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begun and held at the City of New York, on
Wednesday the fourth of March, one thousand seven hundred and eighty nine.

FINDING COMMON GROUND

A FIRST AMENDMENT GUIDE TO RELIGION AND PUBLIC SCHOOLS

WRITTEN AND EDITED BY
CHARLES C. HAYNES

AND

OLIVER THOMAS

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JOHN FERGUSON, Associate Editor

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1207 18th Avenue South
Nashville, TN 37212
(615) 727-1600
www.firstamendmentcenter.org

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ABOUT THE AUTHORS



Charles C. Haynes, Ph.D.

Dr. Charles C. Haynes is senior scholar at the First Amendment Center. He writes and speaks extensively on religious liberty and religion in American public life.

He is best known for his work on First Amendment issues in public schools. Over the past two decades, Haynes has been the principal organizer and drafter of consensus guidelines on religious liberty in schools endorsed by a broad range of religious and educational organizations. In January 2000, three of these guides were distributed by the U.S. Department of Education to every public school in the nation.

Haynes is the author or co-author of six books, including *First Freedoms: A Documentary History of First Amendment Rights in America* (2006) and *Religion in American Public Life* (2001). His column, Inside the First Amendment, appears in newspapers nationwide.

He is a founding board member of the Character Education Partnership and serves on the Steering Committee of the Campaign for the Civic Mission of Schools and the American Bar Association Advisory Commission on Public Education. He chairs the Committee on Religious Liberty of the National Council of Churches.

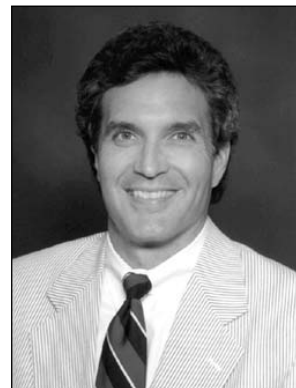
Widely quoted in news magazines and major newspapers, Haynes is also a frequent guest on television and radio. He has been profiled in *The Wall Street Journal* and on ABC's "Evening News."

Haynes holds a master's degree from Harvard Divinity School and a doctorate from Emory University.

Oliver Thomas, Esq.

Oliver Thomas is a lawyer, minister, author and former school board chairman. He has written and lectured extensively on the subject of religion and public education and has consulted with hundreds of school districts. He currently directs the Niswonger Foundation in Greeneville, Tenn.

Mr. Thomas has been involved in litigation at every level of state and federal courts including the United States Supreme Court. His clients have included the National Council of Churches and the Baptist Joint Committee.



In addition to representing numerous Evangelical groups, Mr. Thomas co-authored the A.C.L.U. handbook on church-state law. Before returning to his native Tennessee, Mr. Thomas taught at Georgetown University Law Center. He has lectured at such law schools as Harvard and Regent University.

Mr. Thomas is a graduate of the University of Tennessee, University of Virginia and New Orleans Baptist Theological Seminary where he was chosen as the most outstanding divinity graduate.

This guide is designed to provide general information on the subject of religious expression and practices in schools. It is printed with the understanding that the authors are not rendering legal or other professional services. If the reader has specific legal questions, the services of a qualified, licensed attorney should be sought.

FOREWORD

By John Seigenthaler

Founder, First Amendment Center

It has been 12 years since the Freedom Forum First Amendment Center initially published *Finding Common Ground*, the landmark guide urging educators to begin taking religious liberty and teaching about religion seriously in public schools.

This new and updated edition is designed to further assist school officials, parents and teachers in keeping pace with evolving law, changing trends and emerging challenges that touch on religious liberty and public education.

Charles Haynes, who created this innovative concept, wrote the original guide convinced that educators had universally misinterpreted U. S. Supreme Court opinions and had effectively stripped religion from text books and classroom discussions. At the time this guide first was published, culture wars over religion in the schools raged in many communities. School board meetings, Parent-Teacher Association gatherings and federal courtrooms often were the battlegrounds.

Many school administrators and teachers worried that *Finding Common Ground* was a radical, even a dangerous idea. They feared that Haynes' vision was naïve and if put into practice would fly in the face of court rulings. They were concerned that it would invite lawsuits and incite further controversy.

In fact, teaching *about* religion was an eminently rational and timely idea. In no sense was it radical. Fears that it would stimulate lawsuits were groundless. Concerns that it would drive people apart were wrongheaded. In fact, once in place the program actually helped resolve many community conflicts, both legal and ideological. In action, Haynes' initiative comported perfectly with a stream of Supreme Court decisions dating back almost four decades to an opinion crafted by Justice Tom Clark.

"A person cannot be fully educated," he wrote for the court in 1963, "without understanding the role of religion in history, culture and politics The law, constitutional or otherwise, is no impediment to the realization of this aim."

What had been misunderstood by many educators (and still is misapprehended by too many) was that while Supreme Court rulings barred school-sponsored prayer and religious indoctrination, they had by no means banned teaching *about* religion. The court had decreed that school districts and teachers must be neutral in classroom discussions about religion. Proselytizing or promoting one denomination or faith over others violated the constitutional wall between church and state, the court consistently held. No teacher could encourage students to change religious denominations – or to accept one faith over another.

But Justice Clark understood more than 40 years ago that it was impossible for any student to be enlightened about world or American history, political science, government, art, law or many other subjects without learning about religion. His thesis remains valid. *Finding Common Ground* has given it vitality and viability by offering specific guidelines for classroom instruction.

So why a new edition of this guide? Neither the law nor school enrollment has been static. Change has been a constant in public education, as courts have ruled, for example, that if a tax-supported school permits extracurricular programs and practices of a secular nature, religious programs and practices must also be given fair and similar treatment. Students, the courts have decreed, are allowed to talk to their fellow students about their own religious beliefs so long as they are not harassing. They are allowed to write about their faith in school essays so long as the work conforms to teacher assignments. As Haynes points out, this offers new challenges and new opportunities for public schools.

There also are challenges and opportunities as school administrators seek to adjust to student populations that are more religiously diverse than at any time in the nation's history. In this new edition of his guide, Haynes provides a reliable compass to direct educators in creating an environment and implementing policies that will make all students—those of every religious faith or none—more comfortable and more welcome in a changing educational climate.

In light of the international unrest and national upheaval that has followed the September 11, 2001 terrorist actions in New York, Washington and elsewhere, it seems worth repeating here the first three paragraphs of the foreword I wrote to the original edition of *Finding Common Ground*:

Almost weekly now, U. S. citizens read in newspapers or see on television reports of 'Muslim terrorist' threats or attacks aimed at some 'enemy of Islam.'

The news-media drumbeat has led many of us to the false impression that the Muslim faith is a religion built on a foundation of violence and fanaticism. Nowhere have most of us been taught about the history of Islam or what Muslims today actually believe. We know little about the vision of Muhammad in 610 that began with the revelations known as the Qur'an, accepted by millions of Muslims throughout the world as the word of Allah or God. We are unaware that it is from this experience that the faith of Islam had its beginning.

More than 1300 years later American school children, who read and hear about the growing influence of the Islamic world on our lives, learn very little about the Prophet Muhammad or the religious traditions of Muslims.

If those words had modest meaning in November 1994—and I think they did—they should have bell-ringing resonance since the tragedy that befell the nation that violent

Tuesday morning. It no longer is a question of whether schools *should* teach children about Islam. They *must* teach them—and about other religions as well. It is a responsibility, a duty.

In the days following the terrorist-inspired tragedies, students everywhere came to school with questions about what they had seen and heard and read in the news media. How could a U.S. public school teacher respond to those questions without mentioning religion? Or without putting in context religious extremism by a small group of fanatics? Or without explaining that the Islamic faith of all but a few extremist Muslims would reject the taking of innocent life—any innocent life anywhere?

It is sad but certain that many teachers were forced to deal with those questions from a background of ignorance. Some, no doubt, found themselves answering students' questions by relying mostly on what they had learned from the media.

There were, fortunately, noteworthy exceptions to that drill. In hundreds of schools from California and Utah to New York and New Jersey, teachers whose school systems had embraced the *Finding Common Ground* concept were equipped with answers that were grounded in study and discussion of world religions, including the faith of Muslims. It is probable that many youngsters who had shared in that study and discussion actually were able to help their parents better understand the Islamic religion in the aftermath of the terrorist attacks.

For too long public schools have lived with an unfair reputation of being secular bastions hostile to religion. Religious parents, aware of that public school image, sometimes have opted to send their children to private denominational institutions.

Public schools that now embrace the *Finding Common Ground* model offer students of all faiths and none a unique, enriching academic experience. Seven years ago, it seemed to Charles Haynes that teaching students to understand our deepest religious differences was a way to help save public education. Today, teaching those same lessons may help save far more.

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CHAPTER 1

1

From Battleground to Common Ground

The Religious Liberty clauses of the First Amendment to the Constitution are a momentous decision, the most important political decision for religious liberty and public justice in history. Two hundred years after their enactment they stand out boldly in a century made dark by state repression and sectarian conflict. Yet the ignorance and contention now surrounding the clauses are a reminder that their advocacy and defense is a task for each succeeding generation.

—The Williamsburg Charter
1988

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exercise thereof;

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

—Religious Liberty Clauses,
First Amendment to the
United States Constitution

More than 200 years after their enactment, the first 16 words of the Bill of Rights undergird the boldest and most successful experiment in religious freedom in human history. Despite periodic outbreaks of nativism, anti-Semitism and religious conflict, Americans can be justly proud that we begin the new century as one nation of many peoples and faiths.

THE CHALLENGE

The challenge for 21st-century America is not only to sustain this extraordinary arrangement, but to expand the principles of religious liberty more fairly and justly to each and every citizen. This is no small task. Today the United States is the most religiously diverse society on Earth and, among developed countries, the most religious. But exploding religious pluralism combined with bitter culture wars are making our public square an increasingly crowded and often hostile arena.

Nowhere is it more important — or more difficult — to address our growing ideological and religious diversity than in the public schools. Not only are our schools a key battleground in the culture wars, they are the principal institution charged with enabling Americans to live with our deepest differences. If we fail in our schools to



teach and model the rights and responsibilities that flow from the First Amendment, then surely we endanger the future of our daring experiment in religious liberty.

This guide is built on the conviction that finding common ground on many of the issues that divide us is possible within the civic framework provided by the Religious Liberty clauses of the First Amendment to the U.S. Constitution. The key is for all sides to step back from the debate and to give fresh consideration to the democratic first principles that bind us together as a people. Then, in light of our shared civic commitments, we can work for policies and practices in public education that best protect the conscience of every student and parent in our schools.

A NEW CONSENSUS

Here is the good news: Although underreported by the media and still unknown to many school leaders, a new model has emerged for addressing religion and religious liberty in public schools. Over the past decade, religious and educational groups from across the



spectrum have adopted the consensus guidelines included in this guide. Where these agreements have been applied in local districts, they have enabled a growing number of divided communities to move from battleground to common ground.

The measure of just how much consensus we now have was highlighted in early 2000 when every public-school principal in the United States received a packet of comprehensive religious liberty guidelines from President Clinton and the U.S. Department of Education. For

the first time in American history, all administrators were given the closest thing possible to a legal safe harbor for addressing perennial conflicts over religion in the schools.

This new consensus on religion in public schools began to emerge as a response to the textbook trials in Alabama and Tennessee in the mid-1980s. Although the constitutional questions were quite different, both cases called attention to the fact that the public-school curriculum largely ignored religious ways of understanding the world. The educational issues raised by the trials were reinforced by several textbook studies. The liberal People for the American Way reached much the same conclusion as the conservative Paul Vitz: Public-school texts included little or nothing about religion.

In the wake of these trials and studies, we convened leading educational and religious organizations in an effort to find common ground on the question of religion in the curriculum. Groups ranging from the National Association for Evangelicals to the Association for Supervision and Curriculum Development agreed that ignoring religion was neither educationally sound nor consistent with the First Amendment. We were convinced that we can (and must) do better in public education.

After a year and a half of discussion and debate, we reached agreement on our first set of guidelines, “Religion in the Public School Curriculum: Questions and Answers.” Four months later we forged a second agreement, “Religious Holidays in the Public Schools: Questions and Answers.” This was soon followed by a third statement providing consensus guidelines for implementing the Equal Access Act. After a long history of shouting past one another, we had begun to find common ground.

BEYOND TWO FAILED MODELS

These agreements of the late 1980s and early 1990s were important first steps in articulating a civic framework that enables school and communities to move beyond culture-war debates that are often dominated by extremes.



On one end of the spectrum are those who advocate what might be called the “sacred public school,” where one religion (theirs) is preferred in school policies and practices. Characteristic of the early history of public education, this approach still survives in some parts of the United States, particularly the rural South. From the “Bible wars” of the 19th century to current fights over posting the Ten Commandments in classrooms, attempts to impose religion in schools have fueled countless lawsuits and bitter fights in communities throughout the nation. Not only is this model unconstitutional, it is also unjust.

In recent decades, however, some on the other end of the spectrum have pushed for a “naked public school,” where religion is excluded in the name of the Establishment clause of the First Amendment. The influence of this mistaken view of the First Amendment is apparent in the virtual silence about religion in most of the curriculum and the confusion among many school leaders about the religious-liberty rights of students. But the First Amendment does not mandate that public schools be religion-free zones. This approach is also unjust and, when the rights of students are violated, unconstitutional.

The process of finding consensus during the past decade has yielded a third model – what might be called a “civil public school” – articulated in the various guidelines included in this guide. The shared vision of this model is captured best in “Religious Liberty, Public Education, and the Future of American Democracy,” a statement of principles found in Chapter 2. Twenty-four major religious and educational organizations define religious liberty in public schools this way:

Public schools may not inculcate nor inhibit religion. They must be places where religion and religious conviction are treated with fairness and respect.

Public schools uphold the First Amendment when they protect the religious liberty rights of students of all faiths or none. Schools demonstrate fairness when they ensure that the curriculum includes study *about* religion, where appropriate, as an important part of a complete education.

These four sentences restate the civic framework of the religious-liberty clauses of the First Amendment — our constitutional commitment to “no establishment” and “free exercise” — as they apply to public education. They describe what schools might look like if we finally lived up to the promise of religious liberty. Rather than simply telling public schools what they may not do, the statement calls for protecting student religious expression and including religious perspectives in the curriculum, while simultaneously rejecting government endorsement or promotion of religion.

YES, BUT HOW?

For many years now, the First Amendment Center has worked with school districts throughout the nation to implement the model of a civil public school. We have found that where communities are committed to coming together in the spirit of the First Amendment, consensus is reached, new policies are drafted, and significant changes take place in the classroom. Significantly, support for these efforts comes from both the “right” and “left” of the political and religious spectrum.

The starting point for local communities must be an agreement on First Amendment ground rules as described in Chapters 2 and 3. In the spirit of the First Amendment, all perspectives have a right to be heard, and each citizen has an obligation to protect the freedom of conscience of all others. Agreeing on civic principles allows the dialogue to begin and enables people of all faiths or none to work toward consensus on the proper role of religion in the public schools.

If the resulting agreements and policies are to inspire broad support in the community, all stakeholders must be fully represented in the discussion. When reaching out to critics of the schools, particularly conservative religious groups, school leaders must look beyond

stereotypes to find those representatives most interested in dialogue and consensus. Given the lack of civility in the public square of America today, it is not easy to build bridges of understanding and trust, but it can be done.

While there are extreme voices in the debate, we know from experience that most teachers, parents, administrators and school board members are committed to a principled dialogue, and to fair, open public schools. This includes the vast majority of parents often labeled as members of the “religious right” or the “secular left.” Sadly, a few groups on either side thrive on “demonizing” the opposition, often lumping all individuals and groups under one frightening label. Tactics such as these may successfully raise millions of dollars through direct mail, but they destroy the fabric of our life together as citizens. And the media sometimes fuel the conflict by allowing extreme voices to dominate the debate.

To get beyond the labels, trust needs to be carefully rebuilt. Building trust, of course, requires a willingness to listen. But listening is meaningless if parents or others in the community sense that most questions have been answered before the process begins. A number of school-reform advocates, for example, stress the importance of local participation, but then resist the possibility that local communities may not endorse the reform. Some state mandates encourage communities to write “mission statements,” but leave little room for local decision-making about the educational mission of the schools.

Listening and trusting are also difficult, if not impossible, in districts unprepared for conflict concerning religion and values in the schools. Every district should have comprehensive policies on these issues, developed and endorsed by a broad spectrum of the community and followed up by teacher and administrator education focused on implementation. Using this guide to



take a pro-active — rather than crisis-management — approach to areas of potential controversy is an opportunity for public schools to demonstrate a genuine interest in the concerns of parents, and a concrete commitment to applying religious-liberty principles in public schools.

A COMMON VISION OF THE COMMON GOOD

National consensus statements and guidelines are essential, but they are only starting points in the effort to find lasting common ground. Creating truly civil public schools — schools that take religious liberty seriously — requires school districts willing to do the work of translating these agreements into effective, community-supported policies and practices.



The new consensus represented by the agreements in this guide provides Americans with an historic opportunity. After more than 150 years of shouting past one another about religious liberty in schools, we finally have a model widely agreed-to across our differences. It is now possible to address our differences with civility, reach mutual understanding and forge policies that protect the First Amendment rights of every parent and student.

If we take this opportunity, a common vision of the common good may be realized in public schools and in our communities. The time is now to re-commit ourselves, as American citizens, to the vision of “We the People” — the ongoing and difficult task of building one nation out of many peoples and faiths.



Resources

- Al-Hibri, Azizah Y., Jean Bethke Elshtain, Charles C. Haynes (2001). *Religion in American Public Life: Living with Our Deepest Differences*. New York: W.W. Norton and Co.
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2

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Religious Liberty, Public
Education, and the Future
of American Democracy:
A Statement of Principles

This Statement of Principles is sponsored jointly by:

American Association of School Administrators

American Center for Law and Justice

American Federation of Teachers

Anti-Defamation League

Association for Supervision and Curriculum Development

Carnegie Foundation for the Advancement of Teaching

Catholic League for Religious and Civil Rights

Central Conference of American Rabbis

Christian Coalition

Christian Educators Association International

Christian Legal Society

Coalition for the Community of Reason

Council on Islamic Education

The First Amendment Center

National Association of Elementary School Principals

National Association of Evangelicals

National Association of Secondary School Principals

National PTA

National Council of Churches of Christ in the U.S.A.

National Education Association

National School Boards Association

People for the American Way Foundation

Phi Delta Kappa

Union of American Hebrew Congregations

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Our nation urgently needs a reaffirmation of our shared commitment, as American citizens, to the guiding principles of the Religious Liberty clauses of the First Amendment to the Constitution. The rights and responsibilities of the Religious Liberty clauses provide the civic framework within which we are able to debate our differences, to understand one another, and to forge public policies that serve the common good in public education.

Today, many American communities are divided over educational philosophy, school reform, and the role of religion and values in our public schools. Conflict and debate are vital to democracy. Yet, if controversies about public education are to advance the best interests of the nation, then *how* we debate, and not only *what* we debate, is critical.

In the spirit of the First Amendment, we propose the following principles as civic ground rules for addressing conflicts in public education:

I. Religious Liberty for All

Religious liberty is an inalienable right of every person.

As Americans, we all share the responsibility to guard that right for every citizen. The Constitution of the United States with its Bill of Rights provides a civic framework of rights and responsibilities that enables Americans to work together for the common good in public education.

II. The Meaning of Citizenship

Citizenship in a diverse society means living with our deepest differences and committing ourselves to work for public policies that are in the best interest of all individuals, families, communities and our nation.

The framers of our Constitution referred to this concept of moral responsibility as civic virtue.

III. Public Schools Belong to All Citizens

Public schools must model the democratic process and constitutional principles in the development of policies and curricula.

Policy decisions by officials or governing bodies should be made only after appropriate involvement of those affected by the decision and with due consideration for the rights of those holding dissenting views.

IV. Religious Liberty and Public Schools

Public schools may not inculcate nor inhibit religion. They must be places where religion and religious conviction are treated with fairness and respect.

Public schools uphold the First Amendment when they protect the religious liberty rights of students of all faiths or none. Schools demonstrate fairness when they ensure that the curriculum includes study *about* religion, where appropriate, as an important part of a complete education.

V. The Relationship between Parents and Schools

Parents are recognized as having the primary responsibility for the upbringing of their children, including education.

Parents who send their children to public schools delegate to public school educators some of the responsibility for their children's education. In so doing, parents acknowledge the crucial role of educators without abdicating their parental duty. Parents may also choose not to send their children to public schools and have their children educated at home or in private schools. However, private citizens, including business leaders and others, also have the right to expect public education to give students tools for living in a productive democratic society. All citizens must have a shared commitment to offer students the best possible education. Parents have a special responsibility to participate in the activity of their children's schools. Children and schools benefit greatly when parents and educators work closely together to shape school policies and practices and to ensure that public education supports the societal values of their community without undermining family values and convictions.



VI. Conduct of Public Disputes

Civil debate, the cornerstone of a true democracy, is vital to the success of any effort to improve and reform America's public schools.

Personal attacks, name-calling, ridicule and similar tactics destroy the fabric of our society and undermine the educational mission of our schools. Even when our differences are deep, all parties engaged in public disputes should treat one another with civility and respect, and should strive to be accurate and fair. Through constructive dialogue we have much to learn from one another.

Conclusion

This Statement of Principles is not an attempt to ignore or minimize differences that are important and abiding, but rather a reaffirmation of what we share as American citizens across our differences. Democratic citizenship does not require a compromise of our deepest convictions.

We invite all men and women of good will to join us in affirming these principles and putting them into action. The time has come for us to work together for academic excellence, fairness and shared civic values in our nation's schools.



Endnote

In 1994, Charles Haynes of the First Amendment Center and Ron Brandt of the Association for Supervision and Curriculum Development (ASCD) convened leaders from education associations, civil liberties groups, and religious organizations to draft these shared principles for addressing conflicts in public education. The agreement was published in 1995.

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CHAPTER 3

3

Strategies for Finding Common Ground

No free government or the blessings of liberty
can be preserved by any people but by a firm
adherence to justice, moderation, temperance,
frugality and virtue and by frequent recurrence
to fundamental principles.

—Virginia Declaration of Rights
George Mason
1776

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exercise thereof

Court decisions provide important legal guidance for school districts, but case law alone will not enable us to live with our deepest differences. Too often (and too quickly) in disputes about religion and public education, lawyers are called and lawsuits filed. Communities are further divided, and support for public education continues to erode.

We need to remind ourselves that First Amendment Religious Liberty clauses do not belong only to lawyers and judges; they belong to all of us. The principles of rights, responsibility and respect that flow from the First Amendment are obligations of citizenship for *every* American. When properly understood and applied, these principles allow communities to go beyond conflict and achieve consensus on the role of religion in the public schools. The strategies outlined below indicate some ways in which the civic framework provided by the First Amendment has worked in school districts to build common ground.

STRATEGIES FOR FINDING COMMON GROUND

1. Agree on the ground rules.

No religious consensus is possible in the United States, and to impose one would be both unconstitutional and unjust. A civic consensus, however, is not only possible, but necessary if we are to continue as one nation of many peoples and faiths. In any public-policy debate, all sides need to recall that, as citizens, each of us has already agreed to the democratic first principles that govern our common life. These principles are the “ground rules” within which we negotiate our differences in the public square of America.

What are the ground rules that flow from the First Amendment? Part of the answer is found in Supreme Court decisions as discussed in Chapter 4. Court cases, however, are not the best starting point for establishing guidelines and ground rules in a school district. We

suggest that communities begin with the *Statement of Principles* from Chapter 2. In so doing, all sides are asked to go behind the court cases and to give fresh consideration to the guiding principles of our nation’s charter. At the heart of these principles are the “three Rs” of religious liberty:

Rights: Religious liberty, or freedom of conscience, is a precious, fundamental and inalienable right for all. Every effort should be made in public schools to protect the conscience of all students and parents.

Responsibilities: Central to the notion of the common good, and of greater importance each day because of the increase of pluralism, is the recognition that religious liberty is a universal right joined to a universal duty to respect that right for others. Rights are best guarded and responsibilities best exercised when each person and group guards for all others those rights they wish guarded for themselves. The Williamsburg Charter calls this “the Golden Rule for civic life.”

Respect: Conflict and debate are vital to democracy. Yet if controversies about religion and schools are to reflect the highest wisdom of the First Amendment and advance the best interest of the disputants and the nation, then *how* we debate, and not only *what* we debate, is critical.¹

If these or similar civic ground rules are in place, then all sides come to the table prepared to take responsibility to protect the rights of others and to debate differences with civility and respect. Within this framework, concern for fairness and for protection of conscience shapes the discussion and all agreements that may follow.

2. Include all of the stakeholders.

If agreements and policies are to inspire broad support in the community, all stakeholders must be fully represented in the discussion. On the school level or district-wide, the committee members appointed to make recommendations should represent a broad range of perspectives, making sure that those who are concerned about violations of conscience in the schools are given significant representation.



Religion-and-school policies — no matter how wise or clear — that are developed without strong community participation risk doing more damage than good. Policies shaped by a broad cross-section of the community are widely supported and successful. (See Chapter 15 for examples of policies created by a few school districts.)

¹ These definitions of the principles of rights, responsibilities, and respect that flow from the First Amendment are drawn from the Williamsburg Charter, a document that has greatly influenced our conception of a civil public school. The full text of the Charter may be found in Appendix C. *Articles of Faith, Articles of Peace: The Religious Liberty Clauses and the American Public Philosophy*, edited by James Davison Hunter and Os Guinness (1990), contains essays that provide a context for understanding the significance of the Williamsburg Charter.



Using the Three Rs to Find Common Ground

“Rights, Responsibilities, and Respect”

Using the principles of rights, responsibilities and respect that flow from the First Amendment, a number of initiatives around the nation are discovering new ways to resolve conflict.

Once in place, a civic framework of rights, responsibilities and respect can help schools and communities to find common ground on educational philosophy, school reform and the role of religion and values in public schools.

Statewide Programs

The most extensive 3Rs programs are the California and Utah 3Rs Projects. The California 3Rs project is sponsored jointly by the First Amendment Center and the California County Superintendents Educational Services Association, while the Utah Project is sponsored jointly by the First Amendment Center and Utah Office of Education.

Using First Amendment principles, many California and Utah educators, parents and community leaders have been able to agree on policies and practices that protect the religious liberty rights of students of all faiths or none. These projects work to prepare teachers to teach about religions and cultures in ways that are constitutionally permissible and educationally sound.

Begun in 1991, the California project is underway in all 11 educational regions of the state. Regional leaders for the 3Rs project have been appointed by the California County Superintendents Educational Services Association to assist school districts and communities. For more information about the California 3Rs Project, contact:

Dr. Bruce Grelle
Department of Religious Studies
California State University - Chico
Chico, CA 95929-0740
Phone: (530) 898-4739
Email: bgrelle@csuchico.edu

Margaret Hill, Ph.D
California Three Rs Project
College of Education, FO 115
California State University, San Bernardino
5500 University Parkway
San Bernardino CA 92407
Phone: (909) 537-5459
Fax: (909) 537-7173
Email: drpeghill@verizon.net

The Utah project began in 1996 and already there is a broad network of supporters throughout the state. For more information about the Utah 3Rs project, contact:

Martha Ball
Utah 3Rs Project Director
Utah State Office of Education
250 East 500 South
P.O. Box 144200
Salt Lake City, UT 84114-4200
Phone: (801) 521-6960
Fax: (801) 538-7588



Other States

A number of other school districts in Texas, Pennsylvania, Oklahoma and other states have adopted a “3Rs” approach to religious liberty issues. For more information about these efforts contact Charles Haynes at the First Amendment Center. Email address: chaynes@freedomforum.org.

When school boards or administrators reach out to critics of the schools, particularly religious conservatives, they must look beyond media stereotypes and identify those representatives most interested in dialogue and consensus. If school leaders are unsure who might best represent a particular point of view, they might contact national organizations such as those listed in the Appendix for suggestions about strong leadership in the local community.

Because we are a democracy, there will be “winners” and “losers” on policy issues and curriculum decisions. But if the different perspectives have been given full and fair hearing and if every effort has been made to protect the conscience of all parents and students, then even those who may “lose” on a particular policy will most likely remain supporters of the public schools.

3. Listen to all sides.

Given the opportunity, the vast majority of parents, teachers, administrators and school board members will commit to a principled dialogue and will work for fair, open public schools. While it is true that a small number of people on all sides of these issues resist efforts to reach common ground, most Americans, when given an opportunity, want to find a way forward that best serves the schools and the community. We have found this to be true in every region of the country and across all religious and political lines.

Establishing a climate where people listen to one another requires that we go beyond labels and rebuild trust. Public-school educators must keep in mind that, as leaders of institutions established by the people through the government, they are required to represent the Constitution and the Bill of Rights. Public schools are first and foremost models of the nation’s charter. All else, including educational philosophy and proposals for change, should be decided by the people of each community working with school boards, administrators and teachers.

If we are to rebuild trust and to truly listen to one another, public-education leaders must acknowledge what is valid about criticisms of the way religion has been treated in many public schools and in the curriculum. At the same time, critics of the schools must recognize that the vast majority of public-school administrators and teachers do not intend to be hostile to religion, and want only to be fair in their treatment of parents and students. Putting aside labels and stereotypes and taking seriously the position of the “other side” are the starting points for genuine dialogue.



Bridgebuilders

Since 1992 BridgeBuilders has become a nationally recognized specialist in disarming cultural and religious conflicts through its program of Common Ground Thinking. Using a First Amendment framework to define the common ground, they help deeply divided groups find consensus solutions by crafting policies that are fair to their differences, rather than one side winning at the other's expense. BridgeBuilders offers training in Common Ground Thinking, consulting to help districts communicate effectively with diverse groups, and facilitation services to help conflicted groups find common ground. They have been a sought after resource for local school districts as well as national education groups and agencies to help us all work together beyond our deepest differences.

7228 University Dr.
Moorpark, CA 93021
Phone: (805) 529-1728
Web site: www.bridge-builders.org

4. Work for comprehensive policies.

School districts would be well advised to address a broad range of religion-and-schools issues in a “religion-and-schools” policy. By doing so, schools are able to say “yes” to a role for religion, even as they must say “no” to state-sponsored religious practices. No, public schools may not promote religion (or hostility to religion), nor may schools sponsor religious practices. But yes, there is a place for teaching about religions, and there are ways to accommodate the needs and requirements of religious students. Policies can be developed on student speech, distribution of literature, equal access, and other areas that signal strong support for protection of conscience and expression.

Once the commitment is made to establish a comprehensive policy, begin the search for common ground with the areas where agreement is most likely to be achieved. Many communities have found it useful to begin with the role of religion in the curriculum (especially in light of the national agreement reprinted in Chapter 9). It is not difficult to reach consensus about the importance of study about religion as a part of a complete education in the social studies, literature, art, music, and other subjects. (More difficult is the question of *how* it will be done.) Once the first agreement is reached, a foundation is created for consideration of more divisive questions.

An important key throughout the process is to go beyond asking “What is legal?” and to begin asking “What is the right thing to do for my community?” and “What best protects the conscience of every student and parent?”

5. Be pro-active.

Some school leaders avoid addressing religion and school issues, convinced that to raise these questions may cause controversy where there is currently none. While it may be true that a pro-active approach to religious liberty questions is a risky and delicate undertaking, it could be argued that the greater risk is to do nothing. Districts unprepared for controversy fare poorly when a conflict arises (and it will). Where there are no policies (or policies not known or supported by parents), there is a much greater likelihood of lawsuits, shouting matches at school board meetings and polarization in the community.



Students, parents, teachers and administrators all need to know how the school or school district advises where and how religion be discussed in the classroom, how requests by students to form a religious club or to distribute religious literature will be handled, how holidays will be treated and how any number of other questions concerning religion and values will be addressed. A pro-active approach takes seriously the importance of articulating the proper role for religion and religious perspectives in the public schools. The resulting policies and practices create a climate of trust in the community, and demonstrate the public schools' active commitment to the guiding principles of our democracy.

6. Civil Debate.

Remember throughout the process to commit to civil debate. Conflict and debate are a vital part of a democratic system. Yet, if Americans are going to negotiate deep differences, then how we debate — not only what we debate — is critical. Personal attacks, name-calling, and similar tactics destroy the fabric of our society and undermine the educational mission of schools. All parties should agree to treat one another with civility and respect and should strive to be accurate and fair.

7. Follow-Through

Be sure that the entire community is informed of all policies concerning religion, values and religious liberty. If an effort has been made to keep the broader community involved through participation in the committee and through periodic public meetings, there will be people available to help explain the policy to the various constituents of the school.

Once disseminated and explained, policies raise expectations about school performance. That is why it is vitally important for schools to follow up policy statements with staff

development for administrators and teachers. A commitment to teach about religion, for example, means nothing unless teachers are given support for such teaching. A policy that permits student-initiated religious clubs may do more harm than good unless accompanied by a clear understanding by administrators of how the Equal Access Act is to be applied (see Chapter 7). Adoption of these or other policies concerning religion and public education should be immediately followed by forums for parents, workshops for teachers and administrators, and distribution of resources for classroom use.

Remember

First Amendment religious-liberty principles do work — when tried. Without asking anyone to compromise their deepest convictions, schools and communities can find areas of agreement on questions that have long divided Americans. “A common vision for the common good” is still possible in public education.

HOT TIP



Schoolbook Protests: Advice for Both Sides

Stephen Bates*

Conflicts over the public-school curriculum are commonplace, clamorous and unproductive. The two sides talk (more frequently, shout) past each other. Protesters often suggest that anyone who disagrees must be un-Christian, immoral, racist or sexist. And as journalist Joseph Nocera has observed, school people often treat anyone who questions their judgment as “a potential enemy who must be bludgeoned into submission with a First Amendment tire-iron.”

Tips for Parents

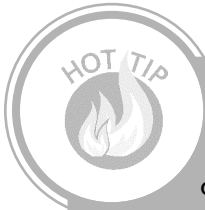
1. **Examine and comment on textbooks before they're adopted.** If your state or district doesn't make books available for pre-adoption inspection, lobby for such a policy.
2. **Choose your battles.** Administrators will be more receptive on your first visit than on your tenth.
3. **Read the book before you complain about it.** Don't rely on others' critiques.
4. **Think before banning.** Think long and hard before trying to have a book removed from the curriculum or the library. You're in a stronger position if you seek an alternative assignment for your child.
5. **In seeking an alternative, consider the magnitude of what you're asking.** You're in a stronger position if you try to excuse your child from a brief assignment — a story or two in a reader, a supplemental novel, a film — rather than an entire textbook. Don't ask for more special treatment (and more work on the part of the teacher) than you absolutely need.
6. **Start with the teacher.** If necessary, work your way up the chain of command.
7. **Recognize, and show that you recognize, that teachers and administrators may not view the assignment as you do.** When seeking an alternative, say that there's no need for one of you to convince the other, but you hope your family's views will be respected. When seeking to remove a book, say that you believe it conflicts with community values, even though it may reflect the values of school officials. In both cases, the issue isn't who's right, it's who decides.
8. **Recognize, and show that you recognize, that teachers and administrators want what they believe to be best for the children.**
9. **Resist the temptation to engage in name-calling.** Don't suggest, even indirectly, that school officials are less devout, less moral or less sensitive to minorities or women than you are.

Tips for Teachers and Administrators

1. **To preempt some protests, solicit community input before books are chosen.** Make books publicly available before they are adopted. When dealing with a particularly controversial topic, consider forming an advisory committee reflecting a wide range of community views.

CONTINUED

* Stephen Bates, a former senior fellow at the Annenberg Washington Program, is author of *Battleground: One Mother's Crusade, the Religious Right, and the Struggle for Control of Our Classrooms*.



2. Put in place a written procedure for dealing with complaints.

Make clear what is required to initiate reconsideration of materials, who will act on the complaint, how quickly a decision will be made and how a dissatisfied party can appeal the decision to a higher authority.

- 3. When a protest does arise, focus on how the public participated in the book selection.** Look at what's in the book and how it's used in the classroom. Don't imply that the adoption process was the only opportunity for public participation and that subsequent complaints are somehow illegitimate. Don't expect protesters to be swayed by the book's pedigree — its awards, reviews, or status as a classic — or by your expertise.
- 4. Keep in mind both sides of the public-schooling paradox: The curriculum must reflect the will of the community.** Truth is never a matter of majority rule, but, to a considerable extent, the public school curriculum is (within the bounds of the Constitution and federal and state law). Consequently, it's important to acknowledge the protesters' right to complain about what's going on in their tax-funded schools. Don't simply call them "censors"; respond to their arguments on the merits.
- 5. Recognize that context doesn't erase all offenses.** For instance, some parents simply won't allow their children to read racial epithets or profanity, even as a minuscule part of an assignment and even in a classic book.
- 6. Remember the civic obligation to respect freedoms of belief, speech and religion, even for people with whom you disagree.** Try to put yourself in the protesters' shoes. How would you feel, and how would you want to be treated, if your child were being taught something contrary to your deepest beliefs? Remember, too, that students learn important lessons about American liberties by seeing how school officials deal with dissent.
- 7. Church-state separation is an issue with sectarian material too, if the protesters want sectarian material in the classroom, if they want teachers to make religious judgments on their behalf or if they want to remove material solely because it conflicts with their religious beliefs.** It's not an issue if they want to remove material because it conflicts with their moral beliefs. To be sure, the distinction isn't always clear. Both faith and morality condemn stealing, for example. And it's not an issue if they want an alternative assignment, no matter what their motivation.
- 8. When parents are seeking an alternative assignment, don't accuse them of misconstruing the assignment or its impact on students.** Don't enlist psychologists or pastors to rebut their views. Rather, focus on whether an alternative is administratively and pedagogically feasible.
- 9. When parents request an alternative assignment, the school system should respond privately.** When protesters seek to remove a book from the curriculum or the school library, however, administrators should ordinarily respond publicly, especially before removing a book. Decisions that affect an entire classroom or an entire school affect the community; in most circumstances, the community should be fully informed.
- 10. Recognize, and show that you recognize, that the protesters want what they believe to be best for the children.**
- 11. Resist the temptation to engage in name-calling.** Don't suggest, even indirectly, that protesters are extremists, zealots or kooks.
- 12. Remember: Obnoxious people have rights too.**

*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 the right of the people
peaceably to assemble,
and to petition the
Government for a redress
of grievances.*

CHAPTER 4

4

The Supreme Court, Religious Liberty, and Public Education

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

—*West Virginia Board of Education v. Barnette*
Justice Robert H. Jackson
1943

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

The Supreme Court and the lower courts are the final arbiters of the Constitution. They tell us what the Constitution and, more specifically, the First Amendment mean. Their interpretation of the First Amendment's Religious Liberty clauses is critical to our understanding of the role of religion in public education.

For the first 150 years of our nation's history, there were very few occasions for the courts to interpret the religion clauses. This was due primarily to the fact that the First Amendment had not yet been applied to the states. As written, the First Amendment applied only to Congress and the federal government. In the wake of the Civil War, however, the 14th Amendment was passed. It reads in part that "no state shall ... deprive any person of life, liberty or property without due process of law" In the 1940 case of *Cantwell v. Connecticut*, the Supreme Court held that the free exercise of religion is one of the "liberties" protected by the due-process clause. Seven years later, the Court added the Establishment clause to the list. Together, these twin protections — free exercise and non-establishment — guarantee American religious liberty.

THE ESTABLISHMENT CLAUSE

The first of the two religion clauses reads: "Congress shall make no law respecting an establishment of religion" Note that the clause is absolute. It allows *no* law. It is also noteworthy that the clause forbids more than the establishment of religion by the government. It forbids even laws *respecting* an establishment of religion.

The Establishment clause sets up a line of demarcation between the functions and operations of the institutions of religion and government in our society. It does so because the framers of the First Amendment recognized that when the roles of the government and religion are intertwined, the result too often has been bloodshed or oppression.

There is much debate about the meaning of the term "establishment of religion." Although judges rely on history, the writing of the framers and prior judicial precedent, they

sometimes disagree. Some, including the late Chief Justice William Rehnquist, argue that the term was intended to prohibit only the establishment of a single national church or the preference of one religious sect over another. Others, including a majority of the justices of the current Supreme Court, believe the term prohibits the government from promoting religion in general as well as the preference of one religion over another. In the words of the Court's decision in *Everson v. Board of Education* (1947):

The establishment of religion clause means at least this: Neither a state nor the federal government may set up a church. Neither can pass laws that aid one religion, aid all religions, or prefer one religion over another. Neither can force a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion ... Neither a state or the federal government may, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and state."¹



To help interpret the Establishment clause, the Court developed a three-part test sometimes referred to as the "*Lemon* test." The test derives its name from the 1971 decision *Lemon v. Kurtzman*, in which the Court struck down a state program providing aid to religious elementary and secondary schools. Although the test has come under fire from several Supreme Court justices, many lower courts continue to use *Lemon* as a yardstick for deciding Establishment clause cases.

Let's look briefly at each prong of the test:

Does the law, or other government action, have a bona fide secular or civic purpose? As a general rule, the purpose of activities in the public schools should be educational. If, for example, a teacher is planning an activity associated with a religious holiday such as Christmas, she should ask herself, "What educational purpose am I trying to accomplish?" If the only purpose for the activity is to celebrate the religious holiday, it probably violates the first prong of the *Lemon* test.

¹ *Everson v. Board of Education*, 330 U.S. 1 (1947).

Accommodating a student's free exercise of religion is generally considered a legitimate civic purpose and, therefore, permissible under *Lemon* — assuming, of course, that the school is not promoting the student's faith. For example, a teacher could allow an art student to paint a picture with a religious theme. In fact, to prohibit such art would probably violate the free-speech and free-exercise rights of the student. On the other hand, a teacher should not make assignments requiring such religious art.

Returning to the issue of accommodation, the framers of the Constitution did not intend that the two religion clauses cancel each other out. Any interpretation of the Establishment clause must take into account the Free Exercise clause and vice versa. In the words of Justice O'Connor:

Government pursues free exercise values when it lifts a government-imposed burden on the free exercise of religion ... When the manifest objective of a statute is to facilitate the free exercise of religion by lifting a government-imposed burden ... the religious purpose of such a statute is legitimated by the free exercise clause.²

Two years later in *Bishop v. Amos*, a unanimous Supreme Court echoed Justice O'Connor's sentiments: "Under *Lemon*, it is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their missions."

This does not mean the government can lift all burdens on religion. To the contrary, the justices struck down a Texas law that provided a sales-tax exemption for



The *Lemon* Test

The *Lemon* test asks three questions about the particular government action that is being challenged. (Remember, the Constitution limits the power of government, not of private citizens.) Each question must be answered in the affirmative if the government action is to be allowed under the Establishment clause. A negative answer to any of the questions means the act is unconstitutional. The questions are:

1. Does the law, or other government action, have a bona fide secular or civic purpose?
2. Does the primary effect neither advance nor inhibit religion? In other words, is it neutral?
3. Does the law avoid excessive governmental entanglement with religion?

If the answer to all three is "yes," the law passes the *Lemon* test.

² *Wallace v. Jaffree*, 472 U.S. 38, 83 (1985) (O'Connor, J., concurring).

religious periodicals only.³ The Court did not believe that having citizens pay a modest sales tax when purchasing a magazine constituted any significant burden on religious exercise. On the other hand, the justices have been willing to give religion some breathing room under the Establishment clause, if the government burden is significant. For example, there is little doubt the courts would uphold the exemptions many states give students who object for religious reasons to attending sex-education classes.

Does the primary effect neither advance nor inhibit religion? In other words, is it neutral? Looking at the second prong of the *Lemon* test, a law is not unconstitutional simply because it allows individuals or churches and synagogues to advance religion, which is their very purpose. For a law to have effects that are forbidden under *Lemon*, the government itself must have advanced religion through its own actions. Allowing students to be released from school to receive religious instruction at a nearby church, for example, does not violate the Establishment clause.⁴ It would violate the Establishment clause for the school to begin promoting, as opposed to merely announcing, such a meeting.



Not every government action that advances or inhibits religion is unconstitutional. Only government acts whose *primary* effect advances or inhibits religion are forbidden. Allowing a religious group to use a public school building after school hours would have an incidental or indirect effect of advancing religion. However, such a use would not violate the *Lemon* test. In fact, the Supreme Court in 1993 ruled unanimously that a public school is required to permit churches to use its facilities on the same basis as other community groups.⁵

Does the law avoid excessive governmental entanglement with religion?

The final prong of the *Lemon* test prohibits “excessive governmental entanglement with religion.” Rarely at issue in cases involving public education, the entanglement prong is most often associated with cases involving aid to religious schools.⁶

³ *Bullock v. Texas Monthly*, 489 U.S. 1 (1989).

⁴ *Zorach v. Clausen*, 343 U.S. 306 (1952).

⁵ *Lamb’s Chapel v. Center Moriches School District*, 508 U.S. 385 (1993).

⁶ *Good News Club v. Milford Central School District*, 533 U.S. 98 (2001).

Entanglement problems could arise if a public school was involving itself in religious matters, such as evaluating the content of student prayers or monitoring students' religious activities. Most often the legality of a public school's policies will be determined by their purpose and primary effect.

Alternatives to the *Lemon* Test

As noted, the *Lemon* test has come under sharp criticism from some scholars and from a majority of the justices of the Supreme Court. Several justices have proposed alternative tests. The most popular thus far was proposed by former Supreme Court Justice Sandra Day O'Connor. This test asks whether a particular governmental action amounts to an *endorsement* of religion. According to Justice O'Connor, a government action is invalid if it creates a perception in the mind of a reasonable observer that the government is either endorsing or disapproving of religion. In short, she believes the Establishment clause is designed to separate one's standing in the civil society from one's standing in a church. Her fundamental concern is whether the particular government action conveys "a message to non-adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community."⁷

Justice O'Connor's "endorsement test" has, on occasion, been subsumed into the *Lemon* test. The justices have simply incorporated it into the first two prongs of *Lemon* by asking if the challenged government act has the purpose or effect of advancing or endorsing religion.

Other Supreme Court justices have proposed tests that allow more government support for religion than either the *Lemon* or endorsement tests. These justices support the adoption of a test developed by Justice Anthony Kennedy and known as the "coercion test." Under this test the government does not violate the Establishment clause unless it (1) provides direct aid to religion in a way that would tend to establish a state church, or (2) coerces people to support or participate in religion against their will.⁸ Under such a test, the government would be permitted to erect such religious symbols as a Nativity scene standing alone in a public school or other public building at Christmas.⁹ But even the coercion test is subject to varying interpretations, as illustrated by the Rhode Island graduation prayer decision in which Justice Kennedy and Scalia, applying the same test, reached different results.¹⁰

In more recent Establishment clause cases, the justices again reverted to *Lemon*, albeit in a somewhat modified form. The Court identified three primary criteria for determining whether government action has a primary effect of advancing religion: 1) no government

⁷ *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984).

⁸ *County of Allegheny v. A.C.L.U.*, 492 U.S. 573 (1989) (Kennedy, J., dissenting).

⁹ *County of Allegheny v. ACLU*, 492 U.S. 573 (1989).

¹⁰ See *Lee v. Weisman*, 505 U.S. 577 (1992).

indoctrination, 2) no defining the recipients of government benefits based on religion, and 3) no excessive entanglement between government and religion.¹¹

*Although the Supreme Court is divided about which test to use in interpreting the Establishment clause, “neutrality” is a principle applied consistently in cases involving public schools. A majority of the Court agrees that school officials must be neutral among religions and between religion and non-religion. This means that under the First Amendment school officials may neither inculcate nor inhibit religion; they must protect the religious-liberty rights of students of all faiths or none.**

THE FREE EXERCISE CLAUSE

The second of the Religious Liberty clauses of the First Amendment states that the government shall make no law prohibiting the free exercise of religion. Although the text is absolute, the courts have had to place some limits on the exercise of religion. To take an easy example, courts would not hold that the First Amendment protects human sacrifice even if some religion required it. While the freedom to believe is absolute, the freedom to act on those beliefs is not.

As with the Establishment clause, the Supreme Court developed a test to help judges interpret the Free Exercise clause. First used in the 1963 case of *Sherbert v. Verner*, this test is sometimes referred to as the *Sherbert* test. While the test’s application was curtailed in the 1990 decision of *Employment Division v. Smith*, many state courts and legislatures continue to look to *Sherbert* when addressing free-exercise issues. The test has four parts: two that apply to any person who claims his free-exercise rights have been violated and two that apply to the government agency accused of violating those rights.

In order to claim the protections of the Free Exercise clause, a person (in this case a student) must show that his actions (1) are motivated by a sincere religious belief, and (2) have been substantially burdened by the government.

Sincere Religious Belief

Notice that the religious beliefs need not be logical, rational or even sensible. Certainly, they need not be popular. They need only be sincere. Thus, the fact that a student’s objection to something in the curriculum may seem unreasonable to the teacher is irrelevant. If the objection is sincere, it *may* be protected under the Free Exercise clause. Also, the fact that a person does not believe in God or a divine being does not mean his beliefs fall outside the protection of the Free Exercise clause. Many religions, such as Buddhism or Taoism, may be non-theistic. Courts tend to take a *functional* as opposed to *creedal* approach to religion. If the belief system functions like a religion in the life of the individual, it is likely to be protected for First Amendment purposes.

¹¹ *Agostini v. Felton*, 521 U.S. 203 (1997).

* Although there is some consistency in how the Supreme Court applies “neutrality” in the public schools, the Court’s 2002 decision in the Cleveland voucher case (*Zelman v. Simmons Harris*, 122 S.Ct. 2460), illustrates that the Justices remain divided over how to apply the Establishment clause to questions of school funding. Five Justices viewed the Cleveland voucher program as a neutral program involving parental choice while four justices saw the program as providing government aid to religion.

Substantial Burden

Sincere beliefs alone, however, do not make a free-exercise claim. In order to claim the protections of the Free Exercise clause, a student must also show that his religion has been substantially burdened by the government. Remote or incidental burdens will not suffice. Usually, coercion — direct or indirect — is required. If, for example, a school prohibited a student from handing out religious tracts to her classmates, this would probably be a “substantial” burden on her religious exercise. Requiring her to conduct her proselytizing at a reasonable time and place during the school day would not. Although some experts

criticize its decision, at least one federal appeals court has ruled that merely exposing students to ideas that may offend their religion does not amount to a substantial burden on their religious exercise.¹²

As noted, a burden on religious exercise need not be direct in order to be protected by the Constitution. Indirect burdens that penalize one for exercising his faith may also be illegal. For example, in the *Sherbert* case, the plaintiff was denied unemployment-compensation benefits because she refused to accept work on her Sabbath. The Supreme Court reversed, holding that Mrs. Sherbert could not be put to the “cruel choice” of having to give up either her government benefits or her religious convictions.¹³



Compelling State Interest

Even if a person has shown that her actions are motivated by a sincere religious belief and have been substantially burdened by the government, the inquiry

is not over. Under the *Sherbert* test, the government will still prevail if it can show that (1) it is acting in furtherance of a “compelling state interest,” and (2) it has pursued that interest in the manner least restrictive, or least burdensome, to religion.

A “compelling state interest” has been described as “an interest of the highest order”¹⁴ and must involve such paramount concerns as public health and safety. Although public schools clearly have a compelling interest in the education and welfare of children, a school must demonstrate that it has a compelling interest in applying a particular policy to a particular child. For example, the courts have recognized a compelling interest in compulsory-attendance laws, but in *Wisconsin v. Yoder*, the Supreme Court held that the

¹² *Mozert v. Hawkins County Board of Education*, 827 F.2d. 1058 (6th Cir. 1987).

¹³ *Sherbert v. Verner*, 374 U.S. 398 (1963).

¹⁴ *Wisconsin v. Yoder*, 406 U.S. 205 (1971).

state did not have a compelling reason to force Amish families to send their children to school beyond the eighth grade. The Court has also ruled that students may not be forced to salute the flag or recite the Pledge of Allegiance.¹⁵ Similarly, a school may have a compelling interest in teaching children how to prevent the spread of AIDS through sex-education classes, but the school may not have a compelling reason to teach this to a child whose parents object on religious grounds. As a result, many states provide exemptions from their sex-education programs.

Least Restrictive Means

Even if the school has a compelling interest, it may have to pursue that interest in the manner least restrictive of a complaining student's religion. In other words, the school should choose a course of action that does not violate the student's religion if such a course of action is available and feasible for the school.

If, for example, a student objects to a particular reading assignment on religious grounds, the school may be required to assign an alternate selection. If requests for exemption become too frequent or too burdensome for the school, a court might find the school's refusal to offer additional alternatives to be justified. For students in such a situation, the only reasonable alternative may be home schooling or a private religious school.

While courts may occasionally be willing to order alternative assignments for individual students, as a general rule they will not alter the curriculum for the entire class unless the assigned material amounts to an establishment of religion.¹⁶ The courts have also held that the mere fact that assigned material coincides with the doctrines of a particular religion — be it Catholicism or secular humanism — does not mean that the school has violated the Establishment clause. In fact, it is unconstitutional to allow a person's religion to determine the curriculum for all others.¹⁷

As noted, the application of the *Sherbert* test was sharply curtailed by the 1990 Supreme Court decision, *Employment Division v. Smith*. In *Smith*, a slim majority of the justices ruled that burdens on religious exercise no longer had to be justified if they were the unintended result of laws of general application. After *Smith*, only laws that (1) were intended to prohibit the free exercise of religion, or (2) violated other constitutional rights such as freedom of speech were subject to the compelling-interest test. Thus, a state could not pass a law stating that Native Americans are prohibited from using peyote, but it could accomplish the same result by prohibiting the use of peyote by everyone. In each case, the central religious ritual for some American Indians would be illegal.

¹⁵ *Barnette v. West Virginia State Board of Education*, 319 U.S. 624 (1943).

¹⁶ *Mozert v. Hawkins County Board of Education*, 827 F.2d. 1058 (6th Cir. 1986); *Smith v. Board of Commissioners*, 827 F.2d. 684 (11th Cir.1987).

¹⁷ *Epperson v. Arkansas*, 393 U.S. 97 (1968); See also *Edwards v. Aguillard* 482 U.S. 578 (1987).

In the three years following *Smith*, more than 50 reported cases were decided against religious groups and individuals. As a result, more than 60 religious and civil-liberties groups, including the American Civil Liberties Union, Concerned Women for America, People for the American Way and the National Association of Evangelicals, joined to draft and support the passage of the Religious Freedom Restoration Act. The Act, which was signed by President Clinton on November 17, 1993, restored the compelling-interest test and ensured its application in all cases where religious exercise is substantially burdened.¹⁸

Although the Religious Freedom Restoration Act (RFRA) was applied to public schools, its tenure was short-lived.¹⁹ On June 25, 1997, the Supreme Court, by a vote of 6-3, struck the Act down as applied to state and local government. The case *City of Boerne v. Flores* holds that Congress overstepped its bounds by forcing states to provide more protection for religious liberty than the First Amendment, as interpreted by the Supreme Court in *Employment Division v. Smith*, requires. RFRA continues to apply to the federal government, however, as indicated by the Court's more recent decision in *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 126 S. Ct. 1211 (2006).

Some states – such as Texas, Rhode Island and Connecticut – have passed their own Religious Freedom Restoration Acts which do apply to the public schools. In other states – such as Minnesota, Massachusetts, and Wisconsin – the courts have



¹⁸ Public Law 103-141 codified at 42 USC sections 2000bb through 2000bb-4 (1993).

¹⁹ *Cheema v. Thompson*, 67 F. 3d 883 (9th Cir. 1995).

held that the compelling-interest test is applicable to religion claims by virtue of the state's own constitution. In many states, however, we are uncertain about the level of protection that applies to free exercise claims.

Some argue that in virtually every case involving a public school, the religion claim can be linked with the parents' constitutional right to control the upbringing of their children, thereby triggering the compelling interest test even under *Smith*. Others maintain that parents and students no longer can force schools to accommodate their religious concerns. Regardless of how this legal dispute is finally resolved, schools fulfill the *spirit* of the First Amendment when they accommodate the religious claims of students and parents where feasible.

CONCLUSION

The Establishment and Free Exercise clauses protect the liberty of conscience of every citizen by providing the legal basis for religious freedom in the United States. Though frequently criticized, the three-part *Lemon* test remains the principal yardstick for deciding cases under the Establishment clause. This test and its likely replacements require the government to be neutral among religions as well as between religion and non-religion. The standard for free-exercise claims is less certain, but schools are encouraged to accommodate religion when they can. Taken together, the two clauses are intended to ensure fairness and neutrality in the schools with respect to religion. Schools must at times accommodate students' religious rights, but teachers and other school personnel may neither advance nor inhibit religious faith.

The Religious Liberty clauses should not be thought of as at odds with one another — one favoring freedom of religion and the other opposed to an establishment of it. The framers wrote the provision forbidding establishment in order to safeguard the principle of religious liberty. Both clauses secure the rights of believers and nonbelievers alike to be free from government involvement in matters of conscience. Together, they secure religious freedom. In the words of the Williamsburg Charter, the two Religious Liberty clauses are “mutually reinforcing provisions [that] act as a double guarantee of religious liberty.” It declared that the two clauses were:

[E]ssentially one provision for preserving religious liberty. Both parts, No Establishment and Free Exercise, are to be comprehensively understood as being in the service of religious liberty as a positive good. At the heart of the Establishment clause is the prohibition of state sponsorship of religion and at the heart of Free Exercise clause is the prohibition of state interference with religious liberty.

*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 right
of the people
peaceably to assemble,
and to petition the
Government for a redress
of grievances.*

CHAPTER 5

A Teacher's Guide to Religion in the Public Schools

A Teacher's Guide to Religion and Public Schools has been endorsed by the following organizations:

American Association of School Administrators

American Federation of Teachers

American Jewish Committee

American Jewish Congress

Anti-Defamation League

Association for Supervision and Curriculum Development

Baptist Joint Committee for Religious Liberty

Catholic League for Religious and Civil Rights

Christian Educators Association International

Christian Legal Society

Council on Islamic Education

First Amendment Center

National Association of Elementary School Principals

National Association of Evangelicals

National Association of Secondary School Principals

National Council of Churches of Christ in the U.S.A.

National Council for the Social Studies

National Education Association

National PTA

National School Boards Association

Union of American Hebrew Congregations

Union of Orthodox Jewish Congregations of America

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

Each day millions of parents from diverse religious backgrounds entrust the education of their children to the teachers in our nation's public schools. For this reason, teachers need to be fully informed about the constitutional and educational principles for understanding the role of religion in public education.

This teacher's guide is intended to move beyond the confusion and conflict that has surrounded religion in public schools since the early days of the common school movement. For most of our history, extremes have shaped much of the debate. On one end of the spectrum are those who advocate promotion of religion (usually their own) in school practices and policies. On the other end are those who view public schools as religion-free zones. Neither of these approaches is consistent with the guiding principles of the Religion Clauses of the First Amendment.

