



Religion in the Public Schools

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I Introduction

The issue of the proper role of religion in the public schools continues to be the subject of great controversy. School officials, parents and students — as well as lawyers and judges — wrestle with these questions every day. However, clear standards and guidance are elusive. This handbook will help provide a roadmap through this terrain.

It is important to bear in mind that this issue is extremely complex. Decision makers must address many competing demands, invariably looking to balance the twin constitutional mandates of separation of church and state and the right to freely exercise religion. They must include in their thinking the needs and rights of both the religious and the non-religious. Furthermore, decision makers must strive towards a vision of a pluralistic America that is open and welcoming to all groups, including religious minorities.

This subject matter area, while complex, does not have to be divisive. School districts should set forth clear policies regarding religion in the public schools that satisfy both the letter and the spirit of the First Amendment. Parents should become involved in the process of discussing these policies with educators, and approach difficulties with an understanding that mistakes and misinformation, not malice, underlie a great many of the problems which typically arise in this area.

Addressing these concerns about civility does not mean that those involved should understate the importance of these issues, nor should they shy away from insisting that their concerns are heard and addressed. Rather, all of us should recognize that although we may define it differently, our common goal is to ensure that the vision of religious liberty upon which this nation was founded is preserved. Few Americans would disagree that our individual religious freedom is extremely precious and that no one should be subjected to inappropriate religious coercion.

The Anti-Defamation League has been fighting anti-Semitism, racism and bigotry since 1913, and to that end, we have been fighting for the rights of religious minorities to practice their religions freely and without government interference. As a result, we have developed an expertise in this area. We encourage you to reach out to your local Anti-Defamation League Regional Office any time you think we can be of assistance.

II Background: Religious Liberty in America

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

— The First Amendment

“Believing... that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their Legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between Church and State.”

— Thomas Jefferson to Danbury Baptists, 1802.¹

A union of government and religion tends to destroy government and degrade religion.

— Supreme Court Justice Hugo Black,
Engel v. Vitale, 370 U.S. 421, 431 (1962).

Why Care?

Since its founding in 1913, the Anti-Defamation League has been guided by its mandate of combating bigotry, bias and discrimination, and securing the rights and liberties of all citizens of the United States. ADL believes deeply and profoundly in the importance of preserving and safeguarding freedom of religion in our increasingly pluralistic nation. Consequently, we believe that government should neither promote nor be hostile to religion. This belief has engendered what for many is a distasteful result: organized religious activity must be kept out of the public schools. This position is not one of hostility towards religion; rather, it reflects a profound respect for religious freedom and a recognition of the extraordinary diversity of religions represented by the students in our public schools.

Our nation’s founders recognized the importance of keeping religion and the government separate. They did so out of respect for both religion and government, knowing that the combination of the two helped neither and often hurt both. To do this, they wrote three clauses in the United States Constitution to ensure that religion and government did not mix.

1. **Religious Test Clause:** “[N]o religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” U.S. Constitution, Article VI, Clause 3.

2. **Establishment Clause:** “Congress shall make no law respecting an establishment of religion. . . .” U.S. Constitution, Amendment I.
3. **Free Exercise Clause:** “Congress shall make no law . . . prohibiting the free exercise thereof.” U.S. Constitution, Amendment I.

Together these three clauses embody and ensure what Jefferson called the “separation of church and state.” (For those dealing with the public schools, only the **Establishment Clause** and the **Free Exercise Clause** are of immediate concern.)

Not merely burdensome legal technicalities, these two clauses enshrine the belief that all Americans should be free to practice their religion without state interference.

Compliance with the separation of church and state must be vigorously enforced in the nation’s public schools. Not endorsing or appearing to endorse religion is especially important in the public school setting due to a number of considerations unique to the public schools: the specific sensitivities of school-age children, the fact that public schools are public institutions, and the profound influence of school officials and teachers over students. This last point bears special examination. Most children view their teachers and other school officials as important authority figures. Moreover, children are highly susceptible to coercion, pressure to conform both from adults and from their peers. These factors create a significant danger when religion is introduced into the public schools in circumstances evincing the apparent endorsement of teachers.

Moreover, the student body in America’s public schools is growing increasingly diverse. Schools must give special consideration to the fact that many school children belong to minority religions or are raised in non-religious environments. The nation’s public schools must be hospitable to students from a variety of backgrounds — students of all faiths or no faith. Public schools should inculcate students with understanding and respect for diversity, as well as a spirit of tolerance, acceptance and inclusion.

In *Santa Fe Independent School Dist. v. Doe*, the Supreme Court nicely summed up the difficulty with school sponsored religion:

School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents 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.²

Some have said that this viewpoint “bristles with hostility to religion.”³ ADL does not agree. To the contrary, this statement brilliantly expresses the difficulties that arise when government makes religion its aim.

The Law

A. The Establishment Clause

As a legal matter, any school practice or policy must not violate the Establishment Clause. For more than three decades, compliance with the Establishment Clause has been examined under the test the U.S. Supreme Court enunciated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). When a court looks at whether a program involving religion is permissible, it first asks: does it meet the criteria set forth in *Lemon*? Indeed, the “*Lemon* test” has proven largely successful in protecting the religious rights and liberties of all Americans, including religious minorities. Thus, in order for a state practice or policy, including a public school practice or policy, to pass constitutional muster under the *Lemon* test, a school official must answer “yes” to the following three questions:

- Does the policy in question have a secular purpose?
- Will the policy in question have a primary effect which neither advances nor inhibits religion?
- Does the policy in question avoid entangling government and religion?

If a school official cannot answer an unequivocal yes to all three of these questions, then the policy must be abandoned. This is necessary as a matter of constitutional law and is good policy. It respects the rights and sensitivities of all students, some of whom may have religious practices that differ from the one being advanced by the policy in question.

In practice, this means that the public schools must never endorse — or appear to endorse — any religion or religious practice. Indeed, not only may they not appear to endorse religion, but they may never appear to disapprove of religion either. Moreover, schools may not give the impression that they endorse religious belief over non-belief or any particular belief over others.

The principle that public schools must never endorse or disapprove of religion has been established in a long line of U.S. Supreme Court decisions. Students must never be given the impression that their school officially prefers or sanctions a particular religion or religion generally. Further, students must never feel coerced by pressure from their peers or from the public to adhere to any religion.

The U.S. Supreme Court reemphasized the importance of church-state separation in the public schools in *Lee v. Weisman*, 112 S.Ct. 2649 (1992) and more recently in *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290 (2000). In both cases, the Court was particularly concerned with the danger of student coercion in public schools resulting from peer and public pressure. The decisions are a ringing reaffirmation of the importance of government not endors-

ing one religion over another or religion over non-religion, particularly when public schools are involved. Notably, the Supreme Court has held that the state (school) is constitutionally **obligated** to see that state-supported activity is not used for religious indoctrination.⁴

B. The Free Exercise Clause

The second question a school must ask about a proposed policy or practice is whether it violates the “free exercise clause” of the First Amendment. “The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all governmental regulation of religious *beliefs* as such. The government may not compel affirmation of religious belief, punish the expression of religious doctrines it believes to be false, impose special disabilities on the basis of religious views or religious status, or lend its power to one or the other side in controversies over religious authority or dogma.”⁵

While this protection seems very broad, the Court has held that the right of free exercise does not relieve an individual of the obligation to comply with a “valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).”⁶ That is, if a law or policy is passed that applies to everyone but happens to impinge on your ability to practice your religion, you may not be able to challenge the law or policy on free exercise grounds. These challenges are difficult because the government must only show a minimal justification for such laws. So, for example, criminal drug laws preventing the use of peyote are applicable even to those whose worship requires the use of peyote because the laws were not passed with religion in mind and are applicable to everyone.⁷

The relationship between the Establishment Clause and the Free Exercise Clause can be a bit hard to tease out. At the end of the day, however, so long as the school district is neither endorsing nor disapproving of religion, it should not run afoul of the Constitution.

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III Prayer in Public School

General Rule: Organized prayer in the public school setting, whether in the classroom or at a school-sponsored event, is unconstitutional. The only type of prayer that is constitutionally permissible is private, voluntary student prayer that does not interfere with the school's educational mission.

May students pray? Students have the right to engage in voluntary individual prayer that is not coercive and does not substantially disrupt the school's educational mission and activities. For example, all students have the right to say a blessing before eating a meal. However, school officials must not promote or encourage a student's personal prayer. Students may engage with other students in religious activity during non-curricular periods as long as the activity is not coercive or disruptive. In addition, while students may speak about religious topics with their peers, school officials should intercede if such discussions become religious harassment. It is essential that private religious activity not materially disrupt the school's educational mission and activities. Personal religious activity may not interfere with the rights or well-being of other students, and the threat of student harassment and pressure must be carefully monitored. It is also critical to ensure that the religious activity is actually student-initiated, and that no school employee supervises or participates in the activity. Any school promotion or endorsement of a student's private religious activity is unconstitutional.

Are vocal prayer and Bible reading in the classroom permitted? Vocal denominational or nondenominational prayer, and ceremonial reading from the Bible, are unconstitutional practices in the public school classroom.⁸ It is legally irrelevant if the prayer or Bible reading is voluntary, or if students may be excused from the activity or classroom during the prayer. Student volunteers may not offer prayers for recitation.⁹ Similarly, student volunteers are prohibited from broadcasting prayers over a school intercom system into the classroom.¹⁰

It is irrelevant in any school context that a prayer is nondenominational. Even a so-called "nondenominational prayer" prefers and advances religion over non-religion (because composing truly non-denominational prayers is very hard to do, such prayers typically prefer one religion over others).

