

# Christian Law Association's 'Rights in Public Schools'

*Do Christian students have any rights in public schools? The short answer to this question is YES! Lots of them!*

## Introduction

The United States Supreme Court removed devotional prayer and Bible reading from public schools in the 1960's with a series of cases in which students challenged these religious activities. *Engel v. Vitale*, 370 U.S. 421 (1962); *Abington v. Schempp*, 374 U.S. 203 (1963). Other cases followed in which the Supreme Court eliminated religious adornments from classroom walls and official prayers from graduation ceremonies. *Stone v. Graham*, 449 U.S. 39 (1980); *Lee v. Weisman*, 112 S.Ct. 2649 (1992). These decisions led to a misguided emphasis in public schools on 'the wall of separation between church and state,' a phrase Thomas Jefferson used in describing the effect of the newly written Constitution, which was quoted by the Supreme Court in *Reynolds v. U.S.*, 98 U.S. 145, 162 (1878).

Between 1960 and 1990, the pendulum had swung too far towards the 'wall of separation' as teachers and school district personnel, perhaps fearful of disobeying the law, tried to purge public school classrooms of everything religious. The Christian Law Association began to hear of public school students being reprimanded for reading their Bibles in school, praying over their lunch, and sharing their faith with other students. All of these activities are clearly constitutional.

Happily, in recent years both Congress and the Supreme Court have been bringing some balance back to this area of the law. Congress passed the Equal Access Act in 1988 to stop the censorship of private religious activities that occurred in public schools in the aftermath of the Supreme Court school prayer cases. Court decisions since then have emphasized the free speech rights of students in the public schools, even in the controversial area of religious expression. The First Amendment to the United States Constitution, contained in the Bill of Rights, says that there may be no establishment of religion by the Government. 'Congress shall make no law respecting an establishment of religion.' The government may not favor one religion over another, or as now interpreted

by the courts, may not favor religion over non-religion. This provision of the Constitution is applied to states as well as to the federal Government.

For the public schools of America the word establishment means that teachers and school officials—who are representatives of the government—may not do anything to favor religion or to favor one religion over another. That is why teachers may not conduct religious devotions—prayer or Bible reading—at the start of the school day. That is why school officials may not sponsor prayers at graduation services or post the Ten Commandments or other religious symbols.

It is important to note, however, that public school teachers may use the Bible in instructional ways—as literature, history, comparative religions, or ethics—in the classroom. This was the holding of *Stone v. Graham*, 449 U.S. 39 (1980). For this reason efforts to ban the Bible and religious books from public school libraries failed. It is only formal, structured prayer and formal, structured devotional use of the Bible in public schools that are forbidden under the First Amendment as an establishment of religion.

The First Amendment not only bars the establishment of religion by the state, it also guarantees that individual Americans have the right to the free exercise of their religion (or non-religion). 'Congress shall make no law prohibiting the free exercise (of religion)'. Public school children, being citizens of America, also have a right to the free exercise of their religion—even in the public schools.

Since 1990, United States Supreme Court decisions have brought some balance to the questions of separation of church and state by recognizing the free exercise and free speech rights of religious children in the public schools. The United States Supreme Court said in *Board of Education of the Westside Community Schools v. Mergens*, 496 U.S. 226 (1990), that if a state institution, such as a public school, prohibited religious speech or activities, 'then it would demonstrate not neutrality but hostility toward religion. The Establishment Clause does not license government to treat religion and those who teach or practice it simply by virtue of their status as such, as subversive of American ideals and, therefore, subject to unique disabilities.' *Mergens* at 248 (Brennan, J., concurring).

The new rule is that public schools must accommodate the religious expression of public school children. Justice Souter said in *Lee v. Weisman*, 'Whatever else may define the

scope of accommodation permissible under the Establishment Clause, one requirement is clear: accommodation must lift a discernible burden of the free exercise of religion.' Lee, 112 S.Ct. at 2677 (Souter, J., concurring). S.Ct. at 2677 (Souter, J., concurring).

