schools today. The right to freedom of religion, however, has been guaranteed to U.S. citizens since 1791. The First Amendment contains two clauses—the establishment clause and the free-exercise clause—that protect the rights of U.S. citizens.

To help interpret the establishment clause—“Congress shall make no law respecting an establishment of religion”—the U.S. Supreme Court set forth several tests. One such assessment is the three-pronged Lemon test, derived from the 1971 case of Lemon v. Kurtzman, in which the Court struck down a state program that provided aid to religious elementary and secondary schools and detailed the requirements of legislation regarding religion. The courts now judge a government statute or policy to be constitutional if it has “a secular legislative purpose,” has “a primary effect that neither advances nor inhibits religion,” and does not “foster excessive entanglement between government and religion.” To satisfy the establishment clause, governmental action must pass all three prongs of this test.

About the Author

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The free-exercise clause states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” Courts must often attempt to balance the right of free exercise of religion against the right not to have an established religion. Problems arise when these two rights are perceived as being in conflict. To help clarify these distinctions, the U.S. Department of Education published guidelines in 1995 regarding religious expression in public schools. These guidelines reflect two basic and equally important obligations of public school officials: first, schools may not forbid students who are acting on their own from expressing their personal religious views or beliefs solely because their actions are of a religious nature, and second, schools may not discriminate against private religious expression by students and must, instead, give students the same right to engage in religious activity and discussion as they have to engage in other comparable activity.

Further, the U.S. Secretary of Education issued official “guidance on constitutionally protected prayer in public elementary and secondary schools” on February 7, 2003. (U.S. Department of Education, 2003) This guidance explains the responsibilities of state and local educational agencies to clarify the extent to which prayer in public schools is legally protected, thereby certifying compliance with the No Child Left Behind Act.

Official Neutrality

Teachers and school administrators are representatives of the state, and the establishment clause prohibits them from soliciting or encouraging religious activity and from participating in such activity with students. Teachers and administrators also are prohibited from discouraging activity because of its religious content and from soliciting or encouraging antireligious activity.

School Prayer and Bible Reading

Prayer at school board meetings. In 1999, in the case of Coles v. Cleveland Board of Education, the court was asked to consider the issue of prayer at a school board meeting. The case involved a student appearing at a school board meeting to accept an award and then indicating that she was shocked and surprised when the board began the meeting by having a Baptist minister offer a prayer. The student said she believed that the prayer showed favor to Christians and was offensive to anyone of another religion attending the meeting. As a result, the Sixth Circuit followed the Supreme Court's lead in striking down any instance of government-sponsored religious expression or involvement in public education. In striking down the school board prayer as unconstitutional, the court asserted that the practice had the primary effect of endorsing religion and further reasoned that prayer at a board meeting was arguably more coercive than at a graduation.

Prayer at athletic events. In June 2000, the U.S. Supreme Court handed down its decision in Santa Fe Independent School District v. Doe. In this case, a number of Mormon and Catholic students and their families had filed a suit challenging the practice of having an elected student chaplain deliver a prayer over the public address system before each home varsity football game. The Supreme Court ruled that the district's policy permitting student-led, student-initiated prayer at football games violated the establishment clause. The court held that, at a minimum, "the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise
or otherwise act in a way that establishes a state religion or religious faith, or tends to do so.” Further, the Court ruled that the delivery of a message such as the invocation on school property, at school-sponsored events, over the school’s public address system, by a speaker representing the student body, under the supervision of school faculty, and pursuant to a school policy that explicitly and implicitly encourages public prayer is not properly characterized as “private” speech. The Court ruled that the policy involves both perceived and actual endorsement of religion.

**Student prayer and religious discussion.** The establishment clause does not prohibit purely private religious speech by students. Students, therefore, have the same right to engage in individual or group prayer and religious discussion during the school day as they do to engage in other comparable activity. For example, students may read their Bible or other scriptures, say grace before meals, and pray before tests. Local school authorities may not structure or administer such rules to discriminate against religious activity or speech.

