

Religion in the classroom

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Robert and his eighth-grade friends start a prayer circle in the cafeteria, reciting grace before and after meals, along with a short Bible study segment. **Melissa's** mother complains that being exposed to this during lunch violates her daughter's freedom-from-religion rights.

Dr. Herman teaches seventh-grade science and continues to discuss creationism alongside evolution, even though his administrator directed him to stop. Is this enough to start the termination process, or will firing him violate his religious rights?

Along with education, many Americans consider religious values and practices to be of utmost importance in their daily lives. So, it's not surprising that school districts sometimes face challenging dilemmas when either students or teachers raise concerns implicating the First Amendment's Religion Clauses.

This article will present a framework for understanding the Religion Clauses

and address several common scenarios administrators face in handling religious conflicts in schools.

The First Amendment

The First Amendment includes two primary clauses relevant to religion-based challenges: the Establishment Clause and the Free Exercise Clause. The Establishment Clause prohibits government entities, including school districts, from establishing an official religion, favoring one faith over another or even favoring faith over nonfaith and vice versa. As we'll see below, the primary Establishment Clause test is whether a particular action or omission implies that the school district endorses one faith or religious practice over another.

The Free Exercise Clause affords citizens the constitutional right to believe and profess whatever religious or anti-religious doctrines they wish. In the education context, this clause prohibits school districts from limiting an individual's beliefs or practices.

Neutral laws, however, are permitted as long as they apply generally to all

citizens. For example, the government can bar drug use as part of a religious ceremony because anti-drug statutes are general laws applicable to the entire population; they do not target religious groups specifically.

Although not directly related to religion, free speech is often implicated as a secondary concern in religious conflicts. The right to free speech often — but not always — forbids a school district from limiting speech based on content. In free exercise cases, plaintiffs frequently add on free speech claims to lawsuits, alleging, for example, that the school also limited their speech based on its content.

In a famous decision some 40 years ago, U.S. Supreme Court Chief Justice **Warren E. Burger** noted that “the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other.” (*Walz v. Tax Comm'n of City of New York*, 397 U.S. 664 (1970))

The Establishment Clause, in other words, sometimes collides with the Free Exercise Clause, making for interesting,

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albeit messy scenarios. If a valedictorian, for example, wants to praise a deity in her speech, the school district may need to consider whether allowing this implies that the board favors that religious perspective. If the board bars the student from mentioning religion in her speech, however, it risks limiting her religious practices or free speech rights.

Determining how best to balance these competing interests requires an extensive analysis of the facts in light of various court decisions. Following are typical situations arising in school districts.

Student Issues

Common student issues include prayer, after-school activities and curriculum or school work.

Prayer

Whether a student can pray often depends on the size of the group. Subject to reasonable restrictions, schools must typically permit individual and small group prayer, such as at lunch or before exams.

The No Child Left Behind Act, in fact, requires schools to certify annually that their policies do not bar constitutionally protected prayer, according to United States Code Section 7904. In contrast, prayer at graduation and athletic events can look like an endorsement of religion, especially if students are obligated to attend or if prayer is encouraged or led by staff.

After-school activities

School policies must be religion-neutral when it comes to after-school activities, but districts can usually impose regulations to prevent the appearance of endorsing religion. For example, schools may require religious clubs to meet several hours after school ends so the meetings won't be seen as a continuation of the school day.

Recent Ohio legislation permits school boards to grant up to two units of credit for attending religious instruction off school grounds but

during the school day (see Ohio Revised Code 3313.6022). No public funds, of course, may be expended on transporting students to and from the religious facility or for the religious instruction.

Finally, the federal Equal Access Act requires any school district that allows extracurricular clubs to provide religious groups with equal access to space and publications.

Schoolwork/curriculum

Generally, students may express personal religious beliefs in reports, homework and artwork. These assignments, however, should be evaluated using ordinary academic standards. The student has no right to a captive audience, and the school is not obligated to display the work if doing so may create an appearance of endorsement.

In 1993, for example, the U.S. 6th Circuit Court of Appeals held in favor of a second-grade teacher who prevented a student from showing a video of a church choir during show-and-tell (*Denooyer v. Merinelli*, 12

F.3d 211 (6th Cir.1993)).

Students do not generally have a right to opt out of a curriculum because of religious objections. Schools, however, should not compel students to affirm what their religious beliefs disallow, such as standing for and reciting the Pledge of Allegiance.

The 6th Circuit, for example, held that a district didn't violate students' free exercise rights when mandating a particular reading series, even though it included — to parents' dismay — magic and evolution (*Mozert v. Hawkins Cty. Bd. of Educ.*, 827 F.2d 1058 (6th Cir.1987)).

Employee issues

In addition to the First Amendment, school boards also are subject to federal and state laws and regulations that prohibit religion-based discrimination in employment. Common issues include the hiring process, absenteeism and curriculum concerns.

Hiring

School districts may not ask about an applicant's religion during an

interview or in forms or paperwork. Moreover, school districts are not permitted to use placement services known for hiring individuals based on a religious preference.

Finally, religious attire cannot serve as a consideration in any hiring decision. In *EEOC v. Abercrombie & Fitch Stores, Inc.*, for example, the Supreme Court ruled that Abercrombie violated federal law by not hiring a hijab-wearing teen, even though she did not ask for any accommodations during the interview (*E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 135 S.Ct. 2028, 192 L.Ed.2d 35 (2015)).

Accommodations

When an employee requests an accommodation, such as permission to be absent for a religious holiday or an exception to a dress code, school districts, like all employers, must determine whether the accommodation is reasonable. In general, districts must offer reasonable accommodations, which may not always be the exact accommodation requested by the employee.

In determining how to provide religious accommodations, employers and employees must engage in an interactive dialogue wherein they

discuss the employee's requested accommodations and attempt to reach a mutually agreeable solution. Not all requested accommodations will be reasonable.

For example, an accommodation that violates the seniority provisions of a collective bargaining agreement would most likely exceed the reasonable accommodation expectation. Whether an accommodation request is actually reasonable depends closely on the specific facts; thus, consulting with an attorney is always advisable.

Curricula

School boards control district curricula. Boards can prohibit displays and activities promoting a teacher's beliefs and can also fire teachers for refusing to teach basic subjects like American history.

As noted above, though, schools should make a reasonable effort to accommodate a teacher's request not to participate in the Pledge of Allegiance or other patriotic observances if participation would conflict with the teacher's religious beliefs.

In *Freshwater v. Mt. Vernon City School Dist. Bd. of Edn.*, for example, the Ohio Supreme Court upheld a termination of a middle-school science

teacher who taught creationism and refused directives to remove religious posters from his classroom. The court, however, noted that the teacher was not required to remove his personal Bible from his desk (*Freshwater v. Mt. Vernon City School Dist. Bd. of Edn.*, 137 Ohio St.3d 469, 2013-Ohio-5000, 1 N.E.3d 335 (2013)).

In short, school districts facing thorny religious conflicts must keep in mind not only the First Amendment's Religion Clauses, but also federal and state laws on employee discrimination. Although this article offers a general framework for understanding these issues, each situation must be analyzed on an individual basis and with knowledge of all pertinent facts.

Additional information on religion in schools and other topics is available in *Class Act: Updates in Education Law* (<http://links.ohio.schoolboards.org/19158>), a podcast devoted to discussing the latest legal developments relevant to school boards nationwide.

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