"[T]he Establishment Clause forbids state-sponsored prayers in public school settings no matter how nondenominational the prayers may be." *Lee v. Weisman*, 505 U.S. 577 (1992).

Can a school or state require a moment of silence in the classroom? The U.S. Supreme Court struck down a statute requiring a moment of silence which students could use for silent prayer or meditation because it was enacted for the purpose of advancing religion.^{11,12} The Supreme Court has not determined if a moment of silence can ever be constitutional. The Anti-Defamation League takes the position that an organized moment of silence will almost inevitably be unconstitutional since both the purpose and effect of such moments of silence are invariably to advance religion.

Can there be prayer before or after athletic events or activities? A school district's policy of permitting student-led, student-initiated prayer before football games is unconstitutional.¹³ It is also unconstitutional for a school official, including a coach, to initiate or lead a team in prayer.¹⁴ Nor may a school official ask a team member or any other student to initiate or lead a prayer before, during or after a public or school-sponsored athletic activity or event.¹⁵ It is also unconstitutional for a member of the clergy to offer prayers before or after public school athletic activities or events.¹⁶ Voluntary prayer presented and led by students without official permission or sanction may be constitutional, provided that it is not coercive in any way.

Can there be prayer at graduation ceremonies? Prayers delivered by clergy at official public school graduation ceremonies are unconstitutional.¹⁷ The fact that a prayer is nondenominational or voluntary does not render it constitutional. The U.S. Supreme Court has not specifically ruled on whether student-initiated nonsectarian graduation prayer is constitutional, and the lower Federal courts disagree on the issue. However, when the Supreme Court ruled in *Santa Fe Independent School Dist. v. Doe* that a district policy allowing student-initiated and student-led prayer before football games was unconstitutional, it effectively ruled-out the possibility that any district policy allowing student-initiated and student-led prayers would be permissible at graduation ceremonies. Moreover, in both *Santa Fe v. Doe* and *Lee v. Weisman*, the Supreme Court expressed particular concern that students could be coerced, through pressure from their peers and others, into praying during school events such as football games and graduation ceremonies. This danger exists regardless of whether it is a member of the clergy or a student who offers the prayer.

The Court also emphasized in *Weisman* and *Santa Fe* that attendance at major school events like graduation or football games should not be considered "voluntary" even if authorities officially designate it as such. Weekly football games and high school graduation are central parts of student life and students should be able to attend these events without fear of religious coercion. However, baccalaureate services, which are distinct and separate from official graduation ceremonies, may constitutionally include prayers and religious sermons. Such events must be privately sponsored and must not be led or sponsored by school personnel. Any school endorsement of such events should be actively discouraged.

Can there be prayer at school assemblies? School officials, employees or outsiders must not offer prayers at school assemblies. Even if attendance is voluntary, students may not deliver prayers at school assemblies either.¹⁸ Student-initiated prayer at school assemblies is unconstitutional even if the prayer is non-proselytizing and nonsectarian.¹⁹

May teachers pray in school? It is unconstitutional for teachers to pray **with or in the presence of** students in school or in their capacities as teachers or representatives of the school. Indeed, teachers may have their free speech and free exercise rights to speak about religious matters and otherwise say prayers in the presence of students abridged in an effort to ensure that there is no appearance that the school is violating the Establishment Clause. Because teachers hold such a special status in the school and are viewed as government officials speaking to a group that is both a captive audience and extremely impressionable, religious speech by teachers or other school personnel will be seen as a state endorsement of religion.²⁰ The Supreme Court has said that “the interest of the State in avoiding an Establishment Clause violation ‘may be [a] compelling’ one justifying an abridgement of free speech otherwise protected by the First Amendment... .”²¹ It is also impermissible for a teacher to read the Bible in front of students during a daily silent reading period.²²

Can school boards say prayers prior to their meetings? While the Supreme Court has upheld the right of legislative bodies to open their sessions with a prayer,²³ other courts have addressed and struck down prayers in a school board setting as such meetings are “inextricably intertwined with the public school system.”²⁴

Sample Scenarios:

Football Coach Leads Team in Prayer

On the day of the Central Valley High School football championship, the coach gave his team a last-minute pep talk in the Bulldogs’ locker room. He then led the team in a prayer, as he traditionally did before each athletic event. Richard Nelson, a student, felt uncomfortable reciting the prayer because he was an atheist. He mentioned his discomfort to the coach who responded that Richard should simply stand in silence or feel free to leave the room while his teammates prayed together.

Is the team prayer constitutional? Is the coach’s solution viable?

The team prayer led by Richard Nelson’s coach is unconstitutional and the coach’s offered solution is unacceptable. He has created an environment where Richard will feel isolated and as if he belonged to this group less than the other athletes. Moreover, as a school official, the coach cannot endorse religion as he is doing here.

Fourth-grader Prayer and Religious Discussion at Recess

Every day at recess, Jessica Lewis, a fourth-grade student, sits under a tree in the schoolyard, recites prayers, and engages her classmates in discussions of a religious nature. The recess monitor, unsure of whether Jessica's activities violate the school's prohibition against classroom prayer, alerts school officials who forbid Jessica's recess prayers and discussions. Jessica's mother threatens to sue the school officials, claiming that their interference with her daughter's activities was unconstitutional.

Does Mrs. Lewis have a valid claim? How should the school respond?

The school should allow Jessica Lewis to engage in prayer and religious discussions with her classmates during recess provided that her activity is not disruptive and does not coerce or otherwise infringe upon the rights of other students.

School Policy Permitting Prayer by Student at Graduation

A school district is reviewing its graduation ceremony policy. The policy calls on a member of the local clergy to deliver a "non-sectarian, non-proselytizing" prayer at the start of the ceremony. After the parent of a graduating senior complains, the school district would like to substitute a student who is elected by his or her peers to deliver the prayer instead.

Can the school district substitute a student for a local clergy person?

No. Neither is acceptable. Schools may not arrange to allow prayer at an event. Student prayer is limited to prayer that is personal, voluntary and non-disruptive. So long as the prayer is sanctioned by the district, at an official event using the school's loudspeaker and podium, such prayer is prohibited.

IV Religion in the Curriculum

General Rule: Public schools may not teach religion, although teaching about religion in a secular context is permitted.²⁵ The Bible may be taught in a school, but only for its historical, cultural or literary value and never in a devotional, celebratory or doctrinal manner, or in such a way that encourages acceptance of the Bible as a religious document.

What distinguishes “teaching religion” from “teaching about religion”?

Religion may be presented as part of a secular educational program. Programs that “teach about religion” are geared toward teaching students about the role of religion in the historical, cultural, literary and social development of the United States and other nations. These programs should instill understanding, tolerance and respect for a pluralistic society. When discussing religion in this context, religion must be discussed in a neutral, objective, balanced and factual manner. Such programs should educate students about the principle of religious liberty as one of the fundamental elements of freedom and democracy in the United States.

“Teaching religion” amounts to religious indoctrination and practice and is clearly prohibited in public schools. A public school curriculum may not be devotional or doctrinal. Nor may it have the effect of promoting or inhibiting religion. A teacher must not promote or denigrate any particular religion, religion in general, or lack of religious belief. A teacher must not interject personal views or advocate those of certain students. Teachers must be extremely sensitive to respect, and not interfere with, a student’s religious beliefs and practices. Students must not be encouraged to accept or conform to specific religious beliefs or practices.

A program intended to teach religion, disguised as teaching about religion, will be found unconstitutional.²⁶

In sum, there is a critical difference between teaching religion and teaching about religion. While it is constitutionally permissible for public schools to teach about religion, it is unconstitutional for public schools and their employees to observe religious holidays, promote religious belief, or practice religion. School officials and parents must be extremely careful not to cross the line between “the laudable educational goal of promoting a student’s knowledge of and appreciation for this nation’s cultural and religious diversity, and the impermissible endorsement of religion forbidden by the Establishment Clause.”²⁷

May schools teach the Bible as literature? The Bible may be studied as literature, but not as religious doctrine. The lesson must be secular, religiously neutral and objective.²⁸ Classes on the Bible as literature should be optional.²⁹ The Anti-Defamation League strongly suggests that such classes be taught by school personnel who have some training in Establishment Clause issues.

May schools teach secular values which coincide with religious values? Schools may indeed and should teach secular values such as honesty, respect for others, courage, kindness and good citizenship. These values, however, must not be taught as religious tenets. The fact that most religions also teach these values does not change the lawfulness and desirability of teaching them. It is also appropriate for school officials to instill in students such values as “independent thought, tolerance of diverse views, self-respect, maturity, self-reliance and logical decision-making.”³⁰

What are some concerns that arise regarding “teaching about religion” in public schools? Although it is legal to teach about religion in public schools in a neutral and secular manner, school administrators, teachers and parents should be cognizant of the inherent dangers of bringing religion into the classroom.³¹ Public school teachers should carefully consider the following factors:

- Students are extremely susceptible to peer and public pressure and coercion. This concern is heightened, of course, at the elementary school level. Any discussion of religion in the classroom should be sensitive to the beliefs of the different students in the class. No student should be made to feel that his or her personal beliefs or practices are being questioned, infringed upon or compromised. A student should never feel ostracized on the basis of his or her religious beliefs.
- If religion is discussed, great care must be taken to discuss minority as well as majority religions. The inclusion of only the major religions in a classroom discussion does not reflect the actual religious diversity within our society and the world. cursory discussions will subtly denigrate the validity of minority religious beliefs held by some individuals, regardless of whether adherents to minority beliefs are represented in the class. If they are present, these students may feel excluded or coerced.
- Students should not be put on the spot to explain their religious (or cultural) traditions. The student may feel uncomfortable and may not have enough information to be accurate. Moreover, by asking a student to be spokesperson for his or her religion, the teacher is sending a signal that the religion is too “exotic” for the teacher to understand. Finally, in certain cases, the teacher may be opening the door for proselytizing activity by the student, which must be avoided.
- Every effort should be made to obtain accurate information about different religions. Special training may be required to prepare teachers to discuss religion in an appropriate manner.
- Discussion of religion in the classroom may alienate those students who are being raised with no religious faith. While there is an obligation for even these students to learn what is being taught as part of a secular educational program, it is very impor-

tant that teachers avoid discussions that seem to endorse religious belief over non-religious belief. Otherwise, such students may feel pressure to conform to the majority, or be made to feel inferior about their own upbringing.