Fortunately, however, there is another alternative that is consistent with the First Amendment and broadly supported by many educational and religious groups. The core of this alternative has been best articulated in "Religious Liberty, Public Education, and the Future of American Democracy," a statement of principles issued by 24 national organizations. Principle IV states:

Public schools may not inculcate nor inhibit religion. They must be places where religion and religious conviction are treated with fairness and respect. Public schools uphold the First Amendment when they protect the religious liberty rights of students of all faiths or none. Schools demonstrate fairness when they ensure that the curriculum includes study *about* religion, where appropriate, as an important part of a complete education.¹

¹ This shared vision of religious liberty in public education is remarkable both for who says it and for what it says. The National Education Association, the American Federation of Teachers, the National School Boards Association, the Association for Supervision and Curriculum Development, the National PTA and the American Association of School Administrators join with the Christian Legal Society, the American Center for Law and Justice, and Citizens for Excellence in Education in asserting these principles. People for the American Way, the Anti-Defamation League and the Union of American Hebrew Congregations are on the list, as are the Council on Islamic Education and the Christian Educators Association International, and the Christian Coalition. A full text of the Statement of Principles may be found in chapter 2.

The questions and answers that follow build on this shared vision of religious liberty in public education to provide teachers with a basic understanding of the issues concerning religion in their classrooms. The advice offered is based on First Amendment principles as currently interpreted by the courts and agreed to by a wide range of religious and educational organizations. This guide is not intended to render legal advice on specific legal questions; it is designed to provide general information on the subject of religion and public schools.

Keep in mind, however, that the law alone cannot answer every question. Teachers and administrators, working with parents and others in the community, must work to apply the First Amendment fairly and justly for all students in our public schools.

A TEACHER’S GUIDE TO RELIGION IN THE PUBLIC SCHOOLS

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

—Religion Clauses of the First Amendment to the U.S. Constitution

1. Is it constitutional to teach about religion?

Yes. In the 1960s school prayer cases (that prompted rulings against state-sponsored school prayer and Bible reading), the U.S. Supreme Court indicated that public school education may include teaching about religion. In *Abington v. Schempp*, Associate Justice Tom Clark wrote for the Court:

[I]t might well be said that one’s education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.

2. Why should study about religion be included in the curriculum?

Growing numbers of educators throughout the United States recognize that study about religion in social studies, literature, art, and music is an important part of a well-rounded education. "Religion in the Public School Curriculum: Questions and Answers," issued by a coalition of 17 major religious and educational organizations—including the Christian Legal Society, the American Jewish Congress, the National Education Association, the American Federation of Teachers, the American Association of School Administrators, the Islamic Society of North America, the National Council for the Social Studies, the Association for Supervision and Curriculum Development, the Baptist Joint Committee on Public Affairs, the National Association of Evangelicals, and the National School Boards Association—describes the importance of religion in the curriculum thus:



Because religion plays a significant role in history and society, study about religion is essential to understanding both the nation and the world. Omission of facts about religion can give students the false impression that the religious life of humankind is insignificant or unimportant. Failure to understand even the basic symbols, practices, and concepts of the various religions makes much of history, literature, art, and contemporary life unintelligible.

Study about religion is also important if students are to value religious liberty, the first freedom guaranteed in the Bill of Rights. Moreover, knowledge of the roles of religion in the past and present promotes cross-cultural understanding essential to democracy and world peace.

A number of leading educational groups have issued their own statements decrying the lack of discussion about religion in the curriculum and calling for inclusion of such information in curricular materials and in teacher education.

Three major principles form the foundation of this consensus on teaching about religion in public schools:

1. As the Supreme Court has made clear, study about religion in public schools is constitutional.
2. Inclusion of study about religion is important in order for students to be properly educated about history and cultures.
3. Religion must be taught objectively and neutrally. The purpose of public schools is to educate students about a variety of religious traditions, not to indoctrinate them into any tradition.

3. Is study about religion included in textbooks and standards?

“Knowledge about religions is not only characteristic of an educated person, but is also absolutely necessary for understanding and living in a world of diversity.”

—National Council for the Social Studies

Agreement on the importance of teaching about religion has begun to influence the treatment of religion in textbooks widely used in public schools, as well as state frameworks and standards for the social studies. The current generation of history textbooks mention religion more often than their predecessors, and, in world history, sometimes offer substantive discussions of religious ideas and events.

State frameworks and standards are also beginning to treat religion more seriously. Most state standards in the social studies require or recommend teaching about religion



through specific content references and general mandates, and many also include such references in fine arts and literature standards. In California, for example, the History-Social Science Framework and the new History-Social Science Content Standards require considerable study of religion. Students studying U.S. History in California are expected to learn about the role of religion in the American story, from the influence of religious groups on social reform movements to the religious revivals, from the rise of Christian fundamentalism to the expanding religious pluralism of the 20th century.

Teaching about religion is also encouraged in the *National Standards for History*, published by the National Center for History in the Schools. The elaborated standards in world history are particularly rich in religious references, examining the basic beliefs and practices of the major religions as well as how these faiths influenced the development of civilization in successive historical periods. While the U.S. history standards include religion less frequently, many historical developments and contributions that were influenced by religion are nevertheless represented.

Geography for Life: The National Geography Standards, published by the Geography Standards Project, and the *National Standards for Civics and Government*, published by the Center for Civic Education, include many references to teaching about religious belief and practice as historical and contemporary phenomena. Study of religion in the social studies would be expanded considerably if curriculum developers and textbooks writers were guided by these standards.

4. How should I teach about religion?

Encouraged by the new consensus, public schools are now beginning to include more teaching about religion in the curriculum. In the social studies especially, the question is no longer “Should I teach about religion?” but rather “How should I do it?”

The answer to the “how” question begins with a clear understanding of the crucial difference between the teaching of religion (religious education or indoctrination) and teaching about religion. “Religion in the Public School Curriculum,” the guidelines issued by 17 religious and educational organizations, summarizes the distinction this way:

- The school’s approach to religion is *academic*, not *devotional*.
- The school strives for student *awareness* of religions, but does not press for student *acceptance* of any religion.
- The school sponsors study *about* religion, not the *practice* of religion.
- The school may *expose* students to a diversity of religious views, but may not *impose* any particular view.

- The school *educates* about all religions; it does not *promote* or *denigrate* religion.
- The school *informs* students about various beliefs; it does not seek to *conform* students to any particular belief.²

Classroom discussions concerning religion must be conducted in an environment that is free of advocacy on the part of the teacher. Students may, of course, express their own religious views, as long as such expression is germane to the discussion. But public-school teachers are required by the First Amendment to teach about religion fairly and objectively, neither promoting nor denigrating religion in general or specific religious groups in particular. When discussing religion, many teachers guard against injecting personal religious beliefs by teaching through attribution (e.g., by using such phrases as “most Buddhists believe ...” or “according to the Hebrew scriptures ...”).

5. Which religions should be taught and how much should be said?

Decisions about which religions to include and how much to discuss about religion are determined by the grade level of the students and the academic requirements of the course being taught.



In the elementary grades, the study of family, community, various cultures, the nation, and other themes and topics may involve some discussion of religion. Elementary students are introduced to the basic ideas and practices of the world’s major religions by focusing on the generally agreed-upon meanings of religious faiths—the core beliefs and symbols as well as important figures and events. Stories drawn from various faiths may be included among the wide variety of stories read by students, but the material selected must always be presented in the context of learning about religion.

On the secondary level, the social studies, literature, and the arts offer opportunities for the inclusion of study about religions—their ideas and practices. The academic needs of the course determine which religions are studied. In a U.S. history curriculum, for example, some faith communities may be given more time than others but only because of their predominant influence on the development of the American nation.

² Based on guidelines originally published by the Public Education Religion Studies Center at Wright State University.

In world history, a variety of faiths are studied in each region of the world in order to understand the various civilizations and cultures that have shaped history and society. The overall curriculum should include all of the major voices and some of the minor ones in an effort to provide the best possible education.

Fair and balanced study about religion on the secondary level includes critical thinking about historical events involving religious traditions. Religious beliefs have been at the heart of some of the best and some of the worst developments in human history. The full historical record (and various interpretations of it) should be available for analysis and discussion. Using primary sources whenever possible allows students to work directly with the historical record.

Of course, fairness and balance in U.S. or world history and literature is difficult to achieve, given the brief treatment of religious ideas and events in most textbooks and the limited time available in the course syllabus. Teachers will need scholarly supplemental resources that enable them to cover the required material within the allotted time, while simultaneously enriching the discussion with study of religion. Some schools now offer electives in religious studies in order to provide additional opportunities for students to study about the major faith communities in greater depth.

6. May I invite guest speakers to help with study about religion?

When teaching about religions in history, some teachers may find it helpful to invite a guest speaker for a more comprehensive presentation of the religious tradition under study. Teachers should consult their school district policy concerning guest speakers in the classroom.

If a guest speaker is invited, care should be taken to find someone with the academic background necessary for an objective and scholarly discussion of the historical period and the religion being considered. Faculty from local colleges and universities often make excellent guest speakers or can make recommendations of others who might be appropriate for working with students in a public-school setting. Religious leaders in the community may also be a resource. Remember, however, that they have commitments to their own faith. Be certain that any guest speaker understands the First Amendment guidelines for teaching about religion in public education and is clear about the academic nature of the assignment.

7. How should I treat religious holidays in the classroom?

Teachers must be alert to the distinction between teaching about religious holidays, which is permissible, and celebrating religious holidays, which is not. Recognition of and information about holidays may focus on how and when they are celebrated, their origins, histories and generally agreed-upon meanings. If the approach is objective and sensitive, neither promoting nor inhibiting religion, this study can foster understanding and mutual respect for differences in belief. Teachers may not use the study of religious holidays as an opportunity to proselytize or otherwise inject personal religious beliefs into the discussion.

The use of religious symbols, provided they are used only as examples of cultural or religious heritage, is permissible as a teaching aid or resource. Religious symbols may be displayed only on a temporary basis as part of the academic lesson being studied. Students may choose to create artwork with religious symbols, but teachers should not assign or suggest such creations.

The use of art, drama, music or literature with religious themes is permissible if it serves a sound educational goal in the curriculum. Such themes should be included on the basis of their academic or aesthetic value, not as a vehicle for promoting religious belief. For example, sacred music may be sung or played as part of the academic study of music. School concerts that present a variety of selections may include religious music. Concerts should avoid programs dominated by religious music, especially when these coincide with a particular religious holiday.

This advice about religious holidays in public schools is based on consensus guidelines adopted by 18 educational and religious organizations.³

8. Are there opportunities for teacher education in study about religion?

Teacher preparation and good academic resources are needed in order for study about religion in public schools to be constitutionally permissible and educationally sound.

The First Amendment Center supports initiatives in several regions of the country designed to prepare public-school teachers to teach about religion. The most extensive of these programs is the California 3Rs Project (Rights, Responsibilities, and Respect). Co-sponsored by the California County Superintendents Educational Services Association, the project has created a network of resource leaders and scholars throughout the state providing support for classroom teachers. Teachers trained by the project give workshops for their colleagues on the constitutional and educational

³ “Religious Holidays and Public Schools: Questions and Answers” may be found in chapter 10.

guidelines for teaching about religion. Religious studies scholars from local colleges and universities are linked with school districts to provide ongoing expertise and periodic seminars on the religious traditions that teachers are discussing in the curriculum.

The Utah State Office of Education co-sponsors a Utah 3Rs Project that is currently building a network of resource leaders in all of the state's school districts. Other states and districts have similar programs in various stages of development.⁴

Harvard University and the University of Pennsylvania offer master's level programs that are excellent opportunities for both current and prospective public- and private-school teachers interested in learning more about the study of religion and religious-liberty issues in American public life.⁵

Other colleges and universities offer assistance to teachers, including in-service programs focused on teaching about religion. A notable example is the Religion and Public Education Resource Center at California State University – Chico. This center provides resources, including curriculum guides and sample lessons in several subject areas.⁶ Other organizations, such as the Council on Islamic Education, offer academic resources and workshops on teaching about specific religious traditions.⁷

9. What are good classroom resources for teaching about religion?*

Teaching about religion in the public schools requires that sound academic resources be made readily available to classroom teachers. Fortunately, good classroom resources, especially in the social studies, are now available for helping teachers integrate appropriate study about religion.

⁴ For details about the "Rights, Responsibilities and Respect" programs, contact Charles Haynes at chaynes@freedomforum.org.

⁵ For more information about the Program in Religion and Secondary Education at Harvard University, contact The Divinity School, 45 Francis Ave., Cambridge, MA 02138. Attention: Diane Moore, Ph.D., Director. Inquiries about the Religion in Public Life Certificate Program at the University of Pennsylvania should be addressed to Christopher Pastore, Academic Advisor, Master of Liberal Arts Program, College of General Studies, University of Pennsylvania, 3440 Market St., Suite 100, Philadelphia, PA 19104-3335.

⁶ Contact the Religion and Public Education Resource Center by writing to Dr. Bruce Grelle, Dept. of Religious Studies, California State University – Chico, Chico, CA 95929.

⁷ The Council on Islamic Education may be reached by calling (714) 839-2929.

* Additional resources are listed at the end of Chapter 9.



Two recent publications are examples of what is now available for study about religion in a secondary school classroom:

Religion in American Life is a 17-volume series written by leading scholars for young readers. Published by Oxford University Press, the series includes three chronological volumes on the religious history of the U.S., nine volumes covering significant religious groups (Protestants, Catholics, Jews, Orthodox Christians, Mormons, Muslims, Hindus, Buddhists, Native Americans and others), and four volumes addressing specific topics of special importance for understanding the role of religion in American life (women and religion, church-state issues, African American religion, and immigration).⁸

Columbia University Press has published a CD-ROM entitled *On Common Ground: World Religions in America*. This multimedia resource uses text, primary sources, photographs, music, film, and the spoken word to bring alive the extraordinary religious diversity in the United States. Fifteen different religions in various regions of America are represented, from the long-established Christian, Jewish, and Native American traditions to the more recent arrivals such as Hinduism and Buddhism.⁹

10. What is the relationship between religion and character education?

As discussed above, the First Amendment prohibits public-school teachers from either inculcating or inhibiting religion. Teachers must remain neutral concerning religion, neutral among religions and neutral between religion and non-religion. But this does not mean that teachers should be neutral concerning civic virtue or moral character.

Teachers should teach the personal and civic virtues widely held in our society, such as honesty, caring, fairness, and integrity. They must do so without either invoking religious authority or denigrating the religious or philosophical commitments of students and parents.

When school districts develop a plan for comprehensive character education, they should keep in mind that the moral life of a great many Americans is shaped by deep religious conviction. Both the approach to character education and the classroom materials used should be selected in close consultation with parents and other community members representing a broad range of perspectives. When care is taken to

⁸ For more information about the Oxford University Press series, *Religion in American Life*, call (800) 451-7556.

⁹ For more information about the CD-ROM *On Common Ground: World Religions in America*, call (800) 944-8648.



find consensus, communities are able to agree on the core character traits they wish taught in the schools and how they wish character education to be done.

For guidance on how to develop and implement a quality character education program, contact the Character Education Partnership in Washington, D.C.¹⁰

The Personal Beliefs of Teachers

11. May I pray or otherwise practice my faith while at school?

As employees of the government, public-school teachers are subject to the Establishment Clause of the First Amendment and thus required to be neutral concerning religion while carrying out their duties as teachers. That means, for example, that teachers do not have the right to pray with or in the presence of students during the school day.

¹⁰ The Character Education Partnership is located at 1025 Connecticut Ave. NW, Suite 1011, Washington, DC 20036. Call (800) 988-8081. Web site: www.character.org.

Outside of their school responsibilities, public-school teachers are free like other citizens to teach or otherwise participate in their local religious community. But teachers must refrain from using their position in the public school to promote their outside religious activities.

Teachers, of course, bring their faith with them through the schoolhouse door each morning. Because of the First Amendment, however, teachers who wish to pray or engage in other religious activities—unless they are silent—should do so outside the presence of students. If a group of teachers wishes to meet for prayer or scriptural study in the faculty lounge during their free time in the school day, we see no constitutional reason why they may not be permitted to do so as long as the activity is outside the presence of students and does not interfere with their duties or the rights of other teachers.

Teachers are permitted to wear non-obtrusive jewelry, such as a cross or Star of David. But teachers should not wear clothing with a proselytizing message (e.g., a “Jesus Saves” T-shirt).

12. How do I respond if students ask about my religious beliefs?

Some teachers prefer not to answer the question, stating that it is inappropriate for a teacher to inject personal beliefs into the discussion. Other teachers may choose to answer the question straightforwardly and succinctly in the interest of an open and honest classroom environment.

Before answering the question, however, teachers should consider the age of the students. Middle and high school students may be able to distinguish between a personal view and the official position of the school; very young children may not. In any case, the teacher may answer at most with a brief statement of personal belief—but may not turn the question into an opportunity to proselytize for or against religion. Teachers may neither reward nor punish students because they agree or disagree with the religious views of the teacher.



Religious Expression of Students

13. May students express religious views in public schools?

In “Religion in the Public Schools: A Joint Statement of Current Law,” 35 religious and civil liberties organizations give the following summary of the rights of students to express their faith in a public school:

Students have the right to pray individually or in groups or to discuss their religious views with their peers so long as they are not disruptive. Because the Establishment Clause does not apply to purely private speech, students enjoy the right to read their Bibles or other scriptures, say grace before meals, pray before tests, and discuss religion with other willing student listeners. In the classroom, students have the right to pray quietly except when required to be actively engaged in school activities (e.g., students may not decide to pray just as a teacher calls on them). In informal settings, such as the cafeteria or in the halls, students may pray either audibly or silently, subject to the same rules of order as apply to other speech in these locations. However, the right to engage in voluntary prayer does not include, for example, the right to have a captive audience listen or to compel other students to participate.¹¹

14. May students express religious views in their assignments?

“Religious Expression in Public Schools,” guidelines published by the U.S. Department of Education, offers the following guidance about religious expression in student assignments:

Students may express their beliefs about religion in the form of homework, artwork, and other written and oral assignments free of discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance, and against other legitimate pedagogical concerns identified by the school.¹²



¹¹ “Religion in the Public Schools: A Joint Statement of Current Law” may be obtained by writing:

“Religion in the Public Schools,” 15 East 84th St., Suite 501, New York, NY 10028.

¹² The U.S. Department of Education guidelines may be found in chapter 6.

15. How should public schools respond to excusal requests from parents?

In “A Parent’s Guide to Religion in the Public Schools,” the National PTA and the First Amendment Center give the following advice concerning excusal requests:

Whenever possible, school officials should try to accommodate the requests of parents and students for excusal from classroom discussions or activities for religious reasons. If focused on a specific discussion, assignment, or activity, such requests should be routinely granted in order to strike a balance between the student’s religious freedom and the school’s interest in providing a well-rounded education.

If it is proved that particular lessons substantially burden a student’s free exercise of religion and if the school cannot prove a compelling interest in requiring attendance, some courts may require the school to excuse the students.

16. May public schools accommodate students with special religious needs?

Public schools are sometimes asked to accommodate students with special religious needs or practices. Sensitive and thoughtful school officials may easily grant many of these requests without raising constitutional questions. Muslim students, for example, may need a quiet place at lunch or during breaks to fulfill their prayer obligation during the school day. Jehovah’s Witnesses ask for their children to be excused from birthday celebrations. As long as honoring these requests is feasible, school officials should do so in the spirit of the First Amendment.

Administrators and teachers should not, however, be placed in the position of monitoring a child’s compliance with a particular religious requirement. Enforcing religious obligations such as prayer, dietary restrictions, or wearing a head covering is the responsibility of parents, not teachers.¹³



¹³ A good resource for understanding the religious needs and practices of students is *America’s Religions: An Educator’s Guide to Beliefs and Practices* by Benjamin J. Hubbard, John T. Hatfield, and James A. Santucci.

17. May students form extracurricular religious clubs?

The Equal Access Act passed by Congress in 1984 ensures that students in secondary public schools may form religious clubs, including Bible clubs, if the school allows other “noncurriculum-related groups.” The Act is intended to protect student-initiated and student-led meetings in secondary schools. According to the Act, outsiders may not “direct, conduct, control, or regularly attend” student religious clubs, and teachers acting as monitors may be present at religious meetings in a nonparticipatory capacity only.¹⁵

The U.S. Department of Education in “Religious Expression in Public Schools” gives the following guidance for interpreting the Equal Access Act:

The Equal Access Act is designed to ensure that, consistent with the First Amendment, student religious activities are accorded the same access to public school facilities as are student secular activities. Based on decisions of the Federal courts, as well as its interpretations of the Act, the Department of Justice has advised that the Act should be interpreted as providing, among other things, that:

- Student religious groups at public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups. Under the Equal Access Act, a school receiving Federal funds that allows one or more student noncurriculum-related clubs to meet on its premises during noninstructional time may not refuse access to student religious groups.
- A meeting, as defined and protected by the Equal Access Act, may include a prayer service, Bible reading, or other worship exercise.
- A school receiving Federal funds must allow student groups meeting under the Act to use the school media—including the public address system, the school newspaper, and the school bulletin board—to announce their meetings on the same terms as other noncurriculum-related student groups are allowed to use the school media. Any policy concerning the use of school media must be applied to all noncurriculum-related student groups in a nondiscriminatory manner. Schools, however, may inform students that certain groups are not school-sponsored.
- A school creates a limited open forum under the Equal Access Act, triggering equal access rights for religious groups, when it allows students to meet during their lunch periods or other noninstructional time during the school day, as well as when it allows students to meet before and after the school day.

¹⁵ The requirements of the Equal Access Act are described in detail in “Equal Access and the Public Schools: Questions and Answers,” a pamphlet sponsored by 21 religious and educational groups. The full text is contained in Chapter 7.

18. May students distribute religious literature in school?

An increasing number of students are requesting permission to distribute religious literature on public-school campuses. According to the guidelines issued by the U.S. Department of Education:

Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. Schools may impose the same reasonable time, place, and manner or other constitutional restrictions on distribution of religious literature as they do on nonschool literature generally, but they may not single out religious literature for special regulation.



HOT TIP

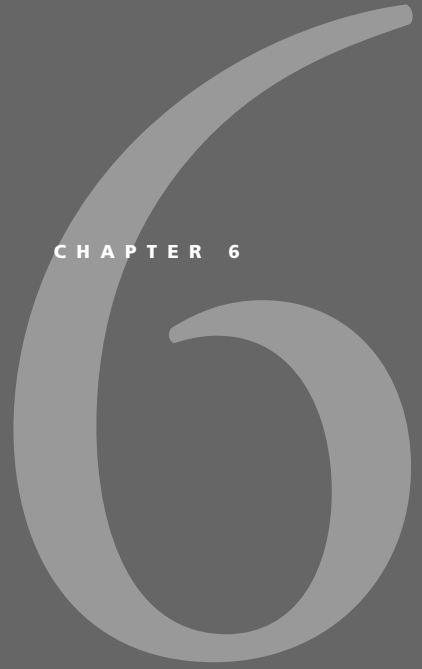


May teachers use role playing or simulations to teach about religion?

Recreating religious practices or ceremonies through role-playing activities should not take place in a public school classroom for three reasons:

1. Such reenactments run the risk of blurring the distinction between teaching about religion (which is constitutional) and school-sponsored practice of religion (which is unconstitutional).
2. Role-playing religious practices or rituals may violate the religious liberty, or freedom of conscience, of the students in the classroom. Even if the students are all volunteers, many parents don't want their children participating in a religious activity of a faith not their own. The fact that the exercise is "acting" doesn't prevent potential problems.
3. Simulations or role-playing, no matter how carefully planned or well-intentioned, risk trivializing, caricaturing or oversimplifying the religious tradition that is being studied. Teachers should use audiovisual resources and primary sources to introduce students to the ceremonies and rituals of the world's religions.

The Authors



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**Student Religious
Expression in Public
Schools: United States
Department of
Education Guidelines**

It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.

—Justice Abe Fortas
Tinker v. Des Moines School District
1969

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

SECRETARY'S LETTER ON CONSTITUTIONALLY PROTECTED PRAYER IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

February 7, 2003

Dear Colleague:

As part of the implementation of the No Child Left Behind Act of 2001 (NCLB), I am issuing guidance today on constitutionally protected prayer in public elementary and secondary schools. The purpose of this guidance is to provide State educational agencies (SEAs), local educational agencies (LEAs) and the public with information on this important topic. The guidance also sets forth and explains the responsibilities of SEAs and LEAs with respect to this aspect of the NCLB Act. Most significantly, as a condition of receiving funds under the Elementary and Secondary Education Act (ESEA), an LEA must certify in writing to its SEA that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as set forth in this guidance.

The guidance clarifies the rights of students to pray in public schools. As stated in the guidance, "... the First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by private individuals" such as students. Therefore, "[a]mong other things, students may read their Bibles or other scriptures, say grace before meals, and pray or study religious materials with fellow students during recess, the lunch hour, or other noninstructional time to the same extent that they may engage in nonreligious activities." Public schools should not be hostile to the religious rights of their students and their families.

At the same time, school officials may not “compel students to participate in prayer or other religious activities.” Nor may teachers, school administrators and other school employees, when acting in their official capacities as representatives of the state, encourage or discourage prayer, or participate in such activities with students.

In these challenging times, it is more important than ever to recognize the freedoms we have. I hope that this guidance can contribute to a common understanding of the meaning of the First Amendment in the public school setting. I encourage you to distribute this guidance widely in your community and to discuss its contents and importance with school administrators, teachers, parents, and students.

Sincerely,
Rod Paige

GUIDANCE ON CONSTITUTIONALLY PROTECTED PRAYER IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

February 7, 2003

Introduction

Section 9524 of the Elementary and Secondary Education Act (“ESEA”) of 1965, as amended by the No Child Left Behind Act of 2001, requires the Secretary to issue guidance on constitutionally protected prayer in public elementary and secondary schools. In addition, Section 9524 requires that, as a condition of receiving ESEA funds, a local educational agency (“LEA”) must certify in writing to its State educational agency (“SEA”) that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as set forth in this guidance.

The purpose of this guidance is to provide SEAs, LEAs, and the public with information on the current state of the law concerning constitutionally protected prayer in the public schools, and thus to clarify the extent to which prayer in public schools is legally protected. This guidance also sets forth the responsibilities of SEAs and LEAs with respect to Section 9524 of the ESEA. As required by the Act, this guidance has been jointly approved by the Office of the General Counsel in the Department of Education and the Office of Legal Counsel in the Department of Justice as reflecting the current state of the law. It will be made available on the Internet through the Department of Education's web site

(www.ed.gov). The guidance will be updated on a biennial basis, beginning in September 2004, and provided to SEAs, LEAs, and the public.

The Section 9524 Certification Process

In order to receive funds under the ESEA, an LEA must certify in writing to its SEA that no policy of the LEA prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance. An LEA must provide this certification to the SEA by October 1, 2002, and by October 1 of each subsequent year during which the LEA participates in an ESEA program. However, as a transitional matter, given the timing of this guidance, the initial certification must be provided by an LEA to the SEA by March 15, 2003.

The SEA should establish a process by which LEAs may provide the necessary certification. There is no specific Federal form that an LEA must use in providing this certification to its SEA. The certification may be provided as part of the application process for ESEA programs, or separately, and in whatever form the SEA finds most appropriate, as long as the certification is in writing and clearly states that the LEA has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance.

By November 1 of each year, starting in 2002, the SEA must send to the Secretary a list of those LEAs that have not filed the required certification or against which complaints have been made to the SEA that the LEA is not in compliance with this guidance. However, as a transitional matter, given the timing of this guidance, the list otherwise due November 1, 2002, must be sent to the Secretary by April 15, 2003. This list should be sent to:

Office of Elementary and Secondary Education
Attention: Jeanette Lim
U.S. Department of Education
400 Maryland Ave, S.W.
Washington, DC 20202

The SEA's submission should describe what investigation or enforcement action the SEA has initiated with respect to each listed LEA and the status of the investigation or action. The SEA should not send the LEA certifications to the Secretary, but should maintain these records in accordance with its usual records retention policy.

Enforcement of Section 9524

LEAs are required to file the certification as a condition of receiving funds under the ESEA. If an LEA fails to file the required certification, or files it in bad faith, the SEA should ensure compliance in accordance with its regular enforcement procedures. The Secretary

considers an LEA to have filed a certification in bad faith if the LEA files the certification even though it has a policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance.

The General Education Provisions Act (“GEPA”) authorizes the Secretary to bring enforcement actions against recipients of Federal education funds that are not in compliance with the law. Such measures may include withholding funds until the recipient comes into compliance. Section 9524 provides the Secretary with specific authority to issue and enforce orders with respect to an LEA that fails to provide the required certification to its SEA or files the certification in bad faith.

Overview of Governing Constitutional Principles

The relationship between religion and government in the United States is governed by the First Amendment to the Constitution, which both prevents the government from establishing religion and protects privately initiated religious expression and activities from government interference and discrimination.¹ The First Amendment thus establishes certain limits on the conduct of public school officials as it relates to religious activity, including prayer.

The legal rules that govern the issue of constitutionally protected prayer in the public schools are similar to those that govern religious expression generally. Thus, in discussing the operation of Section 9524 of the ESEA, this guidance sometimes speaks in terms of “religious expression.” There are a variety of issues relating to religion in the public schools, however, that this guidance is not intended to address.

The Supreme Court has repeatedly held that the First Amendment requires public school officials to be neutral in their treatment of religion, showing neither favoritism toward nor hostility against religious expression such as prayer.² Accordingly, the First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by private individuals, and the line between government-sponsored and privately initiated religious expression is vital to a proper understanding of the First Amendment’s scope. As the Court has explained in several cases, “there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.”³

¹ The relevant portions of the First Amendment provide: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech” U.S. Const. amend. I. The Supreme Court has held that the Fourteenth Amendment makes these provisions applicable to all levels of government — federal, state, and local — and to all types of governmental policies and activities. See *Everson v. Board of Educ.*, 330 U.S. 1 (1947); *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

² See, e.g., *Everson*, 330 U.S. at 18 (the First Amendment “requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them”); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001).

³ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000) (quoting *Board of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (plurality opinion)); *accord Rosenberger v. Rector of Univ. of Virginia*, 515 U.S. 819, 841 (1995).

The Supreme Court’s decisions over the past forty years set forth principles that distinguish impermissible governmental religious speech from the constitutionally protected private religious speech of students. For example, teachers and other public school officials may not lead their classes in prayer, devotional readings from the Bible, or other religious activities.⁴ Nor may school officials attempt to persuade or compel students to participate in prayer or other religious activities.⁵ Such conduct is “attributable to the State” and thus violates the Establishment Clause.⁶

Similarly, public school officials may not themselves decide that prayer should be included in school-sponsored events. In *Lee v. Weisman*,⁷ for example, the Supreme Court held that public school officials violated the Constitution in inviting a member of the clergy to deliver a prayer at a graduation ceremony. Nor may school officials grant religious speakers preferential access to public audiences, or otherwise select public speakers on a basis that favors religious speech. In *Santa Fe Independent School District v. Doe*,⁸ for example, the Court invalidated a school’s football game speaker policy on the ground that it was designed by school officials to result in pregame prayer, thus favoring religious expression over secular expression.

Although the Constitution forbids public school officials from directing or favoring prayer, students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,”⁹ and the Supreme Court has made clear that “private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.”¹⁰ Moreover, not all religious speech that takes place in the public schools or at school-sponsored events is governmental speech.¹¹ For example, “nothing in the Constitution ... prohibits any public school student from voluntarily praying at any time before, during, or after the school day,”¹² and students may pray with fellow students during the school day on the same terms and conditions that they may engage in other conversation or speech. Likewise, local school authorities possess substantial discretion to impose rules of order and pedagogical restrictions on student activities,¹³ but they may not structure or administer such rules to discriminate against student prayer or religious speech. For instance, where schools permit student expression on the basis of genuinely neutral criteria and students retain primary control over the content of their

⁴ *Engel v. Vitale*, 370 U.S. 421 (1962) (invalidating state laws directing the use of prayer in public schools); *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (invalidating state laws and policies requiring public schools to begin the school day with Bible readings and prayer); *Mergens*, 496 U.S. at 252 (plurality opinion) (explaining that “a school may not itself lead or direct a religious club”). The Supreme Court has also held, however, that the study of the Bible or of religion, when presented objectively as part of a secular program of education (e.g., in history or literature classes), is consistent with the First Amendment. See *Schempp*, 374 U.S. at 225.

⁵ See *Lee v. Weisman*, 505 U.S. 577, 599 (1992); see also *Wallace v. Jaffree*, 472 U.S. 38 (1985).

⁶ See *Weisman*, 505 U.S. at 587.

⁷ 505 U.S. 577 (1992).

⁸ 530 U.S. 290 (2000).

⁹ *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969).

¹⁰ *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995).

¹¹ *Santa Fe*, 530 U.S. at 302 (explaining that “not every message” that is “authorized by a government policy and take[s] place on government property at government-sponsored school-related events” is “the government’s own”).

¹² *Santa Fe*, 530 U.S. at 313.

¹³ For example, the First Amendment permits public school officials to review student speeches for vulgarity, lewdness, or sexually explicit language. *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 683-86 (1986). Without more, however, such review does not make student speech attributable to the state.

expression, the speech of students who choose to express themselves through religious means such as prayer is not attributable to the state and therefore may not be restricted because of its religious content.¹⁴ Student remarks are not attributable to the state simply because they are delivered in a public setting or to a public audience.¹⁵ As the Supreme Court has explained: “The proposition that schools do not endorse everything they fail to censor is not complicated,”¹⁶ and the Constitution mandates neutrality rather than hostility toward privately initiated religious expression.¹⁷

Applying the Governing Principles in Particular Contexts

Prayer During Noninstructional Time

Students may pray when not engaged in school activities or instruction, subject to the same rules designed to prevent material disruption of the educational program that are applied to other privately initiated expressive activities. Among other things, students may read their Bibles or other scriptures, say grace before meals, and pray or study religious materials with fellow students during recess, the lunch hour, or other noninstructional time to the same extent that they may engage in nonreligious activities. While school authorities may impose rules of order and pedagogical restrictions on student activities, they may not discriminate against student prayer or religious speech in applying such rules and restrictions.

Organized Prayer Groups and Activities

Students may organize prayer groups, religious clubs, and “see you at the pole” gatherings before school to the same extent that students are permitted to organize other non-curricular student activities groups. Such groups must be given the same access to school facilities for assembling as is given to other non-curricular groups, without discrimination because of the religious content of their expression. School authorities possess substantial discretion concerning whether to permit the use of school media for student advertising or announcements regarding non-curricular activities. However, where student groups that meet for nonreligious activities are permitted to advertise or announce their meetings — for example, by advertising in a student newspaper, making announcements on a student activities bulletin board or public address system, or handing out leaflets — school authorities may not discriminate against groups who meet to pray. School authorities may

¹⁴ *Rosenberger v. Rector of Univ. of Virginia*, 515 U.S. 819 (1995); *Board of Educ. v. Mergens*, 496 U.S. 226 (1990); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981); *Santa Fe*, 530 U.S. at 304 n.15. In addition, in circumstances where students are entitled to pray, public schools may not restrict or censor their prayers on the ground that they might be deemed “too religious” to others. The Establishment Clause prohibits state officials from making judgments about what constitutes an appropriate prayer, and from favoring or disfavoring certain types of prayers — be they “nonsectarian” and “nonproselytizing” or the opposite — over others. See *Engel v. Vitale*, 370 U.S. 421, 429-30 (1962) (explaining that “one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government’s placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services,” that “neither the power nor the prestige” of state officials may “be used to control, support or influence the kinds of prayer the American people can say,” and that the state is “without power to prescribe by law any particular form of prayer”); *Weisman*, 505 U.S. at 594.

¹⁵ *Santa Fe*, 530 U.S. at 302; *Mergens*, 496 U.S. at 248-50.

¹⁶ *Mergens*, 496 U.S. at 250 (plurality opinion); *id.* at 260-61 (Kennedy, J., concurring in part and in judgment).

¹⁷ *Rosenberger*, 515 U.S. at 845-46; *Mergens*, 496 U.S. at 248 (plurality opinion); *id.* at 260-61 (Kennedy, J., concurring in part and in judgment).

disclaim sponsorship of non-curricular groups and events, provided they administer such disclaimers in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

Teachers, Administrators, and other School Employees

When acting in their official capacities as representatives of the state, teachers, school administrators, and other school employees are prohibited by the Establishment Clause from encouraging or discouraging prayer, and from actively participating in such activity with students. Teachers may, however, take part in religious activities where the overall context makes clear that they are not participating in their official capacities. Before school or during lunch, for example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversation or nonreligious activities. Similarly, teachers may participate in their personal capacities in privately sponsored baccalaureate ceremonies.

Moments of Silence

If a school has a “minute of silence” or other quiet periods during the school day, students are free to pray silently, or not to pray, during these periods of time. Teachers and other school employees may neither encourage nor discourage students from praying during such time periods.

Accommodation of Prayer During Instructional Time

It has long been established that schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation in such instruction or penalize students for attending or not attending. Similarly, schools may excuse students from class to remove a significant burden on their religious exercise, where doing so would not impose material burdens on other students. For example, it would be lawful for schools to excuse Muslim students briefly from class to enable them to fulfill their religious obligations to pray during Ramadan.

Where school officials have a practice of excusing students from class on the basis of parents’ requests for accommodation of nonreligious needs, religiously motivated requests for excusal may not be accorded less favorable treatment. In addition, in some circumstances, based on federal or state constitutional law or pursuant to state statutes, schools may be required to make accommodations that relieve substantial burdens on students’ religious exercise. Schools officials are therefore encouraged to consult with their attorneys regarding such obligations.

Religious Expression and Prayer in Class Assignments

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic

standards of substance and relevance and against other legitimate pedagogical concerns identified by the school. Thus, if a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards (such as literary quality) and neither penalized nor rewarded on account of its religious content.

Student Assemblies and Extracurricular Events

Student speakers at student assemblies and extracurricular activities such as sporting events may not be selected on a basis that either favors or disfavors religious speech. Where student speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content. By contrast, where school officials determine or substantially control the content of what is expressed, such speech is attributable to the school and may not include prayer or other specifically religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's.

Prayer at Graduation

School officials may not mandate or organize prayer at graduation or select speakers for such events in a manner that favors religious speech such as prayer. Where students or other private graduation speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, however, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student or other private speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's.

Baccalaureate Ceremonies

School officials may not mandate or organize religious ceremonies. However, if a school makes its facilities and related services available to other private groups, it must make its facilities and services available on the same terms to organizers of privately sponsored religious baccalaureate ceremonies. In addition, a school may disclaim official endorsement of events sponsored by private groups, provided it does so in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

COMMENTARY ON 2003 GUIDANCE ON CONSTITUTIONALLY PROTECTED PRAYER IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

November 6, 2006

K. Hollyn Hollman
General Counsel for Baptist Joint Committee

Like previous Department of Education (DOE) guidelines on religion in the public schools, the 2003 guidelines set forth general principles for the development of school policies. They usefully educate students, teachers, and parents about the proper role of religion in the public schools. Issued in conjunction with the “No Child Left Behind Act of 2001,” the newest guidelines require schools to certify compliance under threat of the penalty of a loss of federal funds. While compliance with the guidelines will preserve federal funding, schools should be mindful that the federal judiciary, not the DOE, has ultimate authority to determine the constitutionality of any policy or practice regarding religion in the public schools.

The 2003 guidelines were billed as a “clarification” of legally protected prayer in public schools. A close look, however, reveals that they actually raise a few new questions, especially when compared to guidelines from the Clinton administration that remain available as archived information on the DOE Web site. The 1995 guidelines were based largely on “Religion and the Public Schools: A Joint Statement of the Law,” a consensus document written and endorsed by religious organizations with diverse perspectives. They were distributed widely, with a letter from former Education Secretary Richard Riley, emphasizing the dual responsibilities of schools to allow religious expression by students and to protect against any government-sponsored religious exercise.

The 2003 guidelines reflect and restate some of the same accepted principles but are more narrowly focused on “protected prayer.” A few specific differences between the two sets of guidelines deserve particular attention.

First, while both sets of guidelines note that school employees are prohibited by the Establishment Clause from encouraging or discouraging prayer and from actively participating in such activities with students, the 2003 guidelines emphasize that the general rule applies to employees only “when acting in their official capacities.” According to the new guidelines, teachers may take part in religious activities “where the overall context makes clear that they are not participating in their official capacities.” The guidelines use “before school or during lunch” as examples, but leave open the difficult

question of how to determine when a teacher is not acting as a representative of the state, especially in the presence of students.

Second, as reflected in its title, the new guidelines explicitly claim to apply to elementary, as well as secondary schools. While the exact lines to be drawn may not be clear, different rules may be warranted in the elementary school context. Differences in ability between elementary and secondary school students — to distinguish between individual and official roles of teachers or to respond to evangelizing efforts of a fellow student — may argue for different roles for school employees at the elementary level to avoid raising constitutional concerns.

Third, and most striking, is the description of protection for student speech in the context of school assemblies and graduation. The new guidelines state that when a student speaker is selected on neutral terms and is able to “retain primary control over the content,” the school is not responsible for the expression. This seems to suggest general approval for schools to allow prayer and religious messages at school events without fear of attribution to the school. This advice is in considerable tension with earlier guidelines warning that the student right to religious expression does not include the right to have a “captive audience” listen. While using a “neutral disclaimer” for student speech may be helpful, it is unlikely to eliminate Establishment Clause concerns if other indicators of sponsorship are present. The 1995 guidelines made clear that teachers not only must abstain from organizing religious activity but also must terminate such activity if it “coerces” another student to participate. The absence of such language in the 2003 guidelines may suggest a greater tolerance for use of a school forum to advance religion than is warranted under the law.

On the whole, the new guidelines should prove useful for schools seeking to avoid many common conflicts regarding religion in the public schools. Because courts retain the final word on what is constitutionally permissible, schools should look beyond the 2003 guidelines to stay out of trouble. Particularly in the areas mentioned previously, countervailing Establishment Clause concerns and the prior guidelines should also be considered. Together, the two sets of guidelines have the potential to inform policy development and teacher training for the benefit of all students.

U.S DEPARTMENT OF EDUCATION GUIDELINES ON RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS

“... Schools do more than train children’s minds. They also help to nurture their souls by reinforcing the values they learn at home and in their communities. I believe that one of the best ways we can help out schools to do this is by supporting students’ rights to voluntarily practice their religious beliefs, including prayer in schools ... For more than 200 years, the First Amendment has protected our religious freedom and allowed many faiths to flourish in our homes, in our work place and in our schools. Clearly understood and sensibly applied, it works.”

President Clinton,
May 30, 1998

DEAR AMERICAN EDUCATOR,

Almost three years ago, President Clinton directed me, as U.S. Secretary of Education, in consultation with the Attorney General, to provide every public school district in America with a statement of principles addressing the extent to which religious expression and activity are permitted in our public schools. In accordance with the President’s directive, I sent every school superintendent in the country guidelines on Religious Expression in Public Schools in August of 1995.

The purpose of promulgating these presidential guidelines was to end much of the confusion regarding religious expression in our nation’s public schools that had developed over more than thirty years since the U.S. Supreme Court decision in 1962 regarding state sponsored school prayer. I believe that these guidelines have helped school officials, teachers, students and parents find a new common ground on the important issue of religious freedom consistent with constitutional requirements.

In July of 1996, for example, the Saint Louis School Board adopted a district wide policy using these guidelines. While the school district had previously allowed certain religious activities, it had never spelled them out before, resulting in a lawsuit over the right of a student to pray before lunch in the cafeteria. The creation of a clearly defined policy using the guidelines allowed the school board and the family of the student to arrive at a mutually satisfactory settlement.

In a case decided last year in a United States District Court in Alabama, (*Chandler v. James*) involving student initiated prayer at school related events, the court instructed the DeKalb

County School District to maintain for circulation in the library of each school a copy of the presidential guidelines.

The great advantage of the presidential guidelines, however, is that they allow school districts to avoid contentious disputes by developing a common understanding among students, teachers, parents and the broader community that the First Amendment does in fact provide ample room for religious expression by students while at the same time maintaining freedom from government sponsored religion.

The development and use of these presidential guidelines were not and are not isolated activities. Rather, these guidelines are part of an ongoing and growing effort by educators and America's religious community to find a new common ground. In April of 1995, for example, thirty-five religious groups issued "Religion and Public Schools: A Joint Statement of Current Law" that the Department drew from in developing its own guidelines. Following the release of the presidential guidelines, the National PTA and the Freedom Forum jointly published in 1996 "A Parent's Guide to Religion in the Public Schools" which put the guidelines into an easily understandable question and answer format.

In the last two years, I have held three religious-education summits to inform faith communities and educators about the guidelines and to encourage continued dialogue and cooperation within constitutional limits. Many religious communities have contacted local schools and school systems to offer their assistance because of the clarity provided by the guidelines. The United Methodist Church has provided reading tutors to many schools, and Hadassah and the Women's League for Conservative Judaism have both been extremely active in providing local schools with support for summer reading programs.

The guidelines we are releasing today are the same as originally issued in 1995, except that changes have been made in the sections on religious excusals and student garb to reflect the Supreme Court decision in *Boerne v. Flores* declaring the Religious Freedom Restoration Act unconstitutional as applied to actions of state and local governments.

These guidelines continue to reflect two basic and equally important obligations imposed on public school officials by the First Amendment. First, schools may not forbid students acting on their own from expressing their personal religious views or beliefs solely because they are of a religious nature. Schools may not discriminate against private religious expression by students, but must instead give students the same right to engage in religious activity and discussion as they have to engage in other comparable activity. Generally, this means that students may pray in a nondisruptive manner during the school day when they are not engaged in school activities and instruction, subject to the same rules of order that apply to other student speech.

At the same time, schools may not endorse religious activity or doctrine, nor may they coerce participation in religious activity. Among other things, of course, school

administrators and teachers may not organize or encourage prayer exercises in the classroom. Teachers, coaches and other school officials who act as advisors to student groups must remain mindful that they cannot engage in or lead the religious activities of students.

And the right of religious expression in school does not include the right to have a “captive audience” listen, or to compel other students to participate. School officials should not permit student religious speech to turn into religious harassment aimed at a student or a small group of students. Students do not have the right to make repeated invitations to other students to participate in religious activity in the face of a request to stop.

The statement of principles set forth below derives from the First Amendment. Implementation of these principles, of course, will depend on specific factual contexts and will require careful consideration in particular cases.

In issuing these revised guidelines I encourage every school district to make sure that principals, teachers, students and parents are familiar with their content. To that end I offer three suggestions:

First, school districts should use these guidelines to revise or develop their own district wide policy regarding religious expression. In developing such a policy, school officials can engage parents, teachers, the various faith communities and the broader community in a positive dialogue to define a common ground that gives all parties the assurance that when questions do arise regarding religious expression the community is well prepared to apply these guidelines to specific cases. The Davis County School District in Farmington, Utah, is an example of a school district that has taken the affirmative step of developing such a policy.

At a time of increasing religious diversity in our country such a proactive step can help school districts create a framework of civility that reaffirms and strengthens the community consensus regarding religious liberty. School districts that do not make the effort to develop their own policy may find themselves unprepared for the intensity of the debate that can engage a community when positions harden around a live controversy involving religious expression in public schools.

Second, I encourage principals and administrators to take the additional step of making sure that teachers, so often on the front line of any dispute regarding religious expression, are fully informed about the guidelines. The Gwinnett County School system in Georgia, for example, begins every school year with workshops for teachers that include the distribution of these presidential guidelines. Our nation’s schools of education can also do their part by ensuring that prospective teachers are knowledgeable about religious expression in the classroom.

Third, I encourage schools to actively take steps to inform parents and students about religious expression in school using these guidelines. The Carter County School District in Elizabethton, Tennessee, included the subject of religious expression in a character education program that it developed in the fall of 1997. This effort included sending home to every parent a copy of the “Parent’s Guide to Religion in the Public Schools.”

Help is available for those school districts that seek to develop policies on religious expression. I have enclosed a list of associations and groups that can provide information to school districts and parents who seek to learn more about religious expression in our nation’s public schools.

In addition, citizens can turn to the U.S. Department of Education web site (<http://www.ed.gov>) for information about the guidelines and other activities of the Department that support the growing effort of educators and religious communities to support the education of our nation’s children.

Finally, I encourage teachers and principals to see the First Amendment as something more than a piece of dry, old parchment locked away in the national attic gathering dust. It is a vital living principle, a call to action, and a demand that each generation reaffirm its connection to the basic idea that is America—that we are free people who protect our freedoms by respecting the freedom of others who differ from us.

Our history as a nation reflects the history of the Puritan, the Quaker, the Baptist, the Catholic, the Jew and many others fleeing persecution to find religious freedom in America. The United States remains the most successful experiment in religious freedom that the world has ever known because the First Amendment uniquely balances freedom of private religious belief and expression with freedom from state-imposed religious expression.

Public schools can neither foster religion nor preclude it. Our public schools must treat religion with fairness and respect and vigorously protect religious expression as well as the freedom of conscience of all other students. In so doing our public schools reaffirm the First Amendment and enrich the lives of their students.

I encourage you to share this information widely and in the most appropriate manner with your school community. Please accept my sincere thanks for your continuing work on behalf of all of America’s children.

Sincerely,
Richard W. Riley
U.S. Secretary of Education

RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS: A STATEMENT OF PRINCIPLES

Student prayer and religious discussion

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

Generally, students may pray in a nondisruptive manner when not engaged in school activities or instruction, and subject to the rules that normally pertain in the applicable setting. Specifically, students in informal settings, such as cafeterias and hallways, may pray and discuss their religious views with each other, subject to the same rules of order as apply to other student activities and speech. Students may also speak to, and attempt to persuade, their peers about religious topics just as they do with regard to political topics. School officials, however, should intercede to stop student speech that constitutes harassment aimed at a student or a group of students.

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

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





Graduation prayer and baccalaureates

Under current Supreme Court decisions, school officials may not mandate or organize prayer at graduation nor organize religious baccalaureate ceremonies. If a school generally opens its facilities to private groups, it must make its facilities available on the same terms to organizers of privately sponsored religious baccalaureate services. A school may not extend preferential treatment to baccalaureate ceremonies and may in some instances be obliged to disclaim official endorsement of such ceremonies.

Official neutrality regarding religious activity

Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the Establishment clause from soliciting or encouraging religious activity, and from participating in such activity with students. Teachers and administrators also are prohibited from discouraging activity because of its religious content and from soliciting or encouraging antireligious activity.

Teaching about religion

Public schools may not provide religious instruction, but they may teach *about* religion, including the Bible or other scripture; the history of religion, comparative religion, the Bible (or other scripture)-as-literature, and the role of religion in the history of the United States and other countries all are permissible public school subjects. Similarly, it is permissible to consider religious influences on art, music, literature and social studies. Although public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of holidays, schools may not observe holidays as religious events or promote such observance by students.

Student assignments

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

Religious literature

Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or

activities. Schools may impose the same reasonable time, place and manner or other constitutional restrictions on distribution of religious literature as they do on nonschool literature generally, but they may not single out religious literature for special regulation.

Religious excusals

Subject to applicable state laws, schools enjoy substantial discretion to excuse individual students from lessons that are objectionable to the student or the students' parents on religious or other conscientious grounds. 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 availing themselves of an excusal option.

Released time

Subject to applicable state laws, schools have the discretion to dismiss students to off-premises religious instruction, 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.

Teaching values

Though schools must be neutral with respect to religion, they may play an active role with respect to teaching civic values and virtue and the moral code that holds us together as a community. The fact that some of these values are held also by religions does not make it unlawful to teach them in school.

Student garb

Schools enjoy substantial discretion in adopting policies relating to student dress and school uniforms. Students generally have no federal right to be exempted from religiously neutral and generally applicable school dress rules based on their religious beliefs or practices; however, schools may not single out religious attire in general, or attire of a particular religion, for prohibition or regulation. Students may display religious messages on items of clothing to the same extent that they are permitted to display other comparable messages. Religious messages may not be singled out for suppression, but rather are subject to the same rules as generally apply to comparable messages.

THE EQUAL ACCESS ACT

The Equal Access Act is designed to ensure that, consistent with the First Amendment, student religious activities are accorded the same access to public school facilities as are student secular activities. Based on decisions of the federal courts as well as its interpretations of the Act, the Department of Justice has advised that the Act should be interpreted as providing, among other things, that:

General provisions

Student religious groups at public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups. Under the Equal Access Act, a school receiving federal funds that allows one or more student noncurriculum-related clubs to meet on its premises during noninstructional time may not refuse access to student religious groups.

Prayer services and worship exercises covered

A meeting, as defined and protected by the Equal Access Act, may include a prayer service, Bible reading, or other worship exercise.

Equal access to means of publicizing meetings

A school receiving federal funds must allow student groups meeting under the Act to use the school media—including the public address system, the school newspaper and the school bulletin board—to announce their meetings on the same terms as other noncurriculum-related student groups are allowed to use the school media. Any policy concerning the use of school media must be applied to all noncurriculum-related student groups in a nondiscriminatory matter. Schools, however, may inform students that certain groups are not school-sponsored.

Lunch-time and recess covered

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

Revised May 1998

*Congress shall make
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establishment of religion
or prohibiting the free
exercise thereof; or
abridging the freedom
of speech, or of the press,
or the right of the people
peaceably to assemble,
and to petition the
Government for a redress
of grievances.*

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CHAPTER 7

Student Religious Clubs

The Equal Access Act: Questions and Answers is jointly sponsored by:

American Academy of Religion

American Association of School Administrators

American Federation of Teachers

American Jewish Committee

American Jewish Congress

Americans United Research Foundation

Association for Supervision and Curriculum Development

Baptist Joint Committee for Religious Liberty

Christian Legal Society

Department of Education of the U.S. Conference of Catholic Bishops

First Amendment Center

General Conference of Seventh-day Adventists

National Association of Secondary School Principals

National Association of Evangelicals

National Conference for Community and Justice

National Council of Churches of Christ in the USA

National Council for the Social Studies

National Education Association

National PTA

National School Boards Association

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

The Equal Access Act became law on August 11, 1984, passing the Senate 88-11 and the House 337-77. Congress's primary purpose in passing the Act, according to the Supreme Court, was to end "perceived widespread discrimination" against religious speech in public schools. While Congress recognized the constitutional prohibition against government promotion of religion, it believed that non-school-sponsored student speech, including religious speech, should not be excised from the school environment.

The Supreme Court, by a vote of 8-1, held in *Westside Community Schools v. Mergens* (1990) that the Equal Access Act is constitutional. This chapter is designed to help school board members, administrators, teachers, parents, religious leaders and students understand and conform to the Act.

The title—*the Equal Access Act*—explains the essential thrust of the Act. There are three basic concepts.

The first is *nondiscrimination*. If a public secondary school permits student groups to meet for student-initiated activities not directly related to the school curriculum, it is required to treat all such student groups equally. This means the school cannot discriminate against any students conducting such meetings "on the basis of the religious, political, philosophical, or other content of the speech at such meetings." This language was used to make clear that religious speech was to receive equal treatment, not preferred treatment.

The second basic concept is protection of *student-initiated and student-led meetings*. The Supreme Court has held unconstitutional state-initiated and state-endorsed religious activities in the public schools. (This Act leaves the "school prayer" decisions undisturbed.) However, in upholding the constitutionality of the Act, the Court noted the "crucial difference between government speech endorsing religion, which the Establishment clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise clauses protect."

The third basic concept is *local control*. The Act does not limit the authority of the school to maintain order and discipline or to protect the well-being of students and faculty.

While the Act does not cover every specific situation, an understanding of the three basic concepts—as fleshed out by the questions and answers below—should be a sufficient guide for addressing most situations.

Many of the sponsors of these guidelines were actively involved in the debate over equal access. Some supported the Act, others remained neutral, and some opposed it. All of the sponsors, however, agree that the provisions of the Act need to be understood clearly as public secondary schools develop policies concerning student groups.



The Equal Access Act (20 U.S.C. 4071-74)

Denial of Equal Access Prohibited Sec. 4071.

- (a) It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.
- (b) A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurriculum-related student groups to meet on school premises during noninstructional time.
- (c) Schools shall be deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum if such school uniformly provides that—
 - (1) the meeting is voluntary and student-initiated;
 - (2) there is no sponsorship of the meeting by the school, the government, or its agents or employees;
 - (3) employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity;
 - (4) the meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and
 - (5) nonschool persons may not direct, conduct, control, or regularly attend activities of student groups.
- (d) Nothing in this subchapter shall be construed to authorize the United States or any State or political subdivision thereof—
 - (1) to influence the form or content of any prayer or other religious activity;
 - (2) to require any person to participate in prayer or other religious activity;

CONTINUED



- (3) to expend public funds beyond the incidental cost of providing the space for student-initiated meetings;
 - (4) to compel any school agent or employee to attend a school meeting if the content of the speech at the meeting is contrary to the beliefs of the agent or employee;
 - (5) to sanction meetings that are otherwise unlawful;
 - (6) to limit the rights of groups of students which are not of a specified numerical size; or
 - (7) to abridge the constitutional rights of any person.
- (e) Notwithstanding the availability of any other remedy under the Constitution or the laws of the United States, nothing in this subchapter shall be construed to authorize the United States to deny or withhold Federal financial assistance to any school.
- (f) Nothing in this subchapter shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.

Definitions Sec. 4072. As used in this subchapter—

- (1) The term “secondary school” means a public school which provides secondary education as determined by State law.
- (2) The term “sponsorship” includes the act of promoting, leading, or participating in a meeting. The assignment of a teacher, administrator, or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting.
- (3) The term “meeting” includes those activities of student groups which are permitted under a school’s limited open forum and are not directly related to the school curriculum.
- (4) The term “noninstructional time” means time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.

Severability Sec. 4073.

If any provision of this subchapter or the application thereof to any person or circumstances is judicially determined to be invalid, the provisions of the remainder of the subchapter and the application to other persons or circumstances shall not be affected thereby.

Construction Sec. 4074.

The provisions of this subchapter shall supersede all other provisions of Federal law that are inconsistent with the provisions of this subchapter.

QUESTIONS *and* ANSWERS: EQUAL ACCESS AND THE PUBLIC SCHOOLS

The following questions and answers indicate how the act is to work:

What triggers the Equal Access Act?

The creation of a “limited open forum.” A limited open forum is created whenever a public secondary school provides an opportunity for one or more “noncurriculum-related student groups” to meet on school premises during noninstructional time. The forum created is said to be “limited” because it is only the school’s own students who can take advantage of the open forum. Outsiders are not granted an independent right of access by the Act.

Must a school board create a limited open forum for students?

No. The local school board has exclusive authority to determine whether it will create or maintain a limited open forum. However, if a school has a “limited open forum,” it may not discriminate against a student group because of the content of the group’s speech.

What is a “noncurriculum-related student group”?