Cases establishing the accommodation rule have all involved high school or college-age students. Some judges have indicated that accommodating religious expression in the lower grades might lead elementary students to think that the school is sponsoring (or establishing) religion. Others believe that when public school teachers do not allow young children to express their faith in the classroom, children may think that religion is not valued or accepted by teachers whom they respect, thus violating the fundamental right of parents to bring up their children in a particular religious faith. 'This primary rule of parents in the upbringing of their children is now established beyond debate as an enduring American tradition.' *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

Public school students have the right to express their religious beliefs in public school under the First Amendment right of free speech. 'Congress shall make no law ... abridging the freedom of speech.' As noted in *Widmar v. Vincent*, 454 U.S. 263 (1981), the law is well settled that religious speech, even prayer, is protected free speech under the First Amendment.

The following guide to religious rights of public school children is based on recent decisions of the United States Supreme Court and on recent federal legislation. It also incorporates the language of a memorandum sent by President Bill Clinton to Attorney General Janet Reno and Secretary of Education Richard W. Riley during the summer of 1995. The memorandum summarized practical ramifications of recent federal actions and called on the Justice and Education Departments to 'use appropriate means to ensure that public school districts and school officials in the United States are informed, by the start of the [1995-96] school year, of the principles' which are to guide religious freedom rights of the nation's public school children.

In laying out the general principles of religious expression in public schools, President Clinton's memo states:

As our courts have reaffirmed ... nothing in the First Amendment converts our public schools into religion-free zones, or requires all religious expression to be left behind at the schoolhouse door. While the government may not use schools to coerce the

conscience of our students or to convey official endorsement of religion, the government's schools also may not discriminate against private religious expression during the school day.

I have been advised by the Department of Justice and the Department of Education that the First Amendment permits-and protects-a greater degree of religious expression in public schools than many Americans may now understand.

I would encourage parents and other interested Christians to share this article with local schoolteachers and administrators when conflicts arise. Local school personnel should also be encouraged to obtain the full text of President Clinton's memorandum from the United States Department of Education. If you need further assistance in a particular area or with a particular local school, please contact our ministry offices.

When communicating with local school district personnel, keep in mind the following:

1. Public schoolteachers and school district officials are not typically lawyers. Usually, even the school board attorney is not an expert in First Amendment rights. By calling attention to the correct legal principles involved, parents of public school children should be enabled to gain their objectives without resorting to litigation.
2. Because some of the law in this area is so recent, some public schools have not yet caught up. In many cases, public school teachers and administrators would like to permit more religious expression in public schools if they only knew that the most recent Supreme Court cases allow it.
3. The rights of public school students and their parents may only be limited by the school's need to maintain order, to avoid coercion, and to enforce nondiscriminatory pedagogical restrictions on student activities.

## **Specific Questions**

With this general background, we now turn to some specific, often-asked questions:

### **1. May a student use a pencil or notebook with a Christian slogan or Bible verse printed on it?**

Forbidding use of such items would violate the rights of free speech and religious expression of public school children.

The school may only impose reasonable regulations for maintaining order in the classroom. Using a pencil or notebook with a Christian slogan cannot in any way materially or substantially detract from classroom order. Forbidding use of such items would be a violation of the Constitutional right allowing symbolic speech.

## **2. May a student wear a tee-shirt or button with a religious slogan, Bible verse, or anti-abortion message printed on it?**

Christian students may display religious messages on clothing to the same extent as other students are permitted to display comparable messages.

Shirts with printed messages are forms of symbolic speech protected by the First Amendment. Courts have only allowed suppression of symbolic speech in public schools if it were lewd or obscene, *Broussard v. Sch. Bd. of City of Norfolk* (E.D. Va. 1992), or if the clothing had slogans advertising alcoholic beverages, *McIntire v. Berel Sch.*, 804 F. Supp. 1415 (W.D. Okla. 1992).

## **3. May a student give out Gospel tracts or religious literature to his classmates?**

Students may distribute religious tracts or literature to their schoolmates in the same manner as they would be permitted to distribute non-religious material. Schools may impose reasonable restrictions on the place and manner for distribution of all printed material, but religious literature may not be singled out for special restrictions or regulations. If the Boy Scouts or community sports team may distribute material promoting out-of-school programs, distribution of similar religious material must also be permitted.

First Amendment rights include the right to distribute Gospel tracts or other religious literature during non-instructional times. The standard that must be applied is: Does the activity materially or substantially disrupt school discipline?

The school must prove that such disruption actually occurs. '[U]ndifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.' *Tinker* at 508. When a student peacefully distributes tracts or other religious

literature on school grounds during non-instructional time there is nothing that 'might reasonably [lead] school authorities to forecast substantial disruption of or material interference with school activities.' Tinker at 514.

