

GUIDELINES ON RELIGION IN PUBLIC SCHOOLS

Introduction

The Jewish community is committed to preserving the principles of religious freedom and separation of church and state embodied by the First Amendment of the United States Constitution. For many years, the Jewish Community Relations Council (JCRC) of Greater Washington has worked in cooperation with local public school officials, as well as with other religious communities, to promote a better understanding of these principles. Ensuring religious neutrality in the public schools depends on the understanding and support of the entire community.

In light of the growing diversity represented in our local communities, such cooperation becomes even more crucial. Many in the Jewish community whose children attend public schools are concerned that schools may engage in inappropriate religious observances or activities that give the impression of government endorsement of a particular religion or hinder the religious requirements of Jewish students.

Most public school administrators and teachers do an excellent job maintaining religious neutrality in the schools. However, given the complex legal issues and special sensitivities involved, it is understandable that there might be some confusion surrounding the subject.

This policy statement was originally developed to minimize the confusion and help school officials, teachers, and parents better understand church/state issues. It is updated regularly based upon Court decisions, federal law, and, we believe, sound educational policy.

In addition to school officials, we also distribute these *Guidelines* to more than 100 constituent agencies, synagogues, and organizations in the Greater Washington community. We hope that with greater awareness, schools will avoid programs which could isolate or create discomfort for any child and, moreover, create public and legal concerns.

It is our hope that you will use these guidelines as a resource, together with JCRC's Holiday Calendars as you plan holiday and other school activities. We encourage you to reproduce and disseminate them as you see fit.

If you have any questions about information contained within this document, need additional information or assistance, or would like a speaker for a teacher, PTA or student meeting you are planning on the subject, please do not hesitate to contact the office the Jewish Community Relations Council (JCRC) of Greater Washington. The JCRC is prepared to assist you with any church/state issue that may arise. Additional school resources may be found at www.jcouncil.org/Schools

We welcome your cooperation.

Separation of Church and State and Religious Freedom

Religious freedom and the Separation of Church and State, cornerstones of our democracy, are reflected in the First Amendment of the United States Constitution. The Amendment, in part, states the following:

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

Decisions of the U.S. Supreme Court over the years have reaffirmed this dual constitutional guarantee of:

- (1) prohibiting government from engaging in conduct, either directly or indirectly, that constitutes religious endorsement or preference (the Establishment Clause) and
- (2) protecting an individual's right to religious practice within the confines of his or her conscience (the Free Exercise Clause). The Court has specifically recognized and expressly interpreted these rights as they apply to America's public schools.

Religious Neutrality in Public Schools

The principle that public schools must be religiously neutral has been established in a long line of Supreme Court decisions. The Court has defined "religiously neutral" as neither promoting nor expressing opposition or hostility toward religion, or no religion, while prohibiting an official preference for one religion over another.

Religious neutrality is not only a constitutional mandate, it is sound educational policy. School sponsored religious practices invariably make some children feel isolated and can turn the school into a non-inclusive environment. Such practices often force children to choose between participating and feeling alienated from their classmates, as well as embroiling parents, teachers and school officials in acrimonious and divisive struggles over school policy. (School sponsored religious practices create inter-religious tension and undermine the respect for religious and cultural diversity that public schools are designed to further. It is highly recommended that school boards establish policies on these issues). The existence of such school district policies can eliminate confusion at the school site level and promote a safe school environment.

Teaching About Religion and Religious Holidays

Schools are allowed to teach about, but may not observe in a worshipful manner religious holidays, such as Christmas or Passover. Schools may recognize holidays for the purpose of providing secular instruction about religious traditions, but not if the goal is to promote a particular religion. Indeed, it is sound educational policy to teach about the diverse religions and religious practices in our society and around the world. Recognition of and information about holidays may focus on how and when they are celebrated and the historical and religious significance of the holiday. Teachers may not use the study of religious holidays as an opportunity to proselytize or to inject personal religious beliefs into the classroom, nor to denigrate any religious belief or practice.

Holiday Concerts

Holiday concerts should include a variety of musical selections that represent various cultural, seasonal and religious traditions; while some religious music may be performed, it should not dominate the program. Most schools are aware that Kwanzaa, Hanukkah and Christmas are regularly celebrated in December. The Wiccan Yule also occurs each December and Muslim holidays, which are based on the lunar calendar, may also occur during this season. Any dramatic productions should emphasize the cultural and not the worshipful aspects of these holidays. Nativity pageants or plays portraying the Hanukkah miracle, for example, are not appropriate in the public school setting.

Despite careful adherence to standards of neutrality, some students may be offended by the treatment of religious holidays in public schools. At a parent's request, these students should be excused from participating in or attending holiday events.