In *Mergens*, the Supreme Court interpreted a noncurriculum-related student group to mean “any student group [or club] that does not directly relate to the body of courses offered by the school.” According to the Court, a student group directly relates to a school’s curriculum only if (1) the subject matter of the group is actually taught, or will soon be taught, in a regularly offered course; (2) the subject matter of the group concerns the body of courses as a whole; or (3) participation in the group is required for a particular course or results in academic credit.

Schools may not substitute their own definition of “noncurriculum-related student group” for that of the Court.



Did the Supreme Court give any examples of “noncurriculum-related student groups”?

The Court noted that unless a school could show that groups such as a chess club, stamp-collecting club, or community service club fell within the definition of curriculum-related set forth by the Court, they would be considered noncurriculum-related for purposes of the Act.

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Student Religious Clubs

In *Mergens*, the Court found at least three groups that were noncurriculum-related for that school: (1) a scuba club, (2) a chess club, and (3) a service club. Each of these clubs was found to be noncurriculum-related because it did not meet the Court's criteria set forth in the question above.

What examples did the Court give of curriculum-related student groups?

The Court noted that “a French club would directly relate to the curriculum if a school taught French in a regularly offered course or planned to teach the subject in the near future. A school's student government would generally relate directly to the curriculum to the extent that it addresses concerns, solicits opinions and formulates proposals pertaining to the body of courses offered by the school. If participation in a school's band or orchestra were required for the band or orchestra classes, or resulted in academic credit, then those groups would also directly relate to the curriculum.”



Student Religious Clubs

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Who determines which student groups are, in fact, curriculum-related?

Local school authorities, subject to review by the courts. However, the Supreme Court has made clear that a school cannot defeat the intent of the Act by defining “curriculum-related” in a way that arbitrarily results in only those student clubs approved by the school being allowed to meet.

When can noncurriculum-related student groups meet?

A limited open forum requiring equal access may be established during “noninstructional time,” which is defined as time set aside by the school before actual classroom instruction begins or after it ends.

Can noncurriculum-related student groups meet during the day?

The Equal Access Act is not triggered by student club meetings that occur only during instructional time. The constitutionality of allowing or disallowing student religious clubs to meet during instructional time has not been expressly ruled upon by the Supreme Court.

To what schools does the Act apply?

The Act applies only to public secondary schools (as defined by state law) that receive federal financial assistance.

May a school establish regulations for meetings that take place in its limited open forum?

Yes. The Act does not take away a school's authority to establish reasonable time, place and manner regulations for its limited open forum. For example, a school may establish a reasonable time period on any one school day, a combination of days or all school days. It may assign the rooms in which student groups can meet. It may enforce order and discipline during the meetings. The key is that time, place and manner regulations must be uniform and nondiscriminatory.

May schools promote, and teachers participate in, some club meetings and not others in a limited open forum?

Some of the Act's language implies that schools may not sponsor any noncurriculum-related club. Other language suggests that schools can sponsor all noncurriculum clubs except religious ones. Subsequent to the *Mergens* decision, some schools have in fact promoted, or assigned teachers to teach, drama or debate clubs and the like, even though the school does not offer formal instruction in these subjects or give credit to those who participate in such clubs. There may be other clubs (such as political clubs) for which school sponsorship is inappropriate.

School sponsorship of some noncurriculum-related student clubs does not mean, however, that a limited open forum does not exist or that non-sponsored clubs may not meet.

May a school require a minimum number of students to form a noncurriculum-related club?

Not if it "limit[s] the rights of groups of students." Care must be exercised that the school not discriminate against numerically small student groups that wish to establish a club. If the number of clubs begins to tax the available space in a particular school, one teacher might be used to monitor several small student groups meeting in the same large room. The key is to be flexible in accommodating student groups that want to meet.

What does "student-initiated" mean?

It means that the students themselves are seeking permission to meet and that they will direct and control the meeting. Teachers and other school employees may not initiate or direct such meetings, nor may outsiders.



May outsiders attend a student meeting?

Yes, if invited by the students and if the school does not have a policy barring all “nonschool persons.” However, the nonschool persons “may not direct, conduct, control, or regularly attend activities of student groups.”

A school may decide not to permit any nonschool persons to attend any club meetings, or it may limit the number of times during an academic year a nonschool person may be invited to attend.

Obviously, no nonschool person should be permitted to proselytize students who are not voluntarily attending the meeting to which the nonschool person is invited.

May teachers be present during student meetings?

Yes, but there are important limitations. For insurance purposes or because of state law or local school policy, teachers or other school employees are commonly required to be present during student meetings. In order to avoid any appearance of state endorsement of religion, teachers or employees are to be present at student religious meetings only in a “nonparticipatory capacity.” The Act also prohibits teachers or other school officials from influencing the form or content of any prayer or other religious activity.

May a teacher or other school employee be required to be present at a student meeting if that person does not share the beliefs of the students?

The Act provides that no school employee may be required to attend a meeting “if the content of the speech at the meeting is contrary to the beliefs” of that employee. If a school establishes a limited open forum, however, it is responsible for supplying a monitor for every student group meeting if a monitor is required.*

**Editor’s Note: Although the endorsers of this guide agreed on this answer, legal experts are divided about whether or not school officials are required to provide a monitor.*



Does the assignment of a teacher to a meeting for custodial purposes constitute sponsorship of the meeting?

No.

Does the expenditure of public funds for the incidental cost of providing the space (including utilities) for student-initiated meetings constitute sponsorship?

No.

If a school pays a teacher for monitoring a student religious club, does this constitute sponsorship?

Congressional debate apparently took for granted that payment of a school-required monitor for any club was an “incidental cost of providing the space for student-initiated meetings.”

Does the use of school media to announce meetings of noncurriculum-related student groups constitute sponsorship of those meetings?

No. The Supreme Court has interpreted the Act to require schools to allow student groups meeting under the Act to use the school media—including the public address system, school paper and school bulletin board—to announce their meetings if other noncurriculum-related student groups are allowed to use the school media. Any policy concerning the use of school media must be applied to all noncurriculum-related student groups in a nondiscriminatory manner. Schools, however, may inform students that certain groups are not school-sponsored.

Do school authorities retain disciplinary control?

Yes. The Act emphasizes the authority of the school “to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.” Furthermore, the school must provide that the meeting “does not materially and substantially interfere with the orderly conduct of educational activities within the school.” These two provisions, however, do not appear to authorize a school to prohibit certain student groups from meeting because of administrative inconvenience or speculative harm. For example, a group cannot be barred at a particular school solely because a similar student group at another school has caused problems.

What about groups that wish to advocate or discuss changes in existing law?

Students who wish to discuss controversial social and legal issues such as abortion, drinking age, the draft and alternative lifestyles may not be barred on the basis of the content of their speech. The school is not required, however, to permit meetings in which unlawful conduct occurs.



7

Student Religious Clubs

What if some students object to other students meeting?

The right of a lawful, orderly student group to meet does not depend on the approval of other students. All students enjoy the constitutional guarantee of free speech. It is the school's responsibility to maintain discipline in order that all student groups are afforded an equal opportunity to meet peacefully without harassment. The school must not allow a "hecklers' veto."

May any groups be excluded?

Yes. Student groups that are unlawful or that materially and substantially interfere with the orderly conduct of educational activities may be excluded. However, a student group cannot be denied equal access simply because its ideas are unpopular. Freedom of speech includes ideas the majority may find repugnant.

Must noncurriculum-related student groups have an open admissions policy?

The Act does not address this issue. There are, however, several federal, as well as state and local, civil rights laws that may be interpreted to prohibit student groups from denying admission on the basis of race, national origin, gender or handicap.

What may a school do to make it clear that it is not promoting, endorsing, or otherwise sponsoring noncurriculum-related student groups?

A school may issue a disclaimer that plainly states that in affording such student groups an opportunity to meet, it is merely making its facilities available, nothing more.

What happens if a school violates The Equal Access Act?

The law contemplates a judicial remedy. An aggrieved person may bring suit in a U.S. district court to compel a school to observe the law. Violations of equal access will not result in the loss of federal funds for the school. However, a school district could be liable for damages and the attorney's fees of a student group that successfully challenges a denial by the school board of its right to meet under the Act.

Should a school formulate a written policy for the operation of a limited open forum?

If a school decides to create a limited open forum or if such a forum already exists, it is strongly recommended that a uniform set of regulations be drawn up and made available to administrators, teachers, students, and parents. The importance of having such a document will become clear if the school either denies a student group the opportunity to meet or is forced to withdraw that opportunity. When the rules are known in advance, general acceptance is much easier to obtain.

What about situations not addressed in these guidelines?

Additional questions may be directed to the organizations listed as sponsors of these guidelines.*

*See Appendix A for contact information for these organizations.

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of grievances.*

CHAPTER 8

8

Student Religious Practices

Our first challenge in America today is simply to open our eyes to these changes, to discover America anew, and to explore the many ways in which the new immigration has changed the religious landscape of our cities and towns, our neighborhoods and schools.

—Diana L. Eck
A New Religious America

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

Many school districts are making efforts to inform administrators and teachers about the religious practices of their students. Knowledge about students' religious needs and requirements promotes understanding between parents and school officials and prepares teachers for questions or concerns when they arise.

Adherence to religious requirements such as special diet or dress is the responsibility of parents and students, not of the public school. In some cases, however, parents may request special accommodation (e.g., excusal from participation in certain school parties or events). Most of these requests may be easily granted without disrupting the educational work of the school.

In rare cases, requests for accommodation may be impossible to grant for practical or constitutional reasons. Even in these instances, some accommodation may be offered. For example, schools are unable to prepare special foods for some religious needs, but they can label foods and offer a variety of choices. When considering these requests, school officials should use the First Amendment framework discussed in Chapters 2 and 4 as a guide to treating the claims of religious conscience seriously and sensitively without putting the school in the position of endorsing or sponsoring religion.

The following information about student religious practices was compiled by the Religious Community Task Force in the Dallas Independent School District as part of a comprehensive policy on religion and schools issues. It is included here as an example of how a large, religiously diverse school district has acted to inform teachers and administrators about the religious practices of many students in the community. For the complete policy of the DISD and for more information about the task force that helped create the policy, contact Jane Didear, Communications Division, Dallas Independent School District, 3700 Ross Avenue, Dallas, TX 75204.



An Educator's Classroom Guide to America's Religions

Greenwood Press publishes Benjamin Hubbard, John Hatfield and James Santucci's guide to the beliefs and practices of a number of the world's religions. Designed specifically for teachers, the book examines each religious group in terms of its origins, beliefs, sacred scriptures, practices, main subgroups, common misunderstandings and stereotypes, and classroom concerns.





Religious Practices Within Dallas Public Schools

A NOTE FROM THE RELIGIOUS COMMUNITY TASK FORCE

The following information was collected from members of the Dallas Public Schools Religious Community Task Force. The items listed are general in nature. Some situations described are a blend of religious/ethnic/cultural practices which might have an impact on students during the school day. If you have questions or need more information about any of the items mentioned, inquiries are invited.

Most of the members of the Task Force represent large organizations, within which are many different levels of religious observation. Some students within each faith may follow all the dictates of the religion and others may observe only a few rituals. If the school can allow those things which do not disrupt normal classroom operations to occur, it avoids conflict for the student who feels under obligation to comply with family and religious mandates. If there must be an accommodation made for a practice to occur away from class, please arrange that through the principal.





Regarding the following material: Task force members have submitted the following information for easy reference, to cover areas which do not follow general cultural trends. The symbolic reference codes below indicate:

- | | |
|---|--|
|  Medical restrictions |  Observances or rituals during school hours |
|  Special diet or foods | <input checked="" type="checkbox"/> Possible absences due to High Holy Days |
|  Particular dress/clothing | |





Various Protestant Christian Traditions

The following Christian denominations on the task force: **Baptists, Disciples, Episcopalians, Evangelicals, Lutherans, Methodists and Presbyterians**, have students in Dallas Public Schools whose beliefs and practices are culturally predominant, and therefore do not require special accommodations during school time. For example, many families worship on Sunday mornings and/or on Sunday and Wednesday evenings, when school is not in session. There are no medical, dietary, clothing or holiday needs that require special attention. However, some denominations report that extracurricular school activities and parent conferences conflict with some evening worship.





Baha'i

- | | |
|---|---|
|  None. |  None. |
|  Students 15 years and older may refrain from eating or drinking during school hours between March 2-20. | <input checked="" type="checkbox"/> Eleven holy days throughout the year, during which students may be absent or not allowed to do ordinary work. |
|  None. | |





Buddhism






























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|---|---|
|  Ethnic medical attitudes may differ. |  Beliefs do not include the existence of a creator. Terms such as idol-worshippers or heathens are offensive to these students. Students follow five moral Precepts & the Noble Eightfold Path which include respect for all animal and human life. Some students may object to participation in the dissection of animals and insects. |
|  Students may prefer to be vegetarians; and some may abstain from dairy products and eggs. | <input checked="" type="checkbox"/> Holy Days established on lunar calendar: Birth of the Buddha; Bodhi Day; the Cambodian, Laotian and Vietnamese New Year. |
|  None. | |





























Christian Science

- | | |
|---|--|
|  Reliance on prayer for effective health care. Legal exemptions from inoculations, vaccinations and immunizations. Request exemption from disease study. No medications, no physical exams, no testing of vision, hearing or intelligence. |  None. |
|  No caffeine, tobacco or alcoholic beverages. |  None. |
| | <input checked="" type="checkbox"/> None. |

Church of Jesus Christ of the Latter Day Saints (Mormon)

- | | |
|---|--|
|  None. |  None. |
|  No coffee, tea, tobacco, alcoholic beverages. | <input checked="" type="checkbox"/> Normal school holidays. |
|  Modest clothing. | |

Religious Practices		
<p>Eastern Orthodox (includes: Antiochan, Armenian, Ethiopian (Coptic), Greek, Kenyan, Korean, Lebanese, Mexican, Syrian, and 5 Slavonic peoples: Bulgarian, Romanian, Russian, Serbian and Ukrainian)</p>	<p> None.</p> <p> Fasting (abstinence) is the refraining from eating identified foods and is not considered a special diet. Certain Feast Days are observed with a fast either prior to or on the feast day itself. If a student is fasting, he/she may: 1) fast every Wednesday and Friday except for designated fast-free periods, or 2) fast from at least meat or dairy products. Students who observe strict fasts may bring food from home. Lunchroom menus provide a varied selection for either fast.</p>	<p> None required.</p> <p> None other than fasting, which occurs during lunch hour; no academic interruptions.</p> <p><input checked="" type="checkbox"/> Students may attend services on their nameday to celebrate the Saint whose name they bear; or the following: Elevation of the Cross, beginning of the 40 Day Fast of the Nativity; Nativity; Epiphany; Great Lent; Annunciation of the Virgin Mary; Holy Week; Pasca (Resurrection) and Ascension Thursday.</p>
<p>Hare Krishna</p>	<p> No animal-derived medications.</p> <p> Lacto-vegetarians (do not eat meat, fish, fowl or eggs).</p> <p> Male students may have small tail of hair at back of head (Sikha).</p>	<p> None. Students respectful of authority.</p> <p><input checked="" type="checkbox"/> Dates according to lunar calendar. Janmastami; Vyasa-Puja Day; Diwali; Govardhana-Puja; Srila Prabhupada's Disappearance Day; Nityananda's Appearance Day; Gaura Purnima; Ram Navami; Nirshringhadev's Appearance Day.</p>
<p>Hinduism</p>	<p> None.</p> <p> Students may be strict vegetarians.</p> <p> An area at home or office is often designated as an altar.</p>	<p> Students may have paint-like mark on the forehead from morning worship, usually done with family at home.</p> <p><input checked="" type="checkbox"/> Dates according to Lunar calendar. Diwali; Govardhana-Puja, Ram Navami.</p>
<p>Islam</p>	<p> Males examined by male doctors; females examined by female doctors. No injections during Ramadan.</p> <p> No alcohol. No pork and any blood. No animals unless they are slaughtered (with prayer). Fish, if caught alive, may be eaten.</p> <p> Males must cover bodies from abdomen to knees; females must cover all except face, hands, feet.</p>	<p> Worship prayers (Salah) five times: at dawn, noon, afternoon, sunset and night. Students need silent and convenient places to perform daily prayers. Weekly Friday noon prayers for males. Polytheistic or atheistic statements and negative words against any Holy Books may not show respect for students.</p> <p><input checked="" type="checkbox"/> Ramadan Feast or Eidul-Fitr (end of fasting month); Eidul-Adha. Dates depend on actual sighting of the moon.</p>
<p>Jain Society Temple</p>	<p> None</p> <p> No eating of root plants (for some members)</p> <p> None</p>	<p> Fasting from 1-14 days.</p> <p><input checked="" type="checkbox"/> Late August through early September.</p>
<p>Jehovah's Witnesses</p>	<p> Parents may request no blood transfusions.</p> <p> No addictive or habit-forming drugs or tobacco.</p> <p> None.</p> <p><input checked="" type="checkbox"/> The only celebration is the memorial of Christ's death (lunar calendar—the first full moon after spring, after sunset).</p>	<p> Views on nationalism prohibit participation in flag saluting, the singing of national anthems or voting on elective offices. No participation in any religious celebrations or national holidays, such as Christmas, Easter, Thanksgiving, Halloween, Valentine's Day, etc. Areas that are a matter of conscience include extra-curricular activities such as sports, cheerleading, dating, attending parties or joining clubs. Alternative classroom materials and assignments could be directed to seasons versus holidays (such as "winter" rather than Christmas).</p>
<p>Judaism</p>	<p> None.</p> <p> Some boys may wear a skull cap and/or a fringed undergarment under their shirts. Some girls may dress with arms and legs covered.</p> <p> Some students may ask to wash hands or pray before a meal. Some students may refrain from doing school projects that occur on Friday evenings and/or Saturdays before sundown. Some students will not be able to participate in musical experiences and on programs whose content affirms religious positions that differ from their own.</p>	<p> Kosher food (marked with Kosher seal, "K", , etc.). Meat and chicken slaughtered by ritual law allowed. No shellfish or fish that do not have scales. No mixing of milk and meat products. No pork products. During Passover, a restricted diet allows no leavened food items such as bread; other holidays may require fasting.</p> <p><input checked="" type="checkbox"/> Holidays begin at sundown the day before. Sabbath begins at sundown each Friday night and is complete at sundown on Saturdays. <i>Rosh Hashanah</i>; Yom Kippur; <i>Sukkot</i>; Shemini Atzeret; Simchat Torah; Chanukah; Purim; <i>Passover</i> (first two and last two days of eight); and <i>Shavuot</i>. (Holidays in italics may be observed for two days.)</p>

Religious Practices, <i>continued</i>		
<p>Native American Religions <i>(American Indians: 114 tribes)</i></p>	<p> None.</p> <p> None.</p> <p><input checked="" type="checkbox"/> The Pueblo Indians of New Mexico, a few of whom attend Dallas Public schools, observe religious feast days throughout the year. Importance of attendance at religious or healing ceremonies in Texas, Oklahoma, New Mexico, South Dakota or Arizona is related to the tribe with which the student is affiliated; children are expected to accompany their parents. Some tribes have "days of mourning" or "mourning periods" for the deceased of immediate or extended-family members.</p>	<p> Longer hair length for some male students; some older high school students wear medicine bags which may be seen conspicuously. Beaded and silver-crafted bolo ties. Girls wear hair/braid tie and beaded hair combs.</p> <p> Religious observances vary from tribe to tribe. Students' practices and self image are derived from the tribes in which they are enrolled. Dallas Schools observe American Indian Heritage Month in November. The Parents Advisory Committee of the American Indian Education Program plans various cultural enrichment activities for the month.</p>
<p>Roman Catholic</p>	<p> No "contraceptive" teaching.</p> <p> No meat on Ash Wednesday or Fridays of Lent, for students 14 or older. There is a period of fasting during the 40 days between Ash Wednesday and Easter.</p> <p> Modest. Some wear religious medals. Ashes are placed on the foreheads of Catholics on Ash Wednesday as reminder of mortality.</p> <p> Sign of the Cross before taking a test, before meals, as an act of thanksgiving or petition.</p>	<p><input checked="" type="checkbox"/> Holy Days include: Assumption of Blessed Virgin Mary; All Saints Day; All Souls Day; Immaculate Conception of the Virgin Mary; Our Lady of Guadalupe (preceded by 9 days of special prayers and services); Advent, 4 weeks before Christmas, observed as a "waiting" period; The Posada, celebrated 9 days before Christmas, with visiting each evening to different homes and churches; Christmas Day; Mary, Mother of God; Lent, 40 days before Easter; Ascension Thursday; Pentecost. <i>Special note:</i> Many Hispanic families travel to their native countries for Holy Week celebrations at Easter time. Family ties are strengthened by summer visits to grandparents.</p>
<p>Seventh Day Adventists</p>	<p> None.</p> <p> No pork or pork products. May prefer to be lacto-vegetarians. No habit forming drugs, alcohol or tobacco.</p> <p> Modest dress.</p>	<p> None.</p> <p><input checked="" type="checkbox"/> Sabbath begins at sundown Friday and concludes at sundown on Saturday. Students may not be able to participate in school events on Friday nights.</p>
<p>Sikh</p>	<p> None.</p> <p> No alcohol or tobacco.</p> <p><input checked="" type="checkbox"/> Baisakhi (Brotherhood), Birthday of Guru Nanak Dev.</p>	<p> None.</p> <p> Boys wear headgear or turbans.</p>
<p>Unitarian/ Universalists</p>	<p> None.</p> <p> None.</p> <p> None.</p>	<p> Families would like to have their children participate in public school activities without having them required to pray publicly. Students have the choice of whether or not to salute flags or pledge certain allegiances.</p> <p><input checked="" type="checkbox"/> During the spring, 13-14 year old students are often taken to U/U historic sites in other parts of the country.</p>
<p>Zoroastrian</p>	<p> None.</p> <p> None.</p> <p> Muslin undershirts with wool cords at waist for boys and girls (may be taken off for sports).</p>	<p> None.</p> <p><input checked="" type="checkbox"/> New Year at Vernal Equinox, usually during March of each year.</p>
<p>Quick reference symbolic codes:</p>	<p> Medical restrictions</p> <p> Special diet or foods</p> <p> Particular dress/clothing</p>	<p> Observances or rituals during school hours</p> <p><input checked="" type="checkbox"/> Possible absences due to High Holy Days</p>
<p>For more information from RCTF members, call Dallas Schools Communications Department, 989-8329</p>		

*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 the right of the people
peaceably to assemble,
and to petition the
Government for a redress
of grievances.*

CHAPTER 9

Religion in the Public School Curriculum

Religion in the Public School Curriculum:
Questions and Answers is sponsored jointly by:

American Academy of Religion

American Association of School Administrators

American Federation of Teachers

American Jewish Congress

Americans United Research Foundation

Association for Supervision and Curriculum Development

Baptist Joint Committee for Religious Liberty

Christian Legal Society

The Church of Jesus Christ of Latter-day Saints

First Amendment Center

The Islamic Society of North America

National Association of Evangelicals

National Conference of Community and Justice

National Council of Churches of Christ in the USA

National Council for the Social Studies

National Education Association

National School Boards Association

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

Growing numbers of people in the United States think it is important to teach *about* religion in the public schools.¹

But what is the appropriate place of religion in the public-school curriculum? How does one approach such issues as textbook content, values education, creation science and religious holidays?

QUESTIONS *and* ANSWERS:

RELIGION IN THE PUBLIC SCHOOL CURRICULUM

The following questions and answers are designed to assist school boards as they make decisions about the curriculum and educators as they teach about religion in ways that are constitutionally permissible, educationally sound, and sensitive to the beliefs of students and parents.

Is it constitutional to teach about religion in public schools?

Yes. In the 1960s school-prayer cases (that prompted rulings against state-sponsored school prayer and Bible reading), the U.S. Supreme Court indicated that public school education may include teaching about religion. In *Abington v. Schempp*, Associate Justice Tom Clark wrote for the Court:

[I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.

¹ "Teaching about religion" includes consideration of the beliefs and practices of religions; the role of religion in history and contemporary society; and religious themes in music, art and literature.

What is meant by “teaching about religion” in the public schools?

The following statements distinguish between teaching about religion in public schools and religious indoctrination:

1. The school’s approach to religion is *academic*, not *devotional*.
2. The school may strive for student *awareness* of religions, but should not press for student *acceptance* of any one religion.
3. The school may sponsor *study* about religion, but may not sponsor the *practice* of religion.
4. The school may *expose* students to a diversity of religious views, but may not *impose* any particular view.
5. The school may *educate* about all religions, but may not *promote* or *denigrate* any religion.
6. The school may *inform* the student about various beliefs, but should not seek to *conform* him or her to any particular belief.²



Why should study about religion be included in the public school curriculum?

Because religion plays a significant role in history and society, study about religion is essential to understanding both the nation and the world. Omission of facts about religion can give students the false impression that the religious life of humankind is insignificant or unimportant. Failure to understand even the basic symbols, practices and concepts of the various religions makes much of history, literature, art and contemporary life unintelligible.

Study about religion is also important if students are to value religious liberty, the first freedom guaranteed in the Bill of Rights. Moreover, knowledge of the roles of religion in the past and present promotes cross-cultural understanding essential to democracy and world peace.

² This answer is based on guidelines originally published by the Public Education Religion Studies Center at Wright State University.

Where does study about religion belong in the curriculum?

Wherever it naturally arises. On the secondary level, the social studies, literature and the arts offer many opportunities for the inclusion of information about religions — their ideas and themes. On the elementary level, natural opportunities arise in discussions of the family and community life and in instruction about festivals and different cultures. Many educators believe that integrating study about religion into existing courses is an educationally sound way to acquaint students with the role of religion in history and society.

Religion also may be taught about in special courses or units. Some secondary schools, for example, offer such courses as world religions, the Bible as literature, and the religious literature of the West and of the East.

Do current textbooks teach about religion?

Rarely. Recent textbook studies conclude that most widely used textbooks largely ignore the role of religion in history and society. For example, readers of high school U.S. history texts learn little or nothing about the great colonial revivals, the struggles of minority faiths, the religious motivations of immigrants, the contributions of religious groups to many social movements, major episodes of religious intolerance, and many other significant events of history. Education without appropriate attention to major religious influences and themes is incomplete education.

How does teaching about religion relate to the teaching of values?

Teaching about religion is not the same as teaching values. The former is objective, academic study; the latter involves the teaching of particular ethical viewpoints or standards of behavior.

There are basic moral values that are recognized by the population at large (e.g., honesty, integrity, justice, compassion). These values can be taught in classes through discussion, by example and by carrying out school policies. However, teachers may not invoke religious authority.

Public schools may teach about the various religious and nonreligious perspectives concerning the many complex moral issues confronting society, but such perspectives must be presented without adopting, sponsoring or denigrating one view against another.

Is it constitutional to teach the biblical account of creation in the public schools?

Some states have passed laws requiring that creationist theory based on the biblical account be taught in the science classroom. The courts have found these laws to be unconstitutional on the ground that they promote a particular religious view. The Supreme Court has



acknowledged, however, that a variety of scientific theories about origins can be appropriately taught in the science classroom. In *Edwards v. Aguillard*, the Court stated:

[T]eaching a variety of scientific theories about the origins of humankind to schoolchildren might be validly done with the clear secular intent of enhancing the effectiveness of science instruction.

Though science instruction may not endorse or promote religious doctrine, the account of creation found in various scriptures may be discussed in a religious studies class or in any course that considers religious explanations for the origin of life.

How should religious holidays be treated in the classroom?

Carefully. Religious holidays offer excellent opportunities to teach about religion in the elementary and secondary schools. Recognition of and information about such holidays should focus on the origin, history and generally agreed-upon meaning of the observances. If the approach is objective, neither advancing nor inhibiting religion, it can foster among students understanding and mutual respect within and beyond the local community.



Resources

The following resources offer excellent background material for understanding not only how religion has influenced the past, but also how it continues to influence society today. Additional assistance can often be found through local colleges and universities, which may provide both workshops and speakers.

Taking religion seriously in the curriculum will require a commitment by schools of education to give teachers more exposure to the study of religious influences and appropriate resources for teaching about these influences in the public school setting.

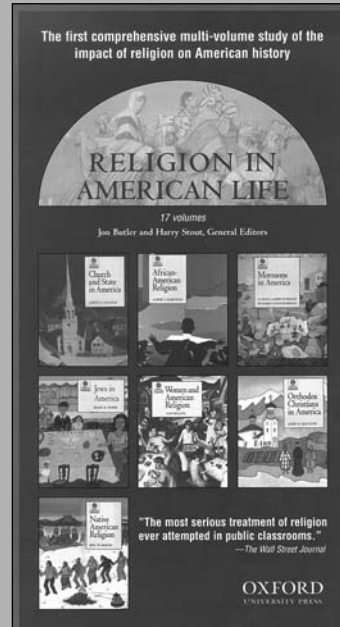
Religion in American Life - Oxford University Press

At long last, a series of scholarly works on religion written for young readers is available. Edited by Yale University professors Jon Butler and Harry Stout and published by Oxford University Press, *Religion in American Life* is a 17-volume series authored by some of the nation's leading scholars in the field of religious studies.

The series is an invaluable resource for teachers of junior and senior high school students. Teachers of U.S. history will find all of the volumes most useful, but world history, government and literature teachers will also be able to use many of the volumes in a variety of ways. Three chronological volumes give the religious history of the United States from the colonial period to the present. Nine volumes cover significant religious groups in America, including Protestants, Catholics, Jews, Muslims, Native Americans and Eastern faiths. Four volumes address specific topics — women, church-state issues, African American religion, and immigration — that are of special importance in understanding the role of religion in American life.

With the addition of these books to school and classroom libraries, students and teachers will have access to scholarly works that fill the gaps left by inadequate textbook treatment of religion. In fact, the chronological volumes would themselves be excellent textbooks for an elective course on religion in America or religion in U.S. history. A teacher's guide, prepared by the First Amendment Center, suggests ways to use the volumes for supplemental reading and research projects in history and other courses.

For more information, visit Oxford University press at www.oup.com/us.



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On Common Ground (CD-ROM)

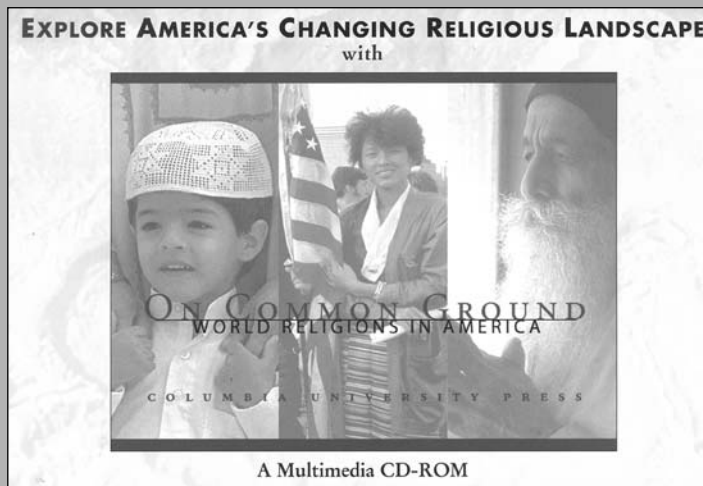
Another groundbreaking resource for students and teachers is *On Common Ground: World Religions in America*, a CD-ROM published in 1997 by Columbia University Press. This multimedia resource uses text, primary sources, photographs, music, film and the spoken word to bring alive the extraordinary religious diversity in the United States. Prepared by Harvard Divinity School professor Diana Eck, the CD-ROM draws on the Pluralism Project, a Harvard-based study that has documented America’s religious landscape.

Using the CD-ROM, students can find out about the beliefs and practices of America’s many faith traditions. They are able to explore the religious diversity of eighteen cities and regions of the United States. Fifteen different religions are represented, from the long-established Native American, Christian and Jewish traditions to more recent arrivals such as Hinduism and Buddhism.

What is especially impressive about this resource is its use of documents, photographs, film, and music to enable practitioners of each faith to provide students with some experience of the religion from the inside. It is also noteworthy that differences within various traditions are discussed (e.g., Orthodox and Reform Judaism). Even issues debated within various traditions — the role of women in Islam, for example — are included. In short, this is an essential resource for every secondary social studies and literature classroom.

For more information, visit the web site at www.columbia.edu/cu/cup/catalog/electronic/idx_cd.html.

Orders can be placed at: 1-800-944-8648 (phone); 1-800-944-1844 (fax); or Columbia University Press Order Department, 136 South Broadway, Irvington, NY 10533.



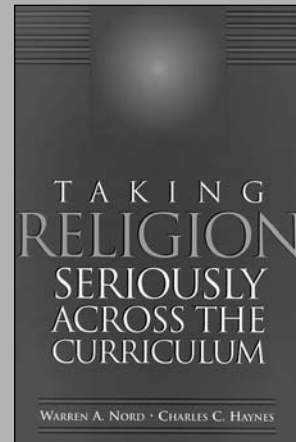
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Taking Religion Seriously Across the Curriculum

In *Taking Religion Seriously Across the Curriculum*, Warren A. Nord and Charles C. Haynes chart a middle course in our culture wars over religion and public education – one that builds on a developing national consensus among educational and religious leaders. In Part One, Nord and Haynes explain why schools should take religion seriously, and they outline the civic, constitutional and educational frameworks that should shape the treatment of religion in the curriculum and classroom. In Part Two, they explore the major issues relating to religion in different domains of the curriculum – in elementary education and in middle- and high-school courses in history, civics, economics, literature and the sciences. They also discuss Bible courses and world religions courses, and they explore the relationship of religion to moral education and sex education. The result is a book that is unique in the scope of its consideration of the relevance of religion *across the curriculum*.

This book is available from: Association for Supervision and Curriculum Development, www.ascd.org.

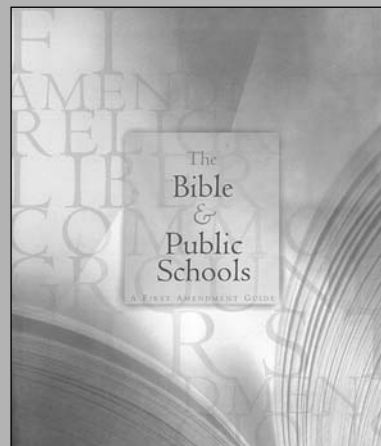


The Bible & Public Schools: A First Amendment Guide

The First Amendment Center and the Bible Literacy Project jointly published these First Amendment guidelines for teachers on the appropriate role of the Bible in the public school curriculum. This guide is endorsed by a wide array of organizations, ranging from the People for the American Way Foundation and the American Jewish Congress to the Christian Legal Society and the National Association of Evangelicals. The guide is based on a question-and-answer format addressing such issues as whether the Bible can be taught in public schools, methods and approaches that are constitutional, and what the courts have said about the subject.

This guide is available online at www.freedomforum.org, or by calling 1-800-830-3733 and requesting publication No. 99-F03.

www.biblecurriculum.org

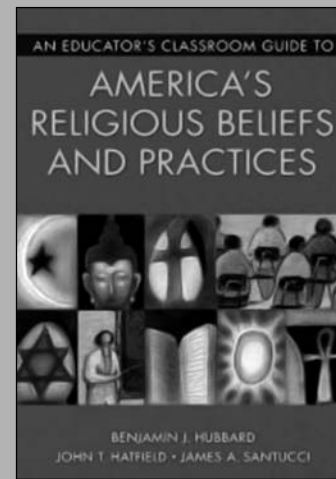


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An Educator's Classroom Guide to America's Religions

Greenwood Press publishes a guide by Benjamin Hubbard, John Hatfield, and James Santucci to the beliefs and practices of a number of the world's religions. Designed specifically for teachers, the guide examines each religious group in terms of its origins, beliefs, sacred scriptures, practices, main subgroups, common misunderstandings and stereotypes, and classroom concerns.





Organizations That Provide Classroom Resources

Council on Islamic Education

P.O. Box 20186
Fountain Valley
CA 92728-0186
(714) 839-2929

www.cie.org

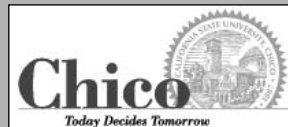
email: CIE@Islam.org.



The Council on Islamic Education (CIE) is a national, non-profit resource organization dedicated to providing information on Islam and Muslim history to K-12 textbook publishers, education officials, curriculum developers, teachers, and other education professionals. CIE is comprised of scholars and academicians associated with major universities and institutions throughout the United States. CIE produces resource materials, conducts workshops, attends education conferences, and convenes events in its efforts towards accurate, balanced, and sensitive coverage of Islam in the context of a global approach to world history.

Religion and Public Education Resource Center

Director: Dr. Bruce Grelle
Department of Religious Studies
California State University — Chico
Chico, CA 95929-0740
(530) 898-4739
e-mail: bgrelle@csuchico.edu



The Religion and Public Education Resource Center (RPERC) provides resources for teaching about religions in public schools in ways that are constitutionally permissible and academically sound. The Center serves both as a depository of existing materials and as a catalyst for the development and distribution of new materials relating to pedagogical and legal issues that arise in connection with teaching about religion in public schools. RPERC offers curriculum guides and sample lessons in several subject areas for classroom teachers.

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Council for Spiritual and Ethical Education

Executive Director: David Streight
P.O. Box 19807
Portland, OR 97280
(800) 298-4599
e-mail: info@csee.org
www.csee.org



The Council for Spiritual and Ethical Education is a membership organization that serves as a national resource for schools to encourage the moral, ethical, and spiritual development of young people. CSEE promotes community service, provides resources and a network for schools' involvement in community service and service learning. CSEE also supports instruction in world religions and ethics as essential components of a complete education.

Religious Studies in Secondary Schools

P.O. Box 19807
Portland, OR 97280
info@rsiss.net
www.rsiss.net



RSISS is a growing coalition of public and private secondary school teachers committed to the idea that education is not complete without the academic study of the world's religious traditions and the ethical values, literatures, and cultures so inextricably linked to them. There are no membership dues, just people in the field willing to help.

Religion and Education

Mike Waggoner, Editor
University of Northern Iowa
520 Schindler Education Center
Cedar Falls, IA 50614-0604
(319) 273-2605



email: jrae@uni.edu
www.uni.edu/jrae

Religion and Education is a journal devoted to news, reviews of books and curricular materials, and essays relating to interactions of religion and education. *Religion and Education's* mission is to facilitate informed, constitutionally appropriate teaching about religions in history and culture that enables students to participate in a pluralistic and religiously diverse world.



Internet Resources

The Internet has become a valuable tool for exploring religious liberty issues in education and the role of religion in the curriculum. In response to this growth, we have prepared a list of resources relating to various religious information sites that can be found on the Internet. Some of these sites target the academic community, and as such are more useful to the teacher who is trying to better understand a variety of faith traditions. A word of caution is due here. As the Internet is an ever-changing entity, the content of the sites mentioned is also changing. Whenever students are using the Internet, they should be closely monitored. In fact, we encourage teachers to preview these sites before students are allowed to access them. While we have attempted to choose sites that are well established, their addresses and locations can change frequently. Also, please remember that these sites are not endorsed by the First Amendment Center but are merely areas that might provide valuable information for the classroom.

Interfaith Calendar by Mall Area Religious Council

www.interfaithcalendar.org

This site is a listing of the religious holidays observed by various religious groups. It is a useful resource for teachers who are interested in these holidays.

INTERFAITH CALENDAR
Primary sacred times for world religions

[2001](#) [2002](#) [2003](#) [2004](#) [2005](#) [2006](#)

[2001](#)
[2002](#)
[2003](#)
[2004](#)
[2005](#)
[2006](#)
[Definitions](#)
[Resources](#)
[? & Answers](#)
[Books](#)
[Families of Religions](#)
[Archive](#)
[Crisis Response](#)

Day by Day
Month by Month
Year by Year
The cycles of sacred time
Move in unique cadences
Each tradition counting time
In unique ways for special reasons.

An Interfaith Memorial to all who died in
the violence of Tuesday.

Now available - [a print out page edition](#)
of the September 2001 calendar.

Judaism, Islam, Buddhism, Hinduism, Christianity, Baha'i, Zoroastrian, Sikhism, Shinto, Jainism, Confucianism/Taoism Native American, and more.

Update 9-17-2001
[Email](#)

In cooperation with the
[Mall Area Religious Council](#)

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Teaching About Religion In Public Schools: Worldview Education
www.teachingaboutreligion.org

“This web site is designed to assist teachers of middle grades and secondary level history and social science programs in their handling of religion as curricular subject matter.” It contains resource material, guidelines, and lesson plans, including the “Different Drummer” curriculum.

Teaching about Religion with a View to ... Diversity

[Web Home Page](#)

[Site Contents Table](#)

[Crucial Information](#)

[Related Websites](#)

[Teaching Materials](#)

[Methods Mini-Course](#)

[What's New ?](#)

[About This Site](#)

[Search This Site](#)


Teaching about Religion

Worldview Education

Goal

To provide academic information and teaching materials related to teaching about religion in public schools in support of

1. an educational commitment to pluralism,
2. acknowledgment that public schools are for students of all worldviews, whether religious or nonreligious, and
3. the professional understanding that public school teachers need to exercise a scrupulous neutrality regarding religion.



Academic Information on Religion
www.academicinfo.net/religindex.html

This site lists various religions according to their presence in various geographic locations. This site is valuable in that it also links to the art and literature of the various belief systems, a useful feature for teachers seeking visual aids. This site links to college- and graduate-level sites and is too complex for younger children.

[Home](#) / [Keyword Search](#) / [Subject Index](#) / [Reference Desk](#) / [Student Center](#)

Academic Info : Religion Gateway

[Humanities > Religion](#)

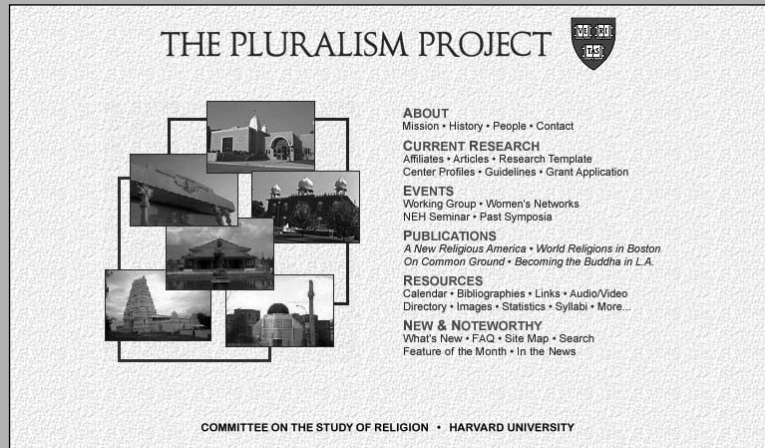
<p>Religious Studies</p> <ul style="list-style-type: none"> • Indexes & Directories • Reference Desk • Digital Library • Libraries & Archives • Academic Departments • Societies & Associations • Religious Tolerance <p>Alternative Spirituality</p> <p>American Frontier History - Religion</p>	<p>Hinduism</p> <p>Holocaust Studies</p> <p>Islamic Studies</p> <p>Jewish Studies</p> <p>Law & Religion</p> <p>Mythology</p> <p>Native American Religions</p>
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Pluralism Project
www.pluralism.org

The Pluralism Project web site at Harvard University is filled with such resources as pictures of various U.S. worship centers, links to other sites with content related to various faiths, syllabi from college courses on the topic of religious pluralism, and archives of news articles reporting on recent faith traditions in the United States.



National Humanities Center
http://www.nhc.rtp.nc.us/tserve/tserve.htm

The National Humanities Center TeacherServ web site is designed to provide practical planning helps for teaching topics in the liberal arts. Instructional guides and resource materials are provided to assist teachers with secondary-school humanities topics, particularly as related to teaching about religion. The current guide, *Divining America*, is an invaluable resource for teachers attempting to achieve a deeper understanding of religion's place in American history.



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Education for Freedom

<http://www.freedomforum.org/templates/document.asp?documentID=13588>

Education for Freedom is offered by The Freedom Forum's First Amendment Center. These lessons (beginning and advanced levels) address constitutional principles and contemporary issues involving the First Amendment. They will draw young people into an exploration of how their freedoms began and how they operate in today's world. Students will discuss just how far individual rights extend, examining rights in the school environment and public places. The lessons may be used in history and government, language arts and journalism, art and debate classes. They may be used in sections or in their entirety.

The screenshot shows the website interface for 'Education for Freedom'. At the top, there is a navigation bar with the following links: NEWSMUSEUM, FIRST AMENDMENT, NEWSROOM DIVERSITY, INTERNATIONAL MEDIA ISSUES, and ABOUT THE FREEDOM FORUM. The main content area features a header with the title 'EDUCATION FOR FREEDOM' and the subtitle 'Lesson Plans for Teaching the First Amendment'. Below this, there is a paragraph of introductory text, followed by a detailed description of the program. At the bottom, there is a section titled 'We invite you to:' with a bullet point: 'Review the lessons by title and description, by academic discipline or First Amendment issue.'

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or prohibiting the free
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abridging the freedom
of speech, or of the press,
or the right of the people
peaceably to assemble,
and to petition the
Government for a redress
of grievances.*

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CHAPTER 10

Religious Holidays in the Public Schools

Religious Holidays in the Public Schools:
Questions and Answers is sponsored jointly by:

American Academy of Religion

American Association of School Administrators

American Federation of Teachers

American Jewish Committee

American Jewish Congress

Americans United Research Foundation

Association for Supervision and Curriculum Development

Baptist Joint Committee on Public Affairs

Christian Legal Society

First Amendment Center

The Islamic Society of North America

National Association of Evangelicals

National Conference of Community and Justice

National Council of Churches of Christ in the USA

National Council for the Social Studies

National Education Association

National School Boards Association

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Since 1776 the United States has grown from a nation of relatively few religious differences to one of countless religious groups. This expanding pluralism challenges the public schools to deal creatively and sensitively with students professing many religions and none.

The following questions and answers concern religious holidays and public education, a subject often marked by confusion and conflict. Teachers and school officials, as well as parents and students, should approach this discussion as an opportunity to work cooperatively for the sake of good education rather than at cross purposes.

School districts developing guidelines about religious holidays will want to base their policies in the shared commitment of respect for individual religious beliefs expressed in the constitutional guarantee of religious liberty. This means that public schools may neither promote nor inhibit religious belief or nonbelief. Drafters of such guidelines also will want to take account of the role of religion in history and culture.

The question-and-answers section is followed by a brief legal analysis of the issues. While awareness of legal issues is essential in considering religion and public education, the law does not supply answers to every question. Within the current legal framework, schools—their boards, administrators, teachers, parents and students—must make many practical decisions regarding religious holidays. This work can be done only by showing sensitivity to the needs of every student and indicating a willingness to steer between avoidance of all references to religion on the one hand and promotion of religion on the other.

QUESTIONS *and* ANSWERS: RELIGIOUS HOLIDAYS IN THE PUBLIC SCHOOLS.

What do the courts say?

The Supreme Court has ruled that public schools may not sponsor religious practices (*Engel v. Vitale*, 1962; *Abington v. Schempp*, 1963) but may teach about religion. While it has made no definitive ruling on religious holidays in the schools, the Supreme Court has let stand a lower federal court decision stating that recognition of holidays may be constitutional if the purpose is to provide secular instruction about religious traditions rather than to promote the particular religion involved (*Florey v. Sioux Falls School District*, 8th Cir., 1980).

Do religious holidays belong in the curriculum?

The study of religious holidays may be included in elementary and secondary curricula as opportunities for teaching about religions. Such study serves the academic goals of educating students about history and cultures as well as about the traditions of particular religions in a pluralistic society.

When should teaching about religious holidays take place?

On the elementary level, natural opportunities arise for discussion of religious holidays while studying different cultures and communities. In the secondary curriculum, students of world history or literature have opportunities to consider the holy days of religious traditions. Teachers find it helpful when they are provided with an inclusive calendar noting major religious and secular holidays with brief descriptions of their significance.



How should religious holidays be treated in the classroom?

Teachers must be alert to the distinction between teaching about religious holidays, which is permissible, and celebrating religious holidays, which is not. Recognition of and information about holidays may focus on how and when they are celebrated, their origins, histories and generally agreed-upon meanings. If the approach is objective and sensitive, neither promoting nor inhibiting religion, this study can foster understanding and mutual respect for differences in belief. Teachers will want to avoid asking students to explain their

beliefs and customs. An offer to do so should be treated with courtesy and accepted or rejected depending on the educational relevancy. Teachers may not use the study of religious holidays as an opportunity to proselytize or to inject personal religious beliefs into the discussion. Teachers should avoid this by teaching through attribution, i.e. by reporting that “some Buddhists believe”

May religious symbols be used in public school classes?

Provided they are used only as examples of cultural or religious heritage, religious symbols are permissible to use as teaching aids or resources. Religious symbols may be displayed only on a temporary basis as part of the academic program. Students may choose to create artwork with religious symbols, but teachers should not assign or suggest such creations.

May religious music be used in public schools?

Sacred music may be sung or played as part of the academic study of music. School concerts that present a variety of selections may include religious music. Concerts dominated by religious music, especially when they coincide with a particular religious holiday, should be avoided. The use of art, drama or literature with religious themes also is permissible if it serves a sound educational goal in the curriculum, but not if used as a vehicle for promoting religious belief.

What about Christmas?

Decisions about what to do in December should begin with the understanding that public schools may not sponsor religious devotions or celebrations; study about religious holidays



does not extend to religious worship or practice. Does this mean that all seasonal activities must be banned from the schools? Probably not, and in any event, such an effort would be unrealistic. The resolution would seem to lie in devising holiday programs that serve an educational purpose for all students—programs that do not make students feel excluded or identified with a religion not their own. Holiday concerts in December may appropriately include music related to Christmas and Hanukkah, but religious music should not dominate. Any dramatic productions should emphasize the cultural aspects of the holidays. Nativity pageants or plays portraying the Hanukkah miracle are not appropriate in the public school setting. In

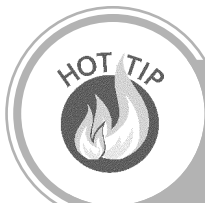
short, while they may recognize the holiday season, none of December's school activities should have the purpose, or effect, of promoting or inhibiting religion.

What about religious objections to some holidays?

Students from certain religious traditions may ask to be excused from classroom discussions or activities related to particular holidays. Some holidays considered by many people to be secular (for example, Halloween and Valentine's Day) are viewed by others as having religious overtones. Excusal requests may be especially common in the elementary grades, where holidays often are marked by parties and similar non-academic activities. Such requests are routinely granted. In addition, some parents and students may make requests for excusals from discussions of certain holidays, even when these holidays are treated from an academic perspective. If focused on limited, specific discussions, such requests may be granted in order to strike a balance between the student's religious freedom and the school's interest in providing a well-rounded education. Administrators and teachers should understand that a policy or practice of excusing students from specific activities or discussions cannot be used as a rationale for school sponsorship of religious celebration or worship for the remaining students.

May students be absent for religious holidays?

Sensitive school policy on absences will take account of the religious needs and requirements of students. Students should be allowed a reasonable number of excused absences, without penalties, to observe religious holidays within their traditions.



Tips for Planning Religious Holidays in Public Schools

Before planning a religious holiday activity in a public school, ask the following questions:

1. Is this activity designed in any way to either promote or inhibit religion?
2. How does this activity serve the academic goals of the course, or the educational mission of the school?
3. Will any student or parent be made to feel like an outsider, not a full member of the community, by this activity?
4. If in December: Do we plan activities to teach about religious holidays at various times of the year or only in December?
5. Are we prepared to teach about the religious meaning of this holiday in a way that enriches students' understanding of history and cultures?

Students may be asked to complete makeup assignments or examinations in conjunction with such absences.

What steps should school districts take?

In a pluralistic society, public schools are places for persons of all faiths and none. Schools may neither promote nor denigrate any religion. In order to respect religious liberty and advance education, we recommend that each school district take the following steps:

1. Develop policies about the treatment of religious holidays in the curricula and inform parents of those policies.
2. Offer pre-service and in-service workshops to assist teachers and administrators in understanding the appropriate place of religious holidays in the schools.
3. Become familiar with the nature and needs of the religious groups in the school community.
4. Provide resources for teaching about religions and religious holidays in ways that are constitutionally permissible and educationally sound.



Religious Holidays and Public Schools: A Brief Legal Analysis

Although many controversies have arisen over religious holidays in public schools, the case law is scant. Because the Supreme Court has not ruled on the issue, there are no final or definitive answers.

The high court has ruled, however, that the government may not erect an explicitly religious symbol (such as a creche or menorah) unless it is part of a larger “secular” holiday display.¹ Many have criticized the Court’s ruling, describing it as the “plastic reindeer test” — referring to the nonreligious symbols that must accompany the display. Interestingly, a majority of the justices has stated that Christmas trees, unlike creches and menorahs, have attained a secular status in our society and can be displayed standing alone. This does not mean that schools should erect Christmas trees during the holiday season, but only that they probably can. Many Americans continue to view Christmas trees as religious symbols, and for this reason schools may wish to be more sensitive than the law requires. The Court also has acknowledged approvingly that Christmas carols are frequently sung in public schools.

One federal appeals court has addressed the recognition of religious holidays by public schools. The decision, *Florey v. Sioux Falls School District*, upheld the school district’s policy and was allowed to stand by the U.S. Supreme Court. It is frequently cited as the controlling case on this controversial issue.² The relevant portions of the policy were as follows:

It is accepted that no religious belief or nonbelief should be promoted by the school district or its employees, and none should be disparaged. Instead, the school district should encourage all students and staff members to appreciate and be tolerant of each other’s religious views In that spirit of tolerance, students and staff members should be excused from participating in practices which are contrary to their religious beliefs unless there are clear issues of overriding concern that would prevent it.

The Sioux Falls School District recognizes that one of its educational goals is to advance the students’ knowledge and appreciation of the role that our religious heritage has played in the social, cultural and historical development of civilization...

The practice of the District shall be as follows:

1. The several holidays throughout the year which have a religious and a secular basis may be observed in the public schools.
2. The historical and contemporary values and the origin of religious holidays may be explained in an unbiased and objective manner without sectarian indoctrination.
3. Music, art, literature and drama having religious themes or bases are permitted as part of the curriculum for school-sponsored activities and programs if presented in a prudent and objective manner and as a traditional part of the cultural and religious heritage of the particular holiday. *CONTINUED*



4. The use of religious symbols such as a cross, menorah, crescent, Star of David, creche, symbols of Native American religions or other symbols that are a part of a religious holiday is permitted as a teaching aid or resource, provided such symbols are temporary in nature. Among these holidays are included Christmas, Easter, Passover, Hanukkah, St. Valentine's Day, St. Patrick's Day, Thanksgiving and Halloween.
5. The school district's calendar should be prepared so as to minimize conflicts with religious holidays of all faiths.³

It is important to note that the Sioux Falls policy was permissible, not required. A better policy might have included more non-Christian holidays such as Rosh Hashana, Ramadan and Yom Kippur. Moreover, particular practices and activities under such a policy, such as Nativity pageants and reenactments of the Hanukkah miracle, might still be unconstitutional.

Any teacher or administrator should ask herself the following questions as she plans holiday activities:

1. Do I have a distinct educational purpose in mind? If so, what is it? It should not be the purpose of public schools to celebrate or observe religious holidays.
2. If I use holidays as an opportunity to teach about religion, am I balanced and fair in my approach? If I teach about Christmas and Easter, for example, do I also teach about non-Christian holidays?
3. Does the planned activity have the primary effect of advancing or inhibiting religion? Does it, for example, promote one faith over another or even religion in general? Remember that the school's approach should be academic, not devotional. It is never appropriate for public schools to proselytize.

A common misconception is that it is permissible to promote Christianity at Christmas, provided that other religions receive similar treatment at other times. For example, some teachers may try to justify celebrating Christmas by celebrating Hanukkah. This approach is wrong. First, Hanukkah is not a major Jewish holiday and should not be equated with Christmas, one of the two most important holidays in the Christian year. Second, one violation of the First Amendment does not justify another. If it is wrong to promote religion in the public schools at Christmas, it is wrong every other day of the year. Instead of "balancing" Christmas with Hanukkah, teachers should work to ensure that all holiday activities focus on objective study about religion, not indoctrination.

We have discussed what schools should and shouldn't do regarding religious holidays, but what about the school's duty to accommodate students and teachers who wish to observe religious holidays on their own time? What obligation do schools have to accommodate these concerns?

CONTINUED



Schools are not required to close on a particular religious holiday but may choose to do so as a matter of administrative convenience as, for example, when large numbers of students are likely to be absent. When schools choose not to close on particular holidays, conflicts may arise. Most states have laws permitting a certain number of excused absences for religious holidays. Where no statutory exemption exists, the First Amendment's Free Exercise clause would seem to require a reasonable number of excused absences for such religious observance.⁴ In no event should a student be penalized for being absent from school to observe religious holidays.

A slightly different rule applies to teachers who wish to be absent to observe religious holidays. Title VII of the Civil Rights Act of 1964 requires school boards to make "reasonable accommodation" of their employees' religious needs. School boards may offer any accommodation that is reasonable, however, and are not required to accept the accommodation proposed by the employee.⁵ Moreover, schools are not required to accommodate an employee's religious needs if doing so would cause "undue hardship" on the employer, such as disturbing the board's collective-bargaining agreement with the teachers' union or imposing more than *de minimis* costs on the employer.⁶ Courts have split over whether schools may provide teachers with extra days off with pay in order to observe religious holidays. Schools that provide employees with paid "personal" days, however, should not be allowed to deny their use for religious observances.

The Authors

Endnotes

¹ *Lynch v. Donnelly*, 465 U.S. 688 (1984); *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573 (1989).

² See e.g. *Johnson v. Shiverman*, 658 S.W. 2d. 910 (Mo.App. 1983).

³ 619 F.2d. 1311 (8th Cir.1980).

⁴ See e.g. *Church of God v. Amarillo Independent School District*, 511 F.Supp. 613 (N.D. Tex. 1981), *aff'd* 670 F.2d. 46 (5th Cir. 1982).

⁵ *Ansonia Board of Education v. Philbrook*, 479 U.S. 60 (1986).

⁶ *T.W.A. v. Hardison*, 432 U.S. 63 (1977); *Estate of Thornton v. Caldor*, 472 U.S. 702 (1985).

11

CHAPTER 11

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The Bible and Public Schools

The Bible and Public Schools: A First Amendment Guide
is published by:

The Bible Literacy Project, Inc.

First Amendment Center

The Bible and Public Schools: A First Amendment Guide
has been endorsed by the following organizations:

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American Federation of Teachers

American Jewish Committee

American Jewish Congress

Anti-Defamation League

Association for Supervision and Curriculum Development

Baptist Joint Committee for Religious Liberty

Christian Educators Association International

Christian Legal Society

Council on Islamic Education

National Association of Evangelicals

National Association of Secondary School Principals

National Bible Association

National Council of Churches of Christ in the U.S.A.