- Discussion of religion in the classroom may alienate those who are being raised with orthodox religious faiths. It is equally important that teachers not appear to disapprove of faith, thereby alienating those who are raised with faith.

If students object on religious grounds to portions of a textbook, may they be excused from studying the material? No. Public schools can require that all students use a prescribed set of textbooks if the books neither promote nor oppose any religious practice. The students must only be required to read and discuss the material and may not be required to perform or refrain from performing any act forbidden or mandated by their religion. Mere exposure to ideas that one finds objectionable on religious grounds does not rise to the level of a free exercise claim that compelled activity would.³²

Aren't these rules just promoting a "secular religion"? The state may not establish a "religion of secularism" in the sense that the state may not affirmatively oppose or show hostility to religion, thereby preferring those who believe in no religion over those who do believe.³³ That being said, the prohibition on teaching religion and religious activity ensures that the government does not advance or promote religious belief over non-religious belief or a particular religious belief over other religious beliefs. Simply, the public schools should work to ensure that they do not endorse or disapprove religion, neither promoting nor denigrating it.

What happens when a student responds to a secular assignment with religious expression? This is as much a free speech issue as it is a religious liberty issue. Where a student responds to an assignment (for example, a book report) with a religiously-themed project (for example, reporting on a religious tract), a school may not refuse to accept the assignment solely because it has a religious basis (students have a right to free expression). However, if in observing the presentation of the assignment — especially expressive assignments like artwork, plays and reports that are presented publicly — an observer might think that the project is endorsed by the school, it is a problem. Thus, a book report delivered to a teacher may not be rejected merely because it is religious, whereas a work of art that will be hung up or displayed by the school or a play intended for public performance is unacceptable. Indeed, educators are able to exercise considerable control over "student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school."³⁴

Sample Scenarios:

Sixth-grader Asks Teacher about Religious Beliefs of Historical Groups

Mr. Clark's sixth grade class used a standard reader which had stories on a wide variety of topics. One passage in the reader involved the first settlers in the "new world," and another described Leonardo da Vinci as the human with a creative mind that "came closest to the divine touch." Talia Berk, a student in Mr. Clark's class, was interested in the passage about the first settlers and asked how the religious beliefs and practices of these settlers compared with those of the Native American Indians.

How should Mr. Clark answer Talia's question on the settlers?

After researching the question, the teacher may explain the answer to Talia in a secular, objective and nondoctrinal manner, or recommend a book on the subject which is secular, unbiased and nondoctrinal.

Parent of Sixth-grader Objects to Reading Assignment on Religious Grounds

Joe Smith, also a student in Mr. Clark's class, showed the reader referenced in the prior scenario to his mother, who became very upset with the passage on Leonardo da Vinci, since she viewed it as contrary to her religious beliefs. Joe's mother asked Mr. Clark to excuse Joe from using the reader. Mr. Clark, unsure of how to respond to Mrs. Smith's request, went to the principal to seek guidance.

Should Joe be exempted from using the standard reader?

The school should not excuse Joe from using the standard reader. However, the school must ensure that the standard reader neither promotes nor opposes religion, and that Joe is merely required to read and discuss the material and is not required to perform or refrain from performing any act forbidden or mandated by his religion.

Jewish Student Asked to Explain Hanukkah to Class

Mr. Parker, who is not Jewish, is afraid that he will mischaracterize Hanukkah when he is explaining about holidays. In class, he calls on a Jewish student to see if she would be willing to explain to the class the meaning of Hanukkah. She tries to do so. Later that day, she tells her mother about the incident, who objects to Mr. Parker. Mr. Parker proposes that the mother come to class and explain Hanukkah. She agrees and comes to school and performs a holiday-foods cooking demonstration.

Should Mr. Parker have asked the student to explain Hanukkah? Should he have asked her mother?

By asking the student, Mr. Parker singled her out from her peers and made Hanukkah seem too exotic for her to explain. It is also unlikely that many students would have the requisite knowledge to give an accurate answer. By asking the mother, Mr. Parker rightly shifted the burden off of the student to an adult. However, he must make sure that the presentation given by the mother is neutral, objective and fits in with a broader lesson plan concerning the holidays. Better still, Mr. Parker could avail himself of one of the many books about Hanukkah and prepare himself to teach the lesson.

V Evolution vs. Creationism

General Rule: Evolution must only be taught as scientific fact. Creationism may not be taught as science under any circumstances.

May a public school science teacher’s right to teach evolution be restricted?

No. The United States Supreme Court has determined that it is unconstitutional to restrict an educator’s right to teach evolution.³⁵

May a science teacher who teaches evolution also teach creationism? No. Educators may not teach, as fact, the theory that humankind was created by a divine being. In science classes, educators must present only scientific explanations for life on earth and scientific critiques of evolution. Furthermore, schools may not refuse to teach evolution in an effort to avoid offending religious individuals. The United States Supreme Court has held that it is unconstitutional to require educators who teach evolution also to teach creationism.³⁶

In addition, disclaimers regarding the theory of evolution as the only explanation for the development of humankind have been found to be unconstitutional. In *Freiler v. Tangipahoa Parish Board of Education*, 185 F.3d 337 (5th Cir 1999), cert. denied, 530 U.S. 1251 (2000), the court struck down a school board rule requiring teachers to read a disclaimer that said that the teaching of evolution is “not intended to influence or dissuade the Biblical version of Creation or any other concept.”

May creationism ever be discussed in the public schools? Yes. Creationism may be included in classes on comparative religion as an example of how some religious groups believe human life began. However, creationism may never be taught as scientific fact.

Do scientific integrity and equity require that we teach a competing theory of human origins? Some have argued that equity, intellectual honesty and scientific integrity require the teaching of creationism as a differing and alternative point of view. However, creationism may not be taught as a response to the theory of evolution. Indeed, creationism (or “creation science”) does not meet the tenets of science as scientists use the term.³⁷ Moreover, it is not a matter of equity to teach a religious point of view in a public school classroom with taxpayer dollars.

Additionally, there is a growing movement promoting the teaching of “intelligent design theory” which asserts that the only reasonable explanation for the very complexity of the world and development of humans is the existence of God. This “theory,” often couched in scientific terminology, is just another species of creationism, and thus also must not be taught in the classroom as scientific fact.

Sample Scenario:

Parent Asks Biology Teacher to Stop Teaching Evolution or Include Creationism

Mrs. Anderson teaches a seventh grade biology class which includes a section on Darwinism and evolution. Jenny Hunter is a student in Mrs. Anderson's class. Jenny's mother was helping Jenny with her homework one night when she realized that Jenny was studying evolution, which goes against the family's belief in divine creation. Jenny's mother asked Mrs. Anderson to either stop teaching evolution or to also include a section on creationism, creation-science or intelligent design in her biology class.

How should Mrs. Anderson respond?

Mrs. Anderson should continue to teach evolution and should not teach any theory that humankind was created by a divine being. While Jenny should be expected to learn and understand the theory of evolution, she should not feel compelled to agree with the theory. Mrs. Anderson should make sure Jenny is not ridiculed because she believes in divine creation.

VI Teaching About Religious Holidays

General Rule: Teachers must be careful not to cross the line between teaching about religious holidays (which is permitted) and celebrating religious holidays (which is not). Celebrating religious holidays in the form of religious worship or other practices is unconstitutional. Teaching about a holiday will be constitutional if it furthers a genuine secular program of education, is presented objectively, and does not have the effect of advancing or inhibiting religion.³⁸ The U.S. Supreme Court has not specifically ruled on this subject.

Please see also ADL's companion piece: The December Dilemma: Guidelines for Public Schools During the December Holidays.

May religious symbols be used as teaching aids in the classroom? Yes. Religious symbols such as crosses, creches and menorahs may be used as teaching aids in the classroom provided that the symbols are displayed as examples of the cultural and religious heritage of the holiday, and are temporary in nature.

May religious symbols be used as decorations? No. Religious symbols are not permissible seasonal or permanent decorations.³⁹

What about symbols that have become secular? The Supreme Court has held that a Christmas tree has become such a secular symbol of the winter holiday season that its display by a public entity does not violate the Establishment Clause.⁴⁰ The Supreme Court has also found that a Hanukkah menorah is a symbol with both secular and religious meanings, and its display by a public entity other than a school within a predominantly secular holiday display does not offend the Establishment Clause.⁴¹ The Supreme Court has not addressed whether such a display is permissible in the public school context, but it has noted that a school's display of a Christmas tree and menorah could raise additional constitutional concerns.⁴² However, lower courts have not invalidated such displays and it is likely that they are permissible.