Religious Symbols

Religious symbols may be used in secular seasonal displays or in the classroom in the context of studying the historical and cultural significance of a holiday or religious practice, but must not be used for worship or practice. Religious symbols may be displayed only on a temporary basis as part of the instructional program. For example, posting the Ten Commandments would only be allowed temporarily and in the context of academic instruction.

Teacher Participation

Teachers are viewed as representatives of the state and, as such, must refrain from encouraging or discouraging religious activity. Restrictions on the permissible actions of teachers include the obvious, such as leading a prayer or a devotional Bible reading, but also actions that can be perceived by impressionable students as advancing or disparaging religion.

Religious Liberty and Equal Access

Students have the right to engage in private, non-disruptive religious expression during non-instructional time. Students may, for example, participate in off-campus release-time programs, pray out loud and in groups so long as it is not sponsored by the school, engage in silent prayer and say grace over meals if the prayers do not disrupt other activities. School officials may not participate in, or encourage students to participate in, any of these activities. A Federal Appeals Court has upheld a Virginia law mandating a moment of silence in public schools in that state.

Under the Equal Access Law, student religious groups must be granted access upon request if the school maintains a limited open forum for non-curriculum related student clubs. The student religious clubs must meet only during non-instructional time. The group must be student initiated and run without encouragement of school faculty. Non-students cannot coordinate or regularly attend group meetings. However, public schools may not deny any religious group after-school access to school facilities if the group's activities otherwise fall within the guidelines defining the school's limited **open forum**, whether it be the Fellowship of Christian Athletes, a Muslim Student Union, a Jewish Culture Club or the Atheist Alliance International.

Proselytizing in School

While the distribution of religious material is not covered under the Equal Access Law, students do have a limited right of expression, which may include proselytizing or distributing religious materials, provided that such activities are not disruptive. "Student free speech" does not extend, however, to attempting to force religious views on fellow classmates. School authorities may restrict the time, place, and manner of the religious distribution and proselytizing while on school property, as long as the school's restrictions are neutral (apply to all groups, both religious and non-religious). Schools may also limit student speech to preserve discipline, the rights of other students, and the educational function of the school. Schools are granted more control over student speech that occurs during class or as part of an organized school activity.

Distribution of materials by outside groups is usually not permissible unless the school has explicitly created a designated, limited forum for a particular event. In many jurisdictions, distribution of religious material by outside groups is not allowed on school grounds. Where distribution is permitted, access must be allowed on a completely neutral basis with the possible exception of materials that are highly likely to disrupt the educational mission of the school.

Absences for Religious Observance

Students should not be penalized for religious observance. Schools are reminded that students must be given excused absences to meet religious obligations and that reasonable accommodations must be made for students to make up missed work. Schools should be sensitive about scheduling events so that students and employees do not miss significant activities and opportunities due to religious observance. Additionally, teachers may choose to avoid introducing major new subject material or providing initial instruction for large projects on days when many students are anticipated to be absent for religious observance. Since students' religious observances may preclude them from studying for tests, teachers should be flexible in scheduling make-up tests upon a student's return to school.

Student Assignments

Students may express their beliefs about religion in homework, artwork and other written and oral assignments free of discrimination based on the religious content of their submissions. Such work should be judged by normal academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school. ⁽¹⁾ Students may claim a right to be excused from classes to which they object on religious grounds unless excusing them would be disruptive either to the student's education or to the class.

Student Garb

Schools enjoy substantial discretion in adopting policies relating to student dress and school uniforms. Students generally have no federal right to be exempted from religiously neutral and generally applicable school dress rules based on their religious beliefs or practices; however, schools may not single out religious attire in general, or attire of a particular religion, such as Sikh turbans, Muslim hijabs, or Jewish yarmulkes for prohibition or regulation. Religious messages on clothing may not be singled out for suppression, but rather are subject to the same rules as generally apply to comparable messages on clothing. ⁽²⁾

Prayer at Graduation Ceremonies and Other School Events

School-sponsored prayer, whether led by students, teachers or outsiders, at school-sponsored events, such as graduation ceremonies and sporting events, as well as during instructional time, is not permitted. A clear example of an unconstitutional activity would be a prayer over the public address system. Students may, of course, pray privately or attend privately sponsored Baccalaureate services if they wish. However, public schools may not endorse, sponsor or encourage attendance at such programs.

Appendix

In February 2003, the Education Department issued guidance under the *No Child Left Behind Act* of 2001 on constitutionally protected prayer in public elementary and secondary schools that set forth the responsibilities of state and local educational agencies in light of the Department's view of the applicable law (http://www.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html) The following Court decisions have affirmed the principle of religious neutrality in public schools.

