

RELIGION IN THE PUBLIC SCHOOLS

RELEASE TIME PROGRAMS

Release time in the public schools refers to programs 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. Such programs 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.¹

SPECIFIC ISSUES & QUESTIONS

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.² The public school may not bear any of the program expenses, including, but are not limited to, solicitation, applications, distribution of notices, and permission slips.

May a religious organization use school facilities for a released time program?

A released time program may only take place off school premises.³ A religious organization may not rent or otherwise use public school facilities to conduct a release time program.^{4 5} 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.

May a school grant credit or accept

grades for an otherwise constitutional release time program? One U.S. Court of Appeals – the Fourth Circuit - upheld a school district policy accepting up to two elective credits and grades for

¹ *Zorach v. Clauson*, 343 U.S. 306 (1952); *Pierce v. Sullivan West Central Sch. Dist.*, 379 F.3d 56 (2d. Cir. 2004).

² See *Zorach*, 343 U.S. 306; *Pierce*, 379 F.3d 56.

³ *Zorach*, 343 U.S. 306; *Illinois ex. rel. McCollum*, 333 U.S. 203 (1948).

⁴ See *Zorach*, 343 U.S. 306; *Illinois ex. rel. McCollum*, 333 U.S. 203 (1948).

⁵ In *H.S. v. Huntington Cty. Community Sch. Corp.*, 616 F. Supp. 2d 863 (N.D. Ind. 2009), the court issued a preliminary injunction prohibiting a school district from allowing a religious organization to park a mobile classroom trailer owned by the organization and bearing no outside religious iconography on school property for the purpose of conducting a release time program.

religion classes taken by students in an otherwise constitutional release time program.⁶ In that case, the unaccredited release time program had its classes and grades evaluated by an accredited private school.⁷ The transfer of the credits and grades were handled in a manner similar to a student transferring from an accredited private school to public school.⁸ The court found that through this procedure the school district did not become entangled with religion because it accepted the coursework and grades “without individually assessing the quality or subject matter of the course, trusting the private school accreditation process to ensure adequate academic standards.”⁹

ADL believes that a public school accepting credits or grades from an otherwise constitutional release time program raises significant issues of entanglement with and endorsement of religion. Until the U.S. Supreme Court definitively rules on this issue, ADL recommends that schools outside the Fourth Circuit refrain from implementing similar policies.

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.¹⁰

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.

⁶ *Moss v. Spartanburg County School District Seven*, 2012 U.S. App. LEXIS 13248 (4th Cir. June 29, 2012).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ In *Perry v. School Dist. No. 81*, 54 Wash.2d 886, 344 P.2d 1036 (1959), the court held that it is unconstitutional for a school to announce a release time program on school bulletin boards and to distribute cards on which students could express interest in participating in the program. However, in *Moss v. Spartanburg Cty. Sch. Dist. No. 7*, 775 F. Supp. 2d 858 (D. SC 2011), *aff'd*, 2012 U.S. App. LEXIS 13248 (4th Cir. June 28, 2012), the court found no constitutional violation where a school allowed a religious organization to make class-room presentations to students about its release time program and allowed the organization access to the names and addresses of incoming students. According to the court, this conduct did not rise to the level of a “... systemic and intricate relationship formed between a public school and religion found unconstitutional in ...” the U.S. Supreme Court’s *Illinois ex. rel. McCollum* decision. In light of the fact that this decision is limited to the Fourth Circuit and the U.S. Supreme Court has yet to address similar issues, ADL takes the position that such conduct is constitutionally problematic. ADL further recommends that a school district seek legal counsel prior to engaging in such activities.

SAMPLE SCENARIOS & SITUATIONS

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 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.

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