Generally, students may pray in a nondisruptive manner when not engaged in school activities or instruction—subject to the rules that normally pertain in the applicable setting. Specifically, students in informal settings, such as cafeterias and hallways, may pray and discuss their religious views with one another. Students may also speak to and attempt to persuade their peers about religious topics, just as they do with regard to political topics. School officials, however, should intercede to stop student speech that constitutes harassment aimed at a student or a group of students. Students may also participate in before- or after-school events with religious content, such as “see-you-at-the-flag-pole” gatherings, on the same terms as they may participate in other noncurricular activities on school premises. Teachers and school administrators should ensure that no student is in any way coerced to participate in a religious activity.

**School employees’ religious expression.** It is important for teachers and others in the school setting to remember that they are employees of the government, subject to the establishment clause, and thus required to be neutral concerning religion while carrying out their duties. Consequently, school employees may not pray with or in the presence of students during the school day. An employee may pray silently or outside the presence of students. Employees are permitted to wear nonobtrusive religious jewelry, such as a cross or a Star of David, but employees should not wear clothing with a proselytizing message.

In the classroom setting, while many teachers prefer not to answer questions about their personal religious beliefs, others choose to answer questions straightforwardly in the interest of an open and honest classroom environment. The crucial issue is whether the student will be likely to interpret the teacher’s personal view as the official position of the school.

**Graduation prayer and baccalaureates.** The U.S. Supreme Court has consistently held that invocations and prayers at high school graduation ceremonies violate the establishment clause. School officials may not mandate or organize prayer at graduation or organize religious baccalaureate ceremonies. If a school generally opens its facilities to private groups, it must make its facilities available on the same terms to organizers of privately sponsored, religious baccalaureate services. However, a school may not extend preferential treatment to baccalaureate ceremonies and may, in some instances, be obliged to disclaim official endorsement of these ceremonies. In *Lee v. Weisman* (1992), the U.S. Supreme Court ruled that even though the graduation ceremony may be voluntary, it is not appropriate for the state to place a student in the position of choosing whether to miss the graduation ceremony or to attend the ceremony and listen to a prayer that the student might find objectionable.

**Silent prayer.** Some school districts and state legislatures have enacted policies and statutes that authorize a moment of silence for meditation or silent prayer. The U.S. Supreme Court ruled, in *Wallace v. Jaffree* (1985), that such a statute in Alabama violated the first prong of the *Lemon* test that required the statute have a secular legislative purpose. The court ruled that Alabama’s statute was not motivated by a secular purpose, but by the purpose of endorsing religion.

**Religious Literature Distribution by students.** Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. In addition, schools may impose the same reasonable time, place, manner, or other restrictions on distribution of religious literature as they do on nonschool literature generally, but they may not single out religious literature for special regulation.

**The Ten Commandments.** In 1980, the Supreme...
Court overturned a Kentucky law calling for the Ten Commandments to be posted in public schools (Stone v. Graham, 1980). At the end of its 2004–2005 term, the Supreme Court decided two cases involving the public display of the Ten Commandments by government agencies. The Texas case involved a red, six-foot-tall granite monument of the Ten Commandments, which was displayed 75 feet from the state capitol building. The Supreme Court reasoned that the display did not denote state support of religion (Van Orden v. Perry, 2005).

Later that year, the Supreme Court reached a different result regarding the Ten Commandments in McCreary County v. American Civil Liberties Union (2005). In this case, two Kentucky counties posted displays of the Ten Commandments in their courthouses. The American Civil Liberties Union filed suit, arguing that the purpose of this display was religious. The Supreme Court affirmed the lower court’s ruling that the display violated the establishment clause.