National Council for the Social Studies

National Education Association

National School Boards Association

People for the American Way Foundation

Society of Biblical Literature

Union of American Hebrew Congregations

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The Search for Common Ground

Ending the confusion and conflict about the Bible and public schools would be good for public education and for our nation. But finding common ground will not be easy because Americans have been divided about this issue since the early days of the common school movement. “Bible wars” broke out in the 19th century between Protestants and Catholics over whose version of the Bible would be read each morning in the classroom. Lawsuits in the 1960s led to Supreme Court decisions striking down devotional Bible-reading by school officials. More recent conflicts have involved differences about the limits of student religious expression and the constitutionality of Bible courses offered in the curriculum.

Two Failed Models

If school districts are going to move from battleground to common ground on issues concerning the Bible¹ in the schools, they must move beyond the extremes that often dominate the debate. On one end of the spectrum are those who advocate what might be called the “sacred public school” where one religion (theirs) is preferred in school practices and policies. Characteristic of the early history of public education, this unconstitutional approach still survives in some school districts.

In more recent decades, there are those on the other end of the spectrum who push for what looks to some like a “religion-free zone” where religion is largely ignored in public schools.

A Third Model of Fairness and Respect

The sponsors of this guide reject both of these models and offer another approach — one in which public schools neither inculcate nor inhibit religion but become places where religion and religious conviction are treated with fairness and respect.

In this third model, public schools protect the religious-liberty rights of students of all faiths or none. And schools ensure that the curriculum includes study *about* religion as an important

¹ There is no single Bible. There is the Jewish Bible (the Hebrew scriptures or Tanakh), and various Christian Bibles — such as Catholic, Protestant, and Orthodox — some with additional books, arranged in a different order. The use of the term “Bible” in this document is meant to be inclusive of the various versions and translations.

part of a complete education. This is a vision of public education that is both consistent with First Amendment principles and broadly supported by many educational and religious organizations.²

The advice offered in this guide draws on this shared vision and relies on recent consensus statements about the role of religion in public schools under current law.³ The focus here is on the Bible because of the need to address the conflicts and confusion surrounding the Bible in the public-school curriculum. There are, of course, scriptures of other faith communities important to millions of Americans and worthy of study in a well-balanced curriculum. The constitutional and educational guidelines offered below apply to study about these scriptures as well.

The Bible and the Religious-Liberty Rights of Students

Many Americans continue to hold the mistaken view that the Supreme Court decisions in the 1960s concerning prayer and devotional Bible-reading prohibited students from expressing their faith in a public school. Actually, the Court did not eliminate prayer or the Bible from public schools; it barred *state-sponsored* religious practices, including devotional use of the Bible by public-school officials.

Student Religious Expression

In “Religion in the Public Schools: A Joint Statement of Current Law,” 35 religious and civil liberties organizations give the following summary of the rights of students to express their faith in a public school:

Students have the right to pray individually or in groups or to discuss their religious views with their peers so long as they are not disruptive. Because the Establishment Clause does not apply to purely private speech, students enjoy the right to read their Bibles or other scriptures, say grace before meals, pray before tests, and discuss religion with other willing student listeners. In the classroom students have the right to pray quietly except when required to be actively engaged in school activities (e.g., students may not decide to pray just as a teacher calls on them). In informal settings, such as the cafeteria or in the halls, students may pray either audibly or silently, subject to the same rules of order as apply to other speech in these locations. However, the right to engage in voluntary prayer does not include, for example, the right to have a captive audience listen or to compel other students to participate.

² See “Religious Liberty, Public Education, and the Future of American Democracy,” a statement of principles sponsored by 24 religious and educational organizations. For a full text of the statement and a list of sponsors, contact the First Amendment Center.

³ See “Religion in the Public Schools: A Joint Statement of Current Law,” endorsed by 35 religious and religious-liberty organizations, and “Religious Expression in Public Schools,” a directive issued by the U.S. Department of Education. Copies of the joint statement are available from the American Jewish Congress, 15 East 84th St., Suite 501, New York, NY 10028.

Student Religious Clubs

The Equal Access Act, passed by Congress in 1984, ensures that students in public secondary schools may form religious clubs, including Bible clubs, if the school allows other extracurricular groups.⁴ The Act is intended to protect *student-initiated* and *student-led* meetings. Outsiders may not “direct, conduct, control, or regularly attend” student religious clubs, and faculty acting as monitors may be present at religious meetings in a nonparticipatory capacity only.⁵

The guidelines on “Religious Expression in Public Schools,” issued by the U.S. Department of Education, give the following guidance for interpreting the Equal Access Act:

The Equal Access Act is designed to ensure that, consistent with the First Amendment, student religious activities are accorded the same access to public school facilities as are student secular activities. Based on decisions of the Federal courts, as well as its interpretations of the Act, the Department of Justice has advised that the Act should be interpreted as providing, among other things, that:

- Student religious groups at public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups. Under the Equal Access Act, a school receiving Federal funds that allows one or more student noncurriculum-related clubs to meet on its premises during noninstructional time may not refuse access to student religious groups.
- A meeting, as defined and protected by the Equal Access Act, may include a prayer service, Bible reading, or other worship exercise.
- A school receiving Federal funds must allow student groups meeting under the Act to use the school media — including the public address system, the school newspaper, and the school bulletin board — to announce their meetings on the same terms as other noncurriculum-related student groups are allowed to use the school media. Any policy concerning the use of school media must be applied to all noncurriculum-related student groups in a nondiscriminatory manner. Schools, however, may inform students that certain groups are not school sponsored.
- A school creates a limited open forum under the Equal Access Act, triggering equal access rights for religious groups, when it allows students to meet during their lunch periods or other noninstructional time during the school day, as well as when it allows students to meet before and after the school day.

⁴ The constitutionality of the Equal Access Act was upheld by the Supreme Court in *Westside Community Schools v. Mergens*, 496 U.S. 226 (1990).

⁵ The requirements of the Equal Access Act are described in detail in “Equal Access and the Public Schools: Questions and Answers,” a pamphlet sponsored by 21 religious and educational groups. The full text is available from the First Amendment Center.

Distribution of Religious Literature

An increasing number of students are requesting permission to distribute religious literature, including Bibles, on public-school campuses. According to the guidelines issued by the U.S. Department of Education:

Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. Schools may impose the same reasonable time, place, and manner or other constitutional restrictions on distribution of religious literature as they do on nonschool literature generally, but they may not single out religious literature for special regulation.

The Bible and the Public-School Curriculum

Educators widely agree that study about religion, where appropriate, is an important part of a complete education. Part of that study includes learning about the Bible in courses such as literature and history. Knowledge of biblical stories and concepts contributes to our understanding of literature, history, law, art, and contemporary society.

What do the courts say?

The Supreme Court has held that public schools may teach students about the Bible as long as such teaching is “presented objectively as part of a secular program of education.”⁶

The Court has also held that religious groups may not teach religious courses on school premises during the school day.⁷ The U.S. Department of Education guidelines reiterate that public schools “may not provide religious instruction, but they may teach *about* religion, including the Bible or other scripture.”⁸ In keeping with the First Amendment’s mandate of governmental neutrality toward religion, any study of religion in a public school must be *educational*, not *devotional*. This principle holds true whether teaching about the Bible occurs in literature, history or any other class and whether the course is required or an elective.

A relatively small number of lower court decisions have dealt directly with the constitutionality of Bible classes in public schools.⁹ These rulings show that the constitutionality of such classes is highly dependent on such factors as how the class is taught, who teaches it, and which instructional materials and lessons are used.

⁶ *School District of Abington Twp v. Schempp*, 374 U.S. 203, 225 (1963). See *Stone v. Graham*, 449 U.S. 39, 42 (1980) (per curiam).

⁷ *McCullum v. Board of Education*, 333 U.S. 203 (1948).

⁸ “Religious Expression in Public Schools,” Department of Education, Letter from Secretary Richard Riley (August 10, 1995) (original emphasis).

⁹ See *Hall v. Board of Commissioners of Conecuh County*, 656 F.2d 999 (5th Cir. 1981); *Gibson v. Lee County School Board*, 1 F. Supp.2d 1426 (M.D. Fla. 1998); *Chandler v. James*, 985 F. Supp. 1062 (M.D. Ala. 1997); *Herdahl v. Pontotoc County School District*, 933 F. Supp. 582 (N.D. Miss. 1996); *Doe v. Human*, 725 F. Supp. 1503 (W.D. Ark. 1989), *aff’d without opinion*, 923 F.2d 857 (8th Cir. 1990), *cert. denied*, 499 U.S. 922 (1991); *Crockett v. Sorenson*, 568 F. Supp. 1422 (W.D. Va. 1983); *Wiley v. Franklin*, 468 F. Supp. 133 (E.D. Tenn. 1979), *supp. op.*, 474 F. Supp. 525 (E.D. Tenn. 1979), *supp. op.*, 497 F. Supp. 390 (E.D. Tenn. 1980); *Vaughn v. Reed*, 313 F. Supp. 431 (W.D. Va. 1970). Compare *Mahak v. Yogi*, 592 F.2d 197 (3d Cir. 1979) (holding unconstitutional a school course in which students participated in transcendental meditation ceremonies).

How the class is taught: Any class about the Bible must be taught in an *objective*, academic manner.¹⁰ The class should neither promote nor disparage religion, nor should it be taught from a particular sectarian point of view.¹¹

Who teaches the class: A superintendent or school board should select teachers for a class about the Bible in the same manner all other teachers are selected.¹² School districts should not delegate the employment of such teachers to an outside committee that selects teachers based upon their religious beliefs or perspectives.¹³ Teachers should be selected based upon their academic qualifications, rather than their religious beliefs or nonbeliefs.¹⁴ Teachers should not be disqualified, however, simply because they have received religious training.¹⁵

Funding for an elective course in religion may be provided by outside sources as long as the funds are contributed with “no strings attached.”¹⁶

Which instructional materials are used: Decisions concerning instructional materials, including which translation of the Bible may be used, should remain under the control of the board of education.¹⁷ The Bible may be used as a primary text, although it probably should not be the only text for a course.¹⁸ Schools should avoid the use of instructional materials and lessons that are of a devotional nature, such as those used in a Sunday school. Supernatural occurrences and divine action described in the Bible may not be taught as historical fact in a public school.¹⁹ The historicity of many persons and events described in the Bible may or may not be confirmed by evidence outside of biblical literature. For a fuller discussion of how to address different interpretations and approaches to the question of historicity, see the “Bible electives in history” section on page 11.

Teaching about the Bible

If teachers are to understand clearly how to teach *about* the Bible — and to feel safe doing so — then local school boards should adopt policies on the role of study about religion in the curriculum. The policy should reflect constitutional principles and current law, and should be developed with the full involvement of parents and other community members. Parents need to be assured that the goals of the school in teaching about religion, including teaching about the Bible, are academic and not devotional, and that academic teaching about the Bible is not intended to either undermine or reinforce the beliefs of those who accept the Bible as sacred scripture or of those who do not. Faith formation is the responsibility of parents and religious communities, not the public schools.

¹⁰ *Schempp*, 374 U.S. at 225; *Graham*, 449 U.S. at 42; *Hall*, 656 F.2d at 1002; *Gibson*, 1 F. Supp. 2d at 1432; *Chandler*, 985 F. Supp. at 1063; *Herdahl*, 933 F. Supp. at 592; *Human*, 725 F. Supp. at 1508; *Crockett*, 568 F. Supp. at 1427; *Wiley*, 497 F. Supp. at 392, 394; *Vaughn*, 313 F. Supp. at 433; *Malnak v. Yogi*, 592 F.2d 197 (3d Cir. 1979) (holding unconstitutional a school course in which students participated in transcendental meditation ceremonies).

¹¹ *Wiley*, 497 F. Supp. at 394. See also, *Gibson*, 1 F. Supp.2d at 1433-34; *Herdahl*, 933 F. Supp. at 595.

¹² *Crockett*, 568 F. Supp. at 1431. See also, *Gibson*, 1 F. Supp.2d at 1433; *Vaughn*, 313 F. Supp. at 434.

¹³ *Herdahl*, 933 F. Supp. at 593-594; *Wiley*, 468 F. Supp. at 152.

¹⁴ *Wiley*, 468 F. Supp. at 152.

¹⁵ *Wiley*, 497 F. Supp. at 393.

¹⁶ *Crockett*, 568 F. Supp. at 1431. See also, *Gibson*, 1 F. Supp.2d at 1433; *Herdahl*, 933 F. Supp. at 598-599.

¹⁷ *Crockett*, 568 F. Supp. at 1431. See also, *Gibson*, 1 F. Supp.2d at 1433.

¹⁸ *Herdahl*, 933 F. Supp. at 595 & n.9, 600. See also, *Hall*, 656 F.2d at 1002-1003; *Wiley*, 468 F. Supp. at 151; *Chandler*, 985 F. Supp. at 1063.

¹⁹ *Gibson*, 1 F. Supp.2d at 1434; *Herdahl*, 933 F. Supp. at 596, 600; *Wiley*, 474 F. Supp. at 531.

In recent years, a consensus has emerged among many religious and educational groups about the appropriate role for religion in the public-school curriculum. In 1989, a coalition of 17 religious and educational organizations issued the following statements to distinguish between teaching *about* religion in public schools and religious indoctrination:

- The school’s approach to religion is *academic*, not *devotional*.
- The school may strive for student *awareness* of religions, but should not press for student *acceptance* of any religion.
- The school may sponsor *study* about religion, but may not sponsor the *practice* of religion.
- The school may *expose* students to a diversity of religious views, but may not *impose, discourage, or encourage* any particular view.
- The school may *educate* about all religions, but may not *promote or denigrate* any religion.
- The school may *inform* the student about various beliefs, but should not seek to *conform* him or her to any particular belief.²⁰

When teaching about the Bible in a public school, teachers must understand the important distinction between advocacy, indoctrination, proselytizing, and the practice of religion — which is unconstitutional — and teaching *about* religion that is objective, nonjudgmental, academic, neutral, balanced, and fair — which is constitutional.

Which Bible?

Selecting a Bible for use in literature, history, or elective Bible courses is important, since there is no single Bible. There is a Jewish Bible (the Hebrew Scriptures, or *Tanakh*), and there are various Christian Bibles — such as Catholic, Protestant, and Orthodox — some with additional books, arranged in a different order. These differences are significant. For example, Judaism does not include the Christian New Testament in its Bible, and the Catholic Old Testament has 46 books while the Protestant has 39. There are also various English translations within each of these traditions.

To adopt any particular Bible — or translation — is likely to suggest to students that it is normative, the best Bible. One solution is to use a biblical sourcebook that includes the key texts of each of the major Bibles or an anthology of various translations.

²⁰ This consensus statement, as well as extensive guidelines and resources for teaching about religion in public schools, can be found in *Finding Common Ground: A First Amendment Guide to Religion and Public Education* by Charles C. Haynes and Oliver Thomas. *Finding Common Ground* is available at www.amazon.com.

At the outset and at crucial points in the course, teachers should remind students about the differences between the various Bibles and discuss some of the major views concerning authorship and compilation of the books of the Bible. Students should also understand the differences in translations, read from several translations, and reflect on the significance of these differences for the various traditions.

Which interpretation?

The Bible is interpreted in many different ways, religious and secular. For example: In Judaism, the Hebrew Bible is typically read through the eyes of various rabbinic commentators. For Roman Catholics, the authoritative interpretation of the church is crucial for understanding the Bible. Some Christians and Jews use the findings of modern secular scholarship to interpret the Bible, while others reject some or all of modern scholarship.

Because there are many ways to interpret the Bible — religious and secular — public-school teachers should expose students to a variety of interpretations. Teachers should allow students to encounter the text directly (like any primary source), and then draw on the resources of different religious and secular interpretative traditions for understanding it. To do this effectively requires the use of secondary sources that provide a discussion of the various religious and secular approaches to the Bible.

Teacher selection and preparation

Teaching about the Bible, either in literature and history courses or in Bible electives, requires considerable preparation. School districts and universities should offer in-service workshops and summer institutes for teachers who are teaching about the Bible in literature and history courses.

When selecting teachers to teach Bible electives, school districts should look for teachers who have some background in the academic study of religion. Unless they have already received academic preparation, teachers selected to teach a course about the Bible should receive substantive in-service training from qualified scholars before being permitted to teach such courses. Electives in biblical studies should only be offered if there are teachers academically competent to teach them.

For the future, we recommend changes in teacher education to help ensure that study about religion, including the Bible, is done well in public schools. Literature and history teachers should be encouraged, as part of their certification, to take at least one course in religious studies that prepares them to teach about religions in their subject. Teachers who wish to teach a Bible elective should have taken college-level courses in biblical studies. Eventually, religious studies should become a certifiable field, requiring at least an undergraduate minor. State departments of education will need to set certification requirements, review

curriculums, and adopt appropriate academic standards for electives in religious studies.

The Bible and literature

Academic study of the Bible in a public secondary school may appropriately take place in literature courses. Students might study the Bible *as* literature. They would examine the Bible as they would other literature in terms of aesthetic categories, as an anthology of narratives and poetry, exploring its language, symbolism, and motifs. Students might also study the Bible *in* literature, the ways in which later writers have used Bible literature, language, and symbols. Much drama, poetry, and fiction contains material from the Bible.

Bible electives in literature

A literature elective in the Bible would focus on the Bible as a literary text. This might include the Bible *as* literature and the Bible *in* literature. A primary goal of the course would be basic biblical literacy — a grasp of the language, major narratives, symbols, and characters of the Bible. The course might also explore the influence of the Bible in classic and contemporary poems, plays, and novels.

Of course, the Bible is not simply literature — for a number of religious traditions it is *scripture*. A “Bible Literature” course, therefore, could also include some discussion of how various religious traditions understand the text. This would require that literature teachers be adequately prepared to address in an academic and objective manner the relevant, major religious readings of the text.

The Bible and history

The study of history offers a number of opportunities to study about the Bible. When studying the origins of Judaism, for example, students may learn different theories of how the Bible came to be. In a study of the history of the ancient world, students may learn how the content of the Bible sheds light on the history and beliefs of Jews and Christians — adherents of the religions that affirm the Bible as scripture. A study of the Reformation might include a discussion of how Protestants and Catholics differ in their interpretation and use of the Bible.

In U.S. history, there are natural opportunities for students to learn about the role of religion and the Bible in American life and society. For example, many historical documents — including many presidential addresses and congressional debates — contain biblical references. Throughout American history, the Bible has been invoked on various sides of many public-policy debates and in conjunction with social movements such as abolition, temperance, and the civil rights movement. A government or civics course may include some discussion of the biblical sources for parts of our legal system.

Learning about the history of the Bible, as well as the role of the Bible in history, are appropriate topics in a variety of courses in the social studies.

Bible electives in history

An elective history course that focuses on the Bible is a difficult undertaking for public schools because of the complex scholarly and religious debates about the historicity of the Bible. Such a course would need to include non-biblical sources from a variety of scholarly perspectives. Students would study archeological findings and other historical evidence in order to understand the history and cultures of the ancient world. Teachers who may be assigned to teach a history course focused on the Bible need a great deal of preparation and sophistication.

Unless schools are prepared to design a course that meets the above requirements, they will face legal and educational challenges. In view of these requirements, most public schools that have offered a Bible elective have found it safer and more age-appropriate to use the Bible literature approach discussed earlier in this guide.

Schools must keep in mind that the Bible is seen by millions of Jews and Christians as *scripture*. For adherents of these faiths, the Bible makes sense of events in terms of God's purposes and actions. This means that the Bible may not be treated as a history textbook by public-school teachers but must be studied by examining a variety of perspectives — religious and non-religious — on the meaning and significance of the biblical account.

As we have already noted, sorting out what is *historical* in the Bible is complicated and potentially controversial. Teachers who teach a history course focused on the Bible need to be sensitive to the differences between conventional secular history and the varieties of sacred history. Students must learn something about the contending ways of assessing the historicity of the Bible. They cannot be uncritically taught to accept the Bible as literally true, as history. Nor should they be uncritically taught to accept as historical only what secular historians find verifiable in the Bible.

Sometimes, in an attempt to make study about the Bible more “acceptable” in public schools, educators are willing to jettison accounts of miraculous events. But this too is problematic, for it radically distorts the meaning of the Bible. For those who accept the Bible as scripture, God is at work in history, and there is a religious meaning in the patterns of history. A Bible elective in a public school may examine all parts of the Bible, as long as the teacher understands how to teach *about* the religious content of the Bible from a variety of perspectives.

The Bible and world religions

Given the importance and influence of religion, public schools should include study about religion in some depth on the secondary level. As we have suggested, such study may include study about the Bible, where appropriate, in history and literature courses as well as in elective courses that deal with the Bible.

However, a course that includes study about the Bible and its influence will not educate students about religion generally. Just as there is more to history than American history, so there is more to religion than the Bible, Judaism, and Christianity.

Public schools should also include study about other religious faiths in the core curriculum and offer electives in world religions. Because religion plays a significant role in history and society, study about religion is essential to understanding both the nation and the world. Moreover, knowledge of the roles of religion in the past and present promotes cross-cultural understanding in our increasingly diverse society.

Some school districts require that high schools offering a Bible elective also offer an elective in world religions. There is considerable merit in this approach. This gives students an opportunity to learn about a variety of religions and conveys to students from faiths other than the biblical traditions that their religions are also worthy of study. It is important for public schools to convey the message that the curriculum is designed to offer a good education, and not to prefer any religious faith or group.

Elementary education

The study of family, community, various cultures, the nation, and other themes and topics important in elementary education may involve some discussion of religion. Elementary students are introduced to the basic ideas and practices of the world's major religions in a number of textbooks and curriculums used in public schools. These discussions of religion focus on the generally agreed-upon meanings of religious faiths — the core beliefs and symbols, as well as important figures and events. Such discussions may include an introduction to biblical literature as students learn something about the various biblical faiths.

This early exposure to study about religion builds a foundation for later, more complex discussions in secondary school literature and history courses. Such teaching is introductory in nature; elementary education is not the place for in-depth treatment of religion. Stories drawn from various religious faiths may be included among the wide variety of stories read by students. But the material selected must always be presented in the context of learning *about* religion.

One court has permitted elective Bible courses at the elementary level.²¹ But if such instruction is undertaken, it must be done academically and objectively by a qualified teacher. Children would need to understand that they are studying about what the people of a particular religious tradition believe and practice. Devotional books intended for faith formation or religious education may not be used in a public-school classroom.

As in secondary schools, a balanced and fair curriculum in the elementary grades would not limit study about religion to Judaism and Christianity, but would include a variety of the world's major religious faiths.

The Bible and Public Schools: A First Amendment Guide is published by The Bible Literacy Project, Inc. and the First Amendment Center.

²¹ *Wiley v. Franklin*, 468 F. Supp. 133 (E.D. Tenn. 1979).

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12

CHAPTER 12

Public Schools and Religious Communities

Public Schools and Religious Communities: A First Amendment Guide is published jointly by:

American Jewish Congress

Christian Legal Society

First Amendment Center

Public Schools and Religious Communities: A First Amendment Guide has been co-signed by the following organizations:

American Association of School Administrators

Association for Supervision and Curriculum Development

Baptist Joint Committee for Religious Liberty

Council on Islamic Education

National Association of Evangelicals

National Association of Elementary School Principals

National Association of Secondary School Principals

National Council of Churches of Christ in the U.S.A.

National PTA

National School Boards Association

Union of Orthodox Jewish Congregations of America

United States Catholic Conference

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exercise*

Public schools and religious institutions have different missions, but they share many of the same civic and moral values. Both are located in most neighborhoods, and each is committed within its own role to the well-being of children. By working together in ways that are permissible under the First Amendment, as interpreted by the U.S. Supreme Court, schools and religious communities can do much to enhance the mission of public education.

Before any school district enters into a cooperative arrangement with any community organization, including religious groups, school officials must be confident that the group provides a safe and secure place for children. In addition, special constitutional considerations apply to cooperative arrangements with religious institutions. Under the First Amendment, public schools must remain neutral among religions and between religion and non-religion. By contrast, religious institutions exist to propagate religious faith and encourage religious practices.

Clearly, then, public schools must be careful when they work with religious institutions, because in important ways these institutions have differing commitments. Although some of the issues discussed here have not been authoritatively decided by the courts, we believe that the constitutional principles and guidelines outlined in this document will enable schools and religious groups to work together for the common good.

These guidelines focus on arrangements between public schools and religious institutions because of the special constitutional implications of those relationships. This focus is not meant to suggest that schools should only seek out religious institutions or that such institutions are preferred providers of assistance to public-school children. We urge schools to seek out a wide range of community organizations, religious and non-religious, without regard to their views on religious issues.

I. General Principles for Cooperative Arrangements

In these guidelines, a “cooperative arrangement” is defined as a shared participation in specific programs and activities in accordance with a written agreement. Before entering

into a cooperative arrangement, public schools and religious communities should understand and accept the following principles:

1. Under the First Amendment, public schools must be neutral concerning religion in all of their activities. School officials must take the necessary steps to ensure that any cooperative activities that take place are wholly secular. Persons invited to address students during the school day shall be advised of this requirement and must agree to abide by it before being allowed access to students.
2. Students have the right to engage in, or decline to engage in, religious activities at their own initiative, so long as they do not interfere with the rights of others. School districts are urged to adopt policies that reflect recent consensus statements on current law concerning religion in public schools. “Religion in the Public Schools: A Joint Statement of Current Law,” the U.S. Department of Education’s guidelines on “Religious Expression in Public Schools,” and other consensus guidelines may be obtained by writing to the publishers of this brochure.
3. Cooperative programs between religious institutions and the public schools are permissible only if:
 - Participation in programs is not limited to religious groups. That is, schools must be open to participation by all responsible community groups. Qualifications should not be established which have the practical effect of including only religious groups. Eligibility shall be stated in writing.
 - A student’s grades, class ranking or participation in any school program will not be affected by his or her willingness to participate or not participate in a cooperative program with a religious institution.
 - Student participation in any cooperative program may not be conditioned on membership in any religious group, acceptance or rejection of any religious belief, or participation (or refusal to participate) in any religious activity.

II. Crisis Counseling

In times of sudden crisis (e.g., violent or accidental death of students or teachers), schools may call on a wide range of qualified counselors, including religious leaders, to assist school-employed counselors in helping children cope with the crisis at hand. Of course, religious leaders may not be the only grief counselors invited on campus during a crisis. Religious leaders may not otherwise be given routine access to students during the school day. Even when counseling to deal with a sudden crisis, religious leaders should remember that a public school is not a place for proselytizing or other overt religious activity.

To the extent that schools cooperate with adults who are important in a student's life (parents or other relatives, guardians, foster parents, social workers or neighbors) to help the child deal with school work, behavioral problems, or other issues, schools may also cooperate with an adult acknowledged by a student as his or her religious leader. However, a school may not in any way compel or coerce a student to speak to representatives of religious institutions.

III. Mentoring Programs

Public schools may cooperate with mentoring projects run by religious institutions provided that:

- Other community organizations are given an equal opportunity and are subject to the same secular selection criteria to operate such programs in partnership with the schools.
- Referrals are made without regard to a student's religious beliefs or lack of them.
- Participation in the program is not conditioned on mandatory participation, or refusal to participate, in religious programs operated by a religious institution.
- At no time do school officials encourage or discourage student participation in the religious programs of religious institutions.

IV. Shelters

In order to provide for the safety of students travelling to and from schools, the school district may ask local institutions (e.g., businesses, firehouses, religious institutions) to serve as temporary shelters for students who seek to avoid danger or threatening situations. The school shall provide signs indicating that the place is a shelter available for students.

V. School Use of Facilities Owned by Religious Institutions

Public schools may arrange to use the facilities of private landholders, including churches, temples, mosques, or other religious institutions. Of course, all such facilities must meet applicable health and safety codes. But if the arrangement involves the use of sanctuaries, playgrounds, libraries or other facilities owned by religious groups, then the following First Amendment guidelines must be followed:

1. The schools must have a secular educational purpose for seeking to use the facilities, such as after-school recreation, extended daycare, homework study hall, etc.
2. Where schools lease space from religious institutions for use as regular public-school classrooms, the leased space is in effect a public-school facility. Religious symbols or messages may not be displayed in the leased areas.

3. Cooperative programs using the facilities of religious institutions must not afford an actual opportunity for proselytizing by clergy, school employees, or adult volunteers of any school children during the school-affiliated program. (Of course, the law is not violated if a cooperative program's use of a religious facility coincidentally results in a student gaining an interest in attending worship services there. But the law prohibits clergy from leading devotions as part of the school program.)
4. As stated above, religious symbols and messages may not be displayed in space leased from religious institutions for use as public-school classrooms. The rules are somewhat different for cooperative programs. A room bedecked with scriptural injunctions about repentance and salvation would not be appropriate for cooperative programs; a room with religious symbols or icons might well be.
5. School officials may neither select nor reject the use of a private religious facility based on the popularity or unpopularity of its religious teachings. Religion-neutral criteria should be employed, e.g., proximity to the schools in question; suitability of the facility for the intended use; health and safety; comparative expenses (if any); accessibility for parent pickup or busing.
6. The school's arrangement for use of a private religious facility should not involve or necessitate an ongoing administrative entanglement between the school district and the religious institution, in which one party ends up exerting influence over the content, scheduling or staffing of the other's activities.

VI. Released-Time Religious Education

Public schools may allow students who have parental permission to leave campus during the school day for religious instruction. (Such released-time programs were ruled constitutional by the U.S. Supreme Court almost 50 years ago.) In released-time religious education, parents must give permission in advance for their child to be transported off campus during the school day to a place designated by participating religious institutions. The parent chooses which faith his or her child is to learn. If a public school chooses to allow released time, the following guidelines must be observed:

1. The religious instruction must occur off campus, and the program must be wholly organized and run by the participating churches, mosques, synagogues, or other religious communities and not by the schools. The religious communities should make all arrangements for facilities, transportation, instruction, insurance, parent information and permission, etc. The programs should not involve the expenditure of public funds.

2. In their words and actions, teachers and administrators may not encourage or discourage the participation of students or parents in released-time programs. Teachers should arrange their lesson plans so that students who participate in released-time religious education are not left at a disadvantage by missing instruction, tests, or class parties during that time. Neither should non-participating students be deprived of meaningful classroom activity. Schools must create neither incentives nor penalties for students to participate or not participate in released-time programs.
3. Parental permission must be a prerequisite for participation in any released-time program of religious instruction. To avoid use of government funds or personnel for religious indoctrination, only the religious community should print and only volunteers should distribute any information and parental permission forms to students, as well as take attendance.
4. Participating religious organizations should inform schools of the weekly attendance by each released student.
5. Schools may require liability insurance and other reasonable regulations relating to student health, education and safety, provided such regulations apply neutrally to all participating religious communities.

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13

CHAPTER 13

Public Schools and Sexual Orientation

The process for dialogue recommended in Public Schools and Sexual Orientation guide has been endorsed by:

American Association of School Administrators

Association for Supervision
and Curriculum Development (ASCD)

BridgeBuilders

Christian Educators Association International

First Amendment Center

Gay, Lesbian and Straight Education Network (GLSEN)

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A shared commitment

In recent years, many public schools have increasingly become a front line in the escalating debates over homosexuality in American society. Conflicts over issues involving sexual orientation in the curriculum, student clubs, speech codes and other areas of school life increasingly divide communities, spark bitter lawsuits, and undermine the educational mission of schools.

These fights are unfortunate, but hardly surprising. Since the earliest days of the common school movement, Americans have viewed the schoolhouse as a microcosm of the public square, an arena where we debate and define who we are as a people. But when these disputes degenerate into personal attacks, ridicule, false characterizations of opposing positions, and similar tactics, they tear communities apart and alienate large numbers of citizens from their local schools. If we cannot find ways to negotiate our differences in public schools with more civility and respect, then schools — and the nation — face a difficult future.

The advice in this guide is built on the conviction that we as American citizens urgently need to reaffirm our shared commitment to the guiding principles of the First Amendment to the U.S. Constitution. The rights and responsibilities of the First Amendment provide the civic framework within which we are able to debate our differences, to understand one another, and to forge public policies that serve the common good in public education.

What divides us

Few issues expose our national divide more starkly than the conflict over how to deal with sexual orientation in public schools. Advocacy groups on both sides are working hard to promote their perspective in the schools — or at least to prevent the other side from promoting theirs.

On one side, many argue that public schools should not deal with homosexuality at all, believing that such discussions should be left entirely to parents. Citing moral and religious convictions, they believe that any state effort to normalize society's perception of same-sex

relationships is harmful to family life and a violation of the deeply held beliefs of many Americans. In their view, public schools should uphold a view of family that affirms sexual abstinence until marriage between one man and one woman.

On the other side, many argue that such convictions about homosexuality are primarily a private and religious matter that should not be used as a basis for public school policy. In their view, families with same-sex parents must be included in the school's definition of family. They point out that harassment based on actual or perceived sexual orientation is a pervasive problem in public schools that adversely affects the academic performance of students who experience it—and sometimes leads to violence and even suicide. They contend that the relevant issue for schools is sexual orientation and identity, not sexual behavior. And they advocate school policies and practices that require school officials to deal with discrimination against gay and lesbian students.

These differences are deep — and difficult to negotiate. Current efforts to legalize or ban same-sex unions in the courts, in legislatures and on ballot initiatives have only exacerbated the debate in schools and raised the stakes for public school officials. Every act by one side is seen as a hostile move by the other. A “Day of Silence” to promote awareness of discrimination against gays and lesbians is now followed by a “Day of Truth” to promote conservative religious views of homosexuality. A T-shirt proclaiming “Straight Pride” is worn to counter one professing “Gay Pride.”

Even finding the right terminology to discuss these differences that neither side will see as problematic can prove extremely difficult. One student's call for toleration is perceived by another student as a challenge to deeply held convictions. And one student's religious convictions are perceived by another student as hostility toward gays and lesbians. One parent is concerned that the school's definition of family might exclude his family, while another parent worries that a definition inclusive of same-sex parents will undermine what her children are taught at home and at church.

Even the most well-intentioned efforts by school officials to address these differences can easily trigger angry protests from one side or the other.

The role of public schools

In light of these passionate differences, it is important to reaffirm that public schools belong to all Americans. The role of school officials, therefore, is to be fair, honest brokers of a dialogue that involves all stakeholders and seeks the common good. Policy decisions about issues concerning sexual orientation should be made only after appropriate involvement of those affected by the decision and with due consideration for the rights of those holding dissenting views. Under the First Amendment, all sides have the right to express their points of view.

School officials struggle to reconcile deeply conflicting community views and legal imperatives on these issues. Sometimes difficult choices must be made, and sometimes there is no option that will satisfy all parties. In some cases, however, school officials mistakenly assume that they must choose sides in the debate over homosexuality — and that their schools must promote the side they choose. Some are convinced that the only way to address this issue is to insist that one view be imposed on all students and parents. But too often this approach only provokes more conflict and solves nothing.

If schools are going to win the peace, it will not be by choosing a side and coercing others to accept it. When matters of conscience are at stake, this strategy is both unjust and counterproductive. It is possible, however, to find areas of agreement if school officials create a climate of mutual respect and honest dialogue.

It would serve us all to remember that the core mission of public schools is to prepare young people for citizenship in a democratic society. This means, first and foremost, maintaining a school environment that respects the rights of students to free speech and free exercise of religion while simultaneously ensuring that student speech does not degenerate into name-calling, bullying or attempts to silence other views.

Under the First Amendment, a school is both safe and free when students, parents, educators and all members of the school community commit to addressing their religious and political differences with civility and respect. A safe school is free of bullying and harassment. And a free school is safe for student speech even about issues that divide us.

When Americans disagree deeply about religious or political questions, public schools should try hard to avoid taking sides. School officials should address the controversy fairly and openly by including all of the stakeholders in the effort to develop policies that promote fairness for all and practices that can be widely supported.

First Amendment ground rules

No ideological or religious consensus is possible — or perhaps even desirable — in our diverse society. But a civic agreement across differences is not only possible but absolutely essential for civil dialogue. The place to begin is to agree on the guiding principles of rights, responsibilities and respect that flow from the First Amendment. These “three Rs” provide a shared framework within which Americans are able to negotiate conflicts over public policy in schools:

- **Rights.** Religious liberty and freedom of expression are inalienable rights for all guaranteed by the First Amendment to the U.S. Constitution. The very purpose of the First Amendment is to safeguard individual rights from actions of majorities and governments. Every effort should be made in public schools to protect these rights for all students and parents.

- **Responsibilities.** As American citizens, we have a civic responsibility to respect these rights for others, including those with whom we deeply disagree. Rights are best guarded and responsibilities best exercised when each person and group guards for all others those rights they wish guarded for themselves.
- **Respect.** Conflict and debate are vital to democracy. Yet if controversies about sexual orientation and schools are to advance the best interests of the disputants and the nation, then how we debate, and not only what we debate, is critical. All parties involved in public schools should agree to debate one another with civility and respect, and should strive to be accurate and fair.

A principled compact that spells out the rights, responsibilities and respect required by our commitment to the First Amendment creates a common ground that serves the interests of our religious and political diversity. Within these ground rules, all sides come to the table prepared to seek a greater common good.¹

Finding common ground

In a growing number of school districts, these First Amendment principles provide a civic framework for constructive dialogue and a basis for cooperation across deep differences. Parents and educators on all sides are reaching across the cultural divide and finding ways to work with people who see the world very differently from themselves. How is this possible? Although individual districts use a variety of strategies, successful school and community leaders adopt the following principles and practices:

1. Create a “common ground task force,” appointed by the school board and consisting of representatives with a wide range of community views. Such a task force can help to advise the district on a range of issues involving sexual orientation such as how to create safe schools, develop balanced curricula and protect appropriate student expression. By building relationships among people with opposing views, the task force builds trust and mutual respect that can translate into shared agreements on school policy and practice.
2. Agree on the civic ground rules and understand current law. A good first step is to make the First Amendment principles of rights, responsibilities and respect the ground rules for the discussion. Then, come to a shared understanding of what current laws and regulations in your state and district may say about the issue of sexual orientation in general and in public schools specifically. The laws of each state (which vary widely and change frequently) are both the starting point and framework for addressing sexual orientation in local schools. Public schools are required to represent and carry out the laws of the land. Within this civic and legal framework, all sides come to the table understanding the parameters of the discussion and prepared to engage the issues with civility and respect.

¹ This definition of the First Amendment principles of rights, responsibilities and respect is drawn from the Williamsburg Charter, a reaffirmation of religious liberty drafted by representatives of America’s leading faiths and signed by nearly 200 leaders from every sector of American life in 1988.

3. Include all stakeholders. In public schools, there must be room for people who see the issue from a variety of perspectives in an environment that calls for everyone to respect the right of others to hold their views. Democratic citizenship does not require a compromise of our deepest convictions. But at times it will require us to work with others who may hold views we find offensive. It is the civic responsibility of people on all sides to state their views in as respectful a manner as possible. Through constructive dialogue we can often find creative solutions that will treat others the way we want to be treated.
4. Think outside the box of “us vs. them” politics. As deeply as we may feel about this issue, we must refrain from using the public schools to impose our views on others. Advocacy groups play an important role in a democracy. But public schools have a very different role. Schools serve the entire community and, in so doing, cultivate a common good that includes us all.
5. Listen to all sides. Given the opportunity, the vast majority of parents, students, administrators and school board members will commit to a principled dialogue and will work for solutions that bring the community together. While it may be true that a small number of people on both sides resist any attempt to find common ground, most people will support a process of deliberation that is open and fair.
6. Work for agreements on civic principles and safe schools. It is important to start deliberations where agreement is most likely to be achieved. All parents, for example, want schools to be safe learning environments where no student is harassed or bullied for any reason. And most people will support policies that prohibit the mistreatment of any individual or group and provide appropriate avenues for redress of grievances.
7. Provide educational opportunities for administrators, teachers, parents and students in the First Amendment principles of rights, responsibilities and respect. When people understand their constitutional rights and civic duties, they are better prepared to engage in civil dialogue — and work together for a learning environment that is safe and free for all students.

This guide is not an attempt to ignore or minimize differences that are important and abiding, but rather a reaffirmation of what we share as Americans across our differences. First Amendment principles can and do work to advance the best interests of education and the nation, but only when they are understood and applied by citizens committed to advancing a common vision of the common good.

Tips for school officials

- Take complaints seriously. Take seriously complaints of name-calling, harassment and discrimination regardless of the reason. Do not dismiss it as playground teasing or tell the student or staff to “toughen up.” Investigate the complaint and intervene directly when it has merit, making clear that such behavior is unacceptable on the public school campus. The public school environment cannot be a hostile place to study or work.
- Listen carefully. Assure parents and students that the school district will listen carefully, be fair to all parties, and try hard to avoid choosing sides in the broader national conflict.
- Talk openly. Don’t be afraid to talk openly about these issues. Some districts may seek to avoid controversy by trying to fly under the radar when dealing with this complicated issue. Whether it is students asking to form a gay-straight alliance, a new textbook introduced into the curriculum, or a new video adopted for family-life education, parents don’t like surprises. When it finally becomes known, as it always does, parents will lose trust with a district that will not be straightforward with them and will respect the one that is.
- Keep the discussion local. To the extent practical, strive to keep your community discussion a local one. This doesn’t mean that outside groups and individuals can’t be helpful facilitators or resources, and some perspectives that are important to the discussion may not be well represented in your community. But neighbor-to-neighbor dialogue works best when a local disagreement doesn’t become a national controversy.
- Respond fairly and equitably. While your district will have to respond fairly and equitably to the variety of home environments of your students, it does not have to define family in the broader culture to do so. Family is a term often defined in state law and schools can acknowledge that various groups use it differently.
- Do not discriminate. Be careful that you do not discriminate against student clubs or expression simply because the political or religious message is unpopular or potentially offensive to some. Educators can and should require that all viewpoints be expressed in a respectful manner, but they may not exclude some views merely because they don’t agree with them. To do so constitutes viewpoint discrimination in violation of the First Amendment.

Tips for parents and students

- Seek information. Don’t jump to conclusions about your school district based on news reports about the national conflict over these issues. Local control and varying state laws make it unlikely that any one approach will be implemented universally across the country without regard to the different perspectives in your community. Start by finding out what is happening in your district. Ask questions and seek information rather than make accusations.

- Share your concerns. If you have concerns about what is happening in your school, start by sharing them with those closest to the problem. If the issue is with your own school, start with teachers or school administrators. If the concern is districtwide, bring it to the attention of district administrators and your local school board. Civil local discussions that lead to solutions are less costly, less divisive and more effective than lawsuits or shouting matches in the media.
- Provide a fair and safe environment. Realize your district not only has a responsibility to address the needs and wishes of your family, but it must also provide a fair and safe environment for people who view this issue differently than you do. We all have a vested interest in ensuring that public schools are a safe learning environment for every student and staff member.
- Respect First Amendment rights. Remember the civic duty to respect the First Amendment rights of others, including the rights of those with whom you deeply disagree.

The drafting of this publication was facilitated by the First Amendment Center and BridgeBuilders (bridge-builders.org), which provides mediation services to help schools and communities find common ground on the issues addressed in this guide.

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Government for a redress
of grievances.*

14

CHAPTER 14

Character Education*

*The contents of this chapter are from the Character Education Partnership and are used by permission.

We must remember that intelligence is not enough.
Intelligence plus character—that is the goal of true education.

—Martin Luther King Jr.,
Speech at Morehouse College
1948

Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks - no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without virtue in the people is a chimerical idea.

—James Madison

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establishment of religion
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exercise thereof

DEFINING AND UNDERSTANDING CHARACTER EDUCATION

What is character education?

Character education is a national movement creating schools that foster ethical, responsible and caring young people by modeling and teaching good character through emphasis on universal values that we all share. It is the intentional, proactive effort by schools, districts and states to instill in their students important core ethical values such as caring, honesty, fairness, responsibility and respect for self and others. Character education is not a “quick fix.” It provides long-term solutions that address moral, ethical and academic issues of growing concern to our society and key to the safety of our schools.

- Character education not only cultivates minds, it nurtures hearts.
- Character education gets to the heart of the matter – literally.

Why do we need character education?

As Dr. Thomas Lickona, author of *Educating for Character*, stated, “Moral education is not a new idea. It is, in fact, as old as education itself. Down through history, in countries all over the world, education has had two great goals: to help young people become smart and to help them become good.” Good character is not formed automatically; it is developed over time through a sustained process of teaching, example, learning and practice. It is developed through character education. The intentional teaching of good character is particularly important in today’s society since our youth face many opportunities and dangers unknown to earlier generations. They are bombarded with many more negative influences through the media and other external sources prevalent in today’s culture. At the same time, there are many more day-to-day pressures impinging on the time that parents and children have together. Studies show that children spend only 38.5 minutes a week (33.4 hours a year) in meaningful conversation with their parents, while they spend 1,500 hours watching television. (American Family Research Council, 1990 and *Harper’s*, November 1999.) Since children spend about 900 hours a year in school, it is essential that

schools resume a proactive role in assisting families and communities by developing caring, respectful environments where students learn core, ethical values. In order to create our schools as the caring and respectful communities we know they can be, we must look deeper. We must be intentional, proactive and comprehensive in our work to encourage the development of good character in young people.

How does character education work?

To be effective, character education must include the entire school community and must be infused throughout the entire school curriculum and culture. Character education promotes core values in all phases of school life and includes proactive strategies and practices that help children not only understand core ethical values, but to care about and act upon them. Based on research by the nation's leading character education experts, CEP's Eleven Principles of Effective Character Education,TM provide guidelines for the elements needed for **effective, comprehensive** character education.

1. Promotes core ethical values.
2. Teaches students to understand, care about, and act upon these core ethical values.
3. Encompasses all aspects of the school culture.
4. Fosters a caring school community.
5. Offers opportunities for moral action.
6. Supports academic achievement.
7. Develops intrinsic motivation.
8. Includes whole-staff involvement.
9. Requires positive leadership of staff and students.
10. Involves parents and community members.
11. Assesses results and strives to improve.

Schools: According to Lickona, when a comprehensive approach to character education is used, a positive moral culture is created in the school—a total school environment that supports the values taught in the classroom. This is accomplished through the leadership of the principal, schoolwide discipline, a sense of community, democratic student government, a moral community among adults and opportunities to address moral concerns. Schools recruit parents and the community as partners and foster caring beyond the classroom by using inspiring role models and opportunities for community service to help students learn to care by giving care.



Teachers: Teachers act as caregivers, models and mentors, treating students with love and respect, setting a good example, supporting pro-social behavior and correcting hurtful actions. The teacher creates a moral community, helping students respect and care about each other and feel valued within the group, and a democratic classroom environment, where students are involved in decision-making. Teachers practice moral discipline, using the creation and application of rules as opportunities to foster moral reasoning, self-control and a respect for others, and teaching values through the curriculum by using academic subjects as vehicles for examining ethical values. They use cooperative learning to teach children to work together, and they help develop their students' academic responsibility and regard for the value of learning and work. They encourage moral reflection through reading, writing, discussion, decision-making exercises and debate, and they teach conflict resolution to help students learn to resolve conflicts in fair, non-violent ways.

What is the goal of character education?

To develop students socially, ethically and academically by infusing character development into every aspect of the school culture and curriculum. To help students develop good character, which includes knowing, caring about and acting upon core ethical values such as respect, responsibility, honesty, fairness and compassion.

What is a school of character like?

There is no one particular look or formula, but schools of character have one thing in common: a school-wide commitment to nurture the “whole child.” They develop students socially, ethically and academically by infusing character development into every part of their curriculum and culture. Specifically, a school committed to character education explicitly names and publicly stands for specific core values and promulgates them to all members of the school community. They define the values in terms of behaviors that can be observed in the life of the school, and they model, study, discuss and use them as the basis for all human relations in the school. They uphold the values by making all school members accountable to consistent standards of conduct, and they celebrate their manifestation in the school and community. Character education works in nearly every school environment, from small to large and from urban to suburban to rural. It works in both public and private schools, and with unique school populations and structures, such as charter, magnet, faith-based, and at-risk. The key to success is that character educators are able to find what works in their particular school, district or community.

How does a school implement character education?

Formalized character education begins when members of a school, along with the broad involvement of community members, come together to determine the core ethical values that they share and that form the basis for good education in their particular school. These values then become the foundation for all that the school does—curriculum, teaching strategies, school culture, extracurricular activities, etc. Character education is thereby infused into the broader community.

Is character education as important as academics?

Absolutely. The social, ethical and emotional development of young people is just as important as their academic development. As Theodore Roosevelt stated: “To educate a man in mind and not in morals is to educate a menace to society.” After all, we know that good workers, citizens, parents and neighbors all have their roots in good character. Therefore, it is critical to create schools that simultaneously foster character development and promote learning. In fact, character education promotes academic excellence because it lays a foundation for all learning that takes place in school. While research is in the early stages, it is clear that character education builds classrooms where students are ready to learn and where teachers are freer to teach.

Isn't character education just another "add-on" that contributes to teachers' workloads?

Character education is not an “add-on” but is instead a different way of teaching; it is a comprehensive approach that promotes core values in all phases of school life and permeates the entire school culture. It is not an imposition on already overburdened schools; rather, it helps educators fulfill their fundamental responsibility to prepare young children for the future by laying a foundation for learning through the creation of caring, respectful school environments. Teachers are reporting that their jobs become easier with the implementation of character education because there are fewer discipline and behavioral problems to detract from teaching time.

How much time each day/week is needed for character education?

Character education should take place throughout the entire school day as administrators, teachers and other staff are presented with opportunities to model and teach positive character traits. Character education should not be relegated to a “character education class” that is conducted periodically but should be infused throughout the structures and processes of the entire school curriculum and culture.

Can character education work at all grade levels?

Yes. Varying age-appropriate strategies and practices are being successfully applied to all grade levels, from teaching social and emotional skills in the earliest grades, to service learning and prejudice reduction in secondary schools. It is important to set a strong foundation during the earlier grades and to reinforce and build upon that foundation during the later grades. However, character education can be initiated at any grade level.



Isn't character education just a new fad or buzzword?

No. Character education has always been an essential part of our schools' mission. In fact, since the founding of our nation's public schools, it was always intended that character education be an integral part of schooling along with academics. Today's character education movement is a re-emergence of that important mission.

Why is character education re-emerging now?

Although character education has always been of vital importance, schools strayed from proactive efforts to incorporate character development into their teaching in past decades. Ironically, this neglect came at a time when the need became greater due to increased challenges in raising ethical children. A number of factors, such as a weakening in guidance by some families and communities, brought on widespread reflection and introspection toward the end of the 20th century. The tragedy at Columbine and fatal shootings at a number of other schools punctuated these concerns across the country. Now, character education is becoming a priority in our nation's education reform as we are increasingly realizing that character development must be an intentional part of education rather than just a process that happens naturally.

Is religion a part of character education?

Parents are the primary and most important moral educators of their children. Thus public schools should develop character education programs in close partnership with parents and the community.

Character education focuses on the core civic virtues and moral values that are widely held in our society across our religious and other differences. Under the First Amendment, public-school teachers may neither inculcate nor denigrate religion. The moral values and civic virtues agreed to in the community may be taught in public schools if done so without religious indoctrination. At the same time, core values should not be taught in such a way as to suggest that religious authority is unnecessary or unimportant.

Sound character education programs affirm the value of religious and philosophical commitments. Faith formation is the province of families and religious communities. But public schools may teach about religion (as distinguished from religious indoctrination) as part of complete education. For example, the curriculum may include teaching about the role of religion in history and contemporary society, alerting students to the fact that moral convictions are often grounded in religious traditions.

PARTICIPATION IN CHARACTER EDUCATION

Shouldn't parents be the primary character educators?

Developing good character is first and foremost a parental responsibility, but the task must also be shared with schools and the broader community. As today's society provides more and tougher challenges to raising ethical, responsible children, increasingly parents and communities are looking to schools for assistance. And sadly, school may be the only place where some children are taught virtuous behavior because they live in homes where their families are not serving as positive role models and are not providing adequate character development.

Who decides what character education traits are emphasized?

It is very important that each school community reach consensus on what values should be taught in a school in order to create the sense of ownership that is needed to obtain “buy-in” for the program. To be effective, school-based character education programs need broad support from all stakeholders in the community—educators, parents, community leaders, youth service groups, businesses and faith and charitable groups.

Early in the planning process, schools should collaborate with parents and their communities to craft a shared vision and objectives. Collectively, they should identify the core values to be taught in their school as well as the particular approaches to teaching them.



Effective character education schools across the country have shown that, despite deep differences, schools and communities can join together around a commitment to our common ethical inheritance. We know that there are some things that we all value for ourselves and for our children. We want our children to be honest. We want them to respect those different from themselves. We want them to make responsible decisions in their lives. We want them to care about their families, communities and themselves.

These things do not happen on their own. It takes all of us, with the support of our schools, to get us there.

Who teaches character education in a school?

Inherently, each and every adult in a school is a character educator by virtue of exposure to students. Regardless of whether a school has formalized character education, all adults serve as role models. Students constantly watch as all adults in the school – teachers, administrators, counselors, coaches, secretaries, cafeteria aides, bus drivers – serve as models for character, whether good or bad.

Beyond modeling, no matter what the academic subject or extracurricular activity, educators are afforded the opportunity to develop good character in their students on a daily basis by intentionally selecting character-based lessons and activities and by the way they educate their students.

Are schools qualified to teach character education?

Many teachers across the country are being trained in character education through staff development and in-services. Meanwhile, it appears that the nation's schools of education are doing very little to prepare future teachers to be character educators, according to a 1999 study conducted by CEP and the Center for the Advancement of Ethics and Character at Boston University.

The study found that, while character education is very strongly supported by the deans of education at the colleges and universities that are training new teachers, very few of the schools are addressing character education during teacher preparation. In order to implement effective initiatives, schools require access to resources and guidance in establishing, maintaining and assessing their programs.

PUBLIC SUPPORT FOR CHARACTER EDUCATION

What do Americans think about character education?



As Americans examine the moral standards of our society and the quality of our nation's education system, they are increasingly looking to schools and communities to help develop good character in our young people. Poll after poll shows that Americans place issues such as ethics and morality high on their list of concerns. For instance:

- Various studies show that more than 90 percent of the population believes schools should teach character traits to students.
- A 1998 Gallup poll found that Americans consider crime and violence; declines in ethics, morals and family values; and drug usage the issues of most concern in our society today.
- A 1998 poll (conducted by The Tarrance Group and Lake Snell Perry & Associates) of 1,000 likely voters showed that Americans want Congress to restore moral values and improve education more than anything else.

Should character education be mandated?

Legislation and policies should encourage character education in general, but not a particular approach or program. Character education works best when local schools and communities work together to identify the core values to be taught in their schools as well as the particular approaches to teaching those values.

States should encourage comprehensive approaches to character education that involve all aspects of school culture and curriculum. Since very few educators and administrators receive training on how to incorporate character education into their classrooms and schools during their initial preparation at teacher colleges and universities, providing funding for staff development is a critical role for states and districts.

Why should the business community support character education?

Since the American workforce ultimately comes from our schools, businesses have a vested interest in seeing that our youth develop into responsible, ethical people. The very qualities that today's work force needs are character traits and skills that form the building blocks of character education. In 1991, the U.S. Department of Labor issued a report "What Work Requires of Schools"—also known as the SCANS report—which cautioned that students must develop a new set of foundation skills and competencies such as interpersonal skills, individual responsibility, self-esteem, sociability, self-management and integrity.

CHARACTER EDUCATION QUANTIFIED

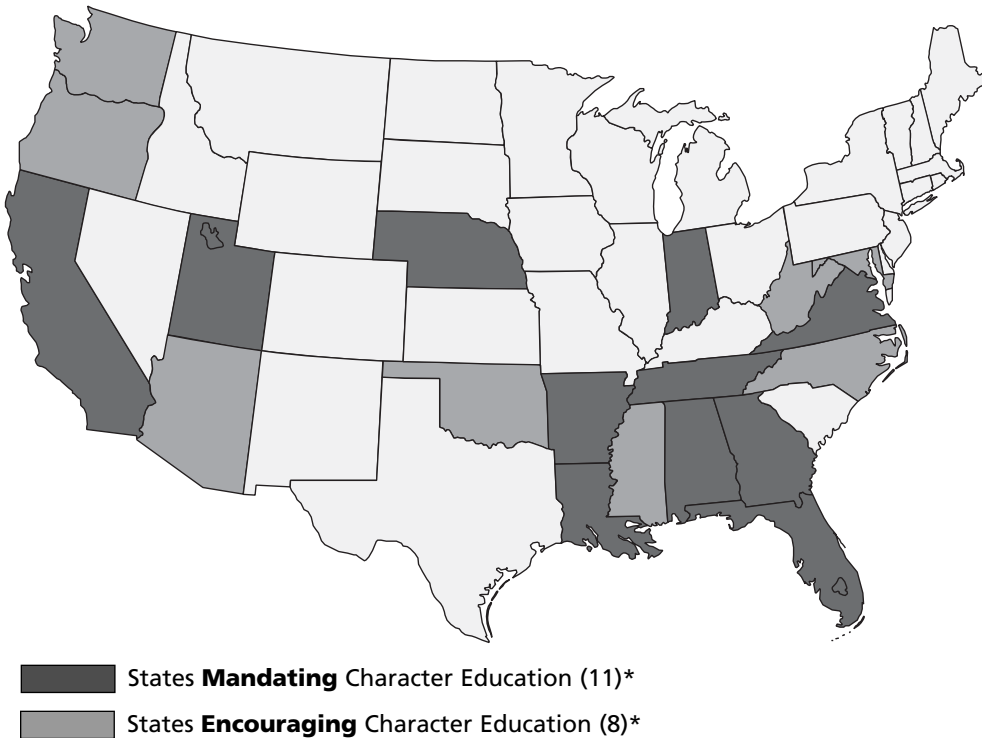
How many schools/districts use character education?

While it is impossible to quantify the number of schools using character education, we do know that it is being implemented to varying degrees in schools all across the country. The combined number of states that are recipients of federal character education grants and states that either require or encourage character education through legislation is 40.

Do any states require character education?

Many state boards and departments of education and, currently, 19 states address character education through legislation. Nearly half a dozen others are currently pursuing legislation regarding character education.

- Eleven states *mandate* character education through legislation: Alabama, Arkansas, California, Florida, Georgia, Indiana, Louisiana, Nebraska, Tennessee, Utah and Virginia.
- Eight states *encourage* character education through legislation: Arizona, Maryland, Mississippi, North Carolina, Oklahoma, Oregon, Washington and West Virginia.