Even setting aside the legal questions for a moment, teachers and school administrators should be extremely cautious in using these symbols as decorations. The classroom and school premises are the place where children spend the majority of their day. It is important that all students feel comfortable and accepted in their school. Symbols of religious holidays may make some students uncomfortable and unwelcome because their holidays and traditions are not represented or because they do not celebrate religious holidays at all.

May religious music, art, literature and drama be used in teaching about holidays?

Yes. Music, art, literature, and drama with religious themes may be included in teaching about holidays, provided that their overall effect is not to endorse religion and that they are presented in a religiously neutral, prudent and objective manner, and relate to sound, secular educational goals. Indeed, the study of religiously inspired material can, in the correct setting, be made a part of a secular educational program.⁴³

May school assemblies or special events include religious music or drama?

Yes. Religious music or drama may be included in school events that are part of a secular program of education. The content of school special events, assemblies, concerts and programs must be primarily secular, objective and educational, and may not focus on any one religion or religious observance and may not appear to endorse religion over non-religion or one religion over another.⁴⁴ Such events must not promote or denigrate any particular religion, serve as a religious celebration, or become a forum for religious devotion. Student participation should be voluntary. Thus, a school's choral group can sing songs that are religious in nature but may only do so if the song is part of a larger program of music which is secular.

May schools incorporate religious themes in a holiday assembly or winter concert?

The study of religious holidays may also include "more than mere classroom instruction."⁴⁵ For instance, public performances or presentations of music, literature and art are permissible, as long as they are "presented objectively as part of a secular program of education."⁴⁶ A permissible purpose for such a program may be advancing students' knowledge of society's cultural and religious heritage.⁴⁷

Religious music, literature, art or other religious activities should never dominate school activities. These activities are permissible only if they make up a small portion of a school-sponsored event. For instance, it may be permissible to have students act out a play which contains one scene where a family is shown opening presents on Christmas morning. However, school-sponsorship of a play about the birth of Jesus would be impermissible because such performances are inherently affirmations of a certain religious point of view.

School-sponsored activities should also focus on more than one religion and religious holiday. Depicting a diversity of beliefs and customs is important to teaching public school students about religion and culture. It also helps to ensure that public schools remain neutral and do not endorse, promote or denigrate any particular denomination or custom.

It is also important to provide students the opportunity to choose not to participate in activities they find offensive to their religious sensibilities. Importantly, a student's grades or school record must not be affected by a decision not to participate.

May students be excused from classes that teach about religious holidays if they have objections based on religious beliefs? Yes. If the religious beliefs of students or their parents conflict with the content of classroom activity, students may be excused.⁴⁸ However, in excusing a student, care should be taken to avoid stigmatizing or appearing to punish the student (for example, a student who is not permitted to take part in a holiday party should not be required to sit in the hall and do math problems).

Should schools close for major religious holidays? Public schools should not close or reschedule activities solely because of conflicts between the school calendar and religious holidays. However, schools may consider closing when large numbers of student and teacher absences are anticipated.⁴⁹ Schools should still take great care in creating their schedules. To avoid penalizing students for religious observance, school calendars should be prepared, to the greatest extent feasible, so as not to conflict with religious holidays of all faiths. A sincere attempt should be made to avoid scheduling graduation, assemblies, and other special school and student events on religious holidays. If conflicts occur, teachers and administrators should exercise sensitivity and flexibility in resolving them.

Notably, because in some religions (including Judaism), holidays fall on different days each year, ADL annually publishes a calendar that lists the holidays of numerous religions. Your Regional Office would be pleased to provide you with information about obtaining a copy.

What are the responsibilities of the school toward a student who has taken an excused absence for a religious holiday? A student should not suffer adverse or prejudicial consequences from an excused absence for religious observance and should be allowed a reasonable opportunity to make up the schoolwork missed due to the absence. Penalties to scholastic records may not be imposed upon students who are absent for religious holidays.⁵⁰ Students should never feel pressured to choose between school attendance and religious observance.⁵¹

Sample Scenarios:

Muslim's Parents Complain About a December Holiday Lesson Limited to Christmas and Hanukkah

Ms. Thomas, a fourth grade teacher, taught a holiday lesson in December which included a brief historical review of Christmas, a discussion of art memorializing the birth of Jesus Christ, and a study of Christmas carols in the designated music period. Ms. Thomas also told the class about Hanukkah, the Maccabee warriors and the menorah oil that lasted eight days, and passed around a dreidel to help the class understand the Jewish holiday. The parents of James Mitchell, a Muslim student in her class, complained to the principal that Ms. Thomas only included Christianity and Judaism in her holiday lesson, and ignored their child's faith completely.

Was the holiday lesson appropriate? What should the principal do to remedy the concerns of James Mitchell's parents?

The holiday lesson plan was appropriate according to legal standards. However, the Muslim religion's holidays, as well as holidays of other religious minorities, should be included in the holiday lesson plan to reflect the true diversity of religions in our culture.

Sixth-grader Seeks to Be Excused from Performing in December Concert That Includes Secular and Religious Songs

An elementary school choir is performing a holiday concert in December which includes secular seasonal songs such as "Jingle Bells" and religious songs such as "Silent Night." Deborah Perry, a sixth grade member of the school choir, asks to be excused from singing at the concert since participation would violate her religious beliefs. Deborah's parents complain to school officials that the holiday concert is unconstitutional because it features religious songs.

How should school officials resolve this situation?

The school concert may constitutionally include some religious songs provided that the concert features mostly secular songs, and that the concert as a whole is primarily educational, secular, objective and nondenominational. However, Deborah Perry's participation should be voluntary, and therefore she should be excused from participation in the concert. Deborah's grade or school record should not be affected by her decision not to participate.

VII Religious Displays on School Property

General Rule: Displays of religious symbols, texts or artwork on school property are impermissible unless a display is integrated into an appropriate secular curriculum.⁵² The fact that a display is donated by a private group or paid for by private funds will not affect whether it is permissible under the Establishment Clause.⁵³

May a school permanently display the Ten Commandments within classrooms or on school property? No. A temporary display of the Ten Commandments integrated into a secular curriculum such as history or comparative religion may be permissible.⁵⁴ However, the Ten Commandments are “undeniably” a religious text, and the Supreme Court and a number of lower courts evaluating permanent displays of the Ten Commandments have found that such displays have a predominantly religious purpose and violate the Establishment Clause.⁵⁵

May a school permanently display religious artwork within classrooms or on school property? No. Similar to displays of the Ten Commandments, a temporary display of religious artwork integrated into a secular curriculum may be permissible. However, courts also have found that permanent displays of religious artwork have a predominantly religious purpose and violate the Establishment Clause.⁵⁶

Sample Scenario:

Principal Displays Religious Painting in High School Hallway

Rob Franklin, a graduating high school senior who is heading off to art school, donates a painting to his high school depicting the Last Supper of Jesus and his apostles. Impressed by the quality of the work, Principal Bard hangs the painting in a hallway of the school. A year later, Ms. Greene, the parent of a ninth-grader, sees the painting when she visits the school for parent-teacher night. She later tells Principal Bard that the display of the painting is inappropriate and asks that it be taken down.

Is the display of the painting permissible? Should Principal Bard take it down?

Principal Bard should take down the painting because its display violates the Establishment Clause. The display is not temporary and integrated into a secular curriculum. Rather, it is a permanent display representing a central event to the Christian faith, and therefore advances and endorses religion. The fact that Rob donated the painting to the school does not diminish this endorsement.

VIII Released Time Programs

General Rule: Released time programs⁵⁷ may be constitutional if the religious classes take place off school grounds, if no public school funds are expended, and if school officials or teachers do not promote program attendance through coercion or other means.⁵⁸

Are public schools required to enact released time programs? No. While a school may choose to enact a released time program, it is never required to do so.

Who bears the expense of released time programs? The religious organization that sponsors the program is responsible for all expenses. Such expenses include, but are not limited to, solicitation, applications, distribution of notices, and permission slips. The public school may not bear any of the program expenses nor participate in promoting the program.⁵⁹

May a religious organization rent school facilities for a released time program? A public school may not rent its facilities for such purposes. The location and timing of the religious classes, combined with the impressionable ages of the students, could create the erroneous impression of official school support for the program. Importantly, under any circumstances, a released time program may only take place off school premises.⁶⁰

What problems can arise when released time programs are instituted? A released time program must be structured to avoid any perception of public school promotion or endorsement of religious instruction. If any element of the program gives the impression of public school support for religion — or if any actual support is given — then the program will likely be struck down by the courts as a violation of the Establishment Clause.

Further, students who choose not to participate in the program may feel isolated or ostracized. These programs can be divisive and may be unfair to children who adhere to religions which are too small to set up their own religious instruction classes or which do not participate in such programs. Also, released time programs disrupt classroom activities and detract from the time children need to master their school work. School officials should be sensitive to these problems and structure the released time program to avoid them. Alternatively, officials may simply choose not to implement released time programs at all.

Sample Scenario:

Elementary School Parent Objects to Released Time Program as Unconstitutional

An elementary school has instituted a “released time” religious education program. On Thursday afternoons, students are released from regular classes to attend religious

classes conducted off school premises. Only students who have written requests from their parents may attend the religious classes, and nonparticipating students remain in their classroom for a silent reading period. Rebecca Segall is a nonparticipating student in the third grade. Rebecca's father objects to the released time program because he believes that the school is unconstitutionally supporting religious education, since public school teachers police the program's attendance and regular classroom activities come to a halt for the program. When school officials hear that Mr. Segall is planning on legally challenging the program, they call a meeting to discuss the issue.

What conclusion should the school officials reach regarding Mr. Segall's claim?

