

RELIGION IN THE PUBLIC SCHOOLS

USE OF SCHOOL FACILITIES BY OUTSIDE RELIGIOUS ORGANIZATIONS

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, under the same terms and conditions, and does not endorse the club or organization's religious activity.^{1 2}

SPECIFIC ISSUES & QUESTIONS

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.

¹ See *Good News Club v. Milford Central School District*, 533 U.S. 98 (2001) (where school district permitted non-religious clubs to use elementary school facilities after school hour hours, it was required to accord the same access to an outside religious club provided there was no perceived endorsement of the club's religious activity); *Child Evangelism Fellowship of South Carolina v. Anderson School District Five*, 470 F.3d 1062 (4th Cir. 2006) (school district was required to provide use of facilities at no cost to all similarly situated community groups); *Child Evangelism Fellowship of Minnesota v. Minneapolis Special School District No. 1*, 822 F. Supp. 2d 878 (D. Minn. 2011) (on a motion for preliminary injunction, the court found that a religious group's participation in a school-district funded and managed after-school program would likely violate the Establishment Clause); *Doe v. Wilson County School System*, 564 F. Supp. 2d 766 (M.D. Tenn. 2008) (religious group meeting at school during instructional time constituted an unconstitutional endorsement of religion); *Gracepointe Church v. Jenkins*, 2006 U.S. Dist. LEXIS 38018 (D.S.C. 2006) (school district was required to allow congregation that otherwise met access criteria to use facilities for worship services).

² But see *Bronx Household of Faith v. Board of Education of the City of New York*, 650 F.3d 30 (2nd Cir. 2011), cert. denied, 132 S. Ct. 816 (2011). There, the court held that a school board did not violate the First Amendment by prohibiting a congregation using school facilities from engaging in religious worship services. However, as of this writing, this prohibition is again being challenged as violating the First Amendment and a district court granted a preliminary injunction against its enforcement. *Bronx Household of Faith v. Bd. of Educ.*, 2012 U.S. Dist. LEXIS 91015 (S.D.N.Y. June 29, 2012).

- 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*,³ the U. S. Court of Appeals for the Eighth Circuit 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*. In *Good News*, the Supreme Court's found that no perceived endorsement of religion occurred by allowing a religious club on campus in part because "... instructors [were] not school teachers."⁴ However, *Wigg* omitted discussion of this finding. Therefore, 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 & SITUATIONS

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

³ 382 F.3d 807 (8th Cir. 2004), reh'g en banc denied, 2004 U.S. App. LEXIS 20976.

⁴ *Good News Club*, 533 U.S. at 118.

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. However, pursuant to a school policy, teachers can distribute fliers through a flier or backpack forum. Outsiders may never distribute such invitations on school property during school hours.⁵

PROVIDED BY: Civil Rights Division

⁵ For more information about distribution of materials by outside religious groups, see the section entitled, "Distribution of Religious Material and Proselytizing by Non-school Personnel."