*As of October 2001

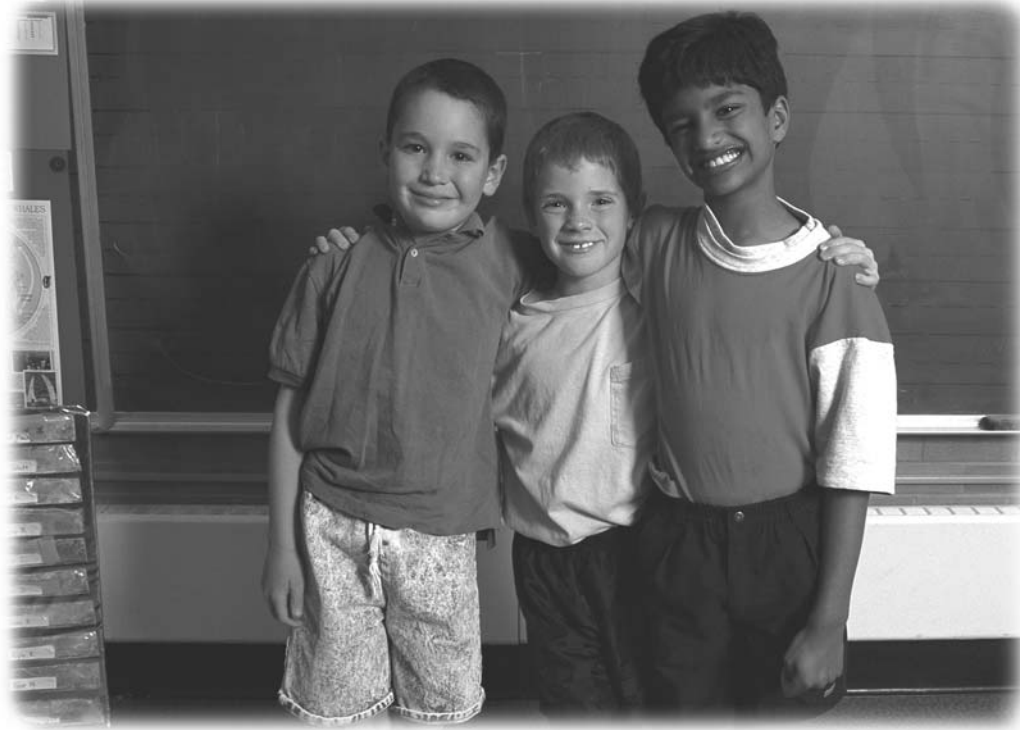
RESULTS OF CHARACTER EDUCATION

How do we know character education works?

Schools that are infusing character education into their curricula and cultures, such as CEP's National Schools of Character, are finding improved academic achievement, behavior, school culture, peer interaction and parental involvement. They are seeing dramatic transformations; pro-social behaviors such as cooperation, respect and compassion are replacing negative behaviors such as violence, disrespect, apathy and underachievement. When you walk into a character education school, you know it. You find an atmosphere of mutual caring and respect, where students value learning and care about their teachers, classmates, communities and themselves. Some specific examples of research conducted on character-based programs include:

- A 2000 evaluation of **South Carolina's four-year character education initiative**, which is a pilot program funded by the U.S. Department of Education, reports dramatic improvements among both students and adults. In surveys of South Carolina administrators, the study found that 91 percent reported improvement in student attitudes, 89 percent reported improvement in student behavior, 60 percent reported improvement in academic performance, and more than 65 percent reported improvement in teacher and staff attitudes since implementing character education. The independent study was conducted by the University of South Carolina's Center for Child and Family Studies.
- In three separate studies spanning almost 20 years, the Developmental Studies Center in Oakland, Calif., has documented numerous positive outcomes for students who have attended elementary schools implementing its **Child Development Project**. This research has consistently shown that students in CDP schools engage in more pro-social behavior (e.g., are helpful and cooperative), are more skilled at resolving interpersonal conflicts, are more concerned about others and are more committed to democratic values. Findings from the most recent study of CDP also showed significant reductions in use of alcohol and marijuana and in delinquent behaviors (outcome variables which were not examined in earlier studies). Preliminary findings from a follow-up study of students in middle school indicate that, relative to comparison students, former CDP students are more "connected" to school, work harder and are more engaged in their middle school classes and have higher course grades and achievement test scores. In addition, they engage in less misconduct at school and are more involved in positive youth activities (e.g., organized sports, community groups), and report that more of their friends are similarly positively involved in school and their communities than comparison students.
- Students trained in **Second Step**, a violence-prevention program, used less physical aggression and hostile, aggressive comments and engaged in more pro-social interactions than peers who were not exposed to the curriculum.

- An independent evaluation of the **Resolving Conflict Creatively Program** found that, of those participating in the program, 64 percent of teachers reported less physical violence and 75 percent reported an increase in student cooperation. Additionally, 92 percent of students felt better about themselves, and more than 90 percent of parents reported an increase in their own communication and problem-solving skills.
- In a study of four schools using **Positive Action**, the average number of behavioral incidents (including violence and substance abuse) requiring discipline referral dropped by 74 percent after the program was implemented for one year and by an average of 80 percent during the next six years. Additionally, absenteeism decreased between 30 to 60 percent, and achievement scores improved from an average of the 43rd to an average of the 71st percentile range after the first year of implementation to an average of the 88th percentile after two to nine years.



- Longitudinal studies from the **Responsive Classroom** program, which emphasizes social skills and good character, have shown increased academic performance across several grade levels. Iowa Test of Basic Skills scores rose 22 percent for the Responsive Classroom students and only 3 percent for the control group. The Responsive Classroom has also resulted in above-average academic growth between grades four and eight, decreases in discipline referrals and increases in pro-social behaviors.

How can character education be assessed?

Through evaluation studies, the impact of character education can be seen through changes in school environment and student attitudes and behavior. For example, many character education schools are reporting reduced violence, discipline referrals and vandalism, and improved attendance and academic performance. While it is challenging for a district or school to assess its program, educators and administrators agree it is worth the effort. More assessment tools are needed, but some existing tools include school surveys, behavioral observations and statistics, and self-assessment questionnaires. CEP's assessment database provides the most comprehensive information available on assessment tools and instruments.

Can character education create safe schools?

Yes. While character education is not a panacea to ridding schools of violence, it is a long-term solution to creating environments where negative and anti-social behaviors are less likely to flourish or go unnoticed and unreported. Character education creates schools where children feel safe because they are in an atmosphere that values respect, responsibility and compassion—not because a guard or metal detector is posted at the door.

FUNDING FOR CHARACTER EDUCATION

How much funding is needed to implement character education?

Character education does not require vast funding. Primary expenses include initial staff training and periodic in-services.

What are possible funding sources for character education?

The U.S. Department of Education provides seed money for character education through its “Partnerships in Character Education Pilot Projects.” Since 1995, a total of 36 states and the District of Columbia have received a combined total of approximately \$27.5 million through the grants. State grant recipients include Alaska, California, Colorado, Connecticut, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, Pennsylvania, Tennessee, South Carolina, Utah, Virginia, Washington and Wisconsin. Additionally, other federal programs that are tied to the goals of character education can be used to launch and support local initiatives. Some of the department's high-profile grant programs that can direct funds to character education include 21st Century Community Learning Centers, Safe and Drug-Free Schools, Teacher Quality Enhancement Grants to States and Partnerships, and America Reads.



Character Education and Religion

When schools and communities adopt character education programs, they must keep in mind that the moral life of a great many Americans is shaped by deep religious conviction. Both the approach to character education and the classroom materials used should be selected in close consultation with parents representing a broad range of perspectives. When care is taken to find consensus, communities are able to agree on the core values they wish taught in the schools and how they wish it to be done.

The civic and moral values widely held in our society, such as honesty, caring, fairness and integrity, can be taught without invoking religious authority. In public schools, where teachers may neither promote nor denigrate religion, these values must be taught without religious indoctrination. At the same time, teaching core values may not be done in such a way as to suggest that religious authority is unnecessary or unimportant. Nothing in a school's approach to character education should undermine the religious conviction of parents and students.

Sound character education programs will acknowledge that many people look to religious authority and revelation for moral guidance. Such programs will affirm the value of religious and philosophical commitments and avoid any suggestion that values are simply a matter of individual choice without reference to absolute truth. Students will be encouraged to consult their parents and religious leaders for a fuller understanding of how their tradition addresses moral questions.

Character education can be hollow and misleading when taught within a curriculum that is silent about religion. When religion is largely ignored, students get the false and dangerous message that religious ideas and practices are insignificant for human experience. A complete education must of necessity include study about religion, where appropriate, throughout the curriculum. Religion and religious perspectives are taken seriously in the curriculum if students are exposed to the great ethical systems of world history and to America's rich and diverse religious heritage. Mentioning religion is not enough. Students need to explore the place of religion in history, literature, art and music if they are to understand the ultimate beliefs and world views that provide the deepest and strongest sources of human meaning for much of humanity.

The Authors

CEP AND CHARACTER EDUCATION

What is the Character Education Partnership (CEP)?

CEP is a national advocate and leader for the character education movement. It is a Washington, D.C.-based nonprofit, nonpartisan, nonsectarian coalition of more than 1,200 organizations and individuals committed to fostering effective character education in our nation's K-12 schools. It is an umbrella organization for character education, serving as the leading resource for people and organizations that are integrating character education into their schools and communities. CEP focuses on defining and encouraging effective practices and approaches to quality character education and provides a forum for the exchange of ideas. CEP's membership includes the nation's leading education organizations, and its board of directors is made up of corporate leaders and leading experts in the field of character education.

What is CEP's mission?

CEP is dedicated to developing moral character and civic virtue in our young people as an essential way of promoting a more compassionate and responsible society.

How does CEP contribute to the character education movement?

CEP provides research and resources to policymakers, character educators, education leaders, the media and general public, while also setting high standards and recognizing quality initiatives nationwide.

CEP hosts the nation's largest and most comprehensive online Character Education Resource Center at www.character.org, connecting educators and communities with hundreds of organizations, curricula, videos, books, etc.

CEP has created the Eleven Principles of Effective Character Education™, which provides quality standards and practical guidelines necessary to build comprehensive character education initiatives. The Eleven Principles will soon be brought to life through a new publication—the *Eleven Principles Sourcebook*—which will give educators the tools and support needed to implement effective character education.

The National Schools of Character™ Awards is CEP's flagship program which annually identifies and recognizes schools and districts nationwide that exemplify excellence in character education. The National Schools of Character Awards highlight character education's positive impact on school climate, academic excellence, and student success, and serve as exemplary models for schools and educators across the country. The winners' successful character education programs are promoted through a best practice publication, mentoring network and national media-outreach efforts.

CEP's **National Forum** provides teachers, principals, counselors, professors, parents and business and community leaders with a chance to learn what works from the nation's leading character education experts and on-the-ground practitioners. Attendance continues to grow, with last year's numbers reaching approximately 700.

CEP's website includes an **online database of assessment tools**, including a hands-on primer in character education evaluation techniques

CEP is working to make character education an integral part of undergraduate and graduate training of educators. With support from the Center for the Advancement of Ethics and Character at Boston University, CEP released a 1999 landmark report, *Teachers as Educators of Character: Are the Nation's Schools of Education Coming Up Short?*, showing strong support for teaching character education in the nation's schools, although only 13 percent of deans are satisfied with their school's efforts to prepare our nation's future teachers.

For more information, contact Character Education Partnership, 1025 Connecticut Ave. NW, Suite 1011, Washington, DC 20036, or by phone at (800) 988-8081. CEP's web site is at www.character.org.

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15

CHAPTER 15

Sample School District Policies

Davis County School District Policy and Procedures
Davis County, Utah

Wicomico County Board of Education
Salisbury, Maryland

Ramona Unified School District Policy
Ramona, California

Richardson Independent School District
Richardson, Texas

Mustang Public Schools
Mustang, Oklahoma

The public schools belong to all Americans. As guardians of our constitutional principles, teachers and administrators have a special obligation and responsibility to protect the religious liberty rights of students of all faiths and none, and to ensure that religion and religious conviction are treated with fairness and respect...Every local school district should work with parents and community leaders to develop clear religious liberty policies on student religious expression that reflect the new consensus under current law.

—Final Report of the American
Assembly on Religion in Public Life
March 26, 2000

*Congress shall make
no law respecting an
establishment of religion
or prohibiting the free*

The five school district policies reproduced below were collected from across the nation and reflect a variety of approaches to religious liberty in public schools. Their inclusion in this guide is not intended as an endorsement of any particular policy, but an illustration of how different communities have addressed these issues. We urge all communities and school districts to develop their own policies and guidelines using the strategies outlined in the guide. Every school system will differ in that they will also need to recognize their state and local laws concerning religious liberty. For additional sample policies on other issues concerning religion and the schools, write to the authors of this guide at The Freedom Forum First Amendment Center at Vanderbilt University.

DAVIS COUNTY SCHOOL DISTRICT POLICY AND PROCEDURES

Davis County, Utah

1. Purpose and Philosophy

- 1.1. As stated by the national signers of the Williamsburg Charter, the Davis County School Board believes that: “Religious liberty in a democracy is a right that may not be submitted to vote and depends on the outcome of no election. A society is only as just and free as it is respectful of this right, especially toward the beliefs of its smallest minorities and least popular communities.”¹
- 1.2. The Board also believes in its duty to foster knowledge about, and respect for, the United States Constitution.
- 1.3. According to the First Amendment of the United States Constitution, “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof.” Consistent with these Constitutional principles, and guidelines issued by the United States Department of Education, the Board recognizes that public schools have two basic and equally important obligations with respect to religion.
- 1.4. First, schools may not endorse specific religious practices or doctrines, nor may they coerce participation in religious activity. “Among other things, school administrators and teachers may not organize or encourage prayer exercises in the classroom. And the right of religious expression in school does not include the right to have a ‘captive audience’ listen, or to compel other students to participate.” Furthermore, school officials “should not permit student religious speech to turn into religious harassment aimed at a student or a small group of students.”²
- 1.5. Second, schools may not forbid students acting on their own from expressing their personal religious views or beliefs solely because they are of a religious nature. The Board concurs with the statement that: “Nothing in the First Amendment converts our public schools into religion-free zones, or requires all religious expression to be left at the school house door.”³ Schools may not discriminate against private religious expression by students, but must instead give students the same right to engage in religious activity and discussion as they have to engage in other comparable activity.”⁴
- 1.6. It is the Board’s purpose to adhere to these principles and promote mutual understanding and respect for the interests and rights of all individuals regarding their beliefs, values, and customs. Specifically, it is the Board’s purpose to have a policy that:
 - 1.6.1. Foster knowledge and understanding about, and sensitivity toward, religious differences and the role of religion in a diverse, contemporary society;

- 1.6.2. Allows student and employee^s religious expression and freedom of speech within the parameters of existing state and federal law;
- 1.6.3. Supports a climate of academic freedom in which religious ideas and organizations can be discussed in an objective way, for their educational value, with emphasis on the impact of religions on history, literature, art, music, morality, and other key social institutions;
- 1.6.4. Requires official neutrality on the part of teachers, administrators, other school employees and volunteers regarding religious activity when acting in their official capacities;
- 1.6.5. Promotes constructive dialogue between schools and community regarding religion;
- 1.6.6. Encourage educators and all members of the school community to engage in persistent efforts to eliminate prejudice, build trust, work toward consensus, and resolve disputes over religious issues in schools promptly, equitably, sensitively, and with civility at the local level.

2. References

- 2.1. United States Constitution, First Amendment.
- 2.2. Utah Constitution, Article X, Section 8.
- 2.3. Memorandum from Richard Riley, U.S. Secretary of Education, to Superintendents of Schools regarding U.S. Department of Education's Guidance on Religious Expression in Public Schools (Aug. 10, 1995) (Available at the U.S. Department of Education or on the Internet at <http://www.ed.gov/Speeches/08-1995/religion.html>).
- 2.4. American Jewish Congress, et al., Religion in the Public Schools: A Joint Statement of Current Law (April 13, 1995) (<http://www.ed.gov/Speeches/04-1995/prayer.html>).
- 2.5. President Bill Clinton, Address at James Madison High School, Vienna, Virginia (July 12, 1995) (Transcript available in U.S. Office of the Press Secretary and on the Internet at <http://www.ed.gov/PressReleases/07-1995/religion.html>).
- 2.6. Freedom Forum First Amendment Center, et. al., Religious Liberty, Public Education, and the Future of American Democracy, A Joint Statement of Principles (1995) (<http://www.freedomforum.org>).

- 2.7. Finding Common Ground: A First Amendment Guide to Religion and Public Education (Charles Haynes and Oliver Thomas, eds. 1994) (<http://www.freedomforum.org>).
- 2.8. Williamsburg Charter Foundation, The Williamsburg Charter (1988).
- 2.9. Utah Code Ann. §531-13-101. Political and religious doctrine prohibited.
- 2.10. Utah Code Ann. §531-13-101.1. Maintaining constitutional freedom in the public schools.
- 2.11. Utah Code Ann. §531-13-101.2. Waivers of participation.
- 2.12. Utah Code Ann. §531-13-101.3. Expressions of belief-discretionary time.
- 2.13. Utah Code Ann. §531-11-302. Grounds for exemption from required immunizations.
- 2.14. Utah Code Ann. §531-11-12. Period of silence.
- 2.15. Utah Admin. Code R277-105. Recognizing constitutional freedoms in the schools.
- 2.16. Utah Admin. Code R277-610. Released-time classes for religious instruction.
- 2.17. 42 U.S.C. §2000bb. Religious Freedom Restoration Act of 1993.
- 2.18. 42 U.S.C. §2000e. Equal Employment Opportunities Act (Title VII).
- 2.19. Davis County School District Policy 5S-400. School Attendance and Discipline.
- 2.20. Davis County School District Policy 5S-401. Safe and Orderly Schools.
- 2.21. Davis County School District Policy 4I-012. Family Education Rights and Privacy.
- 2.22. Davis County School District Policy 4I-001. Textbook Adoption and Appeals Procedures.

3. Definitions

- 3.1. Civility: The attitude of respect for another's belief or views; a method of dialogue and interaction emphasizing reasonableness and sensitivity. Within the context of religious liberty, civility is a civic virtue, a character trait that encompasses respecting the rights of others, including the rights of all citizens to express their beliefs and practice their faith in a law-abiding manner.
- 3.2. Conscience: A standard based upon learned experiences, a personal philosophy or a system of belief, religious teachings or doctrine, an absolute or external sense of right and wrong which is felt on an individual basis, a belief in an external Absolute, or any combination of the foregoing.⁶

- 3.3. Discretionary time: Non-instructional time during which a student is free to pursue personal interests (e.g., free time before and after school, during lunch and between classes or on buses, and private time before and after athletic events or activities).⁷
- 3.4. Free exercise of religious practice/speech: The right to choose or reject religious, theistic, agnostic, or atheistic convictions and to act upon that choice.⁸
- 3.5. Harassment: Words, gestures, or actions which threaten, intimidate, coerce, or physically or emotionally abuse someone. In determining whether an activity is harassment, school officials shall consider the totality of the circumstances, including but not limited to: severity or pervasiveness of the conduct, number of students involved, maturity and age of students, the request to stop and the conduct of the futility of such a request, etc.
- 3.6. Instructional time: Time during which the school is responsible for a student and the student is required to be actively engaged in a learning activity. Such time includes instructional activities in the classroom or study hall during regularly scheduled hours, required school activities outside the classroom, and counseling, private conferences, or tutoring provided by school employees or volunteers acting in their official capacities during or outside of regular school hours.⁹
- 3.7. Mediation: A structured process in which a neutral facilitator assists parties in a negotiating a voluntary settlement of their dispute.
- 3.8. Official capacity: The conduct of any school employee or volunteer when performing any authorized school function or task; i.e., when performing any act under color and by virtue of his/her position. "Official capacity" is also defined as the conduct of any school employee or volunteer when performing official duties, whether before, during, or after regular school hours.
- 3.9. Official neutrality: School officials and employees while acting in their official capacities shall not use their positions to endorse, promote, or disparage a particular religious, denominational, sectarian, agnostic, or atheistic belief, viewpoint, or practice. Consequently, they are prohibited from doing or saying anything that could be reasonably interpreted as inculcating or inhibiting any religious idea, belief, or practice as defined herein.
- 3.10. Religion: For purposes of free exercise under this policy, the term religion is generally defined as a specific system of belief or worship encompassing the nature of deity and/or reality and the relationship of human beings to that deity and/or reality.¹⁰ However, the term religion is not limited to orthodox belief systems or practices; an individual's belief does not have to recognize a supreme being¹¹ or meet any organizational or doctrinal test¹² to be protected under this policy.¹³

3.11. Religious music/non-religious music:

3.11.1. Religious Music is defined as: 1) Any music that recognizes the existence of a supreme being or deity. “The Messiah,” “O Holy Night,” “Silent Night,” the Kaddish, Kol Nidra, and Maoz Tzur are examples of this music. 2) Any music that is suggestive of or that has become closely associated with religions or religious holidays that may be looked upon as being of a religious nature.

3.11.2. Non-religious music is defined as seasonal, cultural, or ethnic music such as “Frosty the Snowman,” “Jingle Bells,” “Winter Wonderland,” and “Over the River and Through the Woods.”

3.12. Religious symbols: A religious symbol is: 1) Any object that portrays or recognizes the existence or a supreme being or deity. Symbols in this category include The Cross, Star of David, nativity scene, menorah, tablets, chalices, crescent, Buddha, and any other symbols that are part of a religious celebration or ceremony. 2) Any object that is so closely associated with religion or with the celebration of a religious holiday that it is looked upon as being of religious nature. Such objects include the dreidel, Christmas tree, Santa Claus, Lion of Judah, Easter eggs and Easter bunnies.

4. Policy

- 4.1. It is District policy to comply with existing state and federal law regarding religion and religious expression in public schools. Specifically, it is District policy to: 1) allow students and employees to engage in expression of personal religious views or beliefs within the parameters of current law, and 2) maintain the schools’ official neutrality regarding sectarian religious issues: according to the constitutional principle of separation between church and state,¹⁴ the District will neither advance nor inhibit religion.¹⁵
- 4.2. It is also District policy to take all reasonable steps to resolve disputes over religious issues in schools promptly, equitably, and with civility at the local level.

5. Student Expression of Personal Religious Beliefs or Views

- 5.1. Non-discrimination: Schools may not forbid students acting on their own from expressing their personal religious views or beliefs solely because they are of a religious nature. Schools may not discriminate against private religious expression by students, but must instead give students the same right to engage in religious activity and discussion as they have to engage in other comparable activity.
- 5.2. Freedom to act: While the freedom to believe is absolute, the freedom to act on a belief is not. In order to claim the Free Exercise protections of the First Amendment

and this policy, a person must show that his or her actions 1) are motivated by a sincere religious belief, and 2) have been substantially burdened by school officials or the District.

- 5.3. Least restrictive means: If an individual can show that his or her actions are motivated by a sincere religious belief and have been substantially burdened by school officials or the District, school officials can still regulate the conduct if they have a compelling interest and pursue such interest the manner least restrictive of the individual's religion.¹⁶
- 5.4. Student religious expression during discretionary time: Free exercise of religious practices or freedom of speech by student during discretionary time shall not be denied unless the conduct or speech unreasonably interferes with the ability of the school officials to maintain order and discipline, violates schools rules, impinges on the rights of others, unreasonably endangers persons or property, creates a coercive environment, or violates concepts of civility or propriety appropriate to the school setting.¹⁷
- 5.4.1. Student conduct or speech of a personal religious nature that may not be prohibited unless it violates the standards above, include, but is not limited to:
- 5.4.1.1. Reading the Bible or other scriptures;
 - 5.4.1.2. Saying grace before meals;
 - 5.4.1.3. Praying with friends in cafeterias, hallways, around flagpoles, or at athletic contests and other extra-curricular activities;
 - 5.4.1.4. Discussing religious views with other students, or attempting to persuade peers about religious topic, as long as the persuasive speech does not constitute harassment.
- 5.5. Student religious expression during instructional time: Students participating in school sponsored learning activities, provided and directed by school employees acting in their official capacities, shall not be prohibited from expressing personal religious beliefs or be penalized for so doing, unless the expression unreasonably interferes with the ability of school officials to maintain order and discipline, violates school rules, impinges on the rights of others, unreasonably endangers persons or property, creates a coercive atmosphere, or violate concepts of civility or propriety appropriate to the school setting.¹⁸
- 5.5.1. Student religious conduct or expression that may not be prohibited in homework, classroom discussions, presentations, assignments, or school sponsored activities, unless it violates the standards above, includes but is not limited to:

- 5.5.1.1. Submitting homework, artwork, or other assignments with religious content;
- 5.5.1.2. Giving class presentations with religious content that are relevant to the curriculum and matter being discussed;
- 5.5.1.3. Making religious remarks or asking question about religion in the ordinary course of classroom discussion;
- 5.5.1.4. Asking questions of students or school employees regarding their religious beliefs or views.
- 5.5.2. Teachers and other school officials should evaluate homework and classroom work with religious content consistent with ordinary academic standards of substance and relevance, as well as other legitimate pedagogical concerns.¹⁹
- 5.5.3. When responding to a student's question about an employee's personal religious beliefs or views, the employee must maintain official neutrality and be careful not to advocate or encourage acceptance of his/her religious belief or perspective (see section 10.2 of this policy).
- 5.5.4. While students have the right to give educationally relevant classroom presentations on religious topic or engage in other religious expression during instructional time, they do not have the right to make a captive audience listen to a lengthy sermon, or compel other students to participate in religious exercises. Students should not conduct religious ceremonies or exercises during instructional time. No student should be coerced to participate in such religious activity.²⁰

6. Religious Clothing and Apparel

- 6.1. Because dress is a form of individual expression, any prohibition or regulation of religious clothing or apparel must be done in the least restrictive manner possible to accomplish district and school objectives of maintaining a safe and orderly school environment.²¹ School officials should make appropriate exemptions to dress code and reasonably accommodate students who wear hairstyles, clothing, head wear, jewelry, cosmetics, or other apparel as a personal expression of sincerely held religious beliefs.
- 6.2. Religious attire that should be appropriately accommodated in school includes, but is not limited to:
 - 6.2.1. Hairstyles;
 - 6.2.2. Yarmulkes;

- 6.2.3. Head scarves or turbans;
 - 6.2.4. Crucifixes, stars of David, CTR rings, and other jewelry;
 - 6.2.5. T-shirts or badges with religious messages or insignia;
 - 6.2.6. Items of ceremonial dress.²²
- 6.3. School officials should also be sensitive and appropriately accommodate students who request not to wear certain gym clothes that they regard, on religious grounds, as immodest.

7. Moment of Silence in Classrooms

- 7.1. In accordance with Utah law²³, teachers may provide for the observance of a period of silence in the classroom each school day. However, teachers and other school officials must maintain official neutrality by neither encouraging nor discouraging prayer or other religious exercise during the moment of silence.²⁴
- 7.2. Under District policy teachers and other school officials may not organize, endorse, or encourage prayer exercises in the classroom.²⁵ Teachers and other school officials must supervise during this time.

8. Graduation Exercises and Other Extra-Curricular Activities

- 8.1. Prayers prohibited at graduation: It is District policy to prohibit prayers as an officially scheduled and sanctioned part of graduation exercises.²⁶
- 8.2. Moments of silence: While the District does not endorse or discourage the practice, students may elect to hold a moment of silence as part of graduation ceremonies.²⁷
- 8.2.1. No Prayer: A moment of silence may only be initiated and conducted by students, and shall not be used as a forum for vocal prayer or other religious exercise, but rather as an opportunity for those in attendance at graduation to participate in a quiet moment according to the dictates of their own conscience.²⁸
 - 8.2.2. Official neutrality: During a moment of silence and all other activities associated with graduation, school officials shall maintain official neutrality.²⁹
- 8.3. Baccalaureate services: Students who wish to include religious activities, such as prayer, in recognition or celebration of their graduation may organize or attend privately sponsored baccalaureate services. Whether such services are organized or sponsored by students, parents, religious organizations, or community groups, the

sponsors may rent District facilities according to the provision of the District's Building Rental Policy (Policy 6F-102).

8.3.1. Under the Building Rental Policy, noncommercial rates apply to religious organizations, parent organizations, or other nonprofit community groups desiring to rent District facilities for baccalaureate services.

8.3.2. School officials may announce the time and place of baccalaureate services, but must not encourage or discourage student participation in such services. Announcing of all baccalaureate services must be done on the same terms, and school officials must clearly state as part of all announcements that baccalaureate services are privately sponsored and that participation is purely voluntary.

8.4. Prayers by non-students at athletic contests and other extra-curricular events: Consistent with the general policy on school-sanctioned prayers, it is District policy to prohibit prayers initiated or led by coaches, parents, clergy, or other non-students prior to, during, or after athletic contests and other extra-curricular events.³⁰ Students may pray together at such events consistent with the guidance outlined in Section 5.1 of this policy. Coaches, administrators, and other school officials may be present during student prayers to supervise, but should in no way participate in or encourage prayer exercises. School officials should take steps to prevent any activity from being coercive or harassing.

9. Distribution of Religious Materials on School Grounds

9.1. Non-school sponsored organizations and non-students may only distribute literature or other materials in schools or on school grounds in accordance with reasonable time, place, and manner restrictions imposed by the school.³¹

9.2. Students may distribute literature unrelated to school curriculum or activities only at reasonable times, places, and manners designated by the school.³²

9.3. Religious tracts, books, or literature may not be singled out for special regulation or prohibition based on content³³, but are subject to reasonable time, place, and manner restrictions imposed by the schools on other non-school related literature.³⁴

10. Employee Expression of Personal Religious Beliefs

10.1. Official neutrality: All employees of the Davis County School District must maintain strict neutrality when acting in their official capacities. An employee's rights relating to voluntary religious practices and freedom of speech do not include proselytizing of any student regarding atheistic, agnostic, sectarian, religious, or denominational doctrine while the employee is acting in the employee's official capacity, nor may an

employee attempt to use his or her position to influence a student regarding the student's religious beliefs or lack thereof.³⁵

- 10.2. Response to questions: If a student asks an employee about that employee's personal religious beliefs, the employee may choose not to respond out of professional respect for the student's freedom of conscience or personal beliefs. However, while acting in an official capacity, an employee may respond in an appropriate and restrained manner to a spontaneous question from a student regarding the employee's personal religious beliefs or perspectives. Because of the special position of trust held by school employees, employees may not advocate or encourage acceptance of specific religious beliefs or perspectives; but may, by exercising due caution, explain or define personal religious beliefs or perspectives (see section 3.9 of this policy).³⁶
- 10.3. Reasonable accommodation: It is District policy to reasonably accommodate an employee's or prospective employee's religious dress, observance or practice whenever such accommodation can be made without undue hardship on the conduct or the District's business.³⁷

11. Volunteers

- 11.1. The District prohibits discrimination on the basis of religion against any group or individual desiring to volunteer in Davis County Schools.
- 11.2. Volunteers must maintain strict neutrality regarding religion while performing volunteer work for the schools.
- 11.3. Volunteers are prohibited from engaging in proselytizing activities or recruiting activities of any type on school grounds or in conjunction with any school activity, and must strictly follow directions given them by school officials.
- 11.4. Religious apparel is permissible if it is required by a person's religion, is part of the person's ordinary work dress and would not be disruptive of the school environment and does not contain a proselytizing message.
- 11.5. Volunteers, including those from religious organizations, serving in the schools and interacting directly with student son a regular basis, shall wear a district approved volunteer name tag containing the individual's first and last name, and shall sign a form acknowledging that they understand and will abide by the provisions of this policy.
- 11.6. School officials are responsible to monitor the behavior and interactions of volunteers while they are serving in schools or participating in school activities. Volunteers who fail to comply with the provisions of this policy shall be asked to leave the school or activity. Ultimate responsibility for enforcement of this policy at the school level rests with the building administrator.

12. Religion in the Curriculum

- 12.1. Teaching about religion: Religious instruction is the responsibility of parents and religious institutions, but teaching about religion and beliefs of conscience is a legitimate and appropriate part of a complete academic education on the elementary and secondary levels.³⁸
- 12.2. Instructional practices: To ensure that the educational approach to religion is one of academic instruction, not of indoctrination, and that it does not unduly favor religion over non-religion, teachers and school officials shall adhere to the following guidelines:
 - 12.2.1. Study or presentations about religion or other beliefs of conscience must achieve academic educational objectives, and be presented in a balanced manner within the context of the approved curriculum.
 - 12.2.2. The school's approach to religion must be academic, not devotional.
 - 12.2.3. Students may be exposed to any and all religious views and beliefs of conscience, but they should not be coerced to accept any particular view or belief.³⁹
 - 12.2.4. The objective study of comparative religions is permissible, but no religious tenet, belief, or denomination may be given inappropriate emphasis; the school may educate about all religions, but may not promote or denigrate any religion or belief of conscience.
 - 12.2.5. Students should be taught to understand a variety of beliefs, and to respect the rights of all people, including the rights of individuals or groups with whom the students may disagree. Teaching about religion and beliefs of conscience should emphasize the role of religion and beliefs of conscience in history and culture, and the importance of religious liberty as a cornerstone of a democratic society.
- 12.3. Privacy: In accordance with federal and state Family Educational Rights and Privacy laws, school officials shall not solicit private information or explanations from students about their personal religious affiliations, beliefs, or practices, without first obtaining proper parental consent.

13. Religious Music

- 13.1. Religious music in schools: Seasonally appropriate and sacred religious music may be performed in school, if presented in a balanced, prudent, and objective manner.⁴⁰
 - 13.1.1. Music should be selected on the basis of its musical quality and educational value rather than its religious content.

- 13.1.2. Music performances must achieve secular educational objectives, and be presented in a balanced manner within the context of the approved curriculum.
 - 13.1.3. Teachers should use good judgment and be especially sensitive to the feelings of students who might wish not to participate for religious reasons, and should explore all reasonable alternatives in resolving a student's objection before offering or granting a waiver of participation.
- 13.2. Performances at religious services: No school employee or student may be required to attend or participate in any religious service, whether in an individual capacity or as a member of a performance group, regardless of where or when the service is held. No penalty may be assessed for failure to attend or perform in such an activity.⁴¹
- 13.2.1. Students may voluntarily attend and perform during a religious service as individuals or as members of a group, provided all arrangements are made by students or non-school adults.⁴²
- 13.3. Performance in church-owned facilities: Unless granted an appropriate waiver, students who are members of performing groups such as school choirs may be required to rehearse or otherwise perform in a church-owned or operated facility if the following conditions are met:
- 13.3.1. The performance is not part of a religious service;
 - 13.3.2. The activity of which the performance is a part is neither intended to further a religious objective nor under the direction of a church official; and
 - 13.3.3. The activity is open to the general public.⁴³
- 13.4. Visits to church-owned facilities: Unless granted an appropriate waiver, students may be required to visit church-owned facilities when religious services are not being conducted if the visit is intended solely for the purpose of pursuing permissible educational objectives such as those relating to art, music, architecture or history.⁴⁴

14. Religious Holidays

- 14.1. No celebration: Religious and civic holiday such as Easter, Passover, Rosh Hashanah, Yom Kippur, Thanksgiving, Hanukkah, Christmas, Kwanzaa, and Ramadan, offer opportunities to teach about a variety of religious traditions and beliefs of conscience during the school year. While teachers and school officials may teach about religious holidays, they may not celebrate such holidays in school.
- 14.2. Christmas: Because Christmas is a holiday that may cause particularly strong concerns among some students and members of the community, teachers and school officials

should be especially mindful and sensitive to the beliefs of all students during this season.⁴⁵ At Christmas the schools should emphasize the positive values of that season that are shared by all people, whether they be of a particular religion or no religion. Thus, values such as peace, goodwill, kindness, unselfishness, giving, and brotherhood are appropriate for recognition at that time, as at any time in the year. During the Christmas season, teachers are encouraged to include discussions or presentations about other religious or cultural winter holidays coinciding with Christmas, such as Hanukkah and Kwanzaa.

- 14.3. Other holidays: Activities and discussions related to cultural holidays such as Valentine's Day, St. Patrick's Day, and Halloween should be academic in nature. Because these holidays may be viewed by some parents as having religious connotations, requests for excusal in school activities associated with these holidays should be routinely granted.
- 14.4. Parties: Class parties associated with seasonal holidays are appropriate insofar as they are consistent with the approved curriculum. However, consistent with the District's goal of maximizing instructional time, such parties must not unduly interfere with regular academic activities.
- 14.5. Teaching about holidays: The significance of holidays, whether religious or secular, may be explained or discussed in an objective manner as part of regular classroom instruction or as questions from students arise, so as to promote a better understanding among all students.⁴⁶

15. Religious Symbols

- 15.1. During holidays: The display of religious symbols that are part of religious holidays is permitted as a teaching aid or resource, provided such symbols are displayed as an example of the cultural heritage of the holiday, and are temporary in nature.⁴⁷ Such holidays include, but are not limited to: Christmas, Kwanzaa, Hanukkah, Ramadan, Easter, Passover, Valentine's Day, St. Patrick's Day, Thanksgiving, and Halloween.
- 15.2. Diversity of symbols: If any religious symbol is to be part of a display, schools must allow for other religious, cultural or ethnic symbols.⁴⁸

16. Waivers of Participation

- 16.1. Rights of individuals: While the District acknowledges its obligation to be sensitive and fair toward the personal rights and beliefs of all individuals, merely exposing students to ideas that may offend the religion does not amount to a substantial burden on their religious exercise. Furthermore, it is unconstitutional to allow one person's or one group's religion to determine the curriculum for all others.⁴⁹ Consequently, it is District policy to accommodate the legitimate objections of

individuals by granting waivers of participation when requested or when no other reasonable alternative is possible.⁵⁰

- 16.2. A parent, a legal guardian of a student, or a secondary student may request a waiver of participation in any portion of the curriculum or school activity which the requesting party believes to be an infringement upon a right of conscience or the exercise of religious freedom in any of the following ways:
 - 16.2.1. It would require participation in a practice that would be offensive to or substantially burdensome on a religion.
 - 16.2.2. It would require participation in a practice forbidden by religious belief or practice, or right of conscience; or
 - 16.2.3. It would bar participation in a practice required by a religious belief or practice, or right of conscience.
- 16.3. A claimed infringement must rise to a level of belief that the school requirement violates a superior duty which is more than personal preference.
- 16.4. If a minor student seeks a waiver of participation, the school shall promptly notify the student's parent or legal guardian about the student's choice.
- 16.5. A parent, guardian, or secondary student requesting a waiver of participation may also suggest an alternative to the school requirement or activity that requires reasonably equivalent performance by the student.
- 16.6. In responding to a request for a waiver, the school may:
 - 16.6.1. Waive participation by the student in the objectionable curriculum or activity, with no penalty;
 - 16.6.2. Provide a reasonable alternative as suggested by the parent or secondary student, or other reasonable alternative developed in consultation with the requesting party, that will achieve the objectives of the portion of the curriculum or activity for which waiver is sought; or
 - 16.6.3. Deny the request.
- 16.7. A request for waiver shall not be denied unless school officials determine that requiring the participation of the student is the least restrictive means necessary to achieve a compelling school interest.
- 16.8. In responding to a request for waiver, the school shall not require a student to accept a substandard or educationally deficient alternative.

17. Waivers of Immunization on Religious Grounds

- 17.1. General rule: A student may not enter school without a certificate of immunization.
- 17.2. Exception: A student is exempt from receiving the required immunizations if the student presents to the principal a statement that the student is a bona fide member of a specified, recognized religious organization whose teachings are contrary to immunizations, signed by one of the following persons:
- 17.2.1. One of the student's parents;
 - 17.2.2. The student's legal guardian;
 - 17.2.3. A legal age brother or sister of a student who has no parent or guardian; or
 - 17.2.4. The student, if of legal age.⁵¹

18. Release Time

- 18.1. General rule: Public schools may permit the release of students during school hours for attendance at religious classes taught by religious teachers on private property, but not on public school premises.⁵² With respect to released time programs in Davis County, the District practice and procedure is as follows⁵³:
- 18.1.1. Religious classes shall not be held in school buildings or on school property in any way that permits public money or property to be applied to, or that requires public employees to become entangled with, any religious worship, exercise, or instruction.
 - 18.1.2. Students shall attend released-time classes during the school day only upon the written request and permission of the student's parent or legal guardian.
 - 18.1.3. Because public schools have a legitimate interest in knowing where their students are during school hours, released-time personnel may transmit regular attendance reports to the public school.⁵⁴ However, school personnel may not become entangled with released-time programs by gathering or compiling attendance reports from released-time programs.
 - 18.1.4. Teachers of released-time classes are not to be considered members of the school faculty or to participate as faculty members in any school function.
 - 18.1.5. Schedules of classes for public schools shall not include released-time classes. At the convenience of school, registration forms may contain a space indicating "released-time" designation. Scheduling shall be done on forms and supplies furnished by the religious institution and by personnel employed or engaged by the institution and shall occur off school premises.

- 18.1.6. Public school publications (i.e., student handbooks, folders, newspapers, etc.) shall not include pictures, reports or records of functions of released-time classes.
- 18.1.7. Public school teachers, administrators, or other officials shall not request teachers of released-time classes to exercise functions or assume responsibilities for the public school program which would result in a commingling of the activities of the two institutions.
- 18.1.8. Public school equipment or personnel shall not be used in any manner to assist in the conduct of released-time classes. No connection of bells, telephones, or other devices shall be made between public school buildings and institutions offering religious instruction except as a convenience to the public school in operation of its own program. When any connection of devices is permitted, the pro-rata costs shall be borne by the respective institutions.
- 18.1.9. Institutions offering religious instruction shall be regarded as private schools completely separate and apart from the public schools.

19. Dispute Resolution

- 19.1. Importance of alternative dispute resolution: given the divisive, lengthy, and costly nature of civil rights litigation for all parties, when First Amendment conflicts arise⁵⁵, it is District policy to take all reasonable steps to resolve disputes over religious issues in schools promptly, equitably, and with civility at the local level.
- 19.2. School level: Principals and other local school officials shall make every reasonable effort to resolve complaints under this policy at the school level.
 - 19.2.1. Individuals shall file written complaints of religious discrimination with the principal or supervisor. If the complaint involves the principal or supervisor, the complaint may be filed directly with the District's Civil Rights Compliance Officer. Appropriate accommodations should be made for individuals with disabilities or small children unable to write.
 - 19.2.2. As soon as possible, but no later than five (5) working days following receipt of the complaint, the principal or building supervisor shall meet with the complaining party to discuss the complaint and explore possibilities for resolution.
- 19.3. Mediation: If resolution is not reached at the school level through informal discussions with the principal or supervisor, the complaint will be subject to the following mediation process:

- 19.3.1. The Civil Rights Compliance Officer shall be contacted and given all relevant information, including copies of written complaints or statements from the parties.
 - 19.3.2. As soon as possible, but no later than five (5) working days following receipt of the complaint, the Compliance Officer will appoint a trained, qualified mediator. The Compliance Officer may appoint an internal (District employee) mediator neutral to the complaint, upon mutual agreement of the parties. If either or both of the parties object to the internal mediator, the Compliance Officer will appoint a mediator from outside the District. If an external mediator is appointed, the District will bear all costs of hiring the mediator.
 - 19.3.3. As soon as possible, but no later than ten (10) working days following the appointment of the mediator, the Compliance Officer will schedule a mediation conference at a neutral site convenient to all parties and the mediator.
 - 19.3.4. The mediator shall earnestly attempt to facilitate a resolution of the complaint. However, the mediator will reserve the right to stop the mediation if it becomes reasonably apparent that a solution cannot be reached or if the parties stop negotiating in good faith.
 - 19.3.5. If resolution is obtained through mediation, the mediator shall forward the complaint, along with the mediator's bill (if an outside mediator), and signed mediation agreement, to the Superintendent of Schools.
- 19.4. Civil Rights Review Board: If no resolution is reached through mediation, the Compliance Officer shall arrange for an impartial hearing before a Civil Rights Review Board as soon as possible, but not later than ten (10) working days following the close of the mediation.
- 19.4.1. The Civil Rights Review Board will be a three-person panel consisting of one person with school administration experience, one clergy or religious representative, and one citizen, all of whom must be neutral to the complaint and who have been trained to the impartial hearing officers.
 - 19.4.2. After hearing the complaint and reviewing the totality of the circumstances, the Civil Rights Review Board shall issue a written decision of findings and conclusions, and a written recommendation for resolution, to the Superintendent of Schools as soon as possible, but no later than ten (10) working days following the hearing.

19.5. Appeals: Any party who disagrees with the decision of the Civil Rights Review Board and/or Superintendent may appeal the decision, in writing, to the Board of Education within ten (10) working days following the date of the decision.

19.5.1. As soon as possible, but no later than ten (10) working days following the receipt of a timely appeal, the Board of Education shall hold an open hearing to consider the complaint. As soon as possible, but no later than ten (10) working days following the hearing, the Board of Education shall issue a written decision.

19.6. Right to counsel: All parties to a complaint may be represented by legal counsel or other representative of their choosing, and at their own expense, at any stage of this dispute resolution procedure.

20. Monitoring Responsibility and Review

20.1. Monitoring responsibility: The Policy Specialist, and the District Civil Rights Compliance Officer, as designated by the Superintendent of Schools, will be responsible for ensuring compliance with this policy. They will yearly evaluate, among other things: the frequency and nature of complaints under this policy; staff and student compliance with the policy; and staff, student, and parent perceptions of the policy's effectiveness. Results of the evaluation will be used to modify or update the policy as appropriate, with an emphasis on remedying deficiencies.

20.2. Policy review: A committee of administrators, teachers, parents, students, clergy, and attorneys shall be convened annually to review this policy's effectiveness and compliance with applicable State and federal law, and to update the policy accordingly.

21. Policy Dissemination

21.1. A summary of this policy and related materials shall be posted in prominent place in each District facility. A summary of the policy shall also be published in student registration materials, student and employee handbooks, and other appropriate publications as directed by the Superintendent.

Document History

Adopted: January 21, 1997

Policy Effective: February 1, 1997

Revised: August 4, 1998 (Section 11 Volunteers)

¹ Finding Common Ground: A First Amendment Guide to Religion and Public Education (Charles C. Haynes & Oliver Thomas, eds. 1994).

² Memorandum from Richard Riley, U.S. Secretary of Education, to Superintendents of Schools regarding U.S. Department of Education's Guidance on Religious Expression in Public Schools (Aug. 10, 1995) (Available at U.S. Department of Education or on the Internet at <http://www.ed.gov/PressReleases/07-1995/religion.html>).

³ President Bill Clinton, Address at James Madison High School, Vienna, Virginia (July 12, 1995) (Transcript available in U.S. Office of the Press Secretary or on the Internet at <http://www.ed.gov/PressReleases/07-1995/religion.html>).

⁴ Memorandum from Richard Riley, U.S. Secretary of Education, to Superintendents of Schools regarding U.S. Department of Education's Guidance on Religious Expression in Public Schools (Aug. 10, 1995) (Available at U.S. Department of Education or on the Internet at <http://www.ed.gov/PressReleases/07-1995/religion.html>).

⁵ While this policy addresses expressive rights of both students and employees, the rights of teachers and other school officials are not coextensive with the rights of students. Because school employees are agents of the State of Utah, they are obligated by law to remain neutral with respect to religion while acting in their official capacity. Specifically, school employees must be circumspect in matters of personal religious expression and take care to avoid actions or words that would advance or inhibit religion. For example, courts have held that a teacher does not have the right to sit at his desk and silently read the Bible in front of students during a classroom silent reading period. *Roberts v. Madigan*, 921 F.2d 1047 (10th Cir. 1990). In addition, school officials must not do or say anything that could reasonably be construed as encouraging or discouraging prayer or other religious exercise in school.

⁶ Utah Admin. Code §R277-105-1 (B)(1996).

⁷ Utah Admin. Code §R277-105-1(C)(1996).

⁸ Utah Admin. Code §R277-105-1 (E)(1996).

⁹ Utah Admin. Code §R277-105-1 (G)(1996).

¹⁰ *Alabama & Coushatta Tribes v. Big Sandy School Dist.*, 817 F.Supp. 1319, 1329 (E.D. Tex. 1993). See also *Welsh v. United States*, 398 U.S. 333, 340 (1970) (defining religion for Free Exercise purposes as any set of beliefs addressing matters of "ultimate concern" occupying a "place parallel to that filled by . . . God in traditionally religious persons."); *Fleishfresser v. Directors of Sch. Dist. 200*, 15 F.3d 680, 688 n. 5 (7th Cir. 1994).

¹¹ *Torcaso v. Watkins*, 367 U.S. 488 (1961).

¹² *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829 (1989); *Alabama & Coushatta Tribes v. Big Sandy Sch. Dist.*, 817 F. Supp. 1319, 1329 (E.D. Tex. 1993); *McGlothin v. Jackson Mun. Separate Sch. Dist.*, 829 F. Supp. 853, 866 n. 19 (S.D. Miss. 1992).

¹³ It is District policy to avoid excessive entanglement with religion. Therefore, school officials should not engage in the practice of judging whether a particular belief is truthful, acceptable, logical, consistent, or comprehensible to others. However, it is proper for school officials to determine whether an individual's belief is sincerely religious or a sincere matter of conscience, as opposed to simply a matter of personal preference. See, e.g., *Brown v. Pena*, 441 F. Supp. 1382, 1385 (S.D. Fla. 1977), *aff'd*, 589 F.2d 1113 (5th Cir., 1979); *McGlothin v. Jackson Mun. Separate Sch. Dist.*, 829 F.Supp. 853, 866 n.19 (S.D. Miss. 1992). In reaching such a determination school officials shall consult with relevant individuals (i.e., parents, clergy, etc.) and consider the totality of the circumstances.

¹⁴ *Everson v. Board of Educ.*, 330 U.S. 1 (1947).

¹⁵ School officials may not pray, read scriptures, or do anything else that could be construed by students as encouraging or discouraging acceptance of a particular religious belief or participation in a religious exercise. See §§1.6.4, 3.9, and footnote 5.

¹⁶ In other words, the school must choose a course of action that does not violate the individual's religion if such a course of action is available and feasible for the school.

¹⁷ Utah Code Ann. §53A-13-101.3(2)(b); Utah Admin. Code §R277-105-6 (B).

¹⁸ Utah Code Ann. §53AS-13-101.3(1), Utah Admin. Code R277-105-6 (A).

¹⁹ See, e.g., *Settle v. Dickson County Sch. Bd.*, 53 F.3d 152 (6th Cir. 1995) (holding that teacher could give 9th grade students a grade of “0” on her proposed research paper covering life of Jesus Christ because student already knew a lot about the subject, and therefore the assignment’s objective of having students research an unfamiliar topic would not be accomplished, and also because while assignment called for consulting at least four sources, student submitted the Bible as her sole source of information); *Denoyer v. Livonia Pub. Sch.*, 799 F. Supp. 744 (E.D. Mich. 1992), aff’d 1 F.3d 1240 (1993) (upholding school district’s decision to prohibit second grader from showing video of herself singing evangelical proselytizing Christian song in Classroom as part of “show and tell” program because showing of the video tape was inconsistent with program’s purpose of teaching children oral communication skills).

²⁰ Id.; see also *Duran v. Nitsche*, 780 F. Supp. 1048 (E.D. Pa. 1991), vacated, 972 F.2d 1331 (3rd Cir. 1992).

²¹ According to District and school dress codes, students are prohibited from wearing any gang-related attire, as well as hairstyles, clothing, apparel, or cosmetics that substantially interferes with the work of the school, materially disrupts the educational process, or impinges upon the rights of other students. See District Policy #5S-400 § 10 (School Discipline and Attendance Policy): *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503 (1969).

²² See *Cheema v. Thompson*, 67 F.3d 883 (9th Cir. 1995)

²³ Utah Code Ann. §53A-11-12.

²⁴ Upon holding a classroom moment of silence, teachers should instruct students that they may engage in any quiet activity of their choice. However, teachers should not say or do anything (i.e., folding arms and bowing head, reading scriptures, etc.) that could reasonably be interpreted as encouraging or discouraging prayer or other religious exercise.

²⁵ Utah Code Ann §53A-13-101.1(3); Utah Admin. Code R277-105-7.

²⁶ The United States Supreme Court has ruled that it is unconstitutional for clergymen to give prayers at public school graduation ceremonies. *Lee v. Weisman*, 112 S. Ct. 2638 (1992). While the Supreme Court has not yet ruled on the constitutionality of student-led graduation prayers, the lower federal courts are split on the issue. Compare *American Civil Liberties Union of New Jersey v. Black Horse Pike Regional Bd. Of Educ.*, 84 F.3d 1471 (3rd Cir. 1996); *Harris v. Joint Sch. Dist. No. 241*, 41 F.3d 447 (9th Cir. 1994), vacated, 115 S. Ct. 2604 (1995) (ruling that student-led graduation prayers are unconstitutional); with *Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274 (5th Cir. 1996); *Jones v. Clear Creek Indep. Sch. Dist.*, 977 F.2d 963 (5th Cir. 1992), cert. denied 113 S. Ct. 2950 (1993); and *Albright v. Board of Educ. Of Granite Sch. Dist.*, 765 F. Supp. 682 (D. Utah 1991) (upholding student-led graduation prayers).

²⁷ See *Wallace v. Jaffree*, 105 S. Ct. 2479, 2498 (1985) (O’Connor, J., concurring): A state-sponsored moment of silence in the public schools is different from state-sponsored vocal prayers or Bible reading. First, a moment of silence is not inherently religious. Silence, unlike prayer or Bible reading need not be associated with a religious exercise. Second, a pupil who participates in a moment of silence need not compromise his or her beliefs. During a moment of silence, a student who objects to prayer is left to his or her own thoughts, and is not compelled to listen to the prayers or thoughts of others. . . . It is difficult to discern a serious threat to religious liberty from a room of silent, thoughtful school children.

See also, *Jaffree*, 105 S. Ct. at 2495 (“Although we do not reach the other two prongs of the Lemon test, I note that the ‘effect’ of a straightforward moment-of-silence statute is unlikely to ‘advanc[e]’ or inhibi[t] religion.”) (Powell, J., concurring); *School District of Abington Township v. Schempp*, 83 S. Ct. 1560, 1602 (“It has not been shown that . . . the observance of a moment of reverent silence at the opening of class, may not adequately serve the solely secular purposes of the devotional activities without jeopardizing either the religious liberties of any members of the community or the proper degree of separation between the spheres of religion and government.”).

More recently, a federal court in *Bown v. Gwinnett County Sch. Dist.*, 895 F. Supp. 1565, 1579 (N.D. Ga. 1995) noted:

Momentary silence simply does not jeopardize either the religious liberties of any members of the community or the proper degree of separation between the spheres of religion and government. Momentary silence does not advance or inhibit religion. Providing this moment of silence for school children does not convey a government message advancing or inhibiting religion.

²⁸ See *Lundberg v. West Monona Communication Sch. Dist.*, 731 F. Supp. 331, 341 (N.D. Iowa 1989) (holding that school districts’ interest in avoiding establishment of religion outweighs students’ right to free speech and free exercise and thus prayer at graduation should not be allowed).

²⁹ Principals, teachers, school board members, and other school officials present on the stand as an official part of graduation ceremonies should not say or do anything (i.e., folding arms and bowing heads, reading scriptures, etc.) that could reasonably be interpreted as encouraging or discouraging prayer or other religious exercise during the moment of silence.

³⁰ See *Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274 (5th Cir. 1996) (ruling unconstitutional a Mississippi state statute that permitted “invocations, benedictions, or nonsectarian, nonproselytizing student-initiated voluntary prayer during compulsory or noncompulsory school-related student assemblies, student sporting events, . . . and other school-related student events.”): *Doe v. Duncanville Indep. Sch. Dist.*, 994 F. 2d 160 (5th Cir. 1993) (striking down coach’s custom of leading girls’ basketball team in Lord’s Prayer before and after practice and games).

³¹ Compare *Berger v. Rensselaer Central Sch. Corp.*, 982 F.2d 1160 (7th Cir. 1993), *cert. denied*, 113 S. Ct. 2344 (1993) (striking down school district's practice of allowing the Gideons to distribute Bibles in 5th grade classrooms); with *Peck v. Upshur County Bd. of Educ.*, 941 F.Supp. 1465 (N.D.W.Va. 1996) (upholding district's policy of allowing private citizens to set up tables at designated places in schools to distribute bibles and other religious materials); *Schanou v. Lancaster County Sch. Dist.*, 863 F.Supp. 1048 (D. Neb. 1994), *vacated*, 62 F.3d 1040 (8th Cir. 1995) upholding district's policy of allowing Gideons to distribute Bibles once per year on school grounds, but outside school buildings, in a non-coercive manner).

³² Federal courts have recently upheld restrictive policies governing the distribution of student materials. For example, the court in *Muller by Muller v. Jefferson Lighthouse School*, 98 F.3d 1530 (7th Cir. 1996) ruled that the following policy of the Racine Unified School District was consistent with the First Amendment and did not violate students' rights to freedom of speech:

Section 6144.11(Non-School-Sponsored Publications)

Publications produced by school district students without school sponsorship, or handbills, may be distributed and/or sold within the school according to the following procedure.

1. They must include the name of the sponsoring organization and/or individual.
2. A time and place for the distribution must be set cooperatively with the principal.
3. A copy must be given to the principal at least 24 hours before its distribution.
4. The publication shall contain this phrase: "The opinions expressed are not necessarily those of the school district or its personnel."
5. If the principal finds the publication (1) contains libelous . . . or obscene language, (2) may incite (lead) persons to illegal acts, (3) is insulting to any group or individuals, or (4) he/she can reasonably forecast that its distribution to the students will greatly disrupt or materially interfere with school procedures and intrude into school affairs or the lives of others, the principal shall notify the sponsors of the publication that its distribution may not be started, or must stop. The principal shall state the reason for his/her decisions.

Section 6144.12: (Distribution and Displaying Materials)

The written permission of the school principal or the Superintendent of Schools is required before students may distribute or display on designated bulletin boards, materials from other sources outside the school

³³ See e.g., *Clark v. Dallas Indep. Sch. Dist.*, 806 F. Supp. 116 (N.D. Tex. 1992) (striking down district policy that prohibited students from engaging in religious discussions and meetings and from distributing religious materials on district property before and during school; court found that "a blanket prohibition on high school students' expression of religious views and even proselytizing on campus is unconstitutional and contrary to the purpose of secondary schools.").

³⁴ For example, a court recently upheld the portions of a school district's literature distribution policy that stipulated the following time, place and manner restrictions:

When any student or students, who as an individual or a group, seek to distribute more than 10 copies of the same written material on one or more days in the school or on school grounds, they must comply with the following procedures:

1. At least 24 hours prior to any distribution of material, the student shall notify the principal of his/her intent to distribute.
2. Material shall be distributed between 7:15 a.m. and 7:45 a.m. and 3:15 p.m. and 3:45 p.m. from a table to be set up by the school for such purposes. The table shall be located at or near the main entrance of the building. No more than two students distributing the same material shall be seated at the table.

Hedges v. Wauconda Community Sch. Dist., 118, 9F.3d 1295, 1296 (7th Cir. 1993). See also *Muller v. Jefferson Lighthouse School*, 98 F.3d 1530 (7th Cir. 1996) (upholding district's policy of requiring students wishing to distribute literature on school property to obtain prior approval from school officials); *Harless v. Darr* 937 F. Supp. 1351 (S.D. Ind. 1996) (ruling that district's policy, providing when students wishes to distribute more than 10 copies of written materials on school grounds he must notify principal of intent to distribute at least 48 hours prior to distribution and provided copy of material to be reviewed by Superintendent, was not impermissible prior restraint).