McCollum v. Board of Education, 333 U.S. 203 (1948) (Striking down a school policy of releasing students from regular classes to attend religious instruction on public property.)

Engel v. Vitale, 370 U.S. 421 (1962); *School Dist. of Abington Tp. v. Schempp*, 374 U.S. 203 (1963). (Striking down school sponsored prayer and religious scripture readings.)

Epperson v. Arkansas, 393 U.S. 97, 106 (1968) (Striking down a policy banning the teaching of evolution because it conflicted with religious sentiments: "The First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma.")

Stone v. Graham, 449 U.S. 39 (1980) (Prohibiting the posting of the Ten Commandments in classrooms by outside groups.)

Karen B. v. Treen, 653 F.2d 897 (5th Cir. 1981), *aff'd*, 455 U.S. 913 (1982) (Striking down a statute authorizing teachers or student volunteers to lead students in daily prayers.)

Wallace v. Jaffree, 472 U.S. 38 (1985) (Striking down a "moment of silence" statute designed to encourage prayer in public schools.) But see *Brown v. Gilmore*, Case No. 01-384 (Sup. Ct. October 29, 2001) (refusing to hear an appeal from a lower court ruling which upheld Virginia's moment of silence law that requires all students to observe a minute of quiet during which they may "meditate, pray or engage in other silent activity.")

Edwards v. Aguillard, 482 U.S. 578 (1987) (Striking down a statute requiring "balanced treatment" of evolution and "creation science.")

Doe v. Shenandoah Cty. Sch. Bd., 737 F. Supp. 913, 918 (W.D. Va. 1990) (Holding that a public school may not assist or encourage participation in a release-time program for religious instruction, focusing on "the symbolic impact created by the appearance of official involvement").

Westside School Dist. V. Mergens, 496 U.S. 226 (1990) (Equal Access Act - 20 USC §§4071-4074) requiring that voluntary religious after-school groups wanting to meet on school grounds be afforded the same access as non-religious groups.)

Lee v. Weisman, 505 U.S. 577 (1992) (Striking down a policy of allowing clergy to deliver non-sectarian, non-proselytizing benedictions and invocations at public high school graduations.) See also *Santa Fe Independent School District v. Doe*, 120 S. Ct. 2266 (2000) (citing Weisman, the Supreme Court has also stated that a school district's policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause of the First Amendment.)

Lamb's Chapel v. Moriches School Dist., 508 U.S. 384 (1993) (Permitting a religious group's after school use of a school facility open to the public finding such use does not risk the appearance of endorsement, and therefore does not violate the Establishment Clause.)

Santa Fe School Dist. V. Doe, 530 U.S. 290 (2000) (Recognizing prohibitions against religious endorsement that exist during school hours also extends to non-academic events, such as football games, which forces non-adherents to choose between attendance and their constitutional rights. Letting the students vote on it does not remove the state's imprimatur from the practice.)

The Good News Club v. Milford Central School, 121 S Ct. 2093 (June 11, 2001) (Holding that a Christian youth group may not be barred from using a New York public school after class hours if other groups are allowed access. The Court found that denying the group access on the ground that it was religious in nature, discriminated against the group because of its religious viewpoint in violation of the Free Speech Clause of the Constitution.)

Hills v. Scottsdale Unified School Dist. No. 48, 329 F.3d 1044 (9th Cir. 2003) (Holding that schools may not bar distribution of leaflets announcing a religious function if they permit distribution of secular leaflets, but may insist on a disclaimer of official endorsement. Flyers that themselves embody proselytizing statements can also be excluded. The Fourth Circuit has reached the same result, although without deciding whether purely proselytizing materials could be excluded.)

Skoros v. City of New York, 437 F.3d 1(2nd Cir.2006). (Upholding a school board rule mandating the exclusion of a crèche from a school holiday display that included a Christmas tree, menorah and star and crescent as winter holiday symbols on grounds that the crèche was too overtly religious a symbol.) See also, *Florey v. Sioux Falls School District 49-5*, 619F.2d.1311 (8th Cir.1980) (Upholding as constitutional the right of independent school districts to review the permissible parameters of religious holiday observances in schools and to establish a rule allowing only holiday displays with secular meanings.)

Kitzmiller v. Dover Area School District, 400 F. Supp. 2d 707 (2005) (An adjunct to Epperson and Aguillard. While not binding in Virginia or Maryland, it provides a detailed 180 page analysis of why teaching "Intelligent Design" violates the Establishment Clause.)

1. Haynes, Charles & Oliver, Thomas, Finding Common Ground, A Guide to Religious Liberty in the Public Schools, First Amendment Center, <http://www.freedomforum.org/publications/first/findingcommonground/B10.USDeptGuidelines.pdf> , pp 128
2. *Ibid*, pp 129.