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Navigating Religious Rights of Teachers and Students: Establishment, Accommodation, Neutrality, or Hostility?

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Navigating Religious Rights of Teachers and Students: Establishment, Accommodation, Neutrality, or Hostility?

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Abstract

Despite the notion that First Amendment rights are established, valued, and respected in the United States, there continues to be confusion in public schools that leads to legal conflict over issues associated with freedoms of speech and expression, especially as they relate to religious issues. Navigating the religious rights of teachers and students can be a precarious undertaking, as administrators' decisions regarding the expression of religious beliefs continue to be highlighted in the media and many times are resolved in the court system at great expense to school districts. The purpose of this article is to clarify religious rights issues for school administrators and school boards. What actions risk violating the establishment clause or expressing hostility toward religion? When and how is religion best accommodated while neutrality is maintained? This study traces court decisions and laws that serve to guide religious rights policies and practices. It also examines recent conflicts and the legal organizations whose mission it is to address First Amendment violations.

Introduction

Despite the notion that First Amendment rights are established, valued, and respected in the United States, in public schools there continues to be confusion that leads to legal conflict over issues associated with freedoms of speech and expression, especially as they relate to religious issues. As is often highlighted in the media, navigating the religious rights of teachers and students can be a precarious undertaking, as the struggles resulting from administrators' decisions regarding the expression of religious beliefs many times are resolved in the court system at great expense to school districts.

The purpose of this article is to clarify religious rights issues for school administrators and school boards. What actions risk violating the establishment clause or expressing hostility toward religion? When and how is religion best accommodated while neutrality is maintained? This study traces court decisions and laws that serve to guide religious rights policies and practices. It also examines recent conflicts and the legal organizations whose mission it is to address First Amendment violations.

Two Legal Organizations and Recent Cases

Several organizations have formed to address issues related to first amendment rights. Two of these are the American Civil Liberties Union and the Liberty Counsel. While the mission statements of these two non-profit organizations appear similar, they contain elements that distinguish their approaches from one another and that have placed these legal associations on opposing sides of many issues. Schools caught in civil rights entanglements commonly find themselves at odds with one of these legal organizations or others similar to them.

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Founded in 1920, the ACLU purports to protect “freedom of religion supported by the strict separation of church and state” (<http://www.aclu.org/about/index.html>, ¶ 3), whereas the Liberty Counsel was established in 1989 with a dedication “to advancing religious freedom” (<http://www.lc.org/aboutus.html>, ¶ 1). Though commonalities do exist in the types of cases each organization undertakes, religious rights issues the ACLU primarily addresses in schools relate to violations of the establishment clause. The Liberty Counsel, on the other hand, argues cases that predominantly respond to the prohibition of the free exercise of religion. One particular instance of these two entities battling each other over a school incident involves the distribution of Gideon Bibles in St. Louis’s South Iron Elementary School and is presently being argued before the Eighth U.S. Circuit Court of Appeals (Liberty Counsel, n.d.). Following is a review of other cases each organization has fought in recent years. An awareness of these cases may assist school administrators and boards in navigating similar situations in their own districts. It should be noted that some of the lawsuits have not yet been resolved at the time of this writing and that others were settled out of court.

The ACLU reports that since May 2004, it has fought 10 cases regarding the religious rights of students or teachers in public schools. In eight of the 10 cases, the ACLU represented plaintiffs who identified violations of the establishment clause by schools that had (1) conducted graduation in a church sanctuary, (2) knowingly invited guest speakers whose purpose was to convert Muslims to Christianity, (3) promoted religious events, (4) displayed a portrait of Jesus outside the principal’s office door, (5) planned prayers for a graduation ceremony, (6) funded religious education, (7) permitted the teaching of intelligent design in science classes, (8) and permitted Gideons to distribute Bibles on campus. In the other two cases, the ACLU supported

students who believed their rights to religious expression were violated. One case resulted from a school's prohibition of a second-grade student's performance of a religious song in an after-school talent show, and another grew out of a school's censorship of a high school senior's selection of a scripture verse to represent her favorite quote in the yearbook (ACLU, n.d.).