³⁵ Utah Admin. Code R277-105-8 (A) (1996); see also *Roberts v. Madigan*, 921 F.2d 1047 (10th Cir. 1990), *cert. denied*, 112 S. Ct. 3025 (1992) (upholding school district's directive to fifth grade teacher barring him from reading Bible at his desk during silent reading period in his classroom).

³⁶ Utah Admin. Code R277-105-8 (B) (1996).

³⁷ 42 U.S.C. §2000e(j) (1996); see also *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977) (holding that TWA was not obligated to accommodate an employee's inability to work Friday nights or Saturdays for religious reasons by allowing a four-day week or paying overtime for shift coverage; the Court stated that "To require [an employer] to bear more than a de minimis cost . . . is an undo

hardship.”; *Lee v. ABF Freight System, Inc.*, 22 F.3d 1019, 1023 (10th Cir. 1994) (holding that “The cost of hiring an additional worker or the loss of production that results from not replacing a worker who is unavailable due to religious conflict can amount to undue hardship.”); *Brown v. Polk County, Iowa*, 61 F.3d 650 (8th Cir. 1995), *cert. denied*, 116 S. Ct. 1042 (1996) (upholding county’s discipline of employee for directing another employee to type his Bible study notes on work time, as such activity created an undue hardship on county business); *Burns v. Southern Pac. Transp. Co.*, 589 F.2d 403, 407 (9th Cir. 1978), *cert. denied*, 439 U.S. 1072 (1979) (“Undue hardship requires more than proof of some fellow-worker’s grumbling . . . An employer . . . would have to show actual imposition on co-workers or disruption of the work routine.”)

³⁸ Utah Code Ann. §53A-13-101.1. *See also School Dist. Of Abington Township v. Schempp*, 374 U.S. 203 (1963), where Justice Clark, writing for the Supreme Court, stated:

It might well be said that one’s education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such a study of the Bible or of religion, when presented objectively as part of a secular program of education may not be effected consistently with the First Amendment.

³⁹ 20 U.S.C. § 1232 h; Utah Code Ann. §53A-13-302.

⁴⁰ *See Bauchman v. West High*, 900 F.Supp. 254, 268 (D. Utah 1995), *appeal pending* (10th Cir. 1996). Ruling that a high school choir’s performance of the songs of “Friends,” and “The Lord Bless You and Keep You,” both of which contained lyrics referring to the Lord and other religious concepts, did not violate the Establishment Clause or the Free Exercise Clause of the First Amendment, the court reasoned in part:

Singing of songs is not an “explicit religious exercise,” like the graduation prayer was deemed to be by the Supreme Court in *Lee v. Weisman* or like other prayers and singing in cases cited by plaintiff. . . . Despite references in some songs to “God” and “Lord,” as well as language in the songs reflecting a supplication to deity, the songs with religious content are not ipso facto the equivalent of prayers. Neither does the fact that the lyrical source of some songs is scriptural automatically render those songs violative of the Establishment Clause.

⁴¹ Utah Admin. Code R277-105-7 (B).

⁴² Utah Admin. Code R277-105-7 (D).

⁴³ Utah Admin. Code R277-105-7 (C).

⁴⁴ Utah Admin. Code R277-105-7 (F).

⁴⁵ Teachers and school officials should be mindful that many non-Christians, as well as some Christians (i.e., Jehovah’s Witnesses) do not celebrate Christmas and many other holidays.

⁴⁶ *See Clever v. Cherry Hill Township Bd. of Educ.*, 838 F. Supp. 929, 939 (D.N.J. 1993) (“If our public schools cannot teach this mutual understanding and respect [about religious symbols and holidays], it is hard to envision another societal institution that could do the job effectively.”)

⁴⁷ *Florey v. Sioux Falls Sch. Dist.*, 619 F. 2d. 1311 (8th Cir. 1980), *cert. denied*, 449 U.S. 987 (1980).

⁴⁸ For example, a teacher may display a Christmas tree together with a Menorah or Star of David, and Santa Claus or a symbol representing Kwanzaa.

⁴⁹ *See e.g., Edwards v. Aguillard*, 482 U.S. 578 (1987); *Epperson v. Arkansas*, 393 U.S. 97 (1968); *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d. 1373, 1379 (9th Cir. 1994) (“If an Establishment Clause violation arose each time a student believed that a school practice either advanced or disapproved of a religion, school curricula would be reduced to the lowest common denominator, permitting each student to become a ‘curriculum review committee’ unto himself or herself.”); *Fleischfresser v. Directors of Sch. Dist. 200*, 15 F.3d. 680, 690 (7th Cir. 1994) (“If we are to eliminate everything that is objectionable to any [religious group] or inconsistent with any of their doctrines, we will leave public schools in shreds. Nothing but educational confusion and a discrediting of the public school system can result from subjecting it to constant lawsuits.”) (*quoting McCollum v. Board of Educ.*, 333 U.S. 203, 235 (1948) (Jackson, J. concurring.)); *Mozert v. Hawkins County Bd. of Educ.*, 827 F.2d 1058 (6th Cir. 1987).

⁵⁰ Utah Code Ann. §53A-13-101.2; Utah Admin. Code R277-105-5.

⁵¹ Utah Code Ann. §53A-11-302.

⁵² *Zorach v. Clauson*, 343 U.S. 306 (1952); *Lanier v. Wimmer*, 662 F.2d. 1349 (10th Cir. 1981).

⁵³ Utah Admin. Code R277-610-3.

⁵⁴ *Lanner v. Wimmer*, 662 F.2d. 1349, 1358 (10th Cir. 1981).

⁵⁵ In a recent federal court opinion, one judge stated:

Paraphrasing George Orwell, we have sunk to the point at which it becomes one's duty to restate the obvious. What seems obvious to me in disputes like these [First Amendment disputes over religion in schools], deeply enmeshed in social and political policy, are not well handled by the adjudication process. Court Decree, focused on the single goal of pure "non-establishment," supplant decisions based on compromise and consensus which reflect the multifaceted wisdom of the people acting through democratically accountable elected officials and educators.

Ingebretsen v. Jackson Pub. Sch. Dist., 88 F.3d. 274, 288 (5th Cir. 1996) (Jones, J., dissenting).

WICOMICO COUNTY BOARD OF EDUCATION

Salisbury, Maryland

[Editor's Note: In 1991 the Wicomico County Board of Education adopted a policy establishing guidelines for teaching about religion and advising teachers on how to approach school programs and religious holidays. The adoption of this policy, despite its success and the community's endorsement of it today, was a slow and difficult process. Fortunately, through open discussions between parents, teachers and school administrators, consensus was reached on a policy that all members of the community could support. Parents who felt the policy's original draft represented one portion of the community's religious agenda, eventually were able to support a revised draft which they came to view as a sound policy intended to help the community sensitively address issues of religious liberty.

Wicomico County's success was due to several important factors: a diversified Values Committee which worked steadily on the policy; open community discussions about the proposed policy; and in-service training for teachers after the adoption of the new policy. Dr. Evelyn Blose Holman, then superintendent of schools for Wicomico County, explains that the policy gives the schools guidelines, saving the community from "some of the rancor and debate" that surrounds religious liberty issues.

In order to further promote the goals of the policy, the county intends to adopt new materials for the study about religions, and the Values Committee has drafted a brochure addressing teacher's frequently asked questions in regards to the policy. Clearly, the adoption of such a policy requires hard work and continuing efforts, but as one parent notes, simply the discussions surrounding the policy have been good for the community, helping the county's schools embrace the values articulated in the policy.]

WICOMICO COUNTY'S POLICY: TEACHING ABOUT RELIGION

Preamble

Any discussion of the place of religion in public education must be grounded in the principle of freedom of conscience, particularly as it is embodied in this nation's First Amendment to the Constitution which states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ..."

This inalienable right to religious liberty depends neither upon political authority nor upon any election but is rooted in the inviolable dignity of each person.

Teaching about religion, then, must adhere to the American experiment which cherishes beliefs that are a matter of conviction rather than coercion. It must foster learning in an atmosphere permeated by the values adopted by the Wicomico County school system: compassion, courtesy, freedom of thought and action, honesty, loyalty, respect for others' rights, responsibility, responsible citizenship, self-respect and tolerance.

While the Supreme Court has prohibited religious indoctrination by the public schools, the court has made clear that teaching *about* religion is permissible under the First Amendment. Operating under the principle that knowledge is preferable to ignorance and recognizing the significant role religion has played in this nation's public life and culture and in the wider arena of world history, the board supports teaching about religious history and tradition where appropriate in the curriculum.

Policy

The board of education endorses teaching *about* religion where the curriculum guides indicate it is appropriate and when the classroom atmosphere encourages both teachers and students to be responsible and to respect the rights of each person.

Such teaching must foster knowledge *about* religion, not indoctrination into religion; it should be academic, not devotional or testimonial; it should promote awareness of religion, not sponsor its practice; it should inform students about the diversity of religious views rather than impose one particular view; and it should promote understanding and respect rather than divisiveness.

Consequently, the board endorses, where appropriate and feasible, the professional development of teachers who wish to learn more about the constitutionally appropriate place of religion in the curriculum. The board also supports the development of new instructional materials that will reflect age-appropriate content and activities for teaching about religion.

Guidelines

To help school administrators and teachers interpret and apply the Wicomico County Board of Education policy regarding teaching about religion in the schools, the following guidelines have been developed by the Values Committee of the Wicomico County Board of Education in consultation with the First Liberty Institute.

Part 1: Curriculum

- A. Religious instruction is the responsibility of parents and religious institutions, but teaching *about* religion is a legitimate part of a complete education on the elementary and secondary levels.
- B. Teaching about religion should always operate within the context of First Amendment rights and responsibilities. In order to ensure the activity is constitutional, its purpose and effort should be to educate about rather than promote religion. The activity should also avoid excessive entanglement between the schools and religious organizations.
- C. As a part of the curriculum, religious literature, music drama and the arts may be included, provided each is intrinsic to the learning experience in the various fields of study and is presented objectively.

Also, as part of the curriculum, students may be asked to read selections from sacred writings for their literary and historical qualities, but not for devotional purposes.

Part 2: School Programs and Holidays

- A. School programs, performances and celebrations will serve an educational purpose. The inclusion of religious music, symbols, art or writings may be permitted if the religious content has an independent educational purpose which contributes to the stated objectives of the approved curriculum.
- B. The use of religious symbols, provided they are used only as an example of cultural and religious heritage, is permitted as a teaching aid or resource. These symbols may be displayed only for the length of time that the instructional activity requires.
- C. The Supreme Court has made clear that public schools may not sponsor religious celebrations but may teach *about* religion. Secular and religious holidays provide opportunities for educating students about history and cultures, as well as traditions of particular religious groups within a pluralistic society.

However, teachers must exercise special caution and sensitivity whenever discussion about religious holidays occurs. Presentation of materials dealing with religious holidays must be accurate, informed and descriptive. Focus should be on the origins, history

and generally agreed-upon meanings of the holidays. Since teachers will need to be aware of the diversity of religious beliefs in their classroom and in the county at large, they will need to be particularly sensitive to the rights of religious minorities as well as those who hold no religious belief. Respect for religious diversity in the classroom requires that teachers be fair and balanced in their treatment of religious holidays. Teachers may not use the study of religious holidays as an opportunity to proselytize or to inject religious beliefs into the discussions. Teachers can teach through attribution, i.e., by reporting that “some Buddhists believe ...”

- D. On the elementary level, natural opportunities arise for discussion of religious holidays while studying different cultures and communities; in the secondary level, students of world history or literature will have opportunities to consider the holy days of religious traditions.
- E. Teachers need to be aware of the major religious holidays of all the represented religions in their classrooms so as to avoid, as much as possible, creating an undue burden on students who choose not to attend school on those days.

Part 3: Scheduling

- A. School scheduling should reasonably accommodate religious observances in the community. The yearly school calendar should minimize conflicts with the religious holidays of all faiths.
- B. The Wicomico School calendar shall continue to recognize national, state, school and community observances. Special days beyond those specified on the calendar may be accommodated as reasonably as possible, with students being asked to make up assignments or examinations without loss of status or penalty.

Part 4: Procedures

- A. Recognizing the importance of religious liberty and freedom of conscience, school administrators and teachers will allow students to be excused, where it is feasible, from activities that are contrary to religious beliefs. Students are responsible for notifying school officials in advance and arranging for make-up work. Students and/or staff members wishing to be excused from activities that are contrary to their religious beliefs may make that request of the appropriate teacher or supervisor, within a reasonable time period to allow accommodations to be made.
- B. This policy holds for all lectures, programs and performances presented within the school during normal school hours. It is the responsibility of teachers and school officials to notify, whenever relevant, outside speakers and performers of Wicomico County’s policy and its guidelines.

- C. Disciplinary questions that relate to violations of this policy by teachers or administrators will be resolved through the already established procedures of the board.
- D. Recognizing that no guidelines can give exhaustive treatment of this issue, the Superintendent may choose to refer disputes about implementation of this policy to an appropriate committee.

RAMONA UNIFIED SCHOOL DISTRICT POLICY

Ramona, California

Recognition of Religious Beliefs and Customs

Preamble

Any discussion of the place of religion in public education must be grounded in the principles of religious liberty, or freedom of conscience, particularly as embodied in this nation's First Amendment to the Constitution, which states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...". This inalienable right to religious liberty depends neither upon political authority nor upon any election but is rooted in the inviolable dignity of each person.

Statement of Purpose

The board of education endorses teaching about religion where the curriculum guides indicate it is appropriate and when the classroom atmosphere encourages both teachers and students to be responsible and to respect the rights of each person.

Such teaching must foster knowledge *about* religion, not indoctrination into religion; it should be academic, not devotional or testimonial; it should promote awareness of religion, not sponsor its practice; it should inform students about the diversity of religious views rather than impose one particular view; and it should promote understanding of different religious views as well as respect for the rights of persons who hold such views.

Right and Responsibility of Students/Staff

Students have the right to pray individually or in groups or to discuss their religious views with their peers so long as they are not disruptive. Because the Establishment Clause does not apply to purely private speech, students enjoy the right to read religious literature, pray before meals and before tests, and discuss religion with other student listeners as long as the listeners do not feel coerced or harassed. However, the right to engage in voluntary prayer does not include, for example, the right to have a captive audience listen or to compel other students to participate.

Teachers and school administrators, when acting in those capacities, are representatives of the state, and, in those capacities, are themselves prohibited from encouraging or soliciting student religious or anti-religious activity. Similarly, when acting in their official capacities, teachers may not engage in religious activities with their students. However, teachers may engage in private religious activity during duty free and noncontractual hours.

As a general rule, students may express their religious viewpoints in the form of reports, both oral and written, homework and artwork. Teachers may not reject or correct such submissions simply because they include a religious symbol or address religious themes. Likewise, teachers may not require students to modify, include or excise religious views in their assignments, if germane. These assignments should be judged by ordinary academic standards of substance, relevance, appearance, and grammar. As noted, however, teachers should not allow students to use a captive, classroom audience to proselytize or conduct religious activities.

Students have the right to distribute religious literature to their schoolmates, subject to those reasonable time, place, and manner or other constitutionally acceptable restrictions imposed on the distribution of all non-school literature. Thus, a school may confine distribution of all literature to a particular table at particular times. It may not single out religious literature for burdensome regulation.

Student participation in before- or after-school religious events on campus is permissible. School officials, acting in an official capacity, may neither discourage nor encourage participation in such events.

Students have the right to speak to and attempt to persuade their peers about religious topics just as they do with regard to political topics. But school officials should intercede to stop student speech if it turns into religious harassment aimed at a student or small group of students.

Student religious clubs in secondary schools are permitted to meet and to have equal access to campus media to announce their meetings. Teachers may not actively participate in club activities and “non-school persons” may not control or regularly attend club meetings.

School Calendars

The school calendar should be prepared so as to minimize conflict with the religious holidays of all faiths. Where conflicts are unavoidable, care should be taken to avoid tests, special projects, introduction of new concepts, and other activities that would be difficult to make up on religious holidays. Students are expected to make up missed assignments without loss of status or penalty.

Religion in Curriculum and Instruction

Students may be taught *about* religion, but public schools may not teach religion. As the U.S. Supreme Court has said repeatedly, “[I]t might well be said that one’s education is not complete without a study of comparative religion, or the history of religion and its relationship to the advancement of civilization.” It would be difficult to teach art, music, literature, and most social studies without considering religious influences.

The history of religion, comparative religion, the Bible or other religious texts as literature (either as a separate course or within some other existing course) are all permissible public school subjects. It is both permissible and desirable to teach objectively about the role of religion in the history of the United States and other countries.

As a part of the curriculum, religious literature, music, drama, and the arts may be included, provided each is intrinsic to the learning experience in the various fields of study and is presented objectively.

Also, as part of the curriculum, students may be asked to read selections from sacred writings for their literary and historical qualities, but not for devotional purposes. The approach to religion shall be one of instruction, not one of indoctrination. The purpose is to educate, not convert. The focus shall be on the study of what all people believe and must not be on teaching a student what to believe.

At all levels, the study of religious music as part of a musical appreciation course, as a musical experience, as part of a study of various lands and cultures is to be encouraged. Seasonally appropriate religious music may be studied during the season when interest is highest. In all public school programs and study, care must be taken to avoid presentation of the music as a celebration of a particular religion or religious holiday and to ensure that there is no bias shown for or against any religion or non-religion.

Schools may teach civic virtues, including honesty, good citizenship, sportsmanship, courage, respect for the rights and freedoms of others, respect for persons and their property, civility, the virtues of moral conviction, tolerance and hard work. Although schools may teach *about* the role religion may play in character and values formation, schools may not invoke religious authority.

Religious Symbolism

Religious messages on T-shirts and the like may not be singled out for suppression. Students may wear religious attire, such as yarmulkes and head scarves, and they may not be forced to wear gym clothes that they regard, on religious grounds, as immodest.

The use of religious symbols that are a part of religious holidays at the appropriate times of the year are permitted as teaching aids or as resources, provided such symbols are displayed as examples of the broad cultural and religious heritage of the celebration and are limited to a brief or temporary period of instruction.

School Ceremonies and Activities

School officials may not mandate, organize, or encourage prayer at graduation or other school activities or dedications, nor may they organize a religious baccalaureate ceremony. The school district may rent facilities under the School Communities Facilities to

community groups who wish to sponsor such events. At certain occasions at which it is appropriate to set a solemn tone, a time of silence may be appropriate.

Parents' Rights to Excuse Students for Religious Reasons

Students will be excused, when feasible, from lessons/activities which their parents find objectionable for religious reasons. Alternative assignments will be substituted.

RICHARDSON INDEPENDENT SCHOOL DISTRICT GUIDELINES FOR RELIGIOUS PRACTICES

Richardson, Texas

Religious Practices

Grades K-12

Equal Access Act

Limited Open Forum

Grades 7-12

Richardson Independent School District 2000-2001

To the RISD Staff:

This handbook is designed to serve as a guide for all of us concerning the religious policies we must follow. These policies, revised during the 1999-2000 school year by a task force comprised of school patrons, religious leaders, and school staff members, are in alignment with court rulings and support an approach of neutrality, inclusion, and respect within our culturally diverse community.

The handbook includes:

Mission Statement

Principles Relating to Religious Practices

Religious Practices

Revised or new sections are:

Religious Content in the Instructional Setting

Religious Music

Baccalaureate

Limited Open Forum Policies

Complaint Procedure (revised)

Sample Complaint Form (new)

In response to the federal Equal Access Act, the Board of Trustees created a Limited Open Forum for all students in secondary schools. The second part of this handbook defines the guidelines, rules, and regulations associated with the Limited Open Forum, followed by the complaint procedure and sample form.

It is important that you read thoroughly the guidelines and familiarize yourself with them. I am so grateful for the commitment and willingness exhibited by the task force to support our RISD community in this worthy endeavor. I also want you to

be aware that these guidelines are being reviewed on a continual basis by this broad-based task force to ensure that we find a common ground when dealing with religious issues.

Sincerely,
 Carolyn Bukhair
 Superintendent of Schools

Mission Statement

The Richardson Independent School District recognizes that two of its educational goals are to advance the students' knowledge and appreciation of the role that religious heritage has played in the social, cultural, and historical development of civilization, and to develop the students' understanding and toleration of religious differences in America.

Principles Relating to Religious Practices

In accomplishing the mission statement's goals, the District may permit studies about religion but may not sponsor the practices of religion.

The First Amendment of the United States Constitution states:

“Congress shall make no law respecting an establishment of religion,
 or prohibiting the free exercise thereof...”

The U.S. Supreme Court has interpreted the First Amendment as requiring the state to maintain a wholesome neutrality in its interaction with religion in our pluralistic democratic society. The United States Court of Appeals for the Fifth Circuit, which has jurisdiction over Texas, has developed five guidelines based on Supreme Court doctrine for determining the appropriateness and/or legality of any specific school-sponsored activity. *First*, the activity must be one that accomplishes the Richardson Independent School District's legislative purpose, namely education. *Second*, the activity's principal or primary effort must neither advance nor inhibit religion. *Third*, the activity must not require or encourage excessive involvement with religion on the part of the District. *Fourth*, the activity must not give the appearance of an endorsement of religion by the District or its employees. And *fifth*, the activity must not coerce students to participate in a religious activity [*Jones v. Clear Creek ISD*, 977 F.2d 963 (Fifth Circuit, 1992)].

While the District may not sponsor or endorse religion, it recognizes the right of each student and school employee to the free exercise of religion, subject to the provisions of this handbook. Further, under the newly enacted Texas Religious Freedom Restoration Act, the District must establish a compelling purpose when it substantially burdens a person's free exercise of religion and must show that the means it uses to accomplish the purpose is the least restrictive way of doing so.

The provisions set forth in this handbook reflect the decisions reached by the U.S. Supreme Court and the U.S. Court of Appeals for the Fifth Circuit, as well as Texas state law.

No religious belief or nonbelief shall be promoted by the Richardson Independent School District, and none shall be disparaged. The Richardson Independent School District shall encourage all students and staff members to appreciate and be tolerant of each other's religious views. The District shall utilize every opportunity to foster understanding and mutual respect among students and parents regarding race, culture, economic background, and religious belief. Fostering high ideals, consideration for others, moral standards, patriotism, justice, and basic values such as love, compassion, family ties, peace, honesty, and goodwill toward all persons is not in conflict with the principles of religious liberty and government neutrality toward religion. The District shall make constructive contributions to the well-being of the community by sharing with families the responsibility of preparing students for participation in a pluralistic society.

Following are specific provisions based upon the preceding principles and federal and state law. This list is not meant to be all inclusive. These provisions, as well as issues not covered in this handbook, should be interpreted in accordance with the preceding principles.

Religious Practices

Prayer

The following shall apply:

1. The District shall permit private, voluntary prayer or meditation by individuals. Such activity shall not be disruptive or interfere with the rights of others.
2. The District and its employees shall not lead, compose, sponsor, encourage, suggest, or provide the means for the recitation of prayers in school facilities during school hours or before, during, or after any school-sponsored public athletic or extracurricular event.
3. The District shall not permit the recitation of student-initiated public prayers as part of an organized class, team, or school-sponsored activity [*Ingebretsen v. Jackson Public School District, Fifth Circuit, 1996, Doe v. Santa Fe ISD, Fifth Circuit, 1999*]. However, nothing prohibits students from engaging in voluntary private individual or group prayer that does not occur under the sponsorship or involvement of the District or its employees [*Doe v. Duncanville ISD, Fifth Circuit, 1995*]. Thus, a student or group of students may elect to say a private prayer not under school sponsorship before lunch or before an athletic contest.
4. School personnel, while representing the District, shall not audibly pray with or in the presence of their students. However, district employees shall treat voluntary student private prayer with respect.

Religious Texts

The following shall apply:

1. The reading from religious texts during instructional time shall be permitted for instructional and literary purposes. The readings shall not be used for promoting religious beliefs or for devotional purposes.
2. The District shall permit the private, voluntary reading of religious texts by students as long as it does not interfere with the educational process. As district representatives and public employees, Richardson ISD employees must remain neutral in matters involving religion and avoid any action that has the effect of advancing religious beliefs at school.
3. The distribution of religious literature by an individual student in the District shall be permitted as long as the distribution does not interfere with the educational process and complies with other District policies [see EFA and FMA].
4. The distribution of religious literature on campus or at school sponsored activities by District employees shall be prohibited.

Religious Content in the Instructional Setting

The following shall apply:

1. Curriculum content pertaining to religion may be presented as part of a secular program of education. Such content may not be taught with the intent of promoting or denigrating any particular religion.
2. The study of religious observances may be included in the curriculum as an opportunity for teaching about religions. Recognition of and information about such holy days shall focus on their educational aspects. Such study serves the academic goals of educating students about history and cultures, as well as fostering among students understanding and mutual respect within a pluralistic society.
3. The use of religious symbols is permitted as a teaching aid or resource, provided such symbols are used as examples of cultural and religious heritage. Their display and use shall be limited to the specific teaching activity and shall not be used for devotional or proselytizing purposes.
4. Student papers and presentations on religious topics are permitted as part of a secular program of instruction. Students may express their opinions about religion in the form of homework, artwork, and other assignments provided they fulfill the purposes of the classroom assignment. Students work containing religious content should be evaluated by ordinary academic standards of substance and relevance and in accordance with other legitimate pedagogical concerns of the teacher and the school.

At all grade levels, the classroom teacher is responsible for setting guidelines to ensure that the content of all student papers and presentations is relevant to the curriculum. At the elementary level, teachers will make special effort to anticipate and prevent situations in which the religious content of a student presentation is likely to offend, confuse, or cause discomfort to impressionable students.

Parent Religious Objection

Upon written parental request, parents are entitled to an exemption under state law for their child from the classroom or other school activity that conflicts with their religious or moral beliefs, provided that the purpose is not to avoid a test or to prevent the student from taking a subject for the semester.

Religious Attire

Dress required by religious customs shall be permitted. If a student's dress could cause a safety hazard in a particular activity, an alternative activity shall be substituted for that student. District personnel may wear religious symbols provided that the symbols do not serve to advance religious beliefs in a way to jeopardize the district's neutrality toward religion.

Religious Observances

The following shall apply:

1. The cultural and historical aspects of religious holy days and their meaning may be taught, but such holy days may not be recognized with religious observances by school personnel.
2. The District calendar should be prepared to minimize conflicts with religious observances of all faiths.
3. Students shall be excused from class for religious observances and shall not be penalized or deprived of reasonable make-up opportunities for such observances [see FDD]. Excusal includes travel days to and from the observance. District employees who are absent for religious observance shall be granted leave without pay unless they wish to use their unused personal business leave for this purpose [see DEC (Regulation)].

Religious Symbols as Decorations

Religious symbols may not be displayed in school as decorations and may be displayed only on a temporary basis as part of the academic program [see also *Religious Attire* in this handbook].

Religious Music

Religious music may be performed by district bands, choirs, and orchestras as part of an academic program of instruction. When planning and presenting performances that include religious music, District personnel must make all reasonable efforts to provide a balanced

presentation of secular and religious music from a variety of traditions throughout the course of the school year.

Students may present a musical work with a religious theme in class or as part of a special performance, variety, or talent show, etc., as long as such selections are consistent with the purpose or theme of the assignment or presentation.

Student selections are permitted based upon ordinary academic standards and relevance in accordance with other legitimate pedagogical concerns of the teacher and school.

Rental of District Facilities by Religious Organizations

The District facilities may be rented for purposes of religious worship or religious teaching by religious organizations or groups only if such facilities are made available under the District's general policies applicable to nonschool organizations or groups. In this context, the policy shall permit the use of such facilities by staff and students acting as private individuals. In all circumstances, District facilities may be used for religious activities only if the activities...

- ...are outside normal school hours;
- ...are not promoted or encouraged by the District; *and*
- ...do not require the expenditure of public funds.

Baccalaureate Services

Baccalaureate, as a religious service, is not sponsored or organized by the District. However, individual schools may sponsor a secular graduation celebratory event. Attendance at such an event shall be optional and voluntary. The event, including the farewell address, shall be motivational and celebratory in character. The event is to be initiated and planned by students in coordination with a faculty advisor who shall assure that the event complies with District policies.

Commencement Ceremonies

Commencement is a secular celebration of the culmination of study leading to graduation. School personnel may not invite clergy to lead invocation and/or benediction or to present an address at school commencement ceremonies. School personnel may permit the graduating class to choose whether to have an invocation and/or benediction at graduation so long as the invocation/benediction is to be given by a student volunteer, is nonproselytizing, and is nonsectarian.

Special Programs or Events

Content of school-sponsored programs and events shall be secular in purpose and effect and shall not promote or denigrate any particular religion. Such programs or events shall reflect a sensitivity to religious diversity within a pluralistic society. Students shall be excused without penalty from participation in such events if participation is in conflict with their religious beliefs.

Other Programs or Student Events

For local provisions on the content of school-sponsored programs as it relates to neutrality in religious matters see FM (Local).

Guidelines for Visitors

Visitors who represent or act as proponents of a religious, political, or philosophical viewpoint shall be allowed only as invited guests of a specific student or small number of students, provided that such visits are consistent with general school policies regarding visitors.

The visitation privileges shall not include the right to establish a situation whereby visitors shall attempt to influence students other than the inviters as to a particular religious, political, or philosophical viewpoint.

This policy is designed not to interfere with the students' right to maintain personal relationships or to restrain free speech, but to prohibit visitors from using such visits as a platform for proselytizing religious beliefs to students. Visitors must also refrain from any conduct that implies, directly or indirectly, school support for or endorsement of a religious message or a religious viewpoint.

Student Religious Groups

Student religious groups may not be school sponsored and District employees may not participate in their affairs. However, such groups may be granted access to the secondary school campus and to school media under the terms of the federal equal access act discussed in the section "*Limited Open Forum Policies for Noncurriculum-Related Student Groups*" in this handbook.

Limited Open Forum Policies for Noncurriculum-Related Student Groups

Curriculum-related groups and clubs may be sponsored and promoted by the school.

This section does not apply to such curriculum-related groups and clubs.

For purposes of the Federal Equal Access Act, the Board has created a limited open forum at the District's secondary schools so that noncurriculum-related student groups may meet on school premises during noninstructional time [see District policy FM and FM (Local)]. As interpreted by the U. S. Supreme Court in *Board of Education of Westside Community Schools v. Mergens*, a noncurriculum-related student group means that the group is not related to the school curriculum because the subject matter is not taught, the subject matter does not relate to the curriculum in general, participation is not required for a course, or participation does not convey academic credit. Each secondary school principal shall set aside noninstructional time before or after actual classroom instruction begins or ends for meetings of noncurriculum-related student groups. This time period includes an activities period when instruction is not occurring.

Student Requests for Access to the Campus

Students in secondary grades (7-12) wanting to meet on school premises shall file a written request with the campus principal. That request shall contain a brief statement of the group's purposes and goals, a list of the group's members, and a schedule of its proposed meeting times. The noncurriculum-related student group must agree to have a monitor (a District employee who is appointed by the principal) who will attend all meetings and activities for custodial purposes. Requests shall be approved by the principal and Superintendent subject to the availability of suitable meeting space and without regard to the religious, political, philosophical, or other content of the speech likely to be associated with the group's meetings. The District and its personnel may not limit the rights of noncurricular-related student groups that are not of a specific size (no minimum).

Staff Participation

Noncurriculum-related student groups must be student-initiated, voluntary, and student-led. The District and its employees are prohibited from sponsoring meetings of noncurricular-related student groups and may be present at religious meetings only in a nonparticipatory capacity. The District and its personnel are prohibited from influencing the form or content of prayer or other religious activity or from requiring any person to participate in prayer or other religious activity at a meeting of a student religious group.

Monitors

A "monitor" is defined as a District employee appointed by the principal who attends all meetings and activities of noncurriculum-related student groups. No employee of the District may be required to accept appointment as a monitor if the purpose of the organization is contrary to the beliefs of the employee. District monitors shall be present at religious meetings only in a nonparticipatory capacity.

Notice of Meetings

Notice of meetings of noncurriculum-related groups may only be posted in a central area(s) designated by the principal. Such notices may only include the name of the noncurriculum group, date, time, and location of the meeting and a statement that the group is non-school sponsored. Posting of meeting notices in other parts of the building not approved by the principal or announcements on the public address system regarding meetings are prohibited.

Involvement of Non-School Persons

Non-school persons only may attend or make presentations at meetings of noncurriculum-related groups with approval of the principal. The principal reserves the right to limit the number of times a non-school person(s) may attend a meeting of the group.

Recognition of Student Groups

Noncurriculum-related student groups may be recognized in the school yearbook, provided the recognition is in a section of the yearbook that is separate from curriculum-related groups and is clearly delineated for noncurriculum-related student groups.

Nondiscrimination

Noncurriculum-related student groups may not abridge the constitutional rights of any person, nor discriminate against any person on the basis of race, color, religion, sex, national origin, or disability.

Rules for Meetings

Meetings of noncurriculum-related student groups granted access to the school during noninstructional time must conform to the provisions listed in this handbook and are subject to the following additional rules:

1. The principal or designee shall assign the specific space to be used for the meeting and shall approve in writing the use of the space to the initiating student(s). A yearly calendar of meetings shall be submitted in advance to the principal or designee for approval and the monitor shall keep a log of all such meetings.
2. Notices of meetings shall conform to the notice requirement in the previous section and shall state that such meetings are nonschool-sponsored. Organizations shall identify the nature of their group in all publicity.
3. The meeting shall be voluntary and initiated by a student enrolled in that school.
4. The meeting shall not be sponsored by the District or its employees. District monitors shall be present at religious meetings only in a nonparticipatory capacity.
5. The meeting shall not materially and substantially interfere with the orderly conduct of educational activities within the school.
6. The meeting shall not require expenditure of public funds beyond the incidental cost of providing the space for student-initiated meetings.
7. The meeting shall not result in additional or special student transportation provided at District expense.
8. The cost of repair of any damage to District property, as well as to teachers' and students' property, incurred during such meetings shall be borne by the person(s) responsible and may result in denial of future access to the building.
9. Nothing in this section shall be construed to limit the authority of the school principal to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.

Violations

Failure of a noncurriculum-related student group to comply with applicable rules may result in its loss of rights to meet on school premises. The principal shall report rule violations to the Superintendent.

After a fair determination of the facts concerning rule violations, the Superintendent may decide to suspend the noncurriculum-related student group's rights to meet on school premises for the balance of the school year or some lesser time period, depending upon the seriousness of the violations.

If a determination to suspend a group occurs during the last six-week reporting period of the school year, the suspension may be extended through the end of the first semester of the next school year. Suspensions or warnings imposed by the Superintendent may be appealed to the Board in accordance with District policy [see FNG (Local)].

Religious Practices Complaint Procedure

The Religious Practices Complaint Procedure provides a venue for channeling and resolving complaints that arise under the provisions of the RISD Guidelines for Religious Practices. The procedure is designed to operate expeditiously and equitably.

General Provisions

- As defined in RISD policy FNG (Legal), the term “parent” means a person standing in parental relation, but does not include a person as to whom the parent-child relationship has been terminated or a person not entitled to possession of or access to a child under a court order.
- The term “student” means a person who is enrolled in the Richardson school district.
- For purposes of this procedure, “days” shall mean school days.
- The term “Religious Practices Advisory Committee” means a committee of parents and community members appointed by the RISD Superintendent.

Level One

Level One is the first step in the “Religious Practices Complaint Procedure” and, as such, includes processes for complaints that originate either within a particular school or at the district level.

School Level Complaint

A student or parent who has a **complaint regarding religious practices occurring in the school that the student attends** shall schedule a conference with the school principal within fifteen (15) days of the time the student or parent knew of the event or series of events causing the complaint. The principal shall schedule a conference with the student or parent within ten (10) days of the request for the conference. The student or parent shall secure a Religious Practices Complaint Form from the principal and submit the completed complaint form to the principal at the conference. Within ten (10) days following the conference, the principal shall communicate a written response to the student or parent.

District Level Complaint

A student or parent who has a **complaint regarding religious practices occurring in the district as a whole** shall schedule a conference with the Executive Director, Extended Programs, or designee within fifteen (15) days of the time the student or parent knew of the event or series of events causing the complaint. The Executive Director, Extended Programs, or designee shall schedule a conference with the student or parent within ten (10) days of the request for the conference. The student or parent shall secure a Religious Practices Complaint Form from the principal of the school the student attends and submit the completed form to the Executive Director, Extended Programs, or designee at the conference. Within ten (10) days following the conference, the Executive Director, Extended Programs or designee shall communicate a written response to the student or parents.

Level Two

If the outcome at Level One is not to the student's or parent's satisfaction, the student or parent may present, within fifteen (15) days of receiving the written response, an appeal to the Religious Practices Advisory Committee. In addition to submitting the completed Religious Practices Complaint Form at the time of the appeal, the student or parent shall describe in writing why they have appealed the Level One decision. The Committee shall schedule an informal conference within fifteen (15) days of the filing of the appeal. During the conference, both the Level One administrator and the student and/or parent may make a presentation to the Committee, subject to reasonable time limits set by the Committee chair. The conference is not subject to the Texas Open Meetings Act.

Within ten (10) days following the conference, the Committee shall prepare a written response to be submitted as a recommendation to the Superintendent. Copies of the written response shall be delivered to the Level One administrator and to the student or parent.

The Superintendent shall review the recommendation and accompanying documents in light of the *RISD Guidelines for Religious Practices*. The Superintendent shall advise the parties of a final decision within thirty (30) days.

Level Three

If the outcome at Level Two is not to the student's or parent's satisfaction, the student or parent may submit to the Superintendent a written request to place the matter on the agenda of the next regular Board meeting. The Superintendent shall inform the student or parent of the date, time, and place of the meeting.

The procedures to be followed at the Level Three hearing are delineated in the section "Hearing" in RISD Board Policy FNG (Local), page 2 of 3.

Appeal from the Board to the Texas Commissioner of Education shall be prescribed by Texas state law, regulations, and procedures. The student or parent shall be so advised. Nothing shall preclude the student or parent from any legal remedy in state or federal court.

RISD Religious Practices Complaint Form

In processing a complaint regarding religious practices at the school or district level, a student or parent must complete this form and submit it to the appropriate administrator within the required timeline as described in the Religious Practices Complaint Procedure (see *RISD Guidelines for Religious Practices*). The form must also be filed within the stipulated timelines for appeals (see reverse side).

Name _____ Phone _____

Address _____ City, Zip _____

I am a (*check one*): Parent Student

Student's school: _____ Grade level _____

Explain below in detail what your complaint is and what relevant provision or provisions of the *RISD Guidelines for Religious Practices* are implicated. Attach an additional sheet if necessary.

Describe below what solution or remedy you propose to resolve your complaint. Be as specific as you can. Attach an additional sheet if necessary.

Complainant's signature _____ Date _____

During the complaint process, student and parent personally identifiable information is protected from disclosure to third parties under the terms of the Family Educational Rights and Privacy Act (FERPA). Appeal from the Board to the Texas Commissioner of Education shall be prescribed by Texas state law, regulations, and procedures. The student or parent shall be so advised. Nothing shall preclude the student or parent from any legal remedy in state or federal court.

POLICIES AND PROCEDURES FOR MUSTANG PUBLIC SCHOOLS

Mustang, Oklahoma

Religious Liberty

PREAMBLE

Mustang Public Schools recognizes that religious liberty, or freedom of conscience, is a precious, fundamental and inalienable right for all, as guaranteed by the First Amendment to the Constitution of the United States:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”

This inalienable right is best guarded and responsibilities best exercised when each person and group guards for all others those rights they wish guarded for themselves.

Public schools may neither instill nor inhibit religion. They must be places where religion and religious conviction are treated with fairness and respect. Mustang Public Schools uphold the First Amendment by protecting the religious liberty rights of students of all faiths or no faith.

The proper role of religion in the public school curriculum is *academic* and not devotional. Mustang Public Schools strives to advance the students’ knowledge and appreciation of the role that religion has played in all aspects of human history and development.

TEACHER TRAINING AND CURRICULUM

“Knowledge about religions is not only characteristic of an educated person, but is also absolutely necessary for understanding and living in a world of Diversity.”

— National Council for the Social Studies

Further, the proper role for instruction *about* religion in the public school is in its educational value and not in religious observance or celebration. According to the Supreme Court, the Establishment Clause of the First Amendment forbids state action or practices that aid or prefer one religion over another or that aid all religions and thus endorse or show preference for religion over non-religion, while the Free Exercise Clause requires any state actions or practices which interfere with an individual’s constitutionally protected religious freedom to be strictly scrutinized.

Teacher Training

The District Professional Development Committee shall seek, secure and support the development of teachers by utilizing experts in the field of teaching about religion. This can be accomplished by training key personnel who then become a resource to other district personnel.

Curriculum

Teachers shall prepare and teach lessons throughout the year and throughout the curriculum that:

- Approach religion as *academic*, not devotional
- Strive for student *awareness* of religions, not acceptance of religions
- Study *about* religion, but do not practice religion in the classroom
- *Expose* students to diversity of religious views, not impose any particular view
- *Educate* about a variety of religions, not promote or denigrate religion
- *Inform* students about various beliefs, not conform students to any particular belief
- *Demonstrate* the impact of economic, social, political and cultural effects of religion throughout history
- Are age appropriate

Over time, the District Curriculum Committee shall create additional courses or special units of instruction within the curriculum that promote the study of various religions and beliefs throughout the world. The District Textbook Selection Committee, consisting of staff, administrators and patrons, shall select textbooks and supportive materials for use in classrooms that include references to various religions.

RELIGIOUS HOLIDAYS

Teachers shall be especially sensitive to the feelings of students who might not wish to participate in holiday activities for religious reasons. Parents are encouraged to communicate with classroom teachers the religious practices of their family, in order to assist the teacher in lesson preparation and calendar planning.

In the Classroom

The recognition of religious holidays may be taught if the purpose is to provide instruction about religious traditions in world culture. Presentation of materials dealing with religious holidays must be accurate, informative and descriptive. The focus should be on the origins, history and generally agreed-upon meanings of the holidays. Respect for religious diversity in the classroom necessitates that teachers be fair and balanced in their treatment of religious holidays. No students should feel excluded or forcibly identified with a religion not their own. Teachers shall not use the study of religious holidays as an opportunity to

proselytize or inject personal religious beliefs in the discussions. Teachers should teach through attribution; i.e., by reporting that “some Buddhists believe...” This allows the religious tradition to speak for itself.

On the elementary level, natural opportunities arise for discussion of religious holidays while studying different cultures and communities. On the secondary level, students of social studies, literature, world history and the arts will have opportunities to consider the holy days of religious traditions. Teachers need to be aware of the major religious holidays so as to avoid, as much as possible, creating an undue burden on students who choose not to attend school on those days.

Class parties associated with seasonal holidays are appropriate insofar as they are consistent with the approved curriculum. However, consistent with the District’s goal of maximizing instructional time, such parties must not unduly interfere with regular academic activities.

Holiday Programs

Holiday programs should serve an educational purpose for all students. No school activity shall have the purpose, or effect, of promoting or inhibiting religion. Public schools may not sponsor religious devotions or celebrations. Study about religion does not extend to actually experiencing religious worship or practice.

Religious Depictions

Religious depictions in the classroom, in school assemblies or other school-sponsored programs that have an educational goal shall be allowed. These depictions must only be short re-enactments or portrayals. The School must give attribution explaining that the depictions are the beliefs of a particular faith, i.e. by reporting that “some Buddhists believe...”

Religious Symbols

Religious symbols may be used as a teaching aid or resource, not as a devotional tool, provided they are displayed only as an example of the cultural and religious heritage of the holiday and are temporary in nature. Students may choose to create artwork with religious symbols, but teachers shall not assign such creations. Art projects and other class activities shall give students a choice that respects the kinds of celebrations, religious or otherwise, that their families practice. Teachers and administrators shall not assume how students celebrate certain times of the year, but shall use religious holidays to teach what these symbols actually mean in the traditions they represent.

A religious symbol is:

- Any object that portrays or recognizes the existence of a Supreme Being or deity, including, but not limited to: the Cross, Star of David, nativity scene, menorah, tablets, chalices, crescent, Buddha and other symbols that are part of a religious celebration or ceremony.

- Any object that is closely associated with religion or with the celebration of a religious holiday (such) that it is looked upon as being of a religious nature, including, but not limited to: the Dreidel, Christmas tree, Santa Claus, Lion of Judah, Easter eggs and Easter bunnies.

Religious Music

Traditional carols and music from other traditions, i.e. Religious music, may be performed by District bands, choirs and orchestras as part of an academic program of instruction. When planning and presenting performances that include religious music, District personnel must make all reasonable efforts to provide a balanced presentation of secular and religious music from a variety of traditions throughout the course of the school year.

Students may present a musical work with a religious theme in class or as part of a special performance, variety or talent show, etc., as long as such selections are consistent with the purpose or theme of the assignment or presentation.

Parents' Right to Excuse Students for Religious Reasons

School officials shall try to accommodate the written requests of parents for excusal of their child from classroom discussions or activities for religious reasons. If focused on a specific discussion, assignment, or activity, such a request may be routinely granted. Alternative lessons/activities will be substituted within reasonable limitations.

Scheduling/School Calendars

The school calendar should be prepared so as to minimize conflict with religious holidays. Where conflicts are unavoidable, care should be taken to avoid tests, special projects, introduction of new concepts and other activities that would be difficult to make up. Students are expected to make up missed assignments without loss of status or penalty.

Absence from School for Religious Holidays

No student shall be penalized for being absent from school to observe religious holidays. If a student is going to be absent, it is the parent's responsibility to notify the teacher ahead of time.

RELIGIOUS EXPRESSION

Student Expression of Personal Religious Beliefs or Views

Free exercise of religious practices or freedom of speech by students shall not be denied unless the conduct or speech unreasonably interferes with the ability of the school officials to maintain order and discipline, violates schools rules, impinges on the rights of others, unreasonably endangers persons or property, creates a coercive environment, or violates concepts of civility or propriety appropriate to the school setting. This includes, but is not limited to:

- Reading the Bible or other scriptures during free time
- Praying, alone or in groups, as long as the activity is not disruptive and does not infringe upon the rights of others
- Discussing religious views with other students, or attempting to persuade peers about religious topics, as long as the persuasive speech does not constitute harassment

Student religious conduct or expression shall not be prohibited in homework, classroom discussions, presentations, assignments, or school sponsored activities, unless it violates the standards above. Students have the right to give educationally relevant classroom presentations on religious topics or engage in other religious expression during instructional time. Students do not have the right to make a captive audience listen to a lengthy sermon, or compel other students to participate in religious exercise.

Minute of Silence

A minute of silence shall be allowed as referenced in Policy and Procedures # 1091.

Graduation Exercises

As per the United States Department of Education:

“Student speakers at student assemblies and extracurricular activities may not be selected on a basis that either favors or disfavors religious speech. Where student speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content.”

The graduation program shall contain a disclaimer indicating that student speech is the speaker’s and not the District’s.

Baccalaureate Services

Baccalaureate, as a religious service, is not sponsored or organized by the District.

Attendance at such an event shall be optional and voluntary.

Religious Attire

Dress is a form of individual expression. Any prohibition or regulation of religious clothing or apparel must be done in the least restrictive manner possible to accomplish district and school objectives of maintaining a safe and orderly school environment. School officials should make appropriate exemptions to dress code and reasonably accommodate students who wear hairstyles, clothing, head wear, jewelry, cosmetics, or other apparel as a personal expression of sincerely held religious beliefs.

School officials should also be sensitive and appropriately accommodate students who request not to wear certain gym clothes that they regard, on religious grounds, as immodest.

Distribution of Religious Materials on School Grounds

In accordance with United States lower court decisions, outside groups may passively distribute literature or other materials at the secondary level on school grounds in accordance with reasonable time, place, and manner restrictions imposed by the school.

Students may distribute religious literature or other materials only at reasonable times, places, and manners designated by the school.

Religious flyers and hand-outs, announcing community events, shall not be singled out for special regulation or prohibition based on content, but are subject to reasonable time, place, and manner restrictions imposed by the schools on other non-school related literature.

Employee and Volunteer Worker Expression of Personal Religious Beliefs

All employees of the School District must maintain strict neutrality concerning religion when acting in their official capacities. An employee's rights relating to voluntary religious practices and freedom of speech do not include proselytizing of any student while the employee is acting in the employee's official capacity, nor may an employee attempt to use his or her position to influence a student regarding the student's religious beliefs or lack thereof.

If a student asks an employee about that employee's personal religious beliefs, the employee may choose not to respond. However, while acting in an official capacity, an employee may respond in an appropriate and restrained manner to a spontaneous question from a student regarding the employee's personal religious beliefs or perspectives, but may not turn the question into an opportunity to proselytize for or against religion.

Religious apparel is permissible if it is required by a person's religion, is part of the person's ordinary work dress, would not be disruptive of the school environment, or does not contain a proselytizing message.

16

CHAPTER 16

*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 the right of the people
peaceably to assemble,
and to petition the
Government for a redress
of grievances.*

Frequently asked Questions about Religious Liberty in Public Schools

Topics covered in “Frequently asked Questions about Religious Liberty in Public Schools” include:

Religious Liberty: The Establishment Clause (p. 223)

Religious Liberty: The Free Exercise Clause (p. 226)

Accommodating the Religious Needs
and Requirements of Students (p. 227)

School Prayer (p. 230)

Student Religious Expression (p. 233)

Student Extracurricular Clubs and Activities (p. 236)

Teaching About Religion (p. 239)

Religious Holidays (p. 242)

Use of School Facilities by Outside Groups (p. 243)

Cooperative Agreements Between Public Schools
and Religious Communities (p. 245)

Released-Time Programs (p. 245)

Teacher and Administrator Rights and Responsibilities (p. 246)

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

FREQUENTLY ASKED QUESTIONS ABOUT RELIGIOUS LIBERTY IN PUBLIC SCHOOLS

1. Does the First Amendment apply to public schools?

Yes. The First Amendment applies to all levels of government, including public schools. Although the courts have permitted school officials to limit the rights of students under some circumstances, the courts have also recognized that students — like all citizens — are guaranteed the rights protected by the First Amendment.

Earlier in our history, however, the First Amendment did not apply to the states — and thus not to public schools. When adopted in 1791, the First Amendment applied only to Congress and the federal government (“Congress shall make no law ...”). This meant that when public schools were founded in the mid-19th century, students could not make First Amendment claims against the actions of school officials.

The restrictions on student speech lasted into the 20th century. In 1908, for example, the Wisconsin Supreme Court ruled that school officials could suspend two students for writing a poem ridiculing their teachers that was published in a local newspaper.¹ The Wisconsin court reasoned, “such power is essential to the preservation of order, decency, decorum, and good government in the public schools.” And in 1915, the California Court of Appeals ruled that school officials could suspend a student for criticizing and “slamming” school officials in a student assembly speech.²

In fact, despite the passage of the 14th Amendment in 1868, which provides that “no state shall ... deprive any person of life, liberty or property without due process of law,” it was not until 1925, by way of the Supreme Court case of *Gitlow v. New York*, that the Supreme Court held that the freedom of speech guaranteed by the First Amendment is one of the “liberties” incorporated by the Due Process Clause of the 14th Amendment.

¹ *State ex rel. Dresser v. Dist. Bd. of School Dist. No. 1*, 135 Wis. 619, 116 N.W. 232 (Wis. 1908).

² *Wooster v. Sunderland*, 27 Cal. App. 51, 148 P. 959 (Cal. App. 1915).

In subsequent cases, the Court has applied all of the freedoms of the First Amendment to the states — and thus to public schools — through the 14th Amendment. But not until 1943, in the flag-salute case of *West Virginia v. Barnette*,³ did the U.S. Supreme Court explicitly extend First Amendment protection to students attending public schools.

The *Barnette* case began when several students who were Jehovah's Witnesses refused to salute the flag for religious reasons. School officials punished the students and their parents. The students then sued, claiming a violation of their First Amendment rights.

At the time that the students sued, Supreme Court precedent painted a bleak picture for their chances. Just a few years earlier, the Court had ruled in favor of a similar compulsory flag-salute law in *Minersville School District v. Gobitis*.⁴ As the Court stated in that ruling, “national unity is the basis of national security.”

However, the high court reversed itself in *Barnette*, holding that the free-speech and free exercise of religion provisions of the First Amendment guarantee the right of students to be excused from the flag salute on grounds of conscience.

Writing for the majority, Justice Robert Jackson said that the Supreme Court must ensure “scrupulous protection of constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.”⁵ The Court then warned of the dangers of coercion by government in oft-cited, eloquent language:

*If there is any fixed star in our Constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.*⁶

RELIGIOUS LIBERTY: THE ESTABLISHMENT CLAUSE

2. The First Amendment says that the government may not “establish” religion. What does that mean in a public school?

The meaning of the Establishment Clause, often referred to as the “separation of church and state,” has been much debated throughout our history. Does it require, as described in Thomas Jefferson’s famous 1802 letter to the Danbury Baptists, a high “wall of separation”? Or may government support religion as long as no one religion is favored over others? How can school officials determine when they are violating the Establishment Clause?

³ *West Virginia School Bd. v. Barnette*, 319 U.S. 624 (1943).

⁴ *Minersville School Dist. v. Gobitis*, 310 U.S. 586 (1940).

⁵ *Barnette*, 319 U.S. at 637.

⁶ *Id.* at 642.

In the last several decades, the Supreme Court has crafted several tests to determine when state action becomes “establishment” of religion. No one test is currently favored by a majority of the Court. Nevertheless, no matter what test is used, it is fair to say that the Court has been stricter about applying the Establishment Clause in public schools than in other government settings. For example, the Court has upheld legislative prayer, but struck down teacher-led prayer in public schools.⁷ The Court applies the Establishment Clause more rigorously in public schools, mostly for two reasons: (1) students are impressionable young people, and (2) they are a “captive audience” required by the state to attend school.

When applying the Establishment Clause to public schools, the Court often emphasizes the importance of “neutrality” by school officials toward religion. This means that public schools may neither inculcate nor inhibit religion. They also may not prefer one religion over another — or religion over nonreligion.

3. If school officials are supposed to be “neutral” toward religion under the Establishment Clause, does that mean they should keep religion out of public schools?

No. By “neutrality” the Supreme Court does not mean hostility to religion. Nor does it mean ignoring religion. Neutrality means protecting the religious liberty rights of all students while simultaneously rejecting school endorsement or promotion of religion.

In 1995, 24 major religious and educational organizations defined religious liberty in public schools this way:

Public schools may not inculcate nor inhibit religion. They must be places where religion and religious conviction are treated with fairness and respect.

Public schools uphold the First Amendment when they protect the religious liberty rights of students of all faiths or none. Schools demonstrate fairness when they ensure that the curriculum includes study about religion as an important part of a complete education.⁸

4. Does the Establishment Clause apply to students in a public school?

The Establishment Clause speaks to what government may or may not do. It does not apply to the private speech of students. School officials should keep in mind the distinction between government (in this case “school”) speech endorsing religion — which the Establishment Clause prohibits — and private (in this case “student”) speech endorsing religion, which the free-speech and free-exercise clauses protect.⁹

⁷ *Marsh v. Chambers*, 463 U.S. 783 (1983) (legislative prayer); *Engel v. Vitale*, 370 U.S. 421 (1962) (teacher-led prayer).

⁸ From “Religious Liberty, Public Education, and the Future of American Democracy,” a statement of principles qtd. in Haynes & Thomas, *Finding Common Ground: A Guide to Religious Liberty in Public Schools* (Nashville: First Amendment Center, 2001).

⁹ See *Bd. of Education v. Mergens*, 496 U.S. 226 (1990).

Student religious expression may, however, raise Establishment Clause concerns when such expression takes place before a captive audience in a classroom or at a school-sponsored event. Students have the right to pray alone or in groups or to discuss their faith with classmates, as long as they aren't disruptive or coercive. And they may express their religious views in class assignments or discussions, as long as it is relevant to the subject under consideration and meets the requirements of the assignment.¹⁰ But students don't have a right to force a captive audience to participate in religious exercises.

It isn't entirely clear under current law where teachers and administrators may draw a line limiting student religious expression before a captive audience in a classroom or school-sponsored event. In several recent cases, lower courts have deferred to the judgment of educators about when to limit the religious expression of students in a classroom or school setting. A general guide might be to allow students to express their religious views in a classroom or at a school event as long as they don't ask the audience to participate in a religious activity, use the opportunity to deliver a proselytizing sermon, or give the impression that their views are supported by or endorsed by the school.¹¹

5. How can school officials tell when a planned school action or activity might violate the Establishment Clause?

Here are some questions that teachers and administrators should ask themselves when planning activities that may involve religious content (e.g., a holiday assembly in December):

- Do I have a distinct educational or civic purpose in mind? If so, what is it? (It may not be the purpose of the public school to promote or denigrate religion.)
- Have I done what I can to ensure that this activity is not designed in any way to either promote or inhibit religion?
- Does this activity serve the educational mission of the school or the academic goals of the course?
- Have I done what I can to ensure that no student or parent may be made to feel like an outsider, and not a full member of the community, by this activity?
- If I am teaching about religion, am I balanced, accurate, and academic in my approach?

For more information, see chapter 2 and chapter 4

¹⁰ *Settle v. Dickson County School Bd.*, 53 F.3d 152 (6th Cir. 1995), cert. denied, 516 U.S. 989 (1995).

¹¹ *DeNooyer v. Livonia Public Schools*, 799 F. Supp. 744 (E.D. Mich. 1992); *Guidry v. Broussard*, 897 F.2d 181 (5th Cir. 1989); *Cole v. Oroville Union High School*, 229 F.3d 1092 (9th Cir. 2000).

RELIGIOUS LIBERTY: THE FREE EXERCISE CLAUSE

6. What does “free exercise” of religion mean under the First Amendment?

The Free Exercise Clause of the First Amendment states that the government “shall make no law ... prohibiting the free exercise of religion.” Although the text sounds absolute, “no law” does not always mean “no law.” The Supreme Court has had to place some limits on the freedom to practice religion. To take an easy example cited by the Court in one of its landmark “free exercise” cases, the First Amendment would not protect the practice of human sacrifice even if some religion required it.¹² In other words, while the freedom to believe is absolute, the freedom to act on those beliefs is not.

But where may government draw the line on the practice of religion? The courts have struggled with the answer to that question for much of our history. Over time, the Supreme Court developed a test to help judges determine the limits of free exercise. First fully articulated in the 1963 case of *Sherbert v. Verner*, this test is sometimes referred to as the *Sherbert* or “compelling interest” test. The test has four parts: two that apply to any person who claims that his freedom of religion has been violated, and two that apply to the government agency accused of violating those rights.