This released time program would likely be found constitutional since it takes place off school grounds, involves no expenditure of public funds, and is not promoted by school officials. The fact that regular class activities are suspended during the program, and that school personnel monitor possible truancy, is not sufficient to make the program unconstitutional. However, it is enough to be disruptive to the ordinary educational activity of the school, and on that basis alone, the school district should feel free not to continue the program.

IX Student Religious Clubs

General Rule: The Equal Access Act (“EAA”) (20 U.S.C. §§4071-74) requires public schools which meet certain criteria to treat all student-initiated groups equally, regardless of the religious, political, philosophical or other orientation of the groups. This means that to the extent that a school board opens up its school facilities to *any* student-led and run non-curriculum related group, it must uniformly open its facilities to *all* student-led and run groups, including religious ones. The EAA was adopted by Congress in 1984, and its constitutionality was upheld by the U.S. Supreme Court in *Board of Education of Westside Community Schools v. Mergens*, 496 U.S. 226 (1990).

This Chapter is limited to a discussion of student-initiated religious clubs. Chapter X addresses the related topic of access to school facilities by outside religious clubs and organizations.

Does the EAA apply to all schools? No. The EAA only applies to schools that meet a three-part test. The school must:

- Be a public secondary school;
- Receive federal financial assistance; and
- Have designated certain facilities as a “limited open forum.”

What is a “Secondary School” in the context of the EAA? A secondary school is often defined by state statute, but typically means grades 9 – 12. It is unlikely that the Equal Access Act applies to so-called “middle” schools.⁶¹

What is a “limited open forum” in the context of the EAA? A “limited open forum” is created when a public secondary school allows one or more “non-curriculum related student groups to meet on school premises during non-instructional time.” 20 USCA § 4071(b). Local school boards decide whether to create and maintain limited open forums.

What is a “non-curriculum related student group”? “Non-curriculum related student group,” as used in Equal Access Act, refers to those student groups whose activities are not directly related to the body of courses offered by the public school (e.g., the chess club). Student groups that are directly related to the subject matter of courses offered by the school (e.g., the Spanish club) do not fall within the non-curriculum-related category and thus would be considered curriculum-related.^{62, 63}

What restrictions does EAA place on non-curriculum related student groups?

- The group must be student-initiated.
- The group must be student-sponsored and student-led.
- Participation in the group must be voluntary.

What are the rights of non-curriculum related student groups under the EAA? The EAA grants these groups equal access to school facilities for meetings, and equal access to school media (e.g. school publications, school bulletin boards and public address systems) for publicizing their activities. They may choose their own leaders, restricting certain leadership roles to people of their own faith.⁶⁴ However, general membership probably cannot be limited.

What is “non-instructional time”? “Non-instructional time” is time which a school sets aside before classroom instruction begins or after classroom instruction ends. Non-instructional time also encompasses an activity period or lunch period during which instruction does not occur and during which other groups are allowed to meet.⁶⁵

What are the rights retained by school authorities under the EAA? School officials have the right to monitor club meetings to ensure compliance with provisions of the EAA. School authorities can “maintain order and discipline on school premises” and may prohibit club meetings which “materially and substantially interfere with the orderly conduct of educational activities within the school.” School officials have the duty of protecting the “well-being of students and faculty.” School officials should require religious clubs to follow the same rules as all other student clubs, including adherence to any nondiscrimination policy.

School authorities may establish time, place and manner regulations applicable to club meetings, provided that the restrictions are uniform and nondiscriminatory. School officials have the right to close the limited open forum at any time by prohibiting all non-curriculum related clubs from meeting on school premises, thus ending the school’s obligations under the EAA.⁶⁶

What are the restrictions and obligations placed upon the school, its agents and employees by the EAA? School personnel, including teachers, may not initiate, sponsor, promote, lead or participate in religious club meetings. However, school personnel may be required to monitor club meetings. 20 USCA §4071.

May outsiders attend meetings? Outsiders, such as clergy members, may not initiate club meetings. Outsiders “may not direct, conduct, control or regularly attend activities of stu-

dent groups."⁶⁷ Outsiders may occasionally attend club meetings if invited by the students and if the school does not generally prohibit such guests. However, school officials may totally forbid non-school persons from attending all student club meetings.⁶⁸

What are some concerns that arise when a club meets pursuant to the EAA?

The meeting of religious clubs in school facilities pursuant to their rights under the EAA may create an appearance of school endorsement of religion in violation of the Establishment Clause. School officials must protect against such impressions and may do so by issuing disclaimers clearly stating that the school is not sponsoring, endorsing or promoting any non-curriculum related student groups.

Schools must also recognize and guard against the threat of coercive peer pressure, which may be substantial. Student club members may be able to coerce students into joining sectarian groups and adhering to the club's beliefs, particularly if the student body is composed largely of the same religious faith as that practiced by club members. Such clubs might create "insider" and "outsider" student groups, and, as a result, students may be ridiculed, harassed or ostracized.

Sample Scenarios:

High School Principal Rejects Student Application for Bible Club, but Permits Other Non-Curriculum Related Clubs

Three students at Hawthorne High School decide to form a Bible study club. To organize and structure their club, they enlist the help of their local minister. A school science teacher agrees to become the club advisor. The principal has allowed a wide variety of clubs to meet after school hours, including the chess club, the audiovisual squad, and the Spanish club, but is concerned about the controversy that this club could create. The students claim that the Equal Access Act protects their right to form this club. When he rejects the club proposal, the principal states that all other school clubs are related to the curriculum and hence the Equal Access Act does not apply.

Is the principal correct?

The school has created a limited open forum by allowing other non-curriculum related clubs to meet, and therefore it must allow the Bible study club to meet. However, the roles of the minister and science teacher in the club have to be carefully controlled pursuant to the dictates of the EAA.

People in Community Object to Controversial Non-Curriculum Related Club

A high school allows non-curriculum related student-organized, student-led clubs to meet before and after the school day. A very controversial club has been proposed by a student, and many in the community are opposed to this club's meeting.

What are the school's options?

Under any circumstance, a school may prohibit clubs and organizations that are contrary to the educational mission of the school or present a danger to the health and safety of a school. This is a very high standard: a school district may not bar a student club merely because the school or the community disagrees with its message, even if they disagree strongly. Should the District so elect, it can ban all such non-curriculum related clubs (such as service clubs) including this one.

X Use of School Facilities by Outside Religious Organizations and Clubs

General Rule: During school hours, outside religious organizations and clubs must not meet at public schools. After school hours, such groups may meet at a public school only if the school permits other outside clubs and organizations to meet at the same time and does not endorse the club's religious activity.⁶⁹

May religious clubs meet in public schools?

During school hours: An outside religious organization or club must not meet at public schools.

After school hours: An outside religious organization or club may meet at a public school under the following circumstances:

- The group may meet only if the school allows other outside organizations or clubs to meet at the same time.
- The school must assume the duty of ensuring that it does not appear to be endorsing or disapproving of religion.
- The school district must proactively work to prevent even the perception that it may be endorsing the club's religious activity. In *Good News Club v. Milford Central School*, 533 U.S. 98 (2001), the U.S. Supreme Court found no perceived endorsement of a religious club's activities because the club meetings were not held in elementary school classrooms, the instructors were not school teachers, the students ranged in age, and the children who attended the club had obtained signed permission slips from their parents.
- The school may not allow the club or organization to solicit students, unless it allows all groups to do so. If the school allows such solicitation, it must make sure that no proselytizing or religious message is part of the communication.
- A school district must take extra care to make sure that students from minority religions are not teased or made to feel unwelcome or left out merely because they choose not to attend a religious club meeting.

May a teacher serve as an instructor in a religious club that meets at the school where the teacher works? In *Wigg v. Sioux Falls School District*,⁷⁰ the U.S. Court of Appeals for the Eighth Circuit recently found that an elementary school teacher could participate in a religious club meeting where she teaches. However, the decision is inconsistent with the U.S. Supreme Court's decision in *Good News Club v. Milford Central School* because it omitted discussion of the Supreme Court's finding that no perceived endorsement of religion occurred

by allowing a religious club on campus because "... instructors [were] not school teachers."⁷¹ Until the U.S. Supreme Court definitively answers this question, ADL strongly recommends that teachers not participate in religious clubs meeting in schools where they work.

Sample Scenarios:

Outside Religious Club Seeks to Lease Elementary School Space on Days When Other Outside Clubs Are Not Permitted to Lease Space

An elementary school has a policy of not letting any outside organizations rent space on campus during the week. However, the school does rent space to a soccer league to practice on Saturdays and to a homeowners group on Sundays. A local religious group has applied for permission to meet on campus on Wednesday afternoons.

Does the school have to allow the group to meet?

No. The school district does not allow other groups to meet at that time, so it is not required to allow this club to meet. However, the school district may have to allow the religious club to meet on the weekends, because that is when it allows the other clubs to meet.

Outside Religious Club Seeks to Meet at High School That Permits Non-Curriculum Related Student Clubs to Meet Before and After School

A high school allows student-organized, student-led non-curriculum related clubs to meet before and after the school day, but does not allow other groups to use the school. A local religious organization wants to meet on campus after school. While students will attend the club, the club will be run by a local religious leader.

Must the school allow this club to meet?

No. Since the school does not allow outside groups, it is not required to allow this one. However, since it allows student-organized, student-led non-curriculum related clubs to meet, it would have to allow a student-organized, student-led religious group to meet.