In contrast to the ACLU, all school religious rights cases the Liberty Counsel argued since March 2006 represented clients who claimed their freedom of expression had been violated in the following ways:

- Twelve high school students were suspended for refusing to move a before-school prayer meeting out of the commons area where other students waited each morning.
- An elementary student was prohibited from giving Valentine's gifts of Bibles instead of cards.
- Although the equal access issue was settled in the 2001 U.S. Supreme Court case *Good News Clubs v. Milford Central School*, a number of states denied Good News Clubs equal access to campus facilities and distribution of promotional flyers. In Pennsylvania a school attempted to charge GNC for facilities while Boy Scouts and other groups used facilities at no cost. A Milwaukee school imposed a cap on the number of students permitted to attend.
- A Florida school board adopted a policy that banned students from distributing religious literature. The policy was unanimously declared unconstitutional by the Eleventh U.S. Circuit Court of Appeals on August 28, 2006 (Liberty Counsel, n.d.).
- A district in Ohio directed teachers to refrain from verbally wishing students a "Merry Christmas."

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- A Wisconsin high school attempted to censor Christian presenters from a Diversity Day event that included Jews, Muslims, and Buddhists.
- Of 80 kindergarteners' posters on saving the environment, one was censored because of the inclusion of an image of Jesus praying for the world as children recycled and discarded trash. April 24, 2006, the U.S. Supreme Court allowed a lower court ruling to stand that it was unconstitutional to censor the student's religious viewpoint in the class assignment (Liberty Counsel, n.d.).

The above examples of legal entanglements serve to inform school administrators of the types of issues these differing groups handle and of the types of situations that might lead to litigation. It is also noteworthy that the ultimate outcomes can essentially complicate the issue further for school administrators and boards, for they are not always what the donors to organizations such as the ACLU and Liberty Counsel expect. For instance, Taylor (2007) points out that the Liberty Counsel's victory in persuading Virginia's Albemarle County to extend equal access for Vacation Bible Schools to distribute promotional flyers backfired. Months after Liberty Counsel won the victory, a group of Pagans of the Thomas Jefferson Memorial Church, a Unitarian-Universalist congregation, took advantage of the forum to distribute a promotional flyer for a December Pagan ritual to celebrate the Yule. Many community members protested, causing the school board to review its policy of permitting a limited open forum in its flyer distribution policy.

Boston (2004) expresses concerns regarding the conflicts that could arise in the wake of the equal access victory won by the Good News Clubs of Child Evangelism Fellowship. The exponential growth of these after-school clubs is not only fueled by a favorable Supreme Court

decision but also by statistics provided by Barna (2003) that maintain that 32% of proselytized elementary-aged children are likely to convert to Christianity but that only 4% to 6% of teenagers and adults are likely to do so. According to Boston (2004),

Religious Right proselytizers... don't seem to understand that if fundamentalist Christian groups are given access to public school students, other religious groups will soon claim that same right. Public schools could become battlegrounds for competing groups seeking to win new converts (p. 12).

As witnessed in Virginia's Albemarle County Pagan flyer distribution, there is indeed legitimacy to Boston's apprehensions. Navigating religious rights could indeed become more costly and time consuming as organizations such as the ACLU and Liberty Counsel intensify their battles to defend, respectively, the endorsement of religion or its free exercise on public school campuses.

Guidelines for Navigating Religious Rights

In addition to the U.S. Department of Education, many organizations distribute literature to inform educators and parents about what is acceptable based on court decisions and laws. Some of these organizations include the First Amendment Center, American Jewish Congress, Christian Legal Society, The National Education Association, the Association for Supervision and Curriculum Development, the National PTA, and many others. The following guidelines are an amalgamation presented by these organizations.

Student Religious Expression

- Students may pray and read scriptures individually or in groups at any time they would be permitted to engage in secular non-curricular speech. Any prohibitions must be on the same terms that secular speech and reading would be prohibited. According to the

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Supreme Court's *Tinker* (1969) statement, the only acceptable prohibition on student speech would be when the activities "substantially interfere with the work of the school, or impinge upon the rights of other students."