For the individual, the court must determine

- whether the person has a claim involving a sincere religious belief, and
- whether the government action places a substantial burden on the person’s ability to act on that belief.

If these two elements are established, then the government must prove

- that it is acting in furtherance of a “compelling state interest,” and
- that it has pursued that interest in the manner least restrictive, or least burdensome, to religion.¹³

The Supreme Court, however, curtailed the application of the *Sherbert* test in the 1990 case of *Employment Division v. Smith*. In that case, the Court held that a burden on free exercise no longer had to be justified by a compelling state interest if the burden was an unintended result of laws that are generally applicable.¹⁴

After *Smith*, only laws (or government actions) that (1) were intended to prohibit the free exercise of religion, or (2) violated other constitutional rights, such as freedom of speech,

¹² *Reynolds v. U.S.*, 98 U.S. 145 (1878).

¹³ *Sherbert v. Verner*, 374 U.S. 398 (1963).

¹⁴ *Employment Div. v. Smith*, 494 U.S. 872 (1990).

were subject to the compelling-interest test. For example, a state could not pass a law stating that Native Americans are prohibited from using peyote, but it could accomplish the same result by prohibiting the use of peyote by everyone.

In the wake of *Smith*, many religious and civil liberties groups have worked to restore the *Sherbert* test — or compelling-interest test — through legislation. These efforts have been successful in some states. In other states, the courts have ruled that the compelling-interest test is applicable to religious claims by virtue of the state’s own constitution. In many states, however, the level of protection for free-exercise claims is uncertain.

For more information, see chapter 2 and chapter 4

ACCOMMODATING THE RELIGIOUS NEEDS AND REQUIREMENTS OF STUDENTS

7. How should school officials determine when they must accommodate a religious liberty claim under the Free Exercise Clause?

The application of the *Sherbert* or “compelling interest” test was sharply curtailed by the 1990 Supreme Court decision *Employment Division v. Smith*. But some states — such as Florida, Texas and Connecticut — have passed laws requiring the use of a “compelling interest test” in free-exercise cases. Moreover, since most cases involving public schools involve more than one constitutional right (e.g., the religion claim can be linked with a parental right or free-speech claim), some might argue that the compelling-interest test must be used even under *Smith*.

Regardless of how this is eventually settled in the courts, public schools fulfill the spirit of the First Amendment when they use the *Sherbert* test to accommodate the religious claims of students and parents where feasible.

8. May students be excused from parts of the curriculum for religious reasons?

As good educational policy, school officials, whenever possible, should try to accommodate the requests of parents and students for excusal for religious reasons from specific classroom discussions or activities.

In “A Parent’s Guide to Religion in the Public Schools,” the National PTA and the First Amendment Center give the following advice concerning excusal requests:

If focused on a specific discussion, assignment, or activity, such requests should be routinely granted to strike a balance between the student’s religious freedom and the school’s interest in providing a well-rounded education. If it is proved that particular lessons substantially burden a student’s free exercise of religion and if the school cannot prove a compelling interest in requiring attendance, some courts may require the school to excuse the student.¹⁵

It is important for teachers and administrators to ask themselves the questions posed in the *Sherbert* test as they make decisions about how to accommodate excusal requests.

Let’s look at one example of how the *Sherbert* test might be used in a public school: If parents ask for their child to be excused from reading a particular book for religious reasons, the teacher and administrator should first ask if the request is based on a sincere religious belief. Note that the religious belief need not be rational or even sensible to the school official. It need only be sincere. When parents and students take the time to object to a particular reading or activity, they are usually sincere.

Next, school officials must determine whether or not reading the assigned book would constitute a “substantial burden” on the student’s religious liberty rights. This is more difficult to determine, but if the parent and student find the book deeply offensive to their religious beliefs, then making the student read the book might place a substantial burden on her religious freedom. One federal appeals court has ruled that merely exposing students to ideas that contradict their religious beliefs does not constitute a substantial burden on religious exercise.¹⁶

If a student can prove that the school has placed a substantial burden on her sincere exercise of religion, then the inquiry shifts to the school. First, the school must show that it has a “compelling state interest” — described by the Supreme Court as “an interest of the highest order.”¹⁷ Clearly, public schools have a compelling interest in the education and welfare of children. In this instance, for example, the school clearly has a compelling interest in teaching the student to read. But the last part of the test requires that the school pursue that interest in a manner least restrictive of a complaining student’s religion. Thus the school may have an interest in teaching the student to read, but can that interest be accomplished without making the student read that particular book? In other words, the school should choose a course of action that does not violate the student’s religion if such a course of action is available and feasible for the school.

This may be easy to do if a student and parent object to a particular reading assignment on religious grounds. When this happens, the teacher may simply assign an alternate selection. If, however, requests for exemption become too frequent or too burdensome for the school, a court will probably find the school’s refusal to offer additional alternatives to be justified.

¹⁵ Twenty-two national educational and religious organizations agreed to this language in “A Teacher’s Guide to Religion in the Public Schools,” qtd. in Haynes & Thomas, *Finding Common Ground* (Nashville: First Amendment Center, 2001).

¹⁶ *Mozet v. Hawkins County*, 764 F2d 75 (6th Cir. 1985).

¹⁷ *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

9. How should school officials respond to request for accommodation of religious practices during the school day?

Enforcing adherence to religious requirements, such as special diet or dress, is the responsibility of a parent, not of the public school.

However, some religious requirements or practices may conflict with school practices or schedules. In those cases, school officials should try to accommodate these needs if feasible. Let's look at a few examples.

Jehovah's Witnesses may ask that their children be excused from birthday or holiday activities. Teachers should honor these requests by planning alternate activities or time in the library for affected students.

The school may have a "no caps" policy because of concerns about gang activity. But exemptions should be made for Orthodox Jews and other students who must wear head coverings for religious reasons.

Muslim students may request permission to pray in a designated area during the school day. If space is available, and if the educational process isn't disrupted, schools should try to grant this request. Schools may not set up "prayer rooms," but they may find ways to allow students to meet their religious obligations.

Students of various faiths may have dietary restrictions. Under the Establishment Clause, schools probably cannot prepare special foods to fulfill a student's particular religious requirements. But schools may help their religious students and others by labeling foods and offering a variety of choices at every meal.

As noted in the answer to Question 6, it is not entirely clear under current law how much accommodation schools must make for "free exercise" claims. And the legal requirement to accommodate requests may vary from state to state, depending on state law and state constitutional provisions. Nevertheless, schools uphold the principles of religious liberty and the spirit of the First Amendment when they make every effort to accommodate religious requests for exemption from school policies or practices.

10. May students be absent for religious holidays?

Schools should have policies concerning absences that take into account the religious needs and requirements of students. Students should be allowed a reasonable number of excused absences, without penalties, to observe religious holidays within their traditions. Students may be asked to complete makeup assignments or tests in conjunction with such absences.

For more information, see chapter 6 and chapter 8

SCHOOL PRAYER

11. Is it legal for students to pray in public schools?

Yes. Contrary to popular myth, the Supreme Court has never outlawed “prayer in schools.” Students are free to pray alone or in groups, as long as such prayers are not disruptive and do not infringe upon the rights of others. But this right “to engage in voluntary prayer does not include the right to have a captive audience listen or to compel other students to participate.”¹⁸

What the Supreme Court has repeatedly struck down are state-sponsored or state-organized prayers in public schools.

The Supreme Court has made clear that prayers organized or sponsored by a public school — even when delivered by a student — violate the First Amendment, whether in a classroom, over the public address system, at a graduation exercise, or even at a high school football game.¹⁹

12. Is it constitutional for a public school to require a “moment of silence”?

Yes, if, and only if, the moment of silence is genuinely neutral. A neutral moment of silence that does not encourage prayer over any other quiet, contemplative activity will not be struck down, even though some students may choose to use the time for prayer.²⁰

If a moment of silence is used to promote prayer, it will be struck down by the courts. In *Wallace v. Jaffree* the Supreme Court struck down an Alabama “moment of silence” law because it was enacted for the express purpose of promoting prayer in public schools.²¹ At the same time, however, the Court indicated that a moment of silence would be constitutional if it is genuinely neutral. Many states and local school districts currently have moment-of-silence policies in place.

13. May a student pray at graduation exercises or at other school-sponsored events?

This is one of the most confusing and controversial areas of the current school-prayer debate. While the courts have not clarified all of the issues, some are clearer than others.

For instance, inviting outside adults to lead prayers at graduation ceremonies is clearly unconstitutional. The Supreme Court resolved this issue in the 1992 case *Lee v. Weisman*, which began when prayers were delivered by clergy at a middle school’s commencement exercises in Providence, Rhode Island.²² The school designed the program, provided for the invocation, selected the clergy, and even supplied guidelines for the prayer.

¹⁸ This is the language supported by a broad range of civil liberties and religious groups in a joint statement of current law.

¹⁹ *Engel v. Vitale*, 370 U.S. 421 (1962); *School Dist. of Abington Township v. Schempp*, 374 U.S. 203 (1963); *Lee v. Weisman*, 505 U.S. 577 (1992); *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290 (2000).

²⁰ See *Bown v. Gwinnett County School Dist.*, 112 F.3d 1464 (11th Cir. 1997).

²¹ *Wallace v. Jaffree*, 472 U.S. 38 (1985).

²² *Lee v. Weisman*, 505 U.S. 577 (1992).

Therefore, the Supreme Court held that the practice violated the First Amendment's prohibition against laws "respecting an establishment of religion." The majority based its decision on the fact that (1) it is not the business of schools to sponsor or organize religious activities, and (2) students who might have objected to the prayer were subtly coerced to participate. This psychological coercion was not resolved by the fact that attendance at the graduation was "voluntary." In the Court's view, few students would want to miss the culminating event of their academic career.

A murkier issue is student-initiated, student-led prayer at school-sponsored events. On one side of the debate are those who believe that student religious speech at graduation ceremonies or other school-sponsored events violates the Establishment Clause. They are bolstered by the 2000 Supreme Court case of *Santa Fe v. Doe*,²³ which involved the traditional practice of student-led prayers over the public-address system before high school football games.

According to the district, students would vote each year on whether they would have prayers at home football games. If they decided to do so, they would then select a student to deliver the prayers. To ensure fairness, the school district said it required these prayers to be "non-sectarian [and] non-proselytizing."

A 6-to-3 majority of the Supreme Court still found the Santa Fe policy to be unconstitutional. The majority opinion first pointed out that constitutional rights are not subject to a vote. To the contrary, the judges said the purpose of the Bill of Rights was to place some rights beyond the reach of political majorities. Thus, the Constitution protects a person's right to freedom of speech, press, or religion even if no one else agrees with the ideas a person professes.²⁴

In addition, the Court found that having a student, as opposed to an adult, lead the prayer did not solve the constitutional dilemma. A football game is still a school-sponsored event, they held, and the school was still coercing the students, however subtly, to participate in a religious exercise.²⁵

Finally, the Court ruled that the requirement that the prayer be "non-sectarian" and "non-proselytizing" not only failed to solve the problems addressed in *Lee v. Weisman*, it may have aggravated them.²⁶ In other words, while some might like the idea of an inclusive, nonsectarian "civil" religion, others might not. To some people, the idea of nonsectarian prayer is offensive, as though a prayer were being addressed "to whom it may concern." Moreover, the Supreme Court made clear in *Lee v. Weisman* that even nondenominational prayers or generic religiosity may not be established by the government at graduation exercises.²⁷

²³ *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290 (2000).

²⁴ *Id.* at 305–306.

²⁵ *Id.* at 306.

²⁶ *Id.*

²⁷ *Id.*

Another thorny part of this issue is determining whether a particular prayer tends to proselytize. Such determinations entangle school officials in religious matters in unconstitutional ways. In fact, one Texas school district was sued for discriminating against those who wished to offer more-sectarian prayers at graduation exercises.

On the other side of this debate are those who contend that not allowing students to express themselves religiously at school events violates the students' free exercise of religion and free speech.

Case law indicates, however, that this may be true only in instances involving strictly student speech, and not when a student is conveying a message controlled or endorsed by the school. As the 11th Circuit case of *Adler v. Duval County* suggests, it would seem possible for a school to provide a forum for student speech within a graduation ceremony when prayer or religious speech might occur.²⁸

For example, a school might allow the valedictorian or class president an opportunity to speak during the ceremony. If such a student chose to express a religious viewpoint, it seems unlikely it would be found unconstitutional unless the school had suggested or otherwise encouraged the religious speech.²⁹ In effect, this means that in order to distance itself from the student's remarks, the school must create a limited open forum for student speech in the graduation program.

Again, there is a risk for school officials in this approach. By creating a limited open forum for student speech, the school may have to accept almost anything the student wishes to say. Although the school would not be required to allow speech that was profane, sexually explicit, defamatory, or disruptive, the speech could include political or religious views offensive to many, as well as speech critical of school officials.

If school officials feel a solemnizing event needs to occur at a graduation exercise, a neutral moment of silence might be the best option. This way, everyone could pray, meditate, or silently reflect on the previous year's efforts in her own way.

14. Are baccalaureate services constitutional?

Yes, if they are privately sponsored. Public schools may not sponsor religious baccalaureate ceremonies. But parents, faith groups, and other community organizations are free to hold such services for students who wish to attend. The school may announce the baccalaureate in the same way it announces other community events. If the school allows community groups to rent or otherwise use its facilities after hours, then a privately sponsored baccalaureate may be held on campus under the same terms offered to any private group.

For more information, see chapter 6.

²⁸ *Adler v. Duval County*, 250 F.3d 1330 (11th Cir. 2001), cert. denied, 122 S. Ct. 664 (2001).

²⁹ See *Doe v. Madison School Dist.*, 177 F.3d 789 (9th Cir. 1998, vacated on other grounds); *Adler v. Duval County*, 250 F.3d 1330 (11th Cir. 2001), cert. denied, 122 S. Ct. 664 (2001).

STUDENT RELIGIOUS EXPRESSION

15. May students share their religious faith in public schools?

Yes. Students are free to share their faith with their peers, as long as the activity is not disruptive and does not infringe upon the rights of others.

School officials possess substantial discretion to impose rules of order and other pedagogical restrictions on student activities. But they may not structure or administer such rules to discriminate against religious activity or speech.

This means that students 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 activities.³⁰ For example, students may read their Bibles or other scriptures, say grace before meals, and pray before tests.

Generally, students may share their faith or 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 each other, subject to the same rules of order as applied to other student activities and speech.³¹

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 if a student's speech begins to constitute harassment of a student or group of students.

Students may also participate in before- or after-school events with religious content, such as “See You at the Pole” gatherings, on the same terms as they may participate in other noncurriculum activities on school premises. School officials may neither discourage nor encourage participation in such an event.

Keep in mind, however, that the right to engage in voluntary prayer or religious discussion free from discrimination does not necessarily include the right to preach to a “captive audience,” like an assembly, or to compel other students to participate. To that end, teachers and school administrators should work to ensure that no student is in any way coerced — either psychologically or physically — to participate in a religious activity.³²

16. May students express their beliefs about religion in classroom assignments or at school-sponsored events?

Yes, within limits. Generally, if it is relevant to the subject under consideration and meets the requirements of the assignment, students should be allowed to express their religious or nonreligious views during a class discussion, as part of a written assignment, or as part of an art activity.

³⁰ See generally, *Tinker v. Des Moines Independent School Dist.*, 393 U.S. 503 (1969).

³¹ *Id.*

³² *Lee v. Weisman*, 505 U.S. 577 (1992).

This does not mean, however, that students have the right to compel a captive audience to participate in prayer or listen to a proselytizing sermon. School officials should allow students to express their views about religion, but should draw the line when students wish to invite others to participate in religious practices or want to give a speech that is primarily proselytizing. There is no bright legal line that can be drawn between permissible and impermissible student religious expression in a classroom assignment or at a school-sponsored event. In recent lower court decisions, judges have deferred to the judgment of educators to determine where to draw the line.³³

17. What about the power of schools to control student speech in the classroom?

Schools have great latitude to control the speech that occurs in a classroom and, in that setting, can probably prohibit the distribution of student publications altogether.³⁴ Similarly, schools may impose any reasonable constraint on student speech in a school-sponsored publication such as the school newspaper.

18. How do schools resolve the tension between freedom of speech and the need for discipline and control?

Preserving the speech rights of students and maintaining the integrity of public education are not mutually exclusive. Schools should model First Amendment principles by encouraging and supporting the rights of students to express their ideas in writings. On the other hand, students should not expect to have unfettered access to their classmates and should be prepared to abide by reasonable time, place, and manner restrictions.

Schools must continue to maintain order, discipline and the educational mission of the school as they seek to accommodate the rights of the students. As a result, the free-speech rights of students are not co-extensive with the rights of adults. Hate speech and sexually explicit speech, though protected for adults, are probably not protected in a public school.

19. May students distribute religious literature in a public school?

Court decisions on the issue generally fall into two categories. A minority of decisions hold that schools can prohibit the distribution of any publication that is not sponsored by the school. Of course, the ban must be applied even-handedly to all student publications. A school could not, for example, allow the distribution of political literature while barring religious publications. This is particularly evident in light of the Supreme Court's decision in *Westside Community School v. Mergens*, upholding the federal Equal Access Act. Under this minority view, however, a blanket prohibition on all student publications would be permissible.

³³ *C.H. v. Olivia*, 226 F.3d 198 (2nd Cir. 2000) (2nd Cir. 2000), cert. denied, 533 U.S. 915 (2001).

³⁴ *C.H. v. Olivia*, 226 F.3d 198 (2nd Cir. 2000), cert. denied, 533 U.S. 915 (2001).

The majority of courts take a different view. These courts hold that while schools may place some restrictions on the student publications, they may not ban them altogether. The courts base their decisions on the landmark case of *Tinker v. Des Moines School District*, which upheld the right of students to wear black armbands protesting the Vietnam War, even in a public school. Included in this right of free speech is not only the right to speak for oneself but also to distribute the writings (i.e., speech) of others. Thus, courts have generally upheld the rights of students to distribute non-school publications subject to the school's right to suppress such publications if they create substantial disruption, harm the rights of other students or infringe upon other compelling interests of the school. Again, the *Mergens* decision makes clear that the fear of a First Amendment violation is not sufficient justification to suppress a student publication that happens to be religious. Some states, such as California, have incorporated the majority view into their own state education codes.³⁵

20. Do schools that permit the distribution of student religious literature give up all control over how it is done?

No. Just because schools may not prohibit the distribution of all student materials does not mean that schools have no control over what may be distributed on school premises. On the contrary, courts have repeatedly held that schools may place a reasonable “time, place and manner” restrictions on all student materials distributed on campus. Thus, schools may specify when the distribution may occur (e.g., lunch hour or before or after classes begin), where it can occur (e.g., outside the school office) and how it can occur (e.g., from fixed locations as opposed to roving distribution). One recent decision upheld a policy confining the distribution of student literature to a table placed in a location designated by the principal and to the sidewalks adjacent to school property. Of course, any such restriction must be reasonable.

It is also likely that schools may insist on screening all student materials prior to distribution to ensure the appropriateness for a public school. Any such screening policy should provide for a speedy decision, a statement of reasons for rejecting the literature and a prompt appeals process. Because the speech rights of students are not coextensive with those of adults, schools may prohibit the distribution of some types of student literature altogether. Included in this category would be:

- Materials that would likely cause substantial disruption of the operation of the school. Literature that uses fighting words or other inflammatory language about students or groups of students would be an example of this type of material. Student speech may not be prohibited simply because it is considered offensive by some.³⁶
- Material that violates the rights of others. Included in this category would be literature that is libelous, invades the privacy of others or infringes on a copyright.

³⁵ See e.g., West's Ann.Cal.Educ.Code § 48907.

³⁶ *Saxe v. State College Area School Dist.*, 240 F. 3d 200 (3rd Cir. 2001).

- Materials that are obscene, lewd or sexually explicit.
- Commercial materials that advertise products unsuitable for minors.
- Materials that students would reasonably believe to be sponsored or endorsed by the school. One recent example of this category of speech was a religious newspaper that was formatted to look like the school newspaper.

While schools have considerable latitude in prohibiting the distribution of materials that conflict with their educational mission, schools generally may not ban materials based solely on content. Similarly, schools should not allow a heckler's veto by prohibiting the distribution only of those materials that are unpopular or controversial. If Christian students are allowed to distribute their newsletters, Buddhists, Muslims and even Wiccans must be given the same privilege.

For more information, see chapter 6.

STUDENT EXTRACURRICULAR CLUBS AND ACTIVITIES

21. May students form religious or political clubs in secondary public schools?

Yes, if the school allows other extracurricular (noncurriculum-related) groups. Although schools do not have to open or maintain a limited open forum, once they do, they may not discriminate against a student group because of the content of its speech.

The Equal Access Act (EAA), passed by Congress in 1984 and upheld as constitutional by the Supreme Court in 1990, makes it “unlawful for any public secondary school that receives federal funds and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.”

The EAA covers student-initiated and student-led clubs in secondary schools with a limited open forum. According to the act, “non-school persons may not direct, conduct, or regularly attend activities of student groups.”

A “limited open forum” is created whenever a public secondary school provides an opportunity for one or more “noncurriculum related groups” to meet on school premises during noninstructional time. The forum created is said to be “limited” because only the school's students can take advantage of it.

22. What is a “noncurriculum related student group” under the Equal Access Act?

In the 1990 Supreme Court case of *Westside Community Schools v. Mergens*,³⁷ the Court interpreted a “noncurriculum related student group” to mean “any student group [or club] that does not directly relate to the body of courses offered by the school.”

According to the Court, a student group directly relates to a school’s curriculum only if (1) the subject matter of the group is actually taught, or will soon be taught, in a regularly offered course; (2) the subject matter of the group concerns the body of courses as a whole; or (3) participation in the group is required for a particular course or results in academic credit.

As examples, the Court identified three groups that were noncurriculum related at the Westside schools: (1) a scuba club, (2) a chess club, and (3) a service club. The Court found these groups to be noncurriculum related because they did not meet the criteria set forth above. Conversely, the French club was found to be curriculum related since the school regularly offered French classes.

Subject to review by the courts, local school authorities must determine whether a student group is curriculum related or not. Schools may not, however, substitute their own definition of “noncurriculum related” for the definition provided by the Court.

If the school violates the EAA, an aggrieved person may bring suit in U.S. district court to compel the school to observe the law. Although violations of equal access will not result in the loss of federal funds, the school could be liable for damages and the attorney’s fees of a student group that successfully challenges a denial to meet under the act.

23. What control does the school retain over student meetings in a limited open forum?

The EAA does not take away a school’s authority to establish reasonable time, place, and manner regulations for a limited open forum. For example, a school may establish for its student clubs a reasonable meeting time on any one school day, a combination of days, or all school days. It may assign the rooms in which student groups can meet. It may enforce order and discipline during the meetings. The key, however, is that the school’s time, place, and manner regulations must be uniform, nondiscriminatory, and neutral in viewpoint.

24. May teachers or other school employees participate in student religious clubs?

No. The EAA states that “employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity.”

³⁷ *Bd. of Education v. Mergens*, 496 U.S. 226 (1990).

For insurance purposes, or because of state law or local school policy, teachers or other school employees are commonly required to be present during student meetings. But if the student club is religious in nature, school employees may be present as monitors only. Such custodial supervision does not constitute sponsorship or endorsement of the group by the school.

25. May religious leaders or other outside adults attend the meetings of student clubs?

Yes, if the students invite these visitors and if the school does not have a policy barring all guest speakers or outside adults from extracurricular club meetings. However, the EAA states that the nonschool persons “may not direct, conduct, control, or regularly attend activities of student groups.”³⁸

26. May noncurriculum-related student groups use school media to advertise their meetings?

Yes. A student group may use school media — such as the public-address system, school paper, and school bulletin board — as long as other noncurriculum-related student groups are allowed to do so. Any policy concerning the use of school media must be applied to all noncurriculum-related student groups in a nondiscriminatory manner. Schools, however, may issue disclaimers indicating that extracurricular student groups are not school-sponsored or endorsed.

27. May the school exclude any student extracurricular group?

Yes. According to guidelines endorsed by a broad coalition of educational and religious liberty organizations, “student groups that are unlawful, or that materially and substantially interfere with the orderly conduct of educational activities, may be excluded. However, a student group cannot be denied equal access simply because its ideas are unpopular. Freedom of speech includes the ideas the majority may find repugnant.”³⁹

Most schools require students to submit a statement outlining the purpose and nature of the proposed club. School officials do not have to allow meetings of groups that advocate violence or hate or engage in illegal activity. This does not mean, however, that schools may bar students from forming clubs to discuss controversial social and legal issues such as abortion or sexual orientation. Again, student-initiated clubs in a limited open forum may not be barred on the basis of the viewpoint of their speech.

Some schools require parental permission for students to join an extracurricular club. Although this step is not required by the EAA, it has enabled schools to keep the forum open in communities where student clubs have sparked controversy.

³⁸ 20 U.S.C. 4071(c)(3).

³⁹ “The Equal Access Act: Questions and Answers,” found in Haynes & Thomas, *Finding Common Ground* (2001).

28. Do students have the right to form religious or political clubs below the secondary level?

Probably not, but current law is unclear on this point. Although the EAA does not apply to public schools below the secondary level, some courts have held that the Free Speech Clause protects the right of middle school or elementary school students to form religious or political clubs on an equal footing with other student-initiated clubs. When the EAA was debated in Congress, many lawmakers expressed doubt that young children could form religious clubs that would be truly initiated and led by students. In addition, younger students are more likely to view religious clubs meeting at the school as “school sponsored.” For these and other reasons, Congress declined to apply equal access below the secondary level.

May administrators permit students to form religious or political clubs in middle schools, even if the law does not require that such clubs be allowed? Again, current law is unclear on this point. If school officials decide to allow middle school students to form religious or political clubs, then at the very least the school should have in place a clear policy and ground rules for the clubs, consistent with the EAA, and explain that the student clubs are not school sponsored.⁴⁰

For more information, see chapter 7.

TEACHING ABOUT RELIGION

29. Is it constitutional to teach about religion in a public school?

Yes. In the 1960s school-prayer cases that prompted rulings against state-sponsored school prayer and devotional Bible reading, the U.S. Supreme Court indicated that public school education may include teaching about religion. In *Abington v. Schempp*, Associate Justice Tom Clark wrote for the Court:

[I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education may not be effected consistently with the First Amendment.⁴¹

⁴⁰ *Good News Club v. School Dist. of Ladue*, 28 F.3d 1501 (8th Cir. 1994).

⁴¹ *Abington School Dist. v. Schempp*, 374 U.S. 203 (1963).

30. What does it mean to teach “about” religion under the First Amendment?

The key is to understand the difference between the teaching *of* religion — that is, religious indoctrination or faith formation — and teaching *about* religion — that is, the academic study of religion. The distinction may be summarized this way:

- The school’s approach to religion is *academic*, not *devotional*.
- The school strives for student *awareness* of religions, but does not press for student *acceptance* of any religion.
- The school sponsors study *about* religion, not the *practice* of religion.
- The school may *expose* students to a diversity of religious views, but may not *impose* any particular view.
- The school *educates* about all religions; it does not *promote* or *denigrate* religion.
- The school *informs* students about various beliefs; it does not seek to make students *conform* to any particular belief.⁴²

Classroom discussions concerning religion must be conducted in an environment that is free of advocacy on the part of the teacher. Students may express their own religious views, as long as such expression is germane to the discussion. But public school teachers are required by the First Amendment to teach about religion fairly and objectively, neither promoting nor denigrating religion in general or specific religious groups in particular. When discussing religion, many teachers must guard against injecting personal religious beliefs by teaching through attribution (e.g., by using such phrases as “most Buddhists believe ...” or “according to the Hebrew scriptures ...”).

31. Does the First Amendment require that “equal time” be given to all faiths in the public school curriculum?

No. The grade level of the students and the academic requirements of the course should determine which religions to study and how much to discuss about religion.

In the elementary grades, the study of family, community, culture, history, literature, the nation, and other themes and topics should naturally involve some discussion of religion. Elementary students are introduced to the basic ideas and practices of the world’s major religions by focusing on the generally agreed-upon meanings of religious faiths — the core beliefs and symbols as well as important figures and events. Stories drawn from various faiths may be included among the wide variety of stories read by students, but the material selected must always be presented in the context of learning about religion.

On the secondary level, the social studies, literature, and the arts offer opportunities for the inclusion of study about religions, their ideas, and practices. The academic needs of the

⁴² Based on guidelines originally published by the Public Education Religious Studies Center at Wright State University and subsequently agreed to by seventeen national religious and educational organizations in “Religion in the Public School Curriculum: Questions and Answers.” The full guidelines may be found in Haynes & Thomas, *Finding Common Ground* (Nashville: First Amendment Center, 2001).

course should determine which religions are studied and how much time is required to provide an adequate understanding of the concepts and practices under consideration.

In a U.S. history course, for example, some faith communities may be given more time than others simply because of their predominant influence on the development of the nation. In world history, a variety of faiths must be studied, based on the regions of the world, in order to understand the various civilizations and cultures that have shaped history and society.

Fair and balanced study about religion on the secondary level includes critical thinking about historical events involving religious traditions. Religious beliefs have been at the heart of some of the best and worst developments in human history. The full historical record, and various interpretations of it, should be available for analysis and discussion. Using primary sources whenever possible allows students to work directly with the historical record.

Of course, fairness and balance in U.S. or world history and literature is difficult to achieve, given the brief treatment of religious ideas and events in most textbooks and the limited time available in the course syllabus. Teachers will need scholarly supplemental resources that enable them to cover the required material within the allotted time, while enriching the discussion with study of religion. In fact, some schools now offer electives in religious studies to provide additional opportunities for students to study about the major faith communities in greater depth.

Overall, the curriculum should include all major voices, and many minor ones, in an effort to provide the best possible education.

32. Is it legal to invite guest speakers to help teach about religion?

Yes, if the school district policy allows guest speakers in the classroom.

If a guest speaker is invited, care should be taken to find someone with the academic background necessary for an objective and scholarly discussion of the historical period and the religion under consideration. Faculty from local colleges and universities often make excellent guest speakers, or they can recommend others who might be appropriate for working with students in a public school setting.

Religious leaders in the community may also be a resource. Remember, however, that they have commitments to their own faith. Above all else, be certain that any guest speaker understands the First Amendment guidelines for teaching about religion in public education and is clear about the academic nature of the assignment.

For more information, see chapter 9.

RELIGIOUS HOLIDAYS

33. How should religious holidays be treated in the classroom?

Teachers must be alert to the distinction between teaching about religious holidays, which is permissible, and celebrating religious holidays, which is not. Recognition of and information about holidays may focus on how and when they are celebrated, their origins, histories, and generally agreed-upon meanings. If the approach is objective and sensitive, neither promoting nor inhibiting religion, this study can foster understanding and mutual respect for differences in belief. Teachers may not, however, use the study of religious holidays as an opportunity to proselytize or otherwise inject their personal religious beliefs into the discussion.

The use of religious symbols is permissible as a teaching aid or resource, provided they are used only as examples of cultural or religious heritage. Religious symbols may be displayed only on a temporary basis as part of the academic lesson being studied. Students may choose to create artwork with religious symbols, but teachers should not assign or suggest such creations.

The use of art, drama, music, or literature with religious themes is permissible if it serves a sound educational goal in the curriculum. Such themes should be included on the basis of their academic or aesthetic value, and not as a vehicle for promoting religious beliefs. For example, sacred music may be sung or played as part of the academic study of music. School concerts that present a variety of selections may include religious music. Concerts should, however, avoid programs dominated by religious music, especially when these coincide with a particular religious holiday.

34. What should schools do in December?

Decisions about what to do in December should begin with the understanding that public schools may not sponsor religious devotions or celebrations; study about religious holidays does not extend to religious worship or practice.

Does this mean that all seasonal activities must be banned from the schools? Probably not, and in any event, such an effort would be unrealistic. The resolution would seem to lie in devising holiday programs that serve an educational purpose for all students — programs that make no students feel excluded or forcibly identified with a religion not their own.

Holiday concerts in December may appropriately include music related to Christmas, Hanukkah, and other religious traditions, but religious music should not dominate. Any dramatic productions should emphasize the cultural aspects of the holidays. Conversely, Nativity pageants or plays portraying the Hanukkah miracle would not be appropriate in the public school setting.

In short, while recognizing the holiday season, none of the school activities in December should have the purpose, or effect, of promoting or inhibiting religion.

35. How should religious objections to holidays be handled?

Students from certain religious traditions may ask to be excused from classroom discussions or activities related to particular holidays. For example, holidays such as Halloween and Valentine’s Day, which are considered by many people to be secular, are viewed by others as having religious overtones.

Excusal requests may be especially common in the elementary grades, where holidays are often marked by parties and similar nonacademic activities. Such requests should be routinely granted in the interest of creating good policy and upholding the religious-liberty principles of the First Amendment.

In addition, some parents and students may make requests for excusals from discussions of certain holidays, even when these holidays are treated from an academic perspective. If these requests are focused on a limited, specific discussion, administrators should grant such requests, in order to strike a balance between the student’s religious freedom and the school’s interest in providing a well-rounded education.

Administrators and teachers should understand, however, that a policy or practice of excusing students from a specific activity or discussion may not be used as a rationale for school sponsorship of religious celebration or worship for the remaining students.

For more information, see chapter 10.

USE OF SCHOOL FACILITIES BY OUTSIDE GROUPS

36. Do outside groups have the right to distribute their material on campus?

No. Adults from outside the school do not have the right to distribute materials to students in a public school. May school officials allow them to do so? Although this area of the law is somewhat unclear, it is fair to say that schools should exercise great caution before giving an outside group access to students during the school day. Giving some groups access opens the door to others. Moreover, if a religious group is allowed to actively distribute religious literature to students on campus, that activity is likely to violate the Establishment Clause.

At least one lower court has upheld “passive” distribution of materials by religious and other community groups. Note that in this case the group left materials for students to browse

through and take only if they wished. Also, a wide variety of community groups were given similar privileges, and the school posted a disclaimer explaining that the school did not endorse these materials. Under those conditions, this court allowed passive distribution, but only in a secondary school setting⁴³ (although other federal courts have rejected this distinction).

Schools may announce community events or meetings of groups — including religious groups — that work with students. All of these groups should be treated in the same way. The school should make clear that it does not sponsor these community groups.⁴⁴

37. What about distribution of flyers from religious groups about events or programs for youth?

Although outside groups generally have no right to distribute religious materials on campus, flyers from religious groups may be another matter. If a school allows outside groups such as the Girl Scouts to send flyers home with students about programs for youth, some courts have ruled that schools may not deny that privilege to a religious group.⁴⁵

38. May public school facilities be used by outside community groups during nonschool hours?

Generally, yes. Although schools are not required to open their facilities to any community group, when they do, all groups — including those with a religious viewpoint — must be treated the same.⁴⁶ In fact, the Supreme Court has ruled unanimously that schools may not discriminate on the basis of religious viewpoint when making their facilities available to community groups during nonschool hours.⁴⁷

Schools may, of course, impose reasonable, content-neutral restrictions on the use of their facilities. For example, schools may decide when meetings may be held, how long they may last, whether they may continue during weeks or months when school is not in session, what maintenance fee must be paid, and what insurance might be required.

Some content-based restrictions may also be allowed. For example, schools may probably exclude for-profit, commercial businesses even though community nonprofits are allowed to use school facilities after hours. They may also limit the use of the facilities to such things as “educational purposes,” but such distinctions may prove difficult to administer, as many groups may claim to meet the stipulated purpose.

Schools should be aware that the imposition of content-based restrictions could raise difficult constitutional questions. For example, the Supreme Court has held in *Good News v. Milford* that in the case of the Good News Club, a content-based restriction excluding

⁴³ *Peck v. Upshur County*, 155 F.3d 274 (4th Cir. 1998).

⁴⁴ *Child Evangelism Fellowship v. Stafford Township*, 386 F.3d 514 (3rd Cir. 2004).

⁴⁵ *Hills v. Scottsdale S.D. County Pub. Schools*, 329 F.3d 1044 (9th Cir. 2003); *Rusk v. Crestview Local School Dist.*, 379 F.3d 418 (6th Cir. 2004); *Child Evangelism Fellowship v. Mont. Co. Public Schools*, 373 F.3d 89 (4th Cir. 2004).

⁴⁶ *Good News Club v. Milford Central School Dist.*, 533 U.S. 98 (2001).

⁴⁷ *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993); *Good News Club v. Milford*, 533 U.S. 98 (2001).

religious worship and instruction amounted to impermissible viewpoint discrimination. School districts should be especially mindful to consult with legal counsel if they decide to draft content-based restrictions.

For more information, see chapter 12.

COOPERATIVE AGREEMENTS BETWEEN PUBLIC SCHOOLS AND RELIGIOUS COMMUNITIES

39. May public schools and religious communities enter into cooperative agreements to help students with such programs as tutoring?

Yes, but only if appropriate constitutional safeguards are in place. Remember, public schools must remain neutral among religions and between religion and nonreligion. For that reason, religious groups must refrain from proselytizing students during any cooperative programs with public schools. Participation or nonparticipation by students in such cooperative programs should not affect the student's academic ranking or ability to participate in other school activities. In addition, cooperative programs may not be limited to religious groups, but must be open to all responsible community groups.⁴⁸

For more information, see chapter 12.

RELEASED-TIME PROGRAMS

40. May students be released for off-campus religious instruction during the school day?

Yes. Subject to applicable state laws, public schools have the discretion to release students who have parental permission to attend off-campus religious instruction during the school day. The Supreme Court in the 1952 case *Zorach v. Clauson* ruled “released-time” programs constitutional.⁴⁹

If a public school decides to allow released time, the program must take place off campus and must be wholly organized and run by religious or community groups and not by the school. Schools may not encourage or discourage participation by students or in any way penalize students who do not attend.

For more information, see chapter 6.

⁴⁸ For more detailed guidelines, see “Public Schools and Religious Communities: A First Amendment Guide” published by the American Jewish Congress, Christian Legal Society, and First Amendment Center and co-signed by 12 additional educational and religious organizations (1999).

⁴⁹ *Zorach v. Clauson*, 343 U.S. 306 (1952).

TEACHER AND ADMINISTRATOR RIGHTS AND RESPONSIBILITIES

41. May teachers and administrators pray or otherwise express their faith while at school?

As employees of the government, public school teachers and administrators are subject to the Establishment Clause and thus required to be neutral concerning religion while carrying out their duties. That means, for example, that school officials do not have the right to pray with or in the presence of students during the school day.

Of course, teachers and administrators — like students — bring their faith with them through the schoolhouse door each morning. Because of the First Amendment, however, school officials who wish to pray or engage in other religious activities — unless they are silent — should do so outside the presence of students.

If a group of teachers wishes to meet for prayer or scriptural study in the faculty lounge during free time in the school day, most legal experts see no constitutional reason why they should not be permitted to do so, as long as the activity is outside the presence of students and does not interfere with their duties or the rights of other teachers.⁵⁰

Teachers are permitted to wear unobtrusive jewelry, such as a cross or the Star of David. But teachers should not wear clothing with a proselytizing message (e.g., a “Jesus Saves” T-shirt).

When not on duty, of course, educators are free like all other citizens to practice their faith. But school officials must refrain from using their position in the public school to promote their outside religious activities.

42. May teachers wear religious jewelry in the classroom?

Most experts agree that teachers are permitted to wear unobtrusive jewelry, such as a cross or a Star of David. But they should not wear clothing with a proselytizing message (e.g., a “Jesus Saves” T-shirt).

43. How should teachers respond if students ask them about their religious beliefs?

Some teachers prefer not to answer the question, believing that it is inappropriate for a teacher to inject personal beliefs into the classroom. Other teachers may choose to answer the question directly and succinctly in the interest of an open and honest classroom environment.

Before answering the question, however, teachers should consider the age of the students. Middle and high school students may be able to distinguish between a personal conviction

⁵⁰ See generally, McFarland, S. T. (1996). “A Religious Equality Amendment? The Necessity and Impact of the Proposed Religious Equality Amendment,” B.Y.U.L. Rev. 627; (2001).

and the official position of the school; very young children may not. In any case, the teacher may answer at most with a brief statement of personal belief — but may not turn the question into an opportunity to proselytize for or against religion. Teachers may neither reward nor punish students because they agree or disagree with the religious views of the teacher.

44. May a teacher refuse to teach certain materials in class if she feels the curriculum infringes on her personal beliefs?

Generally, teachers must instruct their students in accordance with the established curriculum. For example, the 9th Circuit ruled in 1994 against a high school biology teacher who had challenged his school district's requirement that he teach evolution, as well as its order barring him from discussing his religious beliefs with students. In the words of the court, "[a] school district's restriction on [a] teacher's right of free speech in prohibiting [the] teacher from talking with students about religion during the school day, including times when he was not actually teaching class, [is] justified by the school district's interest in avoiding [an] Establishment Clause violation."⁵¹

More recently, a state appeals court ruled again that a high school teacher did not have a First Amendment right to refuse to teach evolution in a high school biology class.⁵² The teacher had argued that the school district had reassigned him to another school and another course because it wanted to silence his criticism of evolution as a viable scientific theory. The state appeals court rejected that argument, pointing out that the teacher could not override the established curriculum.

Other courts have similarly found that teachers do not have a First Amendment right to trump school district decisions regarding the curriculum.⁵³ One court wrote: "the First Amendment has never required school districts to abdicate control over public school curricula to the unfettered discretion of individual teachers."⁵⁴ More recently, the 4th Circuit ruled that a teacher had "no First Amendment right to insist on the makeup of the curriculum."⁵⁵

For more information, see chapter 5.

⁵¹ *Pelozo v. Capistrano Unified School Dist.*, 37 F.3d 517 (9th Cir. 1994), cert. denied, 515 U.S. 1173 (1995).

⁵² *LeVake v. Independent School Dist. No. 656*, 625 N.W.2d 502 (Minn. App. 2001), cert. denied, 122 S. Ct. 814 (2002).

⁵³ *Clark v. Holmes*, 474 F.2d 928 (7th Cir. 1972), cert. denied, 411 U.S. 972 (1973); *Webster v. New Lenox School Dist. No. 122*, 917 F.2d 1004 (7th Cir. 1990).

⁵⁴ *Kirkland v. Northside Independent School Dist.*, 890 F.2d 794 (5th Cir. 1989), cert. denied, 496 U.S. 926 (1990).

⁵⁵ *Boring v. Buncombe County Bd. of Education*, 136 F.3d 364 (4th Cir. 1998), cert. denied, 525 U.S. 813 (1998) (teacher had no First Amendment right to select particular play for students to perform).

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Government for a redress
of grievances.*

APPENDIX A



**Appendix A:
Contact Information
for Organizations
Signing Consensus
Statements**

*Congress shall make
no law respecting an
establishment of religion
or prohibiting the
exercise of*

APPENDIX A: CONTACT INFORMATION FOR ORGANIZATIONS SIGNING CONSENSUS STATEMENTS

American Academy of Religion

825 Houston Mill Road N.E., Suite 300
Atlanta, GA 30329-4205
Phone 1 (404) 727-3049
Fax 1 (404) 727-7959
aar@aarweb.org
www.aarweb.org

American Federation of Teachers

555 New Jersey Ave., N.W.
Washington, DC 20001
Phone (202) 879-4400
online@aft.org
www.aft.org

American Association of School Administrators

801 North Quincy St., Suite 700
Arlington, VA 22203-1730
Phone (703) 528-0700
Fax (703) 841-1543
webmaster@aasa.org
www.aasa.org

American Jewish Committee

P.O. Box 705
New York, NY 10150
Phone (212) 751-4000
Fax (212) 891-1492
PR@ajc.org
www.ajc.org

American Center for Law and Justice

P.O. Box 90555
Washington, DC 20090-0555
Phone (757) 226-2489
Fax (757) 226-2836
www.aclj.org

American Jewish Congress

825 Third Ave.
New York, NY 10022
Phone (212) 879-4500
Fax (212) 758-1633
www.ajcongress.org

**Americans United for
Separation of Church and State**

518 C St., N.E.
Washington, DC 20002
Phone (202) 466-3234
Fax (202) 466-2587
americansunited@au.org
www.au.org

Anti-Defamation League

605 Third Ave.
New York, NY 10158-3560
Phone (212) 490-2525
Fax (212) 867-0779
www.adl.org

**Association for Supervision
and Curriculum Development**

1703 North Beauregard St.
Alexandria, VA 22311-1714
Phone (703) 578-9600 or
1 (800) 933-ASCD
Fax (703) 575-5400
www.ascd.org

**Baptist Joint Committee
for Religious Liberty**

200 Maryland Ave., N.E.
Washington, DC 20002
Phone (202) 544-4226
Fax (202) 544-2094
bjc@BJCOnline.org
www.BJCOnline.org

The Bible Literacy Project, Inc.

122 W. 14th St., PMB 332
Front Royal, VA 22630
Phone (540) 622-2265
info@bibleliteracy.org
www.bibleliteracy.org

**Carnegie Foundation for the
Advancement of Teaching**

51 Vista Lane
Stanford, CA 94305
Phone (650) 566-5100
Fax (650) 326-0278
clyburn@carnegiefoundation.org
www.carnegiefoundation.org

**Catholic League for Religious
and Civil Rights**

450 Seventh Ave.
New York, NY 10123
Phone (212) 371-3191
Fax (212) 371-3394
cl@catholicleague.org
www.catholicleague.org

**Central Conference of
American Rabbis**

355 Lexington Ave.
New York, NY 10017
Phone (212) 972-3636
Fax (212) 692-0819
info@ccarnet.org
www.ccarnet.org

Christian Coalition of America

P.O. Box 37030
Washington, DC 20013-7030
Phone (202) 479-6900
Fax (202) 479-4260
coalition@cc.org
www.cc.org

**Christian Educators
Association International**

P.O. Box 41300
Pasadena, CA 91114-8300
Phone (888) 798-1124
Fax (626) 798-2346
info@ceai.org
www.ceai.org

Christian Legal Society

8001 Braddock Road, Suite 300
Springfield, VA 22151
Phone (703) 642-1070
Fax (703) 642-1075
CLSHQ@clsnet.org
www.clsnet.org

First Amendment Center

1207 18th Ave. South
Nashville, TN 37212
Phone (615) 727-1600
Fax (615) 727-1319
info@fac.org
www.firstamendmentcenter.org

Coalition for the Community of Reason

6 Peele Place
Charleston, SC 29401
Phone (843) 577-0637
Fax (843) 953-1410
facilitator@communityofreason.org
www.communityofreason.org

General Conference of Seventh-day Adventists

12501 Old Columbia Pike
Silver Spring, MD 20904-6600
Phone (301) 680-6000
Fax (301) 680-6090
www.adventists.org

Council on Islamic Education

P.O. Box 20186
Fountain Valley, CA 92728-0186
Phone (714) 839-2929
Fax (714) 839-2714
info@cie.org
www.cie.org

Islamic Society of North America

P.O. Box 38
Plainfield, IN 46168
Phone (317) 839-8157
Fax (317) 839-1840
www.isna.net

Church of Jesus Christ of Latter-day Saints

50 East North Temple Street
Salt Lake City, Utah 84150
Phone (801) 240-1000
www.lds.org

National Association of Elementary School Principals

1615 Duke St.
Alexandria, VA 22314
Phone (800) 38-NAESP [800-386-2377]
or (703) 684-3345
naesp@naesp.org
www.naesp.org

Department of Education of the United States Conference of Catholic Bishops

3211 4th St., N.E.
Washington, DC 20017-1194
Phone (202) 541-3000
www.usccb.org

National Association of Evangelicals

Office of Governmental Affairs
P.O. Box 23269
Washington, DC 20026
Phone (202) 789-1011
oga@nae.net
www.nae.net

**National Association of
Secondary School Principals**

1904 Association Drive
Reston, VA 20191-1537
Phone (703) 860-0200
cpd@principals.org
www.principals.org

**National Conference for
Community and Justice**

326 Flatbush Ave., #402
Brooklyn, NY 11238
Phone (212) 545-1300
Fax (718) 783-4143
www.nccj.org

**National Council for
the Social Studies**

8555 16th St., Suite 500
Silver Spring, MD 20910
Phone (301) 588-1800
Fax (301) 588-2049
www.ncss.org

**National Council of Churches
of Christ in the USA**

Room 880, 475 Riverside Drive
New York, NY 10115
Phone (212) 870-2227
Fax (212) 870-2030
news@nccusa.org
www.nccusa.org

National Education Association

1201 16th St., N.W.
Washington, DC 20036-3290
Phone (202) 833-4000
Fax (202) 822-7974
www.nea.org

National PTA

541 North Fairbanks Court, Suite 1300
Chicago, IL 60611-3396
Phone (312) 670-6782
or (800) 307-4PTA (4782)
Fax (312) 670-6783
info@pta.org
www.pta.org

**National School Boards
Association**

1680 Duke St.
Alexandria, VA 22314
Phone (703) 838-6722
Fax (703) 683-7590
info@nsba.org
www.nsba.org

People for the American Way

2000 M St., N.W., Suite 400
Washington, DC 20036
Phone: (202) 467-4999
or (800) 326-7329
pfaw@pfaw.org
www.pfaw.org

Phi Delta Kappa

408 N. Union St., P.O. Box 789
Bloomington, IN 47402-0789
Phone (800) 766-1156
or (812) 339-1156
Fax (812) 339-0018
www.pdkintl.org

Union for Reform Judaism

633 Third Ave.
New York, NY 10017-6778
Phone (212) 650-4000
www.uahc.org

**Union of Orthodox Jewish
Congregations of America**

11 Broadway, 14th Floor

New York, NY 10004

Phone (212) 563-4000

www.ou.org



B

APPENDIX B

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Government for a redress
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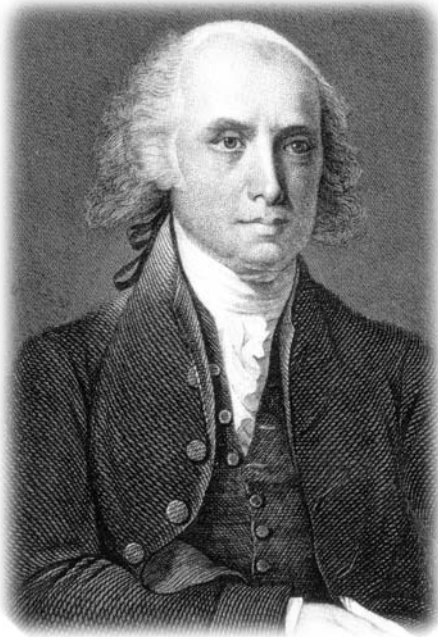
Appendix B: A History of Religious Liberty in American Public Life

The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right.

—James Madison
Memorial and Remonstrance
1785

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exercise thereof*

From the colonial era to the present, religions and religious beliefs have played a significant role in the political life of the United States. Religion has been at the heart of some of the best and some of the worst movements in American history. The guiding principles that the Framers intended to govern the relationship between religion and politics are set forth in Article VI of the Constitution and in the opening 16 words of the First Amendment of the Bill of Rights. Now that America has expanded from the largely Protestant pluralism of the seventeenth century to a nation of some 3,000 religious groups, it is more vital than ever that every citizen understand the appropriate role of religion in public life and affirm the constitutional guarantees of religious liberty, or freedom of conscience, for people of all faiths or none.



The philosophical ideas and religious convictions of Roger Williams, William Penn, John Leland, Thomas Jefferson, James Madison, and other leaders were decisive in the struggle for freedom of conscience. The United States is a nation built on ideals and convictions that have become democratic first principles. These principles must be understood and affirmed by every generation if the American experiment in liberty is to endure.



What Citizens Should Know

The citizen should be able to:

1. Explain the position that religious liberty is a universal human right, the preservation of which depends upon a reciprocal responsibility to respect that right for everyone.
2. Explain how the constitutional principles of religious liberty are the ground rules that enable people of all faiths and none to live together as citizens of one nation.
3. Explain the principles of religious liberty or freedom of conscience as found in the First Amendment of the U.S. Constitution.
4. Explain various interpretations of the constitutional relationship of religion and government in American political life.
5. Explain the significant role religion and religious belief have played in American history and politics.
6. Explain the relationship of religious liberty to the strength and diversity of religious life in the United States.
7. Take, defend, and evaluate positions on constitutional issues regarding religious beliefs and practices.

FRAME OF REFERENCE

Conceptual perspective

I. The central place of faith in the idea of religion.

The radical pluralism of faiths in the United States today makes it difficult to define religion without excluding religions that may not fit a chosen definition. If, however, citizens are to understand the role of religion in American public life and support religious liberty for all, they need to appreciate that faith is of central importance to many Americans.

- A. The centrality of religion in the lives of many Americans.** Without defining what religion is, we can, for purposes of civic understanding, focus on what religion does in the lives of believers. Ultimate beliefs and world views shape the lives of many people because they are regarded as the deepest source of meaning and belonging. In the United States, arguably the most religious of all the industrialized nations, religious beliefs are at the center of life for millions of Americans. These beliefs are not confined to worship and family life; they also shape the political and social views of vast numbers of citizens.
- B. The expansion of religious pluralism.** The United States has moved beyond the largely Protestant pluralism of its early history to a pluralism that includes almost every religious expression in the world. This expanding diversity presents new challenges for American public life.
- C. Religious liberty as freedom of conscience for all, including non-believers.** A growing number of people in the United States express no religious preference at all. Any discussion of pluralism and the role of religion in public life, therefore, must include secularists, humanists, non-believers, and others who do not profess any religious beliefs.



1. *The protection of religion in its broadest sense.* The Supreme Court has accepted the necessity of broad recognition of world views (and the dangers of too narrow a definition of religion) by giving conscientious objector status to those who have “a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption ...” (*U.S. v. Seeger*, 1965).
2. *No one excluded from protection.* The important point for citizens to keep in mind is that religious liberty, or freedom of conscience, was intended by the Framers to protect the beliefs of everyone, not just those of recognized faith communities.

II. The American experiment in religious liberty.

Religious liberty in America is a key part of the boldest and most successful experiment in freedom the world has known. The strength and diversity of religion in the United States is due almost entirely to the full protection of religious liberty, or freedom of conscience, guaranteed by the Constitution.

A. Religious liberty as the “first liberty.” Religious liberty has been called America’s “first liberty” because freedom of the mind is logically and philosophically prior to all other freedoms protected by the Constitution.

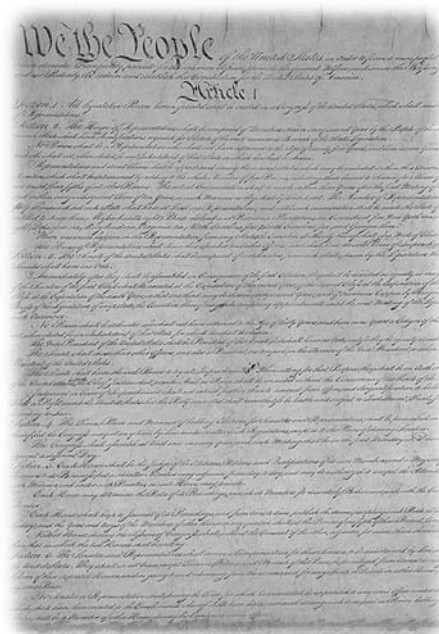
B. Definition of religious liberty.

In the American experiment, religious liberty is defined according to the following elements:

1. *Freedom of conscience.* There shall be full freedom of conscience for people of all faiths or none.
2. *Religious liberty, an inalienable right.* Religious liberty is considered to be a natural or inalienable right that must always be beyond the power of the state to confer or remove.
3. *Right to practice any or no religion.* Religious liberty includes the right to freely practice any religion or no religion without governmental coercion or control.



C. Guarantees of religious liberty in the Constitution. The guiding principles supporting the definition of religious liberty are set forth in Article VI of the Constitution and in the opening words of the First Amendment to the Constitution. These principles have become the ground rules by which people of all religions or none can live together as citizens of one nation.



1. Article VI of the Constitution.

Article VI concludes with these words: “No religious test shall ever be required as a qualification to any office or public trust under the United States.” With this bold stroke, the Framers broke with European tradition and opened public office in the federal government to people of all faiths or none.

2. Religious Liberty clauses. The First Amendment’s Religious Liberty clauses state that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ...” Taken together, these two clauses safeguard religious liberty by protecting religions and religious convictions from governmental interference or control. They ensure that religious belief or nonbelief remains voluntary, free from governmental coercion.

- a. State and local government included. The clauses apply equally to actions of both state and local governments, because the Supreme Court has ruled that the Fourteenth Amendment’s dictum that states are not to deprive any person of liberty makes the First Amendment applicable to the states.
- b. Meaning of “no establishment.” “No establishment” means that neither a state nor the federal government can establish a particular religion or religion in general. Further, government is prohibited from advancing or supporting religion. This does not mean that the government can be hostile to religion. The government must maintain what the Supreme Court has called “benevolent neutrality,” which permits religious exercise

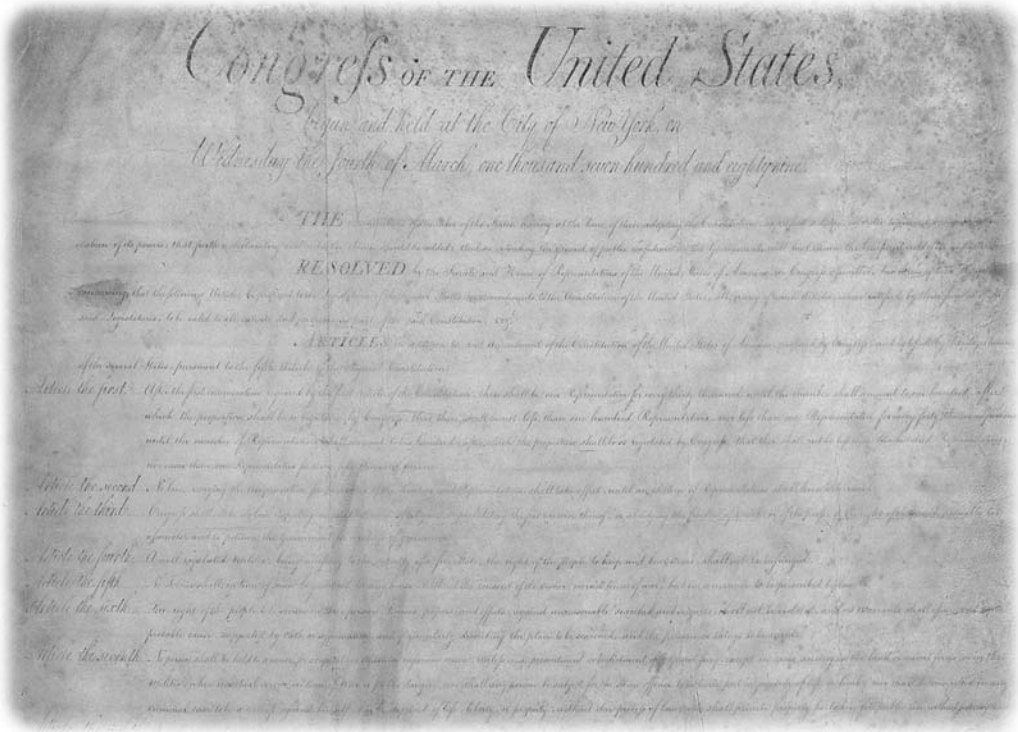


to exist but denies it government sponsorship. The No Establishment clause serves to prevent both religious control over government and political control over religion.

c. Meaning of “free exercise.” “Free exercise” is the freedom of every citizen to reach, hold, practice, and change beliefs according to the dictates of conscience. The Free Exercise clause prohibits governmental interference with religious belief and, within limits, religious practice.