Outside Religious Club Seeks to Meet at Elementary School at the Same Time Other Outside Clubs Meet

Several groups currently use an elementary school campus immediately after the school day, including a computer club, a karate class, and a Cub Scouts chapter. A religious group wants to begin meeting on campus every Tuesday at the same time.

Does the school have to allow the religious club to meet?

Yes. So long as the district has opened its doors to outside organizations (such as the Cub Scouts), the school must allow the religious club in its facilities. However, the school must proactively ensure that it does not endorse or disapprove of the activity. The school district should take extra care to make certain that students from minority religions are not teased or made to feel unwelcome or left out merely because they do not attend the meetings.

Leader of Outside Religious Club Seeks to Solicit Students to Club Meetings at a School Assembly and Through Permission Slips

A religious club wants to meet in an elementary school. The club's leader, a minister, would like to make a brief announcement at an assembly concerning the club and would like the school to include a permission slip in its regular "Tuesday Folder," a weekly communication with parents.

What should the school do?

The minister may make the announcement only if (a) other after-school organizations' leaders are permitted to do so, (b) her message contains no religious or proselytizing themes and (c) the school takes steps to ensure that it is not endorsing the minister's message. To ensure that the school is not endorsing the minister's message, it may wish to make an explicit statement to that effect and it may wish to have the minister speak only when other groups are making their announcements. The school can also require permission slips from parents. However, if the school distributes or collects permission slips, it must be careful not to involve itself in, or endorse the religious activities of, the club.

Permissible Limitations on Notice Posting Policy for After-School Non-Curriculum

Related Clubs

A school allows the posting of notices inviting students to attend after-school meetings of non-curriculum related organizations and clubs.

What limits may the school place on the posting of such notices?

The school can require that a staff-person review and approve all notices before they are posted, and the school may limit the time, place and manner for distribution of the notices. For example, the school may require that notices be posted only within a particular display case or on a specific wall, and require that each notice bear a stamp indicating it has been approved for posting. To ensure that it is not endorsing the religious message of the poster, schools may use a disclaimer on the notice or at the location where all notices are posted. School teachers should not be directly, personally involved in the distribution of fliers, and outsiders may never distribute such invitations on school property during school hours.

XI Distribution of Religious Materials by Students

General Rule: The Supreme Court has recognized students' right to free expression in public schools under the free speech clause of the First Amendment. However, this right is not absolute.⁷²

Students have a limited right to distribute religious material inside public schools. Student religious expression may be limited if it substantially interferes with or disrupts the school's activities or if it involves coercive proselytizing. Moreover, in order to avoid violating the Establishment Clause, it is essential that the school neither sponsor nor appear to sponsor the distribution of religious material by students.⁷³

How may a school limit a student's distribution of religious material prepared by outside organizations? A school may limit such distribution of non-school materials by a student as it may limit students' free speech in any circumstance: it may do so as long as the restrictions are reasonably related to legitimate pedagogical concerns (e.g., maintaining order, ensuring a school free from coercive pressure).⁷⁴

It is essential that schools take care to neither sponsor nor appear to sponsor the distribution of religious material by students. To this end, the school may require a statement on all religious material disclaiming school endorsement.⁷⁵

School authorities may also impose restrictions on school-sponsored expressive activities that students, parents and members of the community might reasonably believe bear the school's imprimatur, such as a student newspaper or hallway bulletin board.⁷⁶

What concerns arise when students distribute religious material prepared by outside organizations? The distribution by students of religious material, under a school's auspices and with its apparent sanction, creates the serious danger of school and state advancement of specific religious practices or beliefs, or at a minimum the impression of such endorsement, which may violate the Establishment Clause.

Students of minority religions, or those who do not practice a religion, may face considerable pressure from students distributing the religious material to accept it, and may be harassed, intimidated, or ostracized if they decline. Such distribution may interfere with the rights and well-being of other students, as well as disrupt the educational process and the fundamental mission of the school to create a learning environment that is hospitable to all students.

May school officials totally prohibit students from distributing religious material that they prepare themselves? The U.S. Supreme Court and Federal courts have not yet resolved this question, which arises less frequently than the issue of distribution of religious material prepared by outside organizations. However, because students also have free speech rights, student distribution of religious material prepared by students may be more difficult to restrict than material prepared by outside groups. However, since a school is a nonpublic forum, it is likely that a school will be able to restrict these materials for pedagogical purposes.

Sample Scenario:

Fifth-grader Distributes Religious Pamphlet to Peers at Lunchtime

Charles Hamilton, a fifth grade student at Benjamin Franklin Elementary School, brought 35 copies of a pamphlet entitled “Good Fun” to school. The pamphlet, prepared by an evangelical organization, contained crossword puzzles, word searches and comic strips. The theme running through “Good Fun” was the power of religion and the evils of secularism. Charles gave out his copies of “Good Fun” during lunch to the students who were waiting in the cafeteria line. Jonathan Freeman, a fourth grade student, accepted the pamphlet and played through the puzzles that evening. When Jonathan's mother realized that the pamphlet was religious material of a proselytizing nature, she called the principal of Benjamin Franklin Elementary School seeking an explanation. The principal had no knowledge that Charles had distributed “Good Fun” and agreed with Mrs. Freeman that the matter had to be looked into and resolved.

How should the principal resolve this matter? Does Charles have the right to distribute “Good Fun” in school?

The school can allow Charles to distribute “Good Fun” subject to certain time, place, and manner restrictions designed to prevent disruption to the educational process and to prevent disruption of the rights and well-being of fellow students. Such content-neutral regulations typically provide that materials may only be distributed during certain times of the day, and from designated locales.

XII Distribution of Religious Material and Proselytizing by Non-school Personnel

General Rule:

Off Public School Premises: Non-school personnel may distribute religious material to students outside the school premises.

On Public School Premises: School authorities are not obligated to allow the distribution of religious material at public schools by outside groups. If there is a universal prohibition on the distribution of materials at school, non-school personnel may not distribute religious materials to students on school premises. However, at least one court has ruled that outside religious groups must be permitted to passively distribute religious materials at public secondary schools if the school has chosen to allow the distribution of material by outside groups.⁷⁷ It is difficult to reconcile this decision with other establishment clause precedents — and school officials should be wary of allowing any outside groups to distribute materials in common areas of the public schools.

May non-school personnel distribute religious material to students off school premises?

Yes. In *Bacon v. Bradley-Bourbonnais High School Dist. No. 307*, the court held that non-school personnel could distribute religious material to students outside the school grounds. 707 F. Supp. 1005 (C.D. Ill. 1989). For example, such distribution is permissible on a public sidewalk or park, areas traditionally open to the public for expressive activity. However, local officials may implement reasonable content-neutral time, place and manner regulations. Such regulations may prohibit the distribution of material that disturbs the work of the school or interferes with the well-being of students.

What are some concerns that arise when non-school personnel distribute religious material to students in close proximity to the school grounds?

- Students might not realize that the school itself is not endorsing a religious message. School officials must take affirmative steps to make certain that students understand this.
- Students who reject religious material in front of other students may confront peer pressure, coercion and ostracism.
- It is possible that a religious group, in its zeal, may harass students and force material and views upon the students.

Sample Scenario:

Outside Group Situated on Public Sidewalk Adjacent to School Gives Religious Material to Passing Students

On the public sidewalk outside a public elementary school, a group of religious advocates handed out chocolate chip cookies and pamphlets on religious observance to passing students. A half block away, the community Little League passed out booklets describing the League's activities. Between the two groups, the local firemen's committee distributed handouts containing fire safety tips. Some students accepted all or some of the handouts, others accepted none. Naturally, many students were interested only in the chocolate chip cookies. Michael Johnson accepted the handouts of all three groups and brought them home. When Mrs. Johnson saw that Michael had been given religious material at school, she called the school to complain. The principal told Mrs. Johnson that since the religious group distributed its material off school property, did not force its pamphlets upon the students, and was one of the many groups allowed to distribute its material that afternoon, there was nothing that he could do about it. The principal recommended that Mrs. Johnson instruct her son not to accept any religious material.

Mrs. Johnson was not pleased with the principal's response. What can she do?

Since the distribution of religious material took place on the sidewalk in front of the school and not in the school, the principal cannot ban the distribution. However, local officials may enact time, place and manner regulations to ensure that the distribution does not interfere with school activities or student welfare. School officials should also inform the students that the school is not connected to the religious group and neither supports nor opposes the distribution of religious material. Furthermore, both Mrs. Johnson and school officials should advise Michael that he does not have to accept the religious material.

XIII Dress Codes

General Rule: Courts generally find that dress codes which prohibit the wearing of religious attire or symbols are not a valid means of achieving discipline when weighed against students' rights to religious freedom and free speech.

How do courts review dress codes that restrict the wearing of religious attire or symbols?

State regulations or school district regulations such as dress codes that affect students' rights to religious expression are subject to a more rigorous standard of judicial review than regulations that do not affect such freedoms. For example, a school dress code restricting hair-length of male students, which might otherwise be permitted, is not a valid means of achieving discipline when weighed against the religious beliefs of Native American students.⁷⁹ Moreover, mere speculation about the possible disruptive effects of a student's dress is not sufficient to overcome students' right to freedom of expression. As a general matter, school disciplinary rules need not be highly detailed. However, when those rules implicate students' rights to religious expression, courts require a higher degree of specificity.

