

GUIDELINES ON RELIGION IN PUBLIC SCHOOLS

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Introduction

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

With the winter holiday season just around the corner, such cooperation becomes even more crucial. Many in the Jewish community whose children attend public schools are concerned that schools may engage in inappropriate or illegal religious observances.

Of course, many 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 annual policy statement was developed to remove the confusion and help school officials, teachers, and parents better understand church/state issues. It is based upon Court decisions, federal law, and, we believe, sound educational policy.

In addition to school officials, we also distribute these *Guidelines* to our 210 constituent agencies, synagogues, and organizations in the Greater Washington community. We hope that with greater awareness, schools will avoid programs which could embarrass 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 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 Council office. The Jewish Community Relations Council of Greater Washington is prepared to assist you with any church/state issue that may arise.

We welcome your cooperation.

Separation of Church and State and Religious Freedom

The separation of church and state and religious freedom, cornerstones of our democracy, are guaranteed by 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 constitutional guarantee and have recognized its importance 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 refraining from promoting any and all religions, expressing opposition or hostility toward religion, and showing 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 uncomfortable and can turn the school into an inhospitable 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 counter the respect for religious and cultural diversity that public schools are designed to further.

Teaching About Religion and Religious Holidays

Schools are allowed to teach *about*, but may not celebrate, religious holidays, such as Christmas and Passover. Schools may recognize holidays for the purpose of providing secular instruction about religious traditions, but not if the goal is to observe or 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 present a variety of musical selections that represent various cultural and religious traditions; while some religious music may be performed, it should not dominate the program. Any dramatic productions should emphasize the cultural and not the worshipful aspects of the holiday. Nativity pageants or plays portraying the Chanukah 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 the 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 the classroom in the context of studying the historical and cultural significance of the holiday or religious practice, but must not be used for worship or practice. Religious symbols may be displayed only on temporary basis as part of the academic 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 state actors 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 federal 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 can not coordinate or regularly attend group meetings. However, public schools may not deny a 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.

If secular groups appealing to children are allowed to rent school premises when school is not in session, groups covering the same subject but from a religious point of view must be allowed to rent the school on the same terms.

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 (not directed at prohibiting religion). 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.

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. Prayer at graduation ceremonies is also prohibited, regardless of who delivers the prayer. Students may, of course, 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 a 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](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.

- ° *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.)
- ° *McCullum 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.)
- ° *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 public school 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 teaching evolution and "creation science.")
- ° *Lee v. Weisman*, 112 S.Ct. 2649 (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.)
- ° *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.)
- ° *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").
- ° *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 school holiday display that included a Christmas tree, a menorah and a star and crescent as winter holiday symbols on grounds that the crèche was too overtly religious a symbol to be included.) 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.)
- ° *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.)