#### **4. May a student witness to his classmates about Jesus or pray with other students on the school campus?**

School officials may not prevent students from gathering for such activities before or after school, at lunch, or during other times when students are permitted to interact with other students. Students may pray together in informal settings and may discuss their religious views with each other, subject only to the same rules of order which apply to all other student conduct and speech. Students may attempt to persuade their peers about religious and political topics, including religion and abortion, so long as such speech does not constitute harassment aimed at a particular student or group of students.

Any restrictions imposed upon student interaction must be reasonable restrictions relating to the time, place, and manner of all student behaviors, not just religious behavior. During any time in which a student is free to discuss non-instructional topics, he is free to discuss religious topics, and such freedom of speech includes the freedom to witness or to pray.

#### **5. May a student say grace before eating his lunch?**

Freedom of speech includes the freedom to pray. Students may bow their heads to pray before tests.

#### **6. May a student read the Bible during the school day?**

Any time that students are allowed to read non-instructional books, Bible reading must be permitted. This would include the hours before and after school or during lunch. It would also include study halls or any free reading hours during class time when teachers permit students to read books of their choice.

#### **7. May students organize Bible clubs in public schools?**

Public secondary schools must allow Bible clubs the same privileges as any other school club. Meetings may include prayer, Bible reading, and worship. Bible clubs must also be allowed to promote their activities through school newspapers, public address systems, and bulletin boards on the same basis as other clubs. The school must provide a room and resources for the Bible clubs. The only difference the Court allowed between Bible clubs and other clubs is that the faculty sponsor may not control the Bible club. The faculty sponsor must merely ensure that the club follows school policies, since any official control by the faculty members of religious activities of the club could be an establishment of religion. The club must be student-led, and students may occasionally invite outside community religious leaders to speak.

### **8. May students write book reports or English themes or do oral assignments based on religious subjects?**

Students may express their religious beliefs in homework, artwork, or any other written or oral assignment. Such home and classroom work must be judged by teachers using ordinary academic standards, and religious topics may not be discriminated against or singled out for special restrictions. This would include the right to present a religious topic in a show-and-tell exercise as well as in a book report or speech assignment to be delivered to the class. It would not be unconstitutional for a teacher to allow students to share their personal religious viewpoints in the classroom at appropriate times or in appropriate assignments. The teacher may constitutionally permit religious students to share their views if the views of all other students are also allowed.

### **9. May Christian students be excused from participation in activities they find objectionable?**

If a particular lesson or activity would substantially burden a student's free exercise of religion, and if the school cannot prove a compelling interest in requiring attendance, the school is legally required to excuse the student from that lesson or activity.

### **10. May student graduation speakers mention their Christian faith and/or read from the Bible?**

If students such as valedictorians or salutatorians are allowed to compose their own speeches, the speeches may only be censored for lewd or obscene speech. A governmental body, such as a school, may not censor the speech of private individuals merely because that speech contains a religious perspective.

Courts have upheld the right of a majority of students to act on their own to incorporate prayer into the graduation exercises if it is student-led and the content is not controlled by school officials. *Jones v. Clear Creek Ind. Sc. Dist.*, 977 F.2d 963 (5th Cir. 1992) (Jones II).

### **11. May baccalaureate services still be held?**

Baccalaureate services may still be held if they are sponsored by a private group rather than by the school. These private baccalaureate services may be held in school facilities if those facilities are generally open to use by other private groups.

### **12. May public schools teach about religion?**

While public schools may not directly provide religious instruction on the school campus, school officials have substantial discretion to dismiss students to participate in off-premises religious instruction provided that they do not encourage or discourage participation and do not penalize students who choose not to participate. Additionally, public schools may teach about religion, including material about the Bible and other religious material, the history of religion, comparative religion, Biblical literature, and the role of religion in American history and in the history of other countries.

While schools must express neutrality toward particular religions, teachers may also actively teach civil values and virtue, as well as the moral codes which hold communities together, even if these values are also those held by particular religious groups. Public schools may also teach about religious holidays, including their religious aspects. Schools may not, however, observe religious holidays except with respect to secular aspects of those holidays.

## **Conclusion**

In dealing with religious issues, public schools must be guided by both religion clauses of the First Amendment to the United States Constitution: the requirement against an official establishment of religion, and the requirement to accommodate the free religious expression of individual citizens, including students.