



2006 “Scriptures in Schools Week” Participant Legal Information

The Alliance Defense Fund (ADF) is America’s largest legal alliance defending religious liberty through strategy, training, funding, and litigation.

As each legal situation differs, the information provided below should only be used as a general reference and should not be considered legal advice.¹ If you think that your rights have been violated as a result of participating in “Scriptures in Schools Week,” please contact our Legal Intake Department so that we may review your situation and possibly assist you. You can reach us via telephone at 1-800-TELL-ADF, or visit our website at www.telladf.org and select the "Legal Help" button to submit a request for legal assistance.

Introduction

Both students and teachers retain their First Amendment liberties while on campus. The Supreme Court has rightfully pointed out that "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."²

Students have the right to share their beliefs, pray, evangelize, read scripture, and invite fellow students to participate in such activities so long as they are voluntary, student-initiated activities that are not disruptive or coercive. A school may not prohibit student expression during non-instructional time unless it (1) substantially interferes with the operation of the school, or (2) infringes on the rights of other students. A school may not prohibit student expression solely because others might find it offensive.³

Since teachers are both individuals and agents of the state, the First Amendment serves to protect their freedom of speech and free exercise of religion, but also prohibits them from establishing religion. The Supreme Court has interpreted the Establishment

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² *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 506 (1969).

³ *Tinker*, 393 U.S. 503.

Clause of the First Amendment to essentially mean that government (including public school teachers) must remain neutral in matters of religion.⁴ In other words, government may neither actively promote, nor affirmatively oppose, religion. However, teachers are free to objectively teach about religion in the classroom, and may fully exercise their own rights during non-instructional time.

A. Student Participants

1. *Can I bring my Bible to school?*

Yes. Students have the same right to bring their Bible to school as they do to bring other personal items.⁵ For example, if the school allows students to bring their own books from home to read during a free silent reading period or at recess, the school cannot prevent students from choosing to read their Bible at these times.

2. *Can I read my Bible at school?*

Yes. Students have the same right to read their Bible at school as they do to engage in other non-curriculum related activities.⁶ Students may read their Bible to fulfill open reading assignments (those without a specific book or set of books specified) or during their free time, but they may not read their Bible when they are supposed to be completing other tasks.

3. *Can I use my Bible, scripture references, etc., to fulfill class assignments?*

Yes. While in class, students are free to express their religious views in a class discussion or as part of an assignment, so long as the expression is relevant to the subject under consideration and meets the requirements of the assignment. The school cannot prohibit religious expression in class unless they have a legitimate pedagogical purpose for doing so.⁷ The school must also grade the assignment fairly and objectively, regardless of whether religious expression was included.⁸

4. *Can I pass out tracts or religious materials to my friends at school?*

Yes, to the same extent that students may speak about their religious beliefs. If the materials (1) substantially interfere with the operation of the school, or (2) infringe on the rights of other students, then the school may prohibit them. But schools may not

⁴ *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1 (1947)

⁵ Excluding otherwise acceptable materials or activities based solely on their religious viewpoint is unconstitutional. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993).

⁶ *Id.*

⁷ *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988).

⁸ U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Elementary and Secondary Schools*, http://www.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html#return14 (last visited Aug. 8, 2006).

impose an outright ban on the distribution of religious materials if they allow students to distribute non-religious materials.⁹

Schools cannot claim that the so-called “separation of church and state” justifies banning religious materials on campus. The school does not endorse student speech, and federal courts have made it very clear that the school’s obligation is to educate the audience about the First Amendment, rather than silence the speaker out of fear that the audience will misperceive that the school, by allowing the speech, is endorsing it.¹⁰

5. ***Can I wear religious t-shirts, clothing or jewelry to school?***

Yes. Schools may not single out religious clothing or clothing displaying a religious message for unfavorable treatment.¹¹ Students may wear religious clothing to school to the same extent that other similar articles of dress are permitted. For example, if the school allows students to wear t-shirts with messages on them, they cannot prevent a student from wearing a t-shirt with a religious message. Additionally, the wearing of clothing or jewelry bearing a religious message is considered student speech, which cannot be restricted unless it (1) substantially interferes with the operation of the school, or (2) infringes on the rights of other students.¹² But a student may not wear clothing with a religious message if the school requires students to conform to a dress code that does not allow any messages to be displayed on clothing.

B. Teacher/Staff Participants

1. ***Can I bring my Bible to school?***

Teachers and staff members have the right to bring their Bible to school with them, but they probably should not keep it in a conspicuous place, such as in plain view on their desk.¹³ It would, however, probably be acceptable for teachers and staff members to place their Bible on a shelf along with other books near or on their desk. Staff members who do not normally interact with children or those who work in areas where children are not present have more leeway in leaving their Bibles out in plain view, since there is more limited risk of undue religious influence.