Notably, 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.⁸⁰

Can schools ban the wearing of religious symbols in an effort to stop gang violence? A ban on gang-related attire cannot restrict the wearing of religious symbols and will not be upheld where there is no evidence of disruption that justifies infringement on students' religiously motivated symbolic speech.⁸¹ In general, gang-related prohibitions on dress have not fared well in the Courts.⁸² Indeed, they have been held to be void for vagueness in a number of circumstances.⁸³

Sample Scenario:

Jewish Student Wearing Star of David is Suspended for Violating Dress Code

In recent years, North High School has experienced a rise in student violence. Some of the fights between students have been accompanied by religious slurs. As a preventative measure, the school board passes a rule prohibiting students from wearing "religious symbols" to school. Anne, a Jewish student, is suspended for wearing a Star of David necklace. She appeals her suspension.

Can the school enforce Anne's suspension?

No. The school board does not appear to have sufficient evidence to show that the violence in the school is due to students wearing religious symbols. Without a causal connection, the school's interest in preventing violence does not justify infringing on Anne's religious symbolic expression.

XIV Teachers' Religious Expression

General Rule: Public schools must maintain religious neutrality and public school teachers, who are the employees and agents of the public schools, must not interfere with this objective. To this end, teachers may not participate in religious activities or advocate particular religious views when they are teaching or counseling students or acting as representatives of the school. However, in circumstances where students are not present (e.g., in a faculty lunchroom), teachers are afforded the same rights as any government employee (see ADL's Religious Accommodation in the Workplace booklet).

May teachers share their religious views with students? No. Teachers should avoid sharing their personal religious views with students, particularly those in the lower grades. If a teacher's religious views become the subject of discussion, the teacher must make clear that he or she is in no way encouraging students to adopt those views. Students must never be encouraged to accept or conform to specific religious beliefs or practices. The Constitution requires governmental agencies to see that state-supported activity — such as a classroom — is not used for religious indoctrination.⁸⁴ Thus, a school district can direct a teacher to “refrain from expressions of religious viewpoints in the classroom and like settings.”⁸⁵ And in fact the school corporation has a constitutional duty to make “certain, given the Religion Clauses, that subsidized teachers do not inculcate religion.”⁸⁶ Courts have held that public school officials have the authority to prevent teachers from giving students and others the impression that the school prefers a particular religion, or religion in general.⁸⁷

May teachers wear religious symbols or clothing to school? Some courts have held that state statutes restricting teachers from wearing certain clothing are constitutional. These statutes are justified in order to preserve an atmosphere of religious neutrality and prevent an appearance of endorsement of religion in public schools. However, even under such statutes, teachers are permitted to wear decoration such as necklaces bearing crosses or Stars of David, which some courts regarded as religiously “ambiguous.” Without such a statute, a teacher's religious garb may still violate the prohibition on government endorsement of religion and should still be banned.⁸⁸

May teachers or other school personnel lead or participate in activities of religious organizations held at their school during non-school hours? Yes, as long as such involvement is undertaken in their capacity as individuals rather than representatives of the school and the state. Great care must be taken by all parties to assure those who may view the teacher's activity that the school and government are not endorsing the activity. (See prior section on “Use of School Facilities By Outside Religious Organizations.”)

Sample Scenario:**Fourth-grader Asks Teacher About Her Cross Necklace**

Mrs. Carlson, a fourth grade teacher, wears a small cross necklace visible to her students. One of her students, Eric, notices the cross and asks her what it symbolizes. Mrs. Carlson responds: "I wear it as a symbol that Jesus died for our sins." Eric tells his parents that his teacher taught him that Jesus died for his sins. Eric's parents complain to Mrs. Carlson.

Was Mrs. Carlson correct to respond as she did?

No. While teachers may wear symbols of their faith, Mrs. Carlson should not have shared tenets of her religion with Eric. It would have been sufficient to say that the cross is an important symbol of her religion.

XV ADL Can Help

The Anti-Defamation League would be pleased to serve as a resource regarding the sensitive and complex issue of religion in the public schools. Administrators, teachers, parents, students and members of the religious community should feel free to contact the nearest ADL office for assistance in formulating or implementing school policies dealing with the issues raised in this handbook. Many ADL offices offer programming and speakers to help train faculty, administrators and parents to deal with these issues.

This, and many of our other church-state publications, can be found at www.adl.org.

End Notes

¹ <http://etext.lib.virginia.edu/jefferson/quotations/jeff1650.htm>

² *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290, 390 (2000) (internal marks omitted).

³ *Id.* at 318 (C.J. Rehnquist, dissenting).

⁴ *See Levitt v. Committee for Public Education & Religious Liberty*, 413 U.S. 472 (1973).

⁵ *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 877 (1990) (internal marks and citations omitted).

⁶ *Id.* at 879.

⁷ *Id.* 872.

⁸ *School Dist. of Abington Township, Pa. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962).

⁹ *Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1982), *aff'd*, 455 U.S. 913 (1982).

¹⁰ *Herdahl v. Pontotoc County School District*, 933 F. Supp 582, 588 (N.D. Miss. 1996). *See also Hall v. Board of School Com'rs of Conecuh County*, 656 F.2d 999, 1000 (5th Cir. 1981).

¹¹ *Wallace v. Jaffree*, 472 U.S. 38 (1985).

¹² *But see Brown v. Gilmore*, 258 F.3d 265 (4th Cir. 2001); *Bown v. Gwinnett County School Dist.*, 112 F.3d 1464 (11th Cir. 1997). The courts in both cases found that moment of silence statutes passed the *Lemon* test because they did not have a religious purpose. In upholding a Virginia statute requiring observance of a daily “minute of silence” for students to “meditate, pray, or engage in any other silent activity,” the court in *Gilmore* found that the statute had the non-religious purposes of permitting non-religious meditation and accommodating religion. It further found that the legislature took *Jaffree* into consideration in passing the statute and there was no evidence of the “minute of silence being used for religious observance.” In upholding the Georgia “Moment of Quiet Reflection in Schools Act” that requires a period of quiet reflection in public schools at the beginning of each school day, the court in *Gwinnett* found that the legislative purpose of the act was not religious, in large part because the statute required a moment of silence only, and had specifically eliminated references to prayer found in a predecessor statute.

¹³ *Santa Fe Independent School Dist.*, 530 U.S. 290.

¹⁴ *Doe v. Duncanville Independent School Dist.*, 70 F.3d 402 (5th Cir. 1995).

¹⁵ *Jager v. Douglas County School Dist.*, 862 F.2d 824 (11th Cir. 1989).

¹⁶ *Duncanville Independent School Dist., v. John Doe*, 994 F.2d 160 (5th Cir. 1993).

- ¹⁷ *Lee v. Weisman*, 505 U.S. 577 (1992). See *Santa Fe Independent School Dist.*, 530 U.S. 290.
- ¹⁸ *Collins v. Chandler Unified School Dist.*, 644 F.2d 759 (9th Cir.), cert. denied, 454 U.S. 863 (1981). See *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290.
- ¹⁹ *Santa Fe Independent School Dist.*, 530 U.S. 290; *Ingebretsen v. Jackson Public School Dist.*, 88 F.3d 274 (5th Cir. 1996).
- ²⁰ *Pelozza v. Capistrano Unified School Dist.*, 37 F.3d 517, 522 (9th Cir. 1994).
- ²¹ *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384, (1993) (quoting *Widmar v. Vincent*, 454 U.S. 263 (1981)).
- ²² *Roberts v. Madigan*, 921 F.2d 1047 (10th Cir. 1990), cert. denied, 112 S.Ct. 3025 (1992).
- ²³ *Marsh v. Chambers*, 463 U.S. 783 (1983).
- ²⁴ *Coles v. Cleveland Board of Education*, 171 F.3d 369 (6th Cir. 1999).
- ²⁵ *Schempp*, 374 U.S. 203.
- ²⁶ *Gibson v. Lee County School Board*, 1 F.Supp.2d 1426 (M.D. Fla. 1998).
- ²⁷ *Clever v. Cherry Hill Township Bd. of Educ.*, 838 F. Supp. 929, 932 (D. N.J. 1993).
- ²⁸ *Schempp*, 374 U.S. 203; *Hall*, 656 F.2d 999; *Gibson*, 1 F. Supp. 1426; *Herdahl*, 933 F. Supp. at 595.
- ²⁹ *Crockett v. Sorenson*, 568 F. Supp. 1422 (W.D. Va. 1983).
- ³⁰ *Smith v. Board of School Comm'rs of Mobile County*, 827 F.2d 684 (11th Cir. 1987).
- ³¹ The difficulty of monitoring what actually occurs inside the classroom puts concerned administrators and parents at a disadvantage. The only way for administrators to become aware of problems and constitutional violations without personally monitoring classes would be through student or parent complaints, which may not always be forthcoming.
- ³² *Mozert v. Hawkins County Public Schools*, 827 F.2d 1058 (6th Cir. 1987), cert. denied, 484 U.S. 1066 (1988); *Grove v. Mead School Dist. No. 354*, 753 F.2d 1528 (9th Cir.), cert. denied, 474 U.S. 826 (1985); *Williams v. Bd. of Educ.*, 388 F. Supp. 93 (D.C.W.Va.), aff'd, 530 F.2d 972 (4th Cir.1975).
- ³³ *Schempp*, 374 U.S. 203. See also *Zorach v. Clauson*, 343 U.S. 306 (1952).
- ³⁴ *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260 (1988). See *Downs v. Los Angeles Unified School Dist.*, 228 F.3d 1003, (9th Cir 2000), cert. denied, 121 S.Ct. 1653 (2001); *C.H. ex rel. Z.H. v. Oliva*, 195 F.3d 167 (3rd Cir 1999), rehearing en banc granted, opinion vacated on other grounds by *C.H. v. Oliva*, 226 F.3d 198 (3rd Cir. 2000). See also *Peck v. Baldwinsville School Bd. of Educ.*, 2001 WL 303755 (2nd Cir. 2001).
- ³⁵ *Epperson v. Arkansas*, 393 U.S. 97 (1968).