(1) The difference between belief and practice. The Supreme Court has interpreted “free exercise” to mean that any individual may believe anything he or she wants, but there may be times when the state can limit or interfere with practices that flow from these beliefs.

(2) The traditional “compelling interest” test. Traditionally, the Court has required a government to demonstrate a compelling interest of the “highest order” before it can burden or otherwise interfere with religious conduct. Even then, the government has to demonstrate that it has no alternative means of achieving its interest that would be less restrictive of religious conduct.



- (3) The debate over the “compelling interest” test. A 1990 Supreme Court decision, *Employment Division v. Smith*, states that government no longer has to demonstrate a compelling government interest unless a law is specifically targeted at a religious practice or infringes upon an additional constitutional right, such as free speech. The Religious Freedom Restoration Act, signed into law by President Clinton in 1993, restored the compelling interest test and ensured its application in all cases where religious exercise is substantially burdened. In June 1997, the Supreme Court struck the Act down, holding that Congress overstepped its bounds by forcing states to provide more protection for religious liberty than the First Amendment, as interpreted by the Supreme Court in *Smith*, requires.
- (4) In September of 2000, Congress passed the Religious Land Use and Institutionalized Persons Act of 2000. This act is designed to protect religious assemblies and institutions from land use restrictions burdening their property, and to protect the right of institutionalized persons to practice their faith. Several states have also attempted to legislate additional protection for free exercise of religion by enacting state Religious Freedom Restoration Acts.

III. Religion, public life, and politics.

The First Amendment separated church from state but not religion from public life.

A. The involvement of religious groups in public life. Many religious groups consider it an article of faith to speak out on issues of moral concern in the public sphere. The Constitution protects the right of religious individuals and organizations to attempt to shape public policy and to exercise their influence. There are presently hundreds of nonprofit groups concerned with religious issues and public life in the United States.

B. Tax-exempt status dependent on nonpartisanship.

However, religious organizations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code may not engage in partisan politics by endorsing or opposing candidates for public office or by spending a substantial amount of their resources lobbying Congress.



C. Religious liberty and political responsibility. In certain cases, the injection of religious views into political debate, though constitutionally protected, may be irresponsible.

1. *Religious views in political debate are protected.* In the American experiment in self-government, disestablishment of religion, or separation of church and state, prevents religious institutions from establishing their faith as the law of the land and from receiving financial support from the state. At the same time, “free exercise” protects the right of religious views to be part of the political debate.
2. *Religious attacks in political debate may be irresponsible.* It is important to remember, however, that some actions taken by religious organizations or individuals in the political arena (for example, attacks against the fitness of people to hold public office because of their religion) may not be unconstitutional but may be politically irresponsible violations of the spirit of religious liberty.

Historical perspective

The relationship of politics and religion has been a central issue in American life since the colonial era. For most of the European settlers who came to North American shores in the seventeenth century from England, France, and Spain—all nations with established churches—a society without an established faith was unimaginable.

The unity and morality of the community, it was believed, depended upon divine sanction of political authority and conformity of the populace in matters of faith. Eventually, however, by separating religion and government and by granting freedom to all religious groups, America launched a new political experiment unprecedented in the world’s history.

I. The religious liberty sought by the Puritans.

Like many who arrived on these shores in the seventeenth century, the Puritans of Massachusetts Bay came to America seeking religious freedom.

A. Religious freedom not sought for others. The freedom they sought, however, was for themselves and not for others. The Puritans felt called by God to establish “new Israel,” a Holy Commonwealth based on a covenant between God and themselves as the people of God.

B. All laws to be grounded in God’s law. Though there were separate areas of authority for church and state in Puritan Massachusetts, all laws of the community were to be grounded in God’s law and all citizens were expected to uphold the divine covenant. Massachusetts was to be an example to the world of God’s kingdom on earth, “a City upon a hill.”

II. Roger Williams and the origins of freedom of conscience in Puritan America.

Very early in the Massachusetts experiment, dissenters arose to challenge the Puritan vision of a holy society. The first dissenter, Roger Williams (c.1603-1683), was himself a Puritan minister but with a very different vision of God's plan for human society. Williams argued that God had not given divine sanction to the Puritan colony. In his view, the civil authorities of Massachusetts had no authority to involve themselves in matters of faith. The true church, according to Williams, was a voluntary association of God's elect. Any state involvement in the worship of God, therefore, was contrary to the divine will and inevitably led to the defilement of the church.

A. "Soul liberty" means freedom of conscience for all. Williams' arguments for religious liberty had two principal parts.

1. *Freedom of conscience as God's will.* Central to Roger Williams' arguments for separating church and state was his conviction that it was divine will that every individual's conscience remain free to accept or reject the word of God. Williams defined freedom of conscience, which he called "soul liberty," as the freedom of each person to follow his or her own heart in matters of faith without interference or coercion by the state.



2. *Religious intolerance and war.* Citing Europe's long history of wars and divisions, Williams pointed out that coercion in matters of faith inevitably leads to persecution and bloodshed.

B. Rhode Island's experiment in religious liberty. Williams found it necessary to seek religious liberty outside of Massachusetts Bay.

1. *The founding of Rhode Island.* Banished from Massachusetts in 1635, Roger Williams founded Rhode Island, the first colony with no established church and the first society in America to grant liberty of conscience to everyone. Jews, Quakers, and others not welcome elsewhere made their home there.
2. *The wider significance of Rhode Island's religious liberty.* Eventually, Williams' conception of soul liberty had an impact far beyond the Rhode Island experiment. In the eighteenth century, dissenting religious groups, particularly the Baptists, were inspired by Williams' ideas to advocate disestablishment and freedom of conscience. Some historians also argue that Williams' writings influenced the Enlightenment philosopher John Locke (1632-1704), a key source for Thomas Jefferson's views concerning religious liberty.

C. Freedom of conscience as an American conviction. The Puritans' demand for religious liberty for themselves became, in the vision of Roger Williams, a requirement of religious liberty for all.

1. *Early religious liberty outside Rhode Island.* This revolutionary idea was echoed to a lesser degree (and for only a brief period) in seventeenth-century Maryland and later, more fully, in the eighteenth-century "holy experiment" of Quaker William Penn's colony of Pennsylvania.
2. *Gradual extension of religious liberty.* Gradually, the extension of liberty to include not only one's own group but also others, even those with whom "we" disagree, became a central American conviction. It is this principle of full freedom for people of all faiths and of none that was embodied 150 years later in the First Amendment to the Constitution.

III. The movement toward religious liberty in the United States.

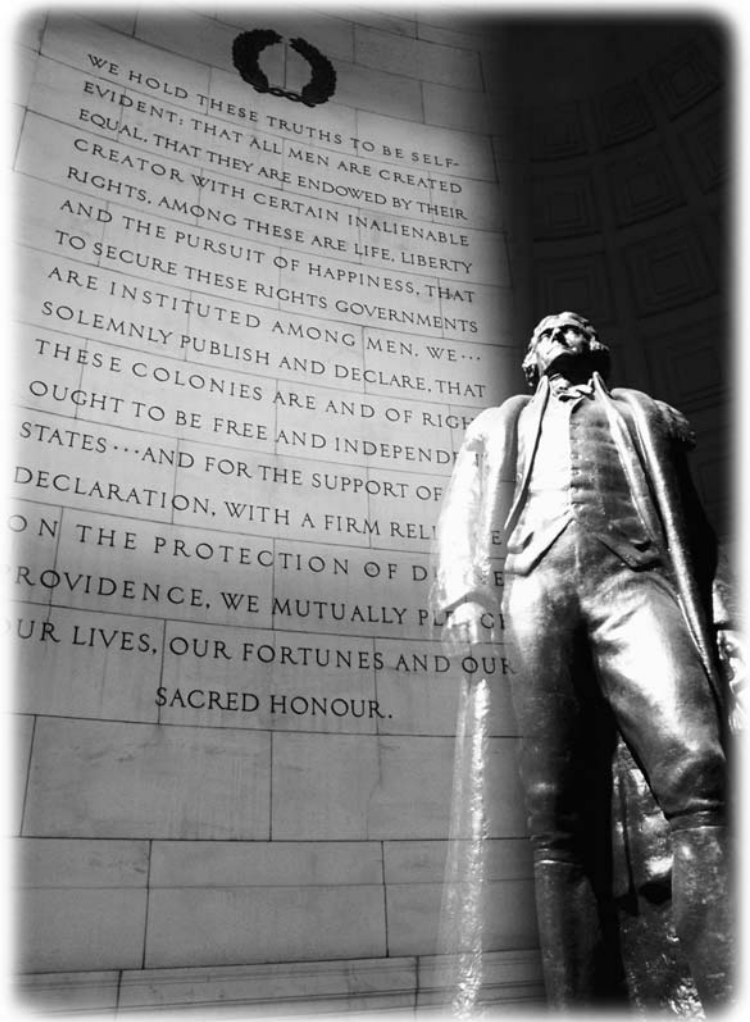
The momentous decision by the framers of the Constitution and the Bill of Rights to prohibit religious establishment on the federal level and to guarantee free exercise of religion was related to a number of religious, political, and economic factors in eighteenth-century America. Underlying all of these factors, of course, was the practical difficulty of establishing any one faith in an emerging nation composed of a multiplicity of faiths (mostly Protestant sects), none of which was strong enough to dominate the others.

A. From toleration to free exercise. The period between 1776 and the passage of the First Amendment in 1791 saw critical changes in fundamental ideas about religious freedom.

1. *The Virginia Declaration of Rights.* In May 1776, just prior to the Declaration of Independence, the leaders of Virginia adopted the Virginia Declaration of Rights, drafted by George Mason. The first draft of the Declaration argued for the “fullest toleration in the exercise of religion according to the dictates of conscience.” This language echoed the writings of John Locke and the movement in England toward toleration.

2. *Madison’s objection: “toleration” versus “free exercise.”* Although toleration was a great step forward, a 25-year-old delegate named James Madison (1751-1836) did not think it went far enough. Madison, also deeply influenced by the ideas of the Enlightenment, successfully argued that “toleration” should be changed to “free exercise” of religion. This seemingly small change in language signaled a revolutionary change in ideas. For Madison, religious liberty was not a concession by the state or the established church, but an inalienable or natural right of every citizen.

3. *“Free exercise and the First Amendment.”* In 1791, the free exercise of religion proclaimed in the Virginia Declaration became a part of the First Amendment, guaranteeing all Americans freedom of conscience.



B. From establishment to separation. The decisive battle for disestablishment came in the large and influential colony of Virginia, where the Anglican Church was the established faith. Once again, James Madison played a pivotal role by leading the fight that persuaded the Virginia legislature to adopt in 1786 Thomas Jefferson’s “Bill for the Establishment of Religious Freedom.”

1. *Madison, Jefferson, and the struggle for disestablishment.* Madison and Jefferson argued that state support for a particular religion or for all religions is wrong, because compelling citizens to support through taxes a faith they do not follow violates their natural right to religious liberty. “Almighty God had created the mind free,” declared Jefferson’s bill. Thus, “to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical.”
2. *The “Great Awakening” and the struggle for disestablishment.* Madison and Jefferson were greatly aided in the struggle for disestablishment by the Baptists, Presbyterians, Quakers, and other “dissenting” faiths of Anglican Virginia. The religious revivals of the eighteenth century, often called The Great Awakening (1728-1790), produced new forms of religious expression and belief that influenced the development of religious liberty throughout the colonies. The revivalists’ message of salvation through Christ alone evoked a deeply personal and emotional response in thousands of Americans.
3. *Evangelical fervor and religious self-government.* The evangelical fervor of the Awakening cut across denominational lines and undercut support for the privileges of the established church.
 - a. Support of religious choice by evangelicals. Religion was seen by many as a matter of free choice and churches as places of self-government. The alliance of church and state was now seen by many as harmful to the cause of religion.
 - b. Leadership in Virginia of John Leland. In Virginia this climate of dissent and the leadership of such religious leaders as John Leland, a Baptist, provided the crucial support Madison needed to win the battle for religious liberty in Virginia.
4. *The final demise of religious establishment.* The successful battle for disestablishment in Virginia is a vital chapter in the story of religious liberty in America. By the time of the ratification of the First Amendment in 1791, all of the other Anglican establishments (except in Maryland) were ended. The Congregational establishments of New England lasted longer. Not until 1818 in Connecticut and 1833 in Massachusetts were the state constitutions amended to complete disestablishment.

IV. The constitutional prohibition of religious tests for office in Article VI.

The only mention of religion in the Constitution of the United States prior to the adoption of the First Amendment was the “no religious test” provision of Article VI. The significance of this often-forgotten provision cannot be exaggerated. At the time of the Constitutional Convention in 1787, most of the colonies still had religious establishments or religious tests for office. It was unimaginable to many Americans that non-Protestants — Catholics, Jews, atheists, and others — could be trusted with public office.

A. “No religious test” proposed at the Constitutional Convention. One aspect of religious liberty was inserted into the Constitution during its framing in Philadelphia.

1. *The role of Charles Pinckney.* At the Constitutional Convention, Charles Pinckney (1757-1824), a delegate from South Carolina, proposed that “no religious test shall ever be required as a qualification to any office or public trust under the United States.” Though he came from a state that had established the Protestant faith as the state religion, Pinckney represented the new spirit of religious liberty exemplified in the Enlightenment thinking of Jefferson.

2. *A tool for oppression outlawed.* Remarkably, the “no religious test” provision passed with little dissent. For the first time in history, a nation had formally abolished one of the most powerful tools of the state for oppressing religious minorities.

B. **Religious tests imposed in some states.** Most states followed the federal example and abolished tests for state office. But it was not until 1868 in North Carolina, 1946 in New Hampshire, and 1961 in Maryland that religious tests were abolished entirely. Maryland had required since 1867 “a declaration of belief in God” for all officeholders. When the U.S. Supreme Court struck down this requirement in 1961, freedom of conscience was fully extended to include non-believers as well as believers. No religious test can be imposed for any office at any level of government.

C. **Informal religious tests a factor in elections.** Though the Constitution barred religious tests as a formal qualification for office, many American voters continued to apply informal religious tests in the political arena, particularly in presidential elections.

1. *Exclusion of Catholics.* Until the nomination of Al Smith in 1928, all presidential and vice presidential candidates nominated by the two parties were Protestants. In 1960, the election of John Kennedy, a Roman Catholic, broke the informal political barrier that had long excluded non-Protestants from the presidency.

2. *Religious dissension among Protestants.* Even with Protestant candidates, religion has frequently been an issue. Beginning with attacks on the Deist religious convictions of Thomas Jefferson (Deism is a faith based on reason rather than revelation) and continuing to the recent discussions about which candidate is “born again,” questions about the “correctness” of a politician’s religion have played an important role in many national elections.

V. The First Amendment principles of religious liberty.

In the mind of James Madison and some of the others at the Constitutional Convention, the Constitution established a limited federal government with no authority to act in religious matters. That others were unsure had momentous consequences.

A. Reassurance for those fearful of religious intolerance. Many Americans, including leaders of the Baptists and other religious groups, feared that the Constitution offered an insufficient guarantee of the civil and religious rights of citizens.

1. *Madison’s promise of a bill of rights.* Many of those who suspected the proposed new constitution demanded a bill of rights as their price of moderating their heated opposition to its adoption. To win ratification, Madison promised to propose a bill of rights in the First Congress.

2. *The enshrinement of religious liberty in the Bill of Rights.* Madison kept his promise, and the Religious Liberty clauses adopted by the first Congress in 1789 became, when ratified by the required number of states in 1791, the opening words of the Bill of Rights.

B. Religious liberty and the first principles of American liberty. Full religious liberty was first applied to acts of the federal government alone. Later it was applied to the states as well.

1. *The First Amendment and the federal government.* With the passage of the First Amendment, the principles of nonestablishment and free exercise became the first principles of American freedom. The federal government was constitutionally prohibited from establishing or sponsoring religion and prohibited from interfering with the natural right of every citizen to reach, hold, exercise, or change beliefs freely.

2. *The First Amendment and state governments.* These prohibitions were extended to the states in the twentieth century, following Supreme Court rulings that the Fourteenth Amendment made the First Amendment applicable to the states.



VI. Religious influences in American political life.

Disestablishment was never meant to keep religious beliefs or institutions from influencing public life. From the beginning of American history, religions and religious believers have played a central role in shaping public policy and political debate.

A. *De facto* Protestant establishment. For many Protestants in the nineteenth century, disestablishment meant an end to the coercive power of the state in matters of faith and barred any faith from becoming the legally established religion. But disestablishment did not extinguish the Protestant vision of creating and maintaining a “Christian America.” By numbers and influence, Protestantism became the *de facto* established religion of the nation. Many no doubt agreed with Daniel Webster when he argued in 1844 that “general tolerant Christianity is the law of the land.”

B. Protestant contributions to social reform. The close ties between Protestant churches and American culture led to many social and political reforms. This can most clearly be seen in the “Second Great Awakening” of the early nineteenth century when some Protestant leaders mounted a crusade to reform and revitalize America. Urban social work, schooling for poor children, the abolitionist movement, supported by Quakers, Methodists, and others, were only a few of the many reform movements inspired in large measure by the religious awakenings.

C. Nativist reaction to expanding pluralism. A dark side to the Protestant vision of America became evident in the nineteenth century.

1. *The effects of immigration.* The waves of immigrants coming to these shores in the nineteenth century challenged the Protestant domination of the culture. By 1850 Catholicism was the largest single American denomination, and by the end of the century large numbers of Jews had arrived to become citizens.
2. *The rise of anti-Catholicism and anti-Semitism.* There were only a few Catholics and Jews in America from the earliest days of colonization. This dramatic influx of non-Protestants created fear and anxiety among some Protestants.
 - a. Intolerance and the “Know Nothings” at mid-century. An anti-Catholic and anti-foreign nativist movement emerged in the first half of the nineteenth century, culminating in the 1840s and 1850s in the Know-Nothing Party. Catholics were the victims of violence and discrimination in many parts of the nation.
 - b. Intolerance at the turn of the century. A resurgence of similar sentiments in the late nineteenth and early twentieth centuries contributed to widespread anti-Semitism, opposition to immigration, and the rise of the Ku Klux Klan.

D. The positive role of religion in helping shape public policy. The ugly expressions of religious bigotry in the nativist movement represent some of the worst examples of religious involvement in politics and public policy. But religion has also been at the heart of some of the best movements in American social and political life.

1. *The contribution of African-American churches.* The black churches have played a central role in the political and social history of African-Americans from the colonial period to the present. Indeed, black churches have shaped the lives of all Americans by providing much of the moral and political leadership of the civil rights movement.
2. *The contribution of Judaism and other minority religions.* In the late nineteenth and early twentieth centuries, churches, synagogues, and temples provided vital support for Catholic, Eastern Orthodox, Jewish, and Asian Buddhist immigrants as they adjusted to life in the United States. Religious communities were also at the forefront of many reform movements during the Progressive Era early in this century. Various religious groups, notably Unitarians, Quakers, and Reform Jews, have been particularly visible in the peace movements and in the advocacy of social justice.

3. *Constitutional separation and the role of religion in public life.* In these and in many other ways, religious institutions and believers have significantly influenced public policy in the United States throughout our nation's history.
- a. Benefits of religious moral leadership. Again, disestablishment was not meant to separate religion from public life. Politics and government in America have clearly benefited from the moral leadership and values of many religious traditions and convictions.
 - b. Costs of religious zealotry. At the same time, the nation has suffered from violations of the spirit of religious liberty by religious groups who have at various times in our history used the public square to attack the religion of others or to deny others the full rights of citizenship.

Contemporary perspective

More people have died because of their religious convictions in the twentieth century than in any previous century. And there appears to be no end to the tragedy. Of the many wars waged throughout the world in the 1990s, more than two-thirds have religious or ethnic differences as a root cause. From Northern Ireland to Bosnia to Sri Lanka, religious differences contribute daily to death and destruction around the globe.

Even the explosion of freedom in Eastern Europe and the former Soviet Union, by any measure a tremendous advance for democratic principles, has been accompanied by a serious outbreak of religious and ethnic bigotry and division. One of the most frightening developments has been the dramatic rise of anti-Semitism throughout the region. Tensions between Muslims and Christians have resulted in violence in Bosnia, Azerbaijan and Armenia and other places.

How has the United States, the most religiously diverse nation in the world, managed to avoid the "holy wars" so prevalent today and throughout history? This remarkable achievement may be traced directly to the Religious Liberty clauses of the First Amendment. In spite of occasional setbacks and outbreaks of religious bigotry, the American experiment in religious liberty has held.

I. Religions remain active in American political life.

Religious liberty has allowed religions in the United States to grow and prosper as in few other places in the world. Not only are a large number of Americans deeply religious, but their religious communities continue to be actively involved in political life. This is evident, for example, in the civil rights and peace movements. Also, since the late 1970s, fundamentalist Christian communities together with other evangelical Christians have become a significant force in American politics, speaking out on a variety of social and moral issues.

II. Confusion about the role of religion in public life threatens religious liberty.

There are disturbing signs that the American experiment in liberty may be in danger from two extremes.

A. Two extremes on the issue of religion and public life. On one end of the political spectrum there are those who seek to establish in law a “Christian America.” On the other end are some who seek to exclude religion from public life entirely. Both proposals violate the spirit of religious liberty.

B. Teaching religion versus teaching about religion. The controversy surrounding the role of religion in public life has left many citizens confused about the principles of religious liberty. This confusion is made worse by the absence of teaching about religion and religious liberty in many public schools. Teaching about religion in the schools is often confused with the teaching of religion, or religious advocacy and indoctrination.

1. *Change in some public schools.* In the last few years a number of states, most notably California, have mandated more teaching about religion in the schools.
2. *Efforts by U.S. Department of Education.* In December of 2000, the U.S. Department of Education sent a packet of religious-liberty guidelines to every public school principal in the nation. These guidelines focussed on religious-liberty rights of students, the relationship between public schools and religious communities, and the role of religion in the curriculum.¹
3. *Change in textbook treatment of the role of religion.* As a result, textbooks have begun to include more about the story of religious liberty and the role of religion in American history and society.

III. The new challenges of exploding pluralism.

The confusion and ignorance surrounding the Religious Liberty clauses of the Constitution leave Americans in a weak position to meet the challenges of exploding religious pluralism in the United States. The violent religious divisions throughout the world serve as a dramatic reminder of how vital it is for Americans to understand and affirm the principles of religious liberty in a nation of some 3,000 religious groups.

A. Pluralism as meaning all faiths or none. Religious pluralism in the United States has expanded beyond the Protestant, Catholic, and Jewish pluralism of the 1950s.

1. *Expanding pluralism.* Pluralism now includes a growing number of people from all the world’s religions, especially Islam and Buddhism. Pluralism must also

¹ These publications included *A Teacher’s Guide to Religion in Public Schools*, *Religious Expression in Public Schools: A Statement of Principles*.

take into account the nearly 12 percent of Americans who express no religious preference at all. This expansion will only continue.

2. *The burdens of exploding pluralism.* The challenges of this diversity can be seen throughout American society. This pluralism is particularly evident in public schools. For example, dozens of different native languages are often found among the students of large urban schools. Similarly, many different religions are represented.

B. The First Amendment as providing ground rules for living together. As the United States begins its third century of constitutional government, the nation raises certain important questions.

1. *Living together without religious consensus.* Two urgent questions are how Americans of so many faiths will continue to live together as citizens of one nation and, since there is not (and cannot be) a religious consensus, what the civic values are that Americans of all faiths or none hold in common.

2. *Adherence to the principles of religious liberty.* To answer these questions, American citizens must return to the democratic first principles articulated in the Religious Liberty clauses of the First Amendment. Religious liberty, or freedom of conscience, is at the heart of what it means to be an American citizen. Only in these principles can Americans find the ground rules that allow all citizens to live together with deep religious differences.

C. The Williamsburg Charter.

One effort to return to first principles is the Williamsburg Charter. Drafted by members of America's leading faiths and revised over the course of two years in close consultation with political, academic, educational, and religious leaders, the Charter was signed in 1988 by former Presidents Gerald Ford and Jimmy Carter, the two living chief justices of the United States, and by nearly 200 leaders of



national life. With their signatures, these individuals strongly reaffirmed the principles of religious liberty as essential for developing a common vision for the common good. The Williamsburg Charter states in part:

We affirm that a right for one is a right for another and a responsibility for all. A right for a Protestant is a right for an Eastern Orthodox is a right for a Catholic is a right for a Jew is a right for a Humanist is a right for a Mormon is a right for a Muslim is a right for a Buddhist—and for the followers of any other faith within the wide bounds of the republic.

That rights are universal and responsibilities mutual is both the premise and the promise of democratic pluralism. The First Amendment in this sense, is the epitome of public justice and serves as the golden rule for civic life. Rights are best guarded and responsibilities best exercised when each person and group guards for all others those rights they wish guarded for themselves.

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*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 the right of the people
peaceably to assemble,
and to petition the
Government for a redress
of grievances.*

Appendix C: The Williamsburg Charter

APPENDIX C



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

APPENDIX C: THE WILLIAMSBURG CHARTER

*This introduction to the Williamsburg Charter is taken from *Articles of Faith, Articles of Peace: The Religious Liberty Clauses and the American Public Philosophy*. Hunter, James Davison and Os Guinness, eds. Washington: The Brookings Institution, 1990.*

The Williamsburg Charter was written and published expressly to address the dilemmas, challenges, and opportunities posed by religious liberty in American public life today. Beginning in the fall of 1986, the charter was drafted by representatives of America’s leading faiths—Protestant, Catholic, Jewish, and secularist, in particular. It was revised over the course of two years in close consultation with political leaders, scholars from many disciplines, and leaders from a wide array of faith communities. Named after Williamsburg in honor of the city’s role as the cradle of religious liberty in America, it was presented to the nation in Williamsburg on June 25, 1988, when the first 100 national signers signed it publicly on the occasion of the 200th anniversary of Virginia’s call for the Bill of Rights.

The stated purpose of the charter is fourfold: to celebrate the uniqueness of the First Amendment religious liberty clauses; to reaffirm religious liberty—or freedom of conscience—for citizens of all faiths and none; to set out the place of religious liberty within American public life; and to define the guiding principles by which people with deep differences can contend robustly but civilly in the public arena.

There are three main sections in the charter: first, a call for a reaffirmation of the first principles that underlie the religious liberty in American experience; second, a call for a reappraisal of the course and conduct of recent public controversies; and third, a call for “reconstitution” of the American people, in the sense of this generation reappropriating the framers’ vision and ideals in our time.

Numerous individual points could be highlighted in a document that has much to say on current issues in law and society—the place accorded to naturalistic faiths, the delineation

of the relationship of the two religious liberty clauses, the mention of the menace of the modern state, the insistence on the danger of “semi-establishments,” and so on. But the two principal themes of the charter center on the importance of religious liberty as America’s “first liberty,” and on the religious liberty clauses as the “golden rule” for civic life. These themes—the inalienable right and the universal duty to respect that right—are developed in various ways, ranging from exposition of first principles to contemporary guidelines, but the overall effect is a powerful restatement of a critical aspect of America’s public philosophy.

Summary of Principles

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

The Religious Liberty clauses of the First Amendment to the Constitution are a momentous decision, the most important political decision for religious liberty and public justice in history. Two hundred years after their enactment they stand out boldly in a century made dark by state repression and sectarian conflict. Yet the ignorance and contention now surrounding the clauses are a reminder that their advocacy and defense is a task for each succeeding generation.

We acknowledge our deep and continuing differences over religious beliefs, political policies and constitutional interpretations. But together we celebrate the genius of the Religious Liberty clauses, and affirm the following truths to be among the first principles that are in the shared interest of all Americans:

1. Religious liberty, freedom of conscience, is a precious, fundamental and inalienable right. A society is only as just and free as it is respectful of this right for its smallest minorities and least popular communities.
2. Religious liberty is founded on the inviolable dignity of the person. It is not based on science or social usefulness and is not dependent on the shifting moods of majorities and governments.
3. Religious liberty is our nation’s “first liberty,” which undergirds all other rights and freedoms secured by the Bill of Rights.
4. The two Religious Liberty clauses address distinct concerns, but together they serve the same end — religious liberty, or freedom of conscience, for citizens of all faiths or none.
5. The No Establishment clause separates Church from State but not religion from politics or public life. It prevents the confusion of religion and government which has been a leading source of repression and coercion throughout history.

6. The Free Exercise clause guarantees the right to reach, hold, exercise or change beliefs freely. It allows all citizens who so desire to shape their lives, whether private or public, on the basis of personal and communal beliefs.
7. The Religious Liberty clauses are both a protection of individual liberty and a provision for ordering the relationship of religion and public life. They allow us to live with our deepest differences and enable diversity to be a source of national strength.
8. Conflict and debate are vital to democracy. Yet if controversies about religion and politics are to reflect the highest wisdom of the First Amendment and advance the best interests of the disputants and the nation, then *how* we debate, and not only *what* we debate, is critical.
9. One of America's continuing needs is to develop, out of our differences, a common vision for the common good. Today that common vision must embrace a shared understanding of the place of religion in public life and of the guiding principles by which people with deep religious differences can contend robustly but civilly with each other.
10. Central to the notion of the common good, and of greater importance each day because of the increase of pluralism, is the recognition that religious liberty is a universal right. Rights are best guarded and responsibilities best exercised when each person and group guards for all others those rights they wish guarded for themselves.

We are firmly persuaded that these principles require a fresh consideration, and that the reaffirmation of religious liberty is crucial to sustain a free people that would remain free. We therefore commit ourselves to speak, write and act according to this vision and these principles. We urge our fellow citizens to do the same, now and in generations to come.

THE WILLIAMSBURG CHARTER

Keenly aware of the high national purpose of commemorating the bicentennial of the United States Constitution, we who sign this Charter seek to celebrate the Constitution's greatness, and to call for a bold reaffirmation and reappraisal of its vision and guiding principles. In particular, we call for a fresh consideration of religious liberty in our time, and of the place of the First Amendment Religious Liberty clauses in our national life.

We gratefully acknowledge that the Constitution has been hailed as America's "chief export" and "the most wonderful work ever struck off at a given time by the brain and purpose of man." Today, two hundred years after its signing, the Constitution is not only the world's

oldest, still-effective written constitution, but the admired pattern of ordered liberty for countless people in many lands.

In spite of its enduring and universal qualities, however, some provisions of the Constitution are now the subject of widespread controversy in the United States. One area of intense controversy concerns the First Amendment Religious Liberty clauses, whose mutually reinforcing provisions act as a double guarantee of religious liberty, one part barring the making of any law “respecting an establishment of religion” and the other barring any law “prohibiting the free exercise thereof.”

The First Amendment Religious Liberty provisions epitomize the Constitution’s visionary realism. They were, as James Madison said, the “true remedy” to the predicament of religious conflict they originally addressed, and they well express the responsibilities and limits of the state with respect to liberty and justice.

Our commemoration of the Constitution’s bicentennial must therefore go beyond celebration to rededication. Unless this is done, an irreplaceable part of national life will be endangered, and a remarkable opportunity for the expansion of liberty will be lost.

For we judge that the present controversies over religion in public life pose both a danger and an opportunity. There is evident danger in the fact that certain forms of politically reassertive religion in parts of the world are, in principle, enemies of democratic freedom and a source of deep social antagonism. There is also evident opportunity in the growing philosophical and cultural awareness that all people live by commitments and ideals, that value-neutrality is impossible in the ordering of society, and that we are on the edge of a promising moment for a fresh assessment of pluralism and liberty. It is with an eye to both the promise and the peril that we publish this Charter and pledge ourselves to its principles.

We readily acknowledge our continuing differences. Signing this Charter implies no pretense that we believe the same things or that our differences over policy proposals, legal interpretations and philosophical groundings do not ultimately matter. The truth is not even that what unites us is deeper than what divides us, for differences over belief are the deepest and least easily negotiated of all.

The Charter sets forth a renewed national compact, in the sense of a solemn mutual agreement between parties, on how we view the place of religion in American life and how we should contend with each other’s deepest differences in the public sphere. It is a call to a vision of public life that will allow conflict to lead to consensus, religious commitment to reinforce political civility. In this way, diversity is not a point of weakness but a source of strength.



I. A time for reaffirmation

We believe, in the first place, that the nature of the Religious Liberty clauses must be understood before the problems surrounding them can be resolved. We therefore affirm both their cardinal assumptions and the reasons for their crucial national importance.

With regard to the assumptions of the First Amendment Religious Liberty clauses, we hold three to be chief:

1. The Inalienable Right

Nothing is more characteristic of humankind than the natural and inescapable drive toward meaning and belonging, toward making sense of life and finding community in the world. As fundamental and precious as life itself, this “will to meaning” finds expression in ultimate beliefs, whether theistic or non-theistic, transcendent or naturalistic, and these beliefs are most our own when a matter of conviction rather than coercion. They are most our own when, in the words of George Mason, the principal author of the Virginia Declaration of Rights, they are “directed only by reason and conviction, not by force or violence.”

As James Madison expressed it in his Memorial and Remonstrance, “The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right.”

Two hundred years later, despite dramatic changes in life and a marked increase of naturalistic philosophies in some parts of the world and in certain sectors of our society, this right to religious liberty based upon freedom of conscience remains fundamental and inalienable. While particular beliefs may be true or false, better or worse, the right to reach, hold, exercise them freely, or change them, is basic and non-negotiable.

Religious liberty finally depends on neither the favors of the state and its officials nor the vagaries of tyrants or majorities. Religious liberty in a democracy is a right that may not be submitted to vote and depends on the outcome of no election. A society is only as just and free as it is respectful of this right, especially toward the beliefs of its smallest minorities and least popular communities.

The right to freedom of conscience is premised not upon science, nor upon social utility, nor upon pride of species. Rather, it is premised upon the inviolable dignity of the human person. It is the foundation of, and is integrally related to, all other rights and freedoms secured by the Constitution. This basic civil liberty is clearly acknowledged in the Declaration of Independence and is ineradicable from the long tradition of rights and liberties from which the Revolution sprang.

2. The Ever Present Danger

No threat to freedom of conscience and religious liberty has historically been greater than the coercions of both Church and State. These two institutions—the one religious, the other political—have through the centuries succumbed to the temptation of coercion in their claims over minds and souls. When these institutions and their claims have been combined, it has too often resulted in terrible violations of human liberty and dignity. They are so combined when the sword and purse of the State are in the hands of the Church, or when the State usurps the mantle of the Church so as to coerce the conscience and compel belief. These and other such confusions of religion and state authority represent the misordering of religion and government which it is the purpose of the Religious Liberty provisions to prevent.

Authorities and orthodoxies have changed, kingdoms and empires have come and gone, yet as John Milton once warned, “new Presbyter is but old priest writ large.” Similarly, the modern persecutor of religion is but ancient tyrant with more refined instruments of control. Moreover, many of the greatest crimes against conscience of this century have been committed, not by religious authorities, but by ideologues virulently opposed to traditional religion.

Yet whether ancient or modern, issuing from religion or ideology, the result is the same: religious and ideological orthodoxies, when politically established, lead only too naturally toward what Roger Williams called a “spiritual rape” that coerces the conscience and produces “rivers of civil blood” that stain the record of human history.

Less dramatic but also lethal to freedom and the chief menace to religious liberty today is the expanding power of government control over personal behavior and the institutions of society, when the government acts not so much in deliberate hostility to, but in reckless disregard of, communal belief and personal conscience.

Thanks principally to the wisdom of the First Amendment, the American experience is different. But even in America where state-established orthodoxies are unlawful and the state is constitutionally limited, religious liberty can never be taken for granted. It is a rare achievement that requires constant protection.

3. The Most Nearly Perfect Solution

Knowing well that “nothing human can be perfect” (James Madison) and that the Constitution was not “a faultless work” (Gouverneur Morris), the Framers nevertheless saw the First Amendment as a “true remedy” and the most nearly perfect solution yet devised for properly ordering the relationship of religion and the state in a free society.

There have been occasions when the protections of the First Amendment have been overridden or imperfectly applied. Nonetheless, the First Amendment is a momentous decision for religious liberty, the most important political decision for religious liberty and public justice in the history of humankind. Limitation upon religious liberty is allowable only where the State has borne a heavy burden of proof that the limitation is justified—not by any ordinary public interest, but by a supreme public necessity—and that no less restrictive alternative to limitation exists.

The Religious Liberty clauses are a brilliant construct in which both No establishment and Free exercise serve the ends of religious liberty and freedom of conscience. No longer can sword, purse and sacred mantle be equated. Now, the government is barred from using religion's mantle to become a confessional State, and from allowing religion to use the government's sword and purse to become a coercing Church. In this new order, the freedom of the government from religious control and the freedom of religion from government control are a double guarantee of the protection of rights. No faith is preferred or prohibited, for where there is no state-definable orthodoxy, there can be no state-punishable heresy.

With regard to the reasons why the First Amendment Religious Liberty clauses are important for the nation today, we hold five to be pre-eminent:

- 1. The First Amendment Religious Liberty provisions have both a logical and historical priority in the Bill of Rights.** They have logical priority because the security of all rights rests upon the recognition that they are neither given by the state, nor can they be taken away by the state. Such rights are inherent in the inviolability of the human person. History demonstrates that unless these rights are protected our society's slow, painful progress toward freedom would not have been possible.
- 2. The First Amendment Religious Liberty provisions lie close to the heart of the distinctiveness of the American experiment.** The uniqueness of the American way of disestablishment and its consequences have often been more obvious to foreign observers such as Alexis de Tocqueville and Lord James Bryce, who wrote that "of all the differences between the Old world and the New, this is perhaps the most salient." In particular, the Religious Liberty clauses are vital to harnessing otherwise centrifugal forces such as personal liberty and social diversity, thus sustaining republican vitality while making possible a necessary measure of national concord.
- 3. The First Amendment Religious Liberty provisions are the democratic world's most salient alternative to the totalitarian repression of human rights and provide a corrective to unbridled nationalism and religious warfare around the world.**

4. **The First Amendment Religious Liberty provisions provide the United States’ most distinctive answer to one of the world’s most pressing questions in the late-twentieth century.** They address the problem: How do we live with each other’s deepest differences? How do religious convictions and political freedom complement rather than threaten each other on a small planet in a pluralistic age? In a world in which bigotry, fanaticism, terrorism and the state control of religion are all too common responses to these questions, sustaining the justice and liberty of the American arrangement is an urgent moral task.
5. **The First Amendment Religious Liberty provisions give American society a unique position in relation to both the First and Third worlds.** Highly modernized like the rest of the First World, yet not so secularized, this society—largely because of religious freedom—remains, like most of the Third World, deeply religious. This fact, which is critical for possibilities of better human understanding, has not been sufficiently appreciated in American self-understanding, or drawn upon in American diplomacy and communication throughout the world.

In sum, as much if not more than any other single provision in the entire Constitution, the Religious Liberty provisions hold the key to American distinctiveness and American destiny. Far from being settled by the interpretations of judges and historians, the last word on the First Amendment likely rests in a chapter yet to be written, documenting the unfolding drama of America. If religious liberty is neglected, all civil liberties will suffer. If it is guarded and sustained, the American experiment will be the more secure.

II. A time for reappraisal

Much of the current controversy about religion and politics neither reflects the highest wisdom of the First Amendment nor serves the best interests of the disputants or the nation. We therefore call for a critical reappraisal of the course and consequences of such controversy. Four widespread errors have exacerbated the controversy needlessly.

1. The Issue Is Not Only What We Debate, But How

The debate about religion in public life is too often misconstrued as a clash of ideologies alone, pitting “secularists” against the “sectarians” or vice versa. Though competing and even contrary worldviews are involved, the controversy is not solely ideological. It also flows from a breakdown in understanding of how personal and communal beliefs should be related to public life.

The American republic depends upon the answers to two questions. By what ultimate truths ought we to live? And how should these be related to public life? The first question is personal, but has a public dimension because of the connection between beliefs and public virtue. The American answer to the first

question is that the government is excluded from giving an answer. The second question, however, is thoroughly public in character, and a public answer is appropriate and necessary to the well-being of this society.

This second question was central to the idea of the First Amendment. The Religious Liberty provisions are not “articles of faith” concerned with the substance of particular doctrines or of policy issues. They are “articles of peace” concerned with the constitutional constraints and the shared prior understanding within which the American people can engage their differences in a civil manner and thus provide for both religious liberty and stable public government.

Conflicts over the relationship between deeply held beliefs and public policy will remain a continuing feature of democratic life. They do not discredit the First Amendment, but confirm its wisdom and point to the need to distinguish the Religious Liberty clauses from the particular controversies they address. The clauses can never be divorced from the controversies they address, but should always be held distinct. In the public discussion, an open commitment to the constraints and standards of the clauses should precede and accompany debate over the controversies.

2. The Issue Is Not Sectarian, But National

The role of religion in American public life is too often devalued or dismissed in public debate, as though the American people’s historically vital religious traditions were at best a purely private matter and at worst essentially sectarian and divisive.

Such a position betrays a failure of civil respect for the convictions of others. It also underestimates the degree to which the Framers relied on the American people’s religious convictions to be what Tocqueville described as “the first of their political institutions.” In America, this crucial public role has been played by diverse beliefs, not so much despite disestablishment as because of disestablishment.

The Founders knew well that the republic they established represented an audacious gamble against long historical odds. This form of government depends upon ultimate beliefs, for otherwise we have no right to the rights by which it thrives, yet rejects any official formulation of them. The republic will therefore always remain an “undecided experiment” that stands or falls by the dynamism of its non-established faiths.

3. The Issue Is Larger Than the Disputants

Recent controversies over religion and public life have too often become a form of warfare in which individuals, motives and reputations have been impugned. The intensity of the debate is commensurate with the importance of the issues debated, but to those engaged in this warfare we present two arguments for reappraisal and restraint.

The lesser argument is one of expediency and is based on the ironic fact that each side has become the best argument for the other. One side's excesses have become the other side's arguments; one side's extremists the other side's recruiters. The danger is that, as the ideological warfare becomes self-perpetuating, more serious issues and broader national interests will be forgotten and the bitterness deepened.

The more important argument is one of principle and is based on the fact that the several sides have pursued their objectives in ways which contradict their own best ideals. Too often, for example, religious believers have been uncharitable, liberals have been illiberal, conservatives have been insensitive to tradition, champions of tolerance have been intolerant, defenders of free speech have been censorious, and citizens of a republic based on democratic accommodation have succumbed to a habit of relentless confrontation.

4. The Issue Is Understandably Threatening

The First Amendment's meaning is too often debated in ways that ignore the genuine grievances or justifiable fears of opposing points of view. This happens when the logic of opposing arguments favors either an unwarranted intrusion of religion into public life or an unwarranted exclusion of religion from it. History plainly shows that with religious control over government, political freedom dies; with political control over religion, religious freedom dies.

The First Amendment has contributed to avoiding both these perils, but this happy experience is no cause for complacency. Though the United States has escaped the worst excesses experienced elsewhere in the world, the republic has shown two distinct tendencies of its own, one in the past and one today.

In earlier times, though lasting well into the twentieth century, there was a de facto semi-establishment of one religion in the United States: a generalized Protestantism given dominant status in national institutions, especially in the public schools. This development was largely approved by Protestants, but widely opposed by non-Protestants, including Catholics and Jews.

In more recent times, and partly in reaction, constitutional jurisprudence has tended, in the view of many, to move toward the de facto semi-establishment of a wholly secular understanding of the origin, nature and destiny of humankind and of the American nation. During this period, the exclusion of teaching about the role of religion in society, based partly upon a misunderstanding of First Amendment decisions, has ironically resulted in giving a dominant status to such wholly secular understandings in many national institutions. Many secularists appear as unconcerned over the consequences of this development as were Protestants unconcerned about their de facto establishment earlier.

Such de facto establishments, though seldom extreme, usually benign and often unwitting, are the source of grievances and fears among the several parties in current controversies. Together with the encroachments of the expanding modern state, such de facto establishments, as much as any official establishment, are likely to remain a threat to freedom and justice for all.

Justifiable fears are raised by those who advocate theocracy or the coercive power of law to establish a “Christian America.” While this advocacy is and should be legally protected, such proposals contradict freedom of conscience and the genius of the Religious Liberty provisions.

At the same time there are others who raise justifiable fears of an unwarranted exclusion of religion from public life. The assertion of moral judgments as though they were morally neutral, and interpretations of the “wall of separation” that would exclude religious expression and argument from public life, also contradict freedom of conscience and the genius of the provisions.

Civility obliges citizens in a pluralistic society to take great care in using words and casting issues. The communications media have a primary role, and thus a special responsibility, in shaping public opinion and debate. Words such as public, secular and religious should be free from discriminatory bias. “Secular purpose,” for example, should not mean “non-religious purpose” but “general public purpose.” Otherwise, the impression is gained that “public is equivalent to secular; religion is equivalent to private.” Such equations are neither accurate nor just. Similarly, it is false to equate “public” and “governmental.” In a society that sets store by the necessary limits on government, there are many spheres of life that are public but non-governmental.

Two important conclusions follow from a reappraisal of the present controversies over religion in public life. First, the process of adjustment and readjustment to the constraints and standards of the Religious Liberty provisions is an ongoing requirement of American democracy. The Constitution is not a self-interpreting, self-executing document; and the prescriptions of the Religious Liberty provisions cannot by themselves resolve the myriad confusions and ambiguities surrounding the right ordering of the relationship between religion and government in a free society. The Framers clearly understood that the Religious Liberty provisions provide the legal construct for what must be an ongoing process of adjustment and mutual give-and-take in a democracy.

We are keenly aware that, especially over state-supported education, we as a people must continue to wrestle with the complex connections between religion and the transmission of moral values in a pluralistic society. Thus, we cannot have, and should not seek, a definitive, once for all solution to the questions that will continue to surround the Religious Liberty provisions.

Second, the need for such a readjustment today can best be addressed by remembering that the two clauses are essentially one provision for preserving religious liberty. Both parts, No establishment and Free exercise, are to be comprehensively understood as being in the service of religious liberty as a positive good. At the heart of the Establishment clause is the prohibition of state sponsorship of religion and at the heart of Free Exercise clause is the prohibition of state interference with religious liberty.

No sponsorship means that the state must leave to the free citizenry the public expression of ultimate beliefs, religious or otherwise, providing only that no expression is excluded from, and none governmentally favored, in the continuing democratic discourse.

No interference means the assurance of voluntary religious expression free from governmental intervention. This includes placing religious expression on an equal footing with all other forms of expression in genuinely public forums.

No sponsorship and no interference together mean fair opportunity. That is to say, all faiths are free to enter vigorously into public life and to exercise such influence as their followers and ideas engender. Such democratic exercise of influence is in the best tradition of American voluntarism and is not an unwarranted “imposition” or “establishment.”

III.A time for reconstruction

We believe, finally, that the time is ripe for a genuine expansion of democratic liberty, and that this goal may be attained through a new engagement of citizens in a debate that is reordered in accord with constitutional first principles and considerations of the common good. This amounts to no less than the reconstitution of a free republican people in our day. Careful consideration of three precepts would advance this possibility:

1. The Criteria Must Be Multiple

Reconstitution requires the recognition that the great dangers in interpreting the Constitution today are either to release interpretation from any demanding criteria or to narrow the criteria excessively. The first relaxes the necessary restraining force of the Constitution, while the second overlooks the insights that have arisen from the Constitution in two centuries of national experience.

Religious liberty is the only freedom in the First Amendment to be given two provisions. Together the clauses form a strong bulwark against suppression of religious liberty, yet they emerge from a series of dynamic tensions which cannot ultimately be relaxed. The Religious Liberty provisions grow out of an understanding not only of rights and a due recognition of faiths but of realism and a due recognition of factions. They themselves reflect both faith and skepticism.

They raise questions of equality and liberty, majority rule and minority rights, individual convictions and communal tradition.

The Religious Liberty provisions must be understood both in terms of the Framers' intentions and history's sometimes surprising results. Interpreting and applying them today requires not only historical research but moral and political reflection.

The intention of the Framers is therefore a necessary but insufficient criterion for interpreting and applying the Constitution. But applied by itself, without any consideration of immutable principles of justice, the intention can easily be wielded as a weapon for governmental or sectarian causes, some quoting Jefferson and brandishing No establishment and others citing Madison and brandishing Free exercise. Rather, we must take the purpose and text of the Constitution seriously, sustain the principles behind the words and add an appreciation of the many-sided genius of the First Amendment and its complex development over time.

2. The Consensus Must Be Dynamic

Reconstitution requires a shared understanding of the relationship between the Constitution and the society it is to serve. The Framers understood that the Constitution is more than parchment and ink. The principles embodied in the document must be affirmed in practice by a free people since these principles reflect everything that constitutes the essential forms and substance of their society—the institutions, customs and ideals as well as the laws. Civic vitality and the effectiveness of law can be undermined when they overlook this broader cultural context of the Constitution.

Notable, in this connection is the striking absence today of any national consensus about religious liberty as a positive good. Yet religious liberty is indisputably what the Framers intended and what the First Amendment has preserved. Far from being a matter of exemption, exception or even toleration, religious liberty is an inalienable right. Far from being a sub-category of free speech or a constitutional redundancy, religious liberty is distinct and foundational. Far from being simply an individual right, religious liberty is a positive social good. Far from denigrating religion as a social or political “problem,” the separation of Church and State is both the saving of religion from the temptation of political power and an achievement inspired in large part by religion itself. Far from weakening religion, disestablishment has, as an historical fact, enabled it to flourish.

In light of the First Amendment, the government should stand in relation to the churches, synagogues and other communities of faith as the guarantor of freedom. In light of the First Amendment, the churches, synagogues and other communities of faith stand in relation to the government as generators of faith, and therefore contribute to the spiritual and moral foundations of democracy. Thus, the government acts as a safeguard, but not the source, of freedom for faiths, whereas the churches and synagogues act as a source, but not the safeguard, of faiths for freedom.

The Religious Liberty provisions work for each other and for the federal idea as a whole. Neither established nor excluded, neither preferred nor proscribed, each faith (whether transcendent or naturalistic) is brought into a relationship with the government so that each is separated from the state in terms of its institutions, but democratically related to the state in terms of individuals and its ideas.

The result is neither a naked public square where all religion is excluded, nor a sacred public square with any religion established or semi-established. The result, rather, is a civil public square in which citizens of all religious faiths, or none, engage one another in the continuing democratic discourse.

3. The Compact Must Be Mutual

Reconstitution of a free republican people requires the recognition that religious liberty is a universal right joined to a universal duty to respect that right.

In the turns and twists of history, victims of religious discrimination have often later become perpetrators. In the famous image of Roger Williams, those at the helm of the Ship of State forget they were once under the hatches. They have, he said, “One weight for themselves when they are under the hatches, and another for others when they come to the helm.” They show themselves, said James Madison, “as ready to set up an establishment which is to take them in as they were to pull down that which shut them out.” Thus, benignly or otherwise, Protestants have treated Catholics as they were once treated, and secularists have done likewise with both.

Such inconsistencies are the natural seedbed for the growth of a de facto establishment. Against such inconsistencies we affirm that a right for one is a right for another and a responsibility for all. A right for a Protestant is a right for an Orthodox is a right for a Catholic is a right for a Jew is a right for a Humanist is a right for a Mormon is a right for a Muslim is a right for a Buddhist—and for the followers of any other faith within the wide bounds of the republic.

That rights are universal and responsibilities mutual is both the premise and the promise of democratic pluralism. The First Amendment, in this sense, is the epitome of public justice and serves as the Golden Rule for civic life. Rights are best guarded and responsibilities best exercised when each person and group guards for all others those rights they wish guarded for themselves. Whereas the wearer of the English crown is officially the Defender of the Faith, all who uphold the American Constitution are defenders of the rights of all faiths.

From this axiom, that rights are universal and responsibilities mutual, derives guidelines for conducting public debates involving religion in a manner that is democratic and civil. These guidelines are not, and must not be, mandated by law. But they are, we believe, necessary to reconstitute and revitalize the American understanding of the role of religion in a free society.

First, those who claim the right to dissent should assume the responsibility to debate: Commitment to democratic pluralism assumes the coexistence within one political community of groups whose ultimate faith commitments may be incompatible, yet whose common commitment to social unity and diversity does justice to both the requirements of individual conscience and the wider community. A general consent to the obligations of citizenship is therefore inherent in the American experiment, both as a founding principle (“We the people”) and as a matter of daily practice.

There must always be room for those who do not wish to participate in the public ordering of our common life, who desire to pursue their own religious witness separately as conscience dictates. But at the same time, for those who do wish to participate, it should be understood that those claiming the right to dissent should assume the responsibility to debate. As this responsibility is exercised, the characteristic American formula of individual liberty complemented by respect for the opinions of others permits differences to be asserted, yet a broad, active community of understanding to be sustained.

Second, those who claim the right to criticize should assume the responsibility to comprehend: One of the ironies of democratic life is that freedom of conscience is jeopardized by false tolerance as well as by outright intolerance. Genuine tolerance considers contrary views fairly and judges them on merit. Debased tolerance so refrains from making any judgment that it refuses to listen at all. Genuine tolerance honestly weighs honest differences and promotes both impartiality and pluralism. Debased tolerance results in indifference to the differences that vitalize a pluralistic democracy.

Central to the difference between genuine and debased tolerance is the recognition that peace and truth must be held in tension. Pluralism must not be confused with, and is in fact endangered by, philosophical and ethical indifference. Commitment to strong, clear philosophical and ethical ideas need not imply either intolerance or opposition to democratic pluralism. On the contrary, democratic pluralism requires an agreement to be locked in public argument over disagreements of consequence within the bonds of civility.

The right to argue for any public policy is a fundamental right for every citizen; respecting that right is a fundamental responsibility for all other citizens. When any view is expressed, all must uphold as constitutionally protected its advocate’s right to express it. But others are free to challenge that view as politically pernicious, philosophically false, ethically evil, theologically idolatrous, or simply absurd, as the case may be seen to be.

Unless this tension between peace and truth is respected, civility cannot be sustained. In that event, tolerance degenerates into either apathetic relativism or a

dogmatism as uncritical of itself as it is uncomprehending of others. The result is a general corruption of principled public debate.

Third, those who claim the right to influence should accept the responsibility not to inflame: Too often in recent disputes over religion and public affairs, some have insisted that any evidence of religious influence on public policy represents an establishment of religion and is therefore precluded as an improper “imposition.” Such exclusion of religion from public life is historically unwarranted, philosophically inconsistent and profoundly undemocratic. The Framers’ intention is indisputably ignored when public policy debates can appeal to the theses of Adam Smith and Karl Marx, or Charles Darwin and Sigmund Freud but not to the Western religious tradition in general and the Hebrew and Christian Scriptures in particular. Many of the most dynamic social movements in American history, including that of civil rights, were legitimately inspired and shaped by religious motivation.

Freedom of conscience and the right to influence public policy on the basis of religiously informed ideas are inseverably linked. In short, a key to democratic renewal is the fullest possible participation in the most open possible debate.

Religious liberty and democratic civility are also threatened, however, from another quarter. Overreacting to an improper veto on religion in public life, many have used religious language and images not for the legitimate influencing of policies but to inflame politics. Politics is indeed an extension of ethics and therefore engages religious principles; but some err by refusing to recognize that there is a distinction, though not a separation, between religion and politics. As a result, they bring to politics a misplaced absoluteness that idolizes politics, “Satanizes” their enemies and politicizes their own faith.

Even the most morally informed policy positions involve prudential judgments as well as pure principle. Therefore, to make an absolute equation of principles and policies inflates politics and does violence to reason, civil life and faith itself. Politics has recently been inflamed by a number of confusions: the confusion of personal religious affiliation with qualification or disqualification for public office; the confusion of claims to divine guidance with claims to divine endorsement; and the confusion of government neutrality among faiths with government indifference or hostility to religion.

Fourth, those who claim the right to participate should accept the responsibility to persuade: Central to the American experience is the power of political persuasion. Growing partly from principle and partly from the pressures of democratic pluralism, commitment to persuasion is the corollary of the belief that conscience is inviolable, coercion of conscience is evil, and the public interest is best served by consent hard won from vigorous debate. Those who believe themselves privy to the will of history brook no argument and need never tarry for consent. But to those

who subscribe to the idea of government by the consent of the governed, compelled beliefs are a violation of first principles. The natural logic of the Religious Liberty provisions is to foster a political culture of persuasion which admits the challenge of opinions from all sources.

Arguments for public policy should be more than private convictions shouted out loud. For persuasion to be principled, private convictions should be translated into publicly accessible claims. Such public claims should be made publicly accessible for two reasons: first, because they must engage those who do not share the same private convictions, and second, because they should be directed toward the common good.

Renewal of first principles

We who live in the third century of the American republic can learn well from the past as we look to the future. Our Founders were both idealists and realists. Their confidence in human abilities was tempered by their skepticism about human nature. Aware of what was new in their times, they also knew the need for renewal in times after theirs. “No free government, or the blessings of liberty,” wrote George Mason in 1776, “can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.”

True to the ideals and realism of that vision, we who sign this Charter, people of many and various beliefs, pledge ourselves to the enduring precepts of the First Amendment as the cornerstone of the American experiment in liberty under law.

We address ourselves to our fellow citizens, daring to hope that the strongest desire of the greatest number is for the common good. We are firmly persuaded that the principles asserted here require a fresh consideration, and that the renewal of religious liberty is crucial to sustain a free people that would remain free. We therefore commit ourselves to speak, write and act according to this vision and these principles. We urge our fellow citizens to do the same.

To agree on such guiding principles and to achieve such a compact will not be easy. Whereas a law is a command directed to us, a compact is a promise that must proceed freely from us. To achieve it demands a measure of the vision, sacrifice and perseverance shown by our Founders. Their task was to defy the past, seeing and securing religious liberty against the terrible precedents of history. Ours is to challenge the future, sustaining vigilance and broadening protections against every new menace, including that of our own complacency. Knowing the unquenchable desire for freedom, they lit a beacon. It is for us who know its blessings to keep it burning brightly.

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Mr. Nat Hentoff, Columnist, The Washington Post and Village Voice, and Staff Writer,
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Dean Kelley, Director, Religious and Civil Liberties Division of the National Council
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Pastor Richard Neuhaus, Director, Center for Religion and Society
Mr. George S. Weigel, Jr., President, The James Madison Foundation

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Professor Peter L. Berger, Boston University
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Nashville, TN 37212
615/727-1600

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