

# RELIGION IN THE PUBLIC SCHOOLS

## RELIGION IN THE CURRICULUM

Public schools may not teach religion, although teaching about religion in a secular context is permitted.<sup>1</sup> 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.<sup>2</sup>

### SPECIFIC ISSUES & QUESTIONS

**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 or practice and is clearly prohibited in public schools. A public school curriculum may not be devotional or doctrinal.<sup>3</sup> 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.<sup>4</sup> 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.

<sup>1</sup> *School Dist. of Abington Township, Pa. v. Schempp*, 374 U.S. 203 (1963).

<sup>2</sup> *Id.*

<sup>3</sup> See *Doe v. Paul Dee Human*, 725 F. Supp. 1503 (W.D. Ark. 1989), affirmed without opinion, 923 F.2d 857 (8th Cir. 1990), cert. denied, 499 U.S. 922 (1991); *Hall v. Board of School Commissioners of Conecuh County*, 656 F.2d 999 (5th Cir. 1981).

<sup>4</sup> See *Johnson v. Poway Unified School District*, 658 F.3d 954 (9th Cir. 2011), cert. denied, 132 S. Ct. 1807 (2012); *Lee v. York County School Division*, 484 F.3d 687 (4th Cir. 2007), cert. denied, 552 U.S. 950; *Williams v. Vidmar*, 367 F. Supp. 2d 1265 (N.D. Ca. 2005).

A program intended to teach religion, disguised as teaching about religion, will be found unconstitutional.<sup>5</sup>

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."<sup>6</sup>

**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.<sup>7</sup> Classes on the Bible as literature should be optional.<sup>8</sup> 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."<sup>9</sup>

### **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.<sup>10</sup> 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

<sup>5</sup> *Gibson v. Lee County School Board*, 1 F. Supp. 2d 1426 (M.D. Fla. 1998).

<sup>6</sup> *Clever v. Cherry Hill Township Bd. of Educ.*, 838 F. Supp. 929, 932 (D.N.J. 1993); see also *Busch v. Marple Newtown School District*, 567 F.3d 89 (3rd Cir. 2009), cert. denied, 130 S. Ct. 1137 (2010).

<sup>7</sup> *Schempp*, 374 U. S. 203; *Hall*, 656 F. 2d 999; *Gibson*, 1 F. Supp. 1426; *Herdahl v. Pontotoc County School District*, 933 F. Supp 582, 588 (N.D. Miss. 1996).

<sup>8</sup> *Crockett v. Sorenson*, 568 F. Supp. 1422 (W.D. Va. 1983).

<sup>9</sup> *Smith v. Board of School Comm'rs of Mobile County*, 827 F.2d 684 (11th Cir. 1987).

<sup>10</sup> 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.

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 important 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.<sup>11</sup>

**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

<sup>11</sup> *Parker v. Hurley*, 514 F.3d 87 (1st Cir. 2008), cert. denied, 555 U.S. 815; *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).

religion, thereby preferring those who believe in no religion over those who do believe.<sup>12</sup> 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.<sup>13</sup> 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).<sup>14</sup> 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.<sup>15</sup> 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."<sup>16</sup>

## **SAMPLE SCENARIOS & SITUATIONS**

### **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

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<sup>12</sup> *Schempp*, 374 U.S. 203. See also *Zorach v. Clauson*, 343 U.S. 306 (1952).

<sup>13</sup> See *Johnson v. Poway Unified School District*, 658 F.3d 954 (9th Cir. 2011), cert. denied, 132 S. Ct. 1807 (2012); *Busch v. Marple Newtown School District*, 567 F.3d 89.

<sup>14</sup> See *Curry v. School Dist. of the City of Saginaw*, 452 F. Supp. 2d 723 (E.D. Mich. 2006), aff'd, *Curry v. Hensiner*, 513 F.3d 570 (6th Cir. 2008), cert. denied, 555 U.S. 1069.

<sup>15</sup> *Id.*

<sup>16</sup> *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).

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, the student 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 him 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.

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