- ³⁶ *Aguillard v. Edwards*, 765 F.2d 1251 (5th Cir.), aff'd, 482 U.S. 578 (1987).
- ³⁷ *McLean v. Arkansas Board of Education*, 529 F. Supp. 1255 (E.D. Ark.1982) (cited favorably in *Aguillard*, 482 U.S. 578).
- ³⁸ See *Florey v. Sioux Falls School Dist.* 49-5, 619 F.2d 1311 (8th Cir.), cert. denied, 449 U.S. 987 (1980).
- ³⁹ See *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 629 (1989) (footnote No. 69, noting the special establishment clause sensitivities present in the public school context); *Washegesic v. Bloomingdale Public Schools*, 33 F.3d 679 (6th Cir. 1994).
- ⁴⁰ *County of Allegheny*, 492 U.S. at 616.
- ⁴¹ Id. at 613-14, 618.
- ⁴² Id. at 629 (footnote No. 69).
- ⁴³ *Illinois ex rel. McCollum v. Board of Education of School Dist. No. 71, Champaign County*, 333 U.S. 203 (1948) (Jackson, J., concurring). See also *Florey*, 619 F.2d 1311.
- ⁴⁴ *Schempp*, 374 U.S. 203; *Sease v. School Dist. of Philadelphia*, 811 F.Supp. 183 (E.D. Pa. 1993).
- ⁴⁵ *Florey*, 619 F. 2d 1311.
- ⁴⁶ *Schempp*, 374 U.S. 203.
- ⁴⁷ *Florey*, 619 F.2d 1311.
- ⁴⁸ Id.
- ⁴⁹ See *Koenick v. Felton*, 190 F.3d 259 (4th Cir 1999); *Metzl v. Leininger*, 57 F.3d 618 (7th Cir. 1995).
- ⁵⁰ *Church of God v. Amarillo Independent School Dist.*, 511 F. Supp. 613 (N.D. Tex. 1981), aff'd, 670 F. 2d 46 (5th Cir. 1982).
- ⁵¹ Id.
- ⁵² See *Stone v. Graham*, 449 U.S. 39, 42 (1980); *ACLU of Kentucky v. McCreary County*, 354 F. 3d 438 (6th Cir. 2003); *Washegesic*, 33 F.3d 679; *Joki v. Board of Education of Schuylerville Central School Dist.*, 745 F. Supp. 823 (N.D.N.Y. 1990).
- ⁵³ See *Stone*, 449 U.S. at 42; *Baker v. Adams County*, 86 Fed. Appx. 104, 2004 WL 68523 (6th Cir. Jan. 12, 2004).
- ⁵⁴ See *Stone* at 42; *McCreary County*, 354 F.3d 438.
- ⁵⁵ See *Stone* at 41-42; *Adams County*, 86 Fed. Appx. 104, 2004 WL 68523; *McCreary*, 354 F.3d 438.
- ⁵⁶ See *Washegesic*, 33 F.3d 679; *Joki*, 745 F. Supp. 823.
- ⁵⁷ A released time program is one in which students are released from school early to attend religious classes off school premises. Participating students must have permission from their parents. Nonparticipating students remain in school.

⁵⁸ *Zorach*, 343 U.S. 306.

⁵⁹ Regarding school involvement in the administration of a released time program, one court has held that it is unconstitutional for a school to announce the program on school bulletin boards and to distribute cards on which students could express interest in participating in the program. *Perry v. School Dist. No. 81*, 54 Wash.2d 886, 344 P.2d 1036 (1959).

⁶⁰ *Illinois ex. rel. McCollum*, 333 U.S. 203; *Zorach*, 343 U.S. 306.

⁶¹ *Peck v. Upshur County Bd. of Educ.*, 155 F.3d 274 (4th Cir 1998) (J. Gribbon Motz, concurring in part, dissenting in part).

⁶² See *Board of Educ. of Westside Community Schools v. Mergens*, 496 U.S. 226 (1990).

⁶³ Many state constitutions have establishment clause provisions that are more restrictive than the First Amendment. In some such instances, state law bars all religious meetings on public school grounds and thus comes into direct conflict with the EAA. One appellate court found that, when these conflicts arise, the EAA preempts (overrules) the state law. *Garnett v. Renton*, 987 F.2d 641 (9th Cir.), cert. denied, 510 U.S. 819 (1993).

⁶⁴ *Hsu v. Roslyn Union Free School. Dist.*, 85 F.3d 839 (2nd Cir.), cert. denied, 519 U.S. 1040 (1996).

⁶⁵ *Donovan v. Punxsutawney Area School Board*, 336 F. 3d 311 (3rd Cir. 2003); *Ceniceros v. Board of Trustees*, 106 F.3d 878 (9th Cir. 1997).

⁶⁶ *Hsu*, 85 F.3d at 847-48; *Pope v. East Brunswick Bd. of Educ.*, 12 F.3d 1244 (3rd Cir 1993).

⁶⁷ 20 U.S.C.A. § 4071(c); *Hsu* at 857 (footnote 16); *Student Coalition for Peace v. Lower Merion School Dist.* 776 F.2d 431 (3rd Cir 1985).

⁶⁸ *Student Coalition for Peace*, 776 F.2d 431.

⁶⁹ See *Good News Club v. Milford Central School*, 533 U.S. 98 (2001). In that case, the U.S. Supreme Court held that an outside religious club could meet at an elementary school after school hours because the school permitted other non-religious groups to meet at the same time and there was no perceived endorsement of the club's religious activity. Although *Good News* concerned an elementary school, the free speech and religious endorsement principles set forth in the case should be applicable to the middle and secondary school context.

⁷⁰ 2004 WL 1948682 (8th Cir. September 3, 2004).

⁷¹ 533 U.S. at 118.

⁷² *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969).

⁷³ *Muller v. Jefferson Lighthouse School*, 98 F.3d 1530 (7th Cir. 1996).

⁷⁴ *Walz v. Egg Harbor Township Board of Education*, 342 F.3d 271 (3rd Cir. 2003); *Muller*, 98 F.3d 1530. See *Denno v. School Bd. of Volusia County*, 218 F.3d 1267 (11th Cir 2000).

⁷⁵ *Muller*, 98 F.3d 1530.

⁷⁶ *Hazelwood School Dist.*, 484 U.S. 260.

⁷⁷ *See Peck*, 155 F.3d 274. In that case, the court decided that a secondary school did not violate the Establishment Clause by permitting non-school personnel to passively offer religious materials to students on a single day during the school year based on a policy allowing outside non-religious and religious speech in schools. The distribution was passive in that the religious materials were placed on tables within common areas, the non-school personnel were not permitted to stand at the tables during the distribution, and the source of the materials was not identified. Significantly, the court also held that the U.S. Supreme Court would find such a distribution unconstitutional in the elementary school context.

⁷⁸ The Supreme Court recognized a school's interest in protecting against substantial disruption in *Tinker v. Des Moines Independent Com. Sch. Dist.*, 393 U.S. 508 (1969) (public schools may prohibit the wearing of certain symbols or clothing only if the school can show that the restricted item causes a substantial disruption or material interference with school activities).

⁷⁹ *See Alabama and Coushatta Tribes of Texas v. Trustees of the Big Sandy Independent School Dist.*, 817 F. Supp. 1319 (E.D. Texas 1993).

⁸⁰ Religion in the Public Schools: A Joint Statement of Current Law, <http://www.ed.gov/Speeches/04-1995/prayer.html>. *See also* US Department of Education: Religious Expression in Public Schools, <http://www.ed.gov/Speeches/08-1995/religion.html>.

⁸¹ *Chalifoux v. New Caney Independent School Dist.*, 976 F. Supp. 659 (S.D. TX 1997).

⁸² *Hodge v. Lynd*, 88 F. Supp.2d 1234 (D.N.M. 2000).

⁸³ *See, e.g., Stephenson v. Davenport Community School Dist.*, 110 F.3d 1303 (8th Cir. 1977) (tattoo cross on arm not a gang symbol, statute is void for vagueness); *City of Harvard v. Gaut*, 660 N.E.2d 259 (Ill.App. 2 Dist. 1996) (invalidating city ordinance on overbreadth grounds, because the ordinance outlawing the wearing of "known gang colors, emblems, or other insignia" banned a substantial amount of protected speech, given the fact that "gang colors" and "gang clothing" included the official colors of the local high school, Chicago Bulls jackets, and religious jewelry such as the Star of David).

⁸⁴ *See, e.g., Aguillard*, 482 U.S. 578; *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

⁸⁵ *Bishop v. Aronov*, 926 F.2d 1066, 1077 (11th Cir. 1991).

⁸⁶ *Lemon*, 403 U.S. at 619.

⁸⁷ *See, e.g., Marchi v. Board of Cooperative Educational Services of Albany*, 173 F.3d 469 (2nd Cir. 1999); *Helland v. South Bend Community School Corp.*, 93 F.3d 327 (7th Cir. 1996); *Duncanville Independent School Dist.*, 70 F.3d 402; *Pelozza*, 37 F.3d 517.

⁸⁸ See *United States v. Board of Education for the School Dist. of Philadelphia*, 911 F.2d 882 (3rd Cir. 1990). See also *Cooper v. Eugene School Dist. No. 4J*, 301 Or. 358, 723 P.2d 298 (1986), appeal dismissed, 480 U.S. 942 (1987).