Bible distribution. Historically, some schools have allowed or encouraged outside groups, such as the Gideons International, an evangelical Christian organization dedicated to dispensing copies of the Bible, to come into schools to distribute. The Fifth Circuit Court, in Meltzer v. Board of Pub. Instruction of Orange County (1977), prohibited this practice, stating that the practice favored the Gideons and consequently was not a neutral act. In Peck v. Upshur County Bd. of Education (1996), however, a federal court in West Virginia ruled that as long as the distribution is conducted in an area that is open to other outside organizations and the students are free to refuse the Bibles, the distribution is permitted.

In a 1997 case in Alabama, a teacher argued that the distribution of Bibles during homeroom to public school students by an outside group did not violate the First Amendment because no instruction took place during homeroom. The court ruled against permitting the distribution, however, stating that because the homeroom was surrounded by other school activities, such a practice gave the impression that the school endorsed the religious activity (Chandler v. James, 1999).

### Accommodating Special Religious Needs

Various religions have practices that may require a student to perform a specific task or to refrain from performing a specific task. For example, Muslim students need a quiet place at lunch or during breaks in the school day to fulfill their prayer obligations. At schools with students who are Jehovah’s Witnesses in attendance, principals are frequently given a brochure that describes the beliefs of Jehovah’s Witnesses and that requests that these children be excused from singing anthems and school songs, from being involved in elected offices, from taking part in cheerleading and homecoming activities, and from celebrating birthdays and holidays. Schools may honor these requests but must not permit school employees to monitor or enforce a child’s compliance with a particular religious requirement.

**Religious holidays.** Although teaching about religion is permissible, celebrating religious holidays is not. Teachers may not use the study of religious holidays as an opportunity to proselytize or otherwise inject personal religious beliefs into the discussion. If any religious symbols are incorporated into the teaching unit, they may be displayed only on a temporary basis as part of the academic lesson.

**Religious excusals.** Schools enjoy substantial discretion to excuse individual students from lessons that are objectionable to the student or the student’s parents on religious or other conscientious grounds. However, students generally do not have a federal right to be excused from lessons that may be inconsistent with their religious beliefs or practices. School officials may neither encourage nor discourage students from opting out of certain activities.

**Released time.** Schools have the discretion to dismiss students for religious instruction conducted off of the school premises, provided that schools do not encourage or discourage participation or penalize those who do not attend. Schools may not allow religious instruction by outsiders on school premises during the school day.

**Student attire.** Students generally have no federal right to be exempted from a school’s dress rules based on their religious beliefs or practices. Schools may not single out religious attire in general, or attire of a particular religion, for prohibition or regulation. Students may display religious

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**Basic Obligations**

Guidelines issued by the U.S. Department of Education in 1995 define two basic and equally important obligations of public school officials:

1. Schools may not forbid students who are acting on their own from expressing their personal religious views or beliefs solely because their actions are of a religious nature.

2. Schools may not discriminate against private religious expression by students and must, instead, give students the same right to engage in religious activity and discussion as they have to engage in other comparable activity.
messages on items of clothing to the same extent that they are permitted to display other comparable messages.

**Teaching About Religion**

Study about religion is a legitimate and essential component of a public education and has the potential to help students become more tolerant of people who hold different religious beliefs. Public schools may not provide religious instruction, but they may teach about religion, including the history of religion, comparative religion, the Bible (or other scripture) as literature, and the role of religion in the history of the United States and other countries. Similarly, it is permissible to consider religious influences on art, music, literature, and history. Although public schools may teach about religious holidays—including their religious aspects—and may celebrate the secular aspects of holidays, schools may not observe holidays as religious events or promote such observance by students.

**Guest speakers on religion.** When community members are invited to speak on a religious topic, it is important that they have appropriate academic credentials and understand that they are to speak about religion but not to proselytize.

**Student assignments.** Students may express their beliefs about religion in the form of homework, artwork, and other written and oral assignments free of discrimination based on the religious content of their submissions. Home and classroom work should be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school.