2. ***Can I read my Bible at school?***

Teachers and staff may read their Bibles at school, but only in limited contexts. A teacher reading a Bible in class during instructional time is problematic under current case law. Teachers may, however, take part in religious activities where the overall

⁹ *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295 (7th Cir. 1993).

¹⁰ *Rusk v. Crestview Local Sch. Dist.*, 379 F.3d 418 (6th Cir. 2004); *Hedges*, 9 F.3d 1295; *Hills v. Scottsdale Unified Sch. Dist. No. 48*, 329 F.3d 1044 (9th Cir. 2003).

¹¹ See *Good News Club*, 533 U.S. 98; *Lamb’s Chapel*, 508 U.S. 384.

¹² *Tinker*, 393 U.S. 503.

¹³ See *Roberts v. Madigan*, 702 F. Supp. 1505, 1518-19 (D. Colo. 1989) (holding in the totality of the circumstances, a teacher did not have the First Amendment right to display his Bible on his desk and read it silently in class during reading periods).

context makes clear that they are not participating in their official capacities. Teachers and staff members certainly have the right to read their Bibles during non-instructional times at school where they have no other work obligations and children are not present, such as at lunch, breaks, or prep periods. Before school or during lunch, for example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversation or nonreligious activities.¹⁴

3. ***Can I teach about religion or the Bible in class?***

While a teacher may not use the classroom to indoctrinate students, a teacher may disseminate information in an objective manner so long as the information is reasonably related to the curriculum. Some subjects cannot be thoroughly taught without some discussion of religion. Indeed, the Supreme Court has long recognized that the objective study of the Bible as part of a secular program of education is consistent with the First Amendment.¹⁵ For example, a teacher may objectively teach the Bible in a history of religions class or study the Bible as part of a literature course. Similarly, when studying art or music, a teacher may objectively discuss, perform, critique, and overview religious music, composition, and history.¹⁶ The Bible can therefore be included in curriculum for its historical, cultural, or literary value, but may not be taught in a devotional or doctrinal manner.¹⁷

4. ***Can I wear religious clothing or jewelry to school?***

As state agents, teachers and staff members do have some restrictions related to the wearing of religious clothing and jewelry imposed by the Establishment Clause that do not apply to students. For example, unlike a student who may consistently wear a t-shirt with the message, "Jesus Saves," a school may be able to prohibit a teacher from wearing a similar t-shirt while at school.¹⁸ On the other hand, even if school had a dress code restricting teachers from wearing religious symbols or clothing, certain articles are allowed. For example, teachers may wear jewelry such as necklaces displaying a cross or the Star of David.¹⁹

5. ***Can I distribute religious materials/Bibles to my students or to other teachers or staff members?***

As a state agent, a teacher acting in their official capacity would be prohibited by the Establishment Clause from handing out religious materials to students. Teachers, however, may give religious materials to other teachers or staff members if distribution of

¹⁴ U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Elementary and Secondary Schools*, http://www.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html#return14 (last visited Aug. 8, 2006).

¹⁵ *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 225 (1963).

¹⁶ U.S. Department of Education, *Religious Expression in Public Schools*, <http://www.ed.gov/Speeches/08-1995/religion.html> (last visited Aug. 8, 2006).

¹⁷ *Schempp*, 374 U.S. at 225 (1963).

¹⁸ See *Downing v. West Haven Bd. of Educ.*, 162 F. Supp. 2d 19, 27-28 (D. Conn. 2001).

¹⁹ See *Nichol v. ARIN Intermediate Unit 28*, 268 F. Supp. 2d 536 (W.D. Pa. 2003).

other materials is allowed between staff members. It would also be prudent to refrain from giving these materials out when in the presence of students. Distributing the materials in the teachers' lounge or placing them in staff mailboxes would likely be acceptable if other materials are permitted to be distributed that way.²⁰

6. *Can I encourage students to participate in “Scriptures in Schools Week”?*

No, not in a teacher's official capacity. Teachers and staff, when acting in their official capacities, are representatives of the state and are prohibited by the Establishment Clause from soliciting or encouraging religious activity, and from participating in such activity with students.²¹ However, teachers and staff members are also prohibited from discouraging activity because of its religious content, and from soliciting or encouraging antireligious activity.²² Outside the school context—e.g., if you are a Sunday School teacher as well as a public school teacher—you do have the right to encourage participation.

Conclusion

We hope this information is helpful to you in understanding the rights of public school students and teachers concerning religious speech in the public school context. If you would like more information or assistance about a particular situation, please contact the Alliance Defense Fund with the information provided above.

²⁰ See generally *Good News Club*, 533 U.S. 98; *Lamb's Chapel*, 508 U.S. 384 (holding that expressive activity may not be restricted solely because of its religious viewpoint).

²¹ U.S. Department of Education, *Religious Expression in Public Schools*, <http://www.ed.gov/Speeches/08-1995/religion.html> (last visited Aug. 8, 2006).

²² *Id.*