- Students may choose to include their religious views in assignments, such as research papers, poems, artwork, etc., with neither academic penalty nor reward for the inclusion of the religious view. Typical standards of substance and relevance should be employed to assess the assignment.
- The 1984 Equal Access Act ensures that, to the same degree that extracurricular clubs are permitted to meet either during or outside school hours, religious student-led clubs may also meet. Equal access applies not just to facilities but also to promotional forums for announcements, such as the intercom system, bulletin board, and flyer distribution. If access is denied based on religious content, it must be denied to all extracurricular clubs as well.
- All student-distributed literature must be treated the same without consideration of religious content. Policies may regulate when and where it may be distributed, but additional restrictions may not be placed on religious content.

Teacher Religious Expression

By the very nature of their roles as school and state representatives, teachers do not have the same religious rights on the public school campus as do students. Their words are taken as being endorsed by the school and could easily be confused as being part of the official curriculum. Therefore, only in instances when it is clear to the students that the teacher is expressing a personal belief and only when it can be done in a non-proselytizing manner should a

teacher convey personal religious beliefs; this is recommended only if it is in response to a student's question about personal religious beliefs.

- Teachers may wear non-obtrusive religious jewelry, such as a cross or Star of David.
- Under no circumstances are teachers free to pray or lead in devotional scripture reading in the presence of students during the school day or during a school function.
- Outside the presence of students, teachers have the right to pray and read scriptures individually or in groups at any time they would be permitted to engage in secular speech unrelated to school matters.

Some courts have taken into account the age of the students when deciding the constitutionality of a teacher's actions, reasoning that the younger the students are, the more difficult it is for them to separate the teacher's views from those of the school (Staver, 2005).

Teaching about Religion

In *Abington v. Schempp* (1963) Associate Justice Tom Clark wrote,

It might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.

Inclusion of religious content in the curriculum is constitutionally appropriate only when it is carried out in an academic, informative study with the purpose to expose students to the religion. It becomes inappropriate when the content is devotional or when it either promotes or

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denigrates religion. The major religions relevant to the subject area should be addressed as is appropriate.

Graduations and Other Ceremonies

Although U.S. Supreme Court cases apparently resolved the issue of prayers at graduation ceremonies (*Lee v. Weisman*, 1992) and at football games (*Santa Fe Independent School District v. Doe*, 2000), conflicts have continued to arise. Evidently, some school officials continue to show preferential treatment to religious speech by planning prayers or presentations by clergy while others prohibit student speeches and guest speakers from praying or quoting scriptures. These stances are violations of the establishment and free expression clauses respectively. Repeatedly, the Supreme Court has held that the First Amendment requires neutrality of school officials, which stipulates that neither favoritism nor hostility toward religious expression should be displayed (*Good News Club v. Milford Central School*, 2001). The First Amendment, therefore, forbids school-sponsored or planned prayers and scripture readings but protects private individuals who choose religious expression as part of a public presentation. For example, school officials may not invite clergy to pray at the ceremony but may permit seniors to nominate and vote on a community member to present a brief statement appropriate to the purpose of the ceremony; the elected person may then have the freedom to share secular or religious words at his or her own choosing. Neither may school officials censor religious content from the valedictorian speech or any other student presentation. Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate” (*Tinker v. Des Moines Independent Community School District*, 1969), and neither do they shed them during the graduation ceremony.

Conclusion

In review of the cases presented in this paper and the guidelines formed from lawsuits, several themes may serve as guiding principles for school administrators and boards. The First Amendment is well served when school officials are consistent: accommodating religion just as they do other non-curricular activities and secular speech while being cautious not to advocate religion or to coerce or compel students to participate. Neutrality should prevail without hostility toward religious expressions. Religion should be neither inculcated nor inhibited.

Navigating religious rights of students and teachers can be precarious and even costly if it leads to litigation. This has led to administrators and teachers becoming so cautious that they eliminate all traces of religion on their campuses and in their classrooms (Staver, 2005). This, however, is unnecessary and does not serve students, families, and communities well. In order to avoid this injustice, pre-service school administration programs are encouraged to include in school law courses an emphasis on the religious rights of both teachers and students.

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