**Creationism.** Efforts to clarify the interpretation of the establishment clause and the free-exercise clause have resulted in a number of evolution-creationism cases. The first is the well-known 1927 case of *Scopes v. State of Tennessee*. In this case, John Scopes volunteered to be the defendant in a test case challenging Tennessee’s antievolution statute. He was charged with teaching the theory of evolution in violation of the statute, was found guilty, and was fined $100. A year later, however, the Tennessee Supreme Court, on a technical point, reversed the decision of the district court.

The U.S. Supreme Court decided a second case involving the theory of evolution in 1968. In *Epperson v. Arkansas*, the court invalidated an Arkansas statute that prohibited the teaching of evolution. The court held the statute unconstitutional on grounds that the First Amendment does not permit a state to require that teaching and learning must be tailored to the principles or prohibitions of any particular religious sect or doctrine.

In 1987, the U.S. Court of Appeals ruled, in *Moore v. Hawkins County Board of Education*, that a group of fundamentalist Christian students in Tennessee had to participate in the classroom use of a basic reading series that exposed students to competing ideas and philosophies, some of which were contrary to the students’ religious beliefs. The court held that “the students were merely being exposed to the materials and were not compelled to either do an act that violated their religious convictions or communicate an acceptance of a particular idea or affirm a belief.”

In the 1987 case of *Edwards v. Aguillard*, the U.S. Supreme Court held unconstitutional Louisiana’s Creationism Act that prohibited the teaching of evolution in public schools, except when it was accompanied by instruction in “creation science.” The court found that by advancing the religious belief that a supernatural being created humankind, which is embraced by the term “creation science,” the act impermissibly endorsed religion.

In 1997, the U.S. District Court for the Eastern District of Louisiana rejected a policy requiring teachers to read aloud a disclaimer whenever they taught about evolution, ostensibly to promote “critical thinking.” The court wrote, in *Freiler v. Tangipahoa Parish Board of Education*, that “in mandating this disclaimer, the School Board is endorsing religion by disclaiming the teaching of evolution in such a manner as to convey the message that evolution is a religious viewpoint that runs counter to…other religious views.” In 1999, the Fifth Circuit Court of Appeals upheld the lower court ruling, noting that the actual effect of the disclaimer was to establish religion by encouraging them to read about religious “alternatives” to evolution. In June 2000, the U.S. Supreme Court denied the petition for a writ of certiorari—a request to the Court to review a decision of a federal or state court—allowing the decision of the Appeals Court to stand.

**Character education.** Although schools must be neutral with respect to religion, they may play an active role with respect to teaching civic values and ethics. The fact that some of these values are also held by various religions does not make it unlawful to teach them in school. Teachers may teach the personal and civic virtues widely held in our society, such as...
integrity, honesty, fairness, and caring. This teaching must be done, however, without invoking religious authority or denigrating the religious or philosophical beliefs of students and parents. It is in the best interest of teachers and students if there is a district-approved, comprehensive plan for character education developed as a cooperative effort with parents and other community members that represents a very broad range of points of view.

The Equal Access Act

The Department of Justice has advised that, in accordance with the Equal Access Act, student religious groups at public secondary schools should have the same right of access to school facilities as is enjoyed by other comparable student groups. Under this act, a school receiving federal funds that allows one or more noncurriculum-related student clubs to meet on its premises during noninstructional time may not refuse access to student religious groups. Noninstructional time is defined as that time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.

The law specifically states that school districts have the option of not creating a limited open forum. To exercise that option, they must keep their facilities closed to all noncurriculum-related student meetings and activities including religious meetings.

In the 1989 case of Mergens v. Board of Education of West Side Community Schools, the U.S. Supreme Court ruled for the first time on the constitutionality of the Equal Access Act. This case began in 1985 when several students at a high school were denied permission to form a Christian group devoted to fellowship and Bible study. The students filed a suit arguing that their rights under the Equal Access Act had been violated. The court ruled that if a school sanctions even one student group that is not directly tied to course work, the act comes into play, and the school cannot discriminate against other student organizations based on their religious, philosophical, or political views. School districts have three options: to drop all extracurricular programs to ensure a closed forum, only permit those groups that directly relate to the curriculum, or open their doors to all student groups.

Lunchtime and recess—limited open forums. A school creates a limited open forum, as defined under the Equal Access Act, when it allows “noncurriculum-related student groups” to meet on school premises during noninstructional time, such as before, during, or after school. Such a meeting is said to be “limited” because only the school’s own students can take advantage of the open forum. Establishing a limited open forum, however, requires equal-access rights for religious groups because a school may not discriminate against a student group because of its speech.

Religious clubs. The crucial issue relating to religious student clubs is whether the school allows other student clubs. Student religious groups at public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups. According to the Equal Access Act, outsiders may not “direct, conduct, control, or regularly attend” student religious clubs, and teachers acting as monitors may be present at religious meetings only in a nonparticipatory capacity. Schools must allow these groups

It Is Generally Permissible

- To use art, drama, music, or literature with religious themes if it serves a sound educational goal in the curriculum
- To include religious themes on the basis of their academic or aesthetic value, not as a vehicle for promoting religious belief
- To sing or play sacred music as part of the academic study of music
- To include a variety of selections that include religious music during school concerts
- To accommodate the requests of parents and students to be excused from classroom discussions or activities for religious reasons
- To routinely grant requests for excuses from specific discussions, assignments, or activities
- To excuse students from particular lessons if the school cannot prove a compelling interest in requiring attendance
- To provide speech, hearing, and psychological services at a parochial or neutral site.

If a school sanctions even one student group that is not directly tied to course work...the school cannot discriminate against other student organizations based on their religious, philosophical, or political views.
to use the school media—including the public address system, the school newspaper, and the school bulletin board—to announce their meetings on the same terms as other non-curriculum-related student groups.

Use of school facilities by religious groups. School districts may not deny use of school facilities by religious groups if a school district has created a limited open forum by permitting other nonreligious groups, (for example, recreational organizations), to use its facilities (Lamb’s Chapel v. Center Moriches Union Free School District, 1992).

Pledge of Allegiance

The first flag-salute statute was passed in 1898, shortly after the United States declared war on Spain. Certain religious groups, most notably the Jehovah’s Witnesses, immediately expressed their opposition to any mandatory pledge of allegiance because of their religious teaching that forbade reverence to a national symbol. In a 1943 case, West Virginia State Board of Education v. Barnette, the Jehovah’s Witnesses argued that being required to recite the Pledge of Allegiance forced them to worship something other than Jehovah.

The Supreme Court, nonetheless, affirmed the state’s right to adopt the flag salute as part of a curriculum to “inspire patriotism and love of country.” At the same time, however, the court concluded that although the state’s purpose in requiring a flag salute was valid, its methods overstepped constitutional bounds. “The actions of the local authorities in compelling the flag salute and pledge transcend constitutional limitations on their power.” This decision does not prohibit schools from including a flag salute in a school’s daily program.
Conclusion

Every school district should have a clear policy that informs all staff members about the appropriate relationship of religion and public education. This policy should emphasize that any inclusion of religious activities much be cleared by the principal. All religious activities must be for educational reasons, not for the purpose of proselytizing. Every policy must conform to any state statutes and state board of education policies. All teachers who deal with religiously contested matters should discuss the content of their syllabus and various course activities with their principal. If courses exist that deal with comparative religion or world religions, the principal should ensure that teachers are competent to teach them. Finally, to make certain that the material is appropriate, a school committee should review all textbook and curriculum materials. LM

References

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- McCreary County v. ACLU, 125 S. Ct. 2722 (2005).
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- Peck v. Upshur County Bd. of Education, 155 F.3d 274, 284 (4th Cir. 1998)