



MEMORANDUM

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Curriculum Matters

We live in a society where the state mandates education. Most American students attend public schools which teach a curriculum that is required by State Boards of Education and local school boards. Problems can arise when curricula developed by school officials conflict with rights guaranteed by the Constitution. The ACLJ is committed to protecting your constitutional rights, including those in the arena of public school education.

Parents have a fundamental liberty interest in the care and control of their children. The Supreme Court has repeatedly affirmed this principle: “the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.” *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *see also Troxel v. Granville*, 530 U.S. 57 (2000) (plurality); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923). In addition, the Court has recognized that parents have a “fundamental interest” in guiding “the *religious* future and *education* of their children.” *Yoder*, 406 U.S. at 232 (emphasis added).

While parents may have little direct say about public school curricula, the Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. § 1232h, provides them a measure of control over some non-curricula issues.

The PPRA reinforces the parental right to know and be informed about their children’s education by giving parents the authority to inspect all instructional material. *Id.* § 1232h(a). In addition, unless parental consent is given, no student is required to submit to any kind of test designed to reveal information concerning political affiliations, potentially embarrassing psychological problems, sexual behavior and attitudes, illegal and anti-social behavior, critical appraisals of family relationships, legally privileged relationships (e.g. those with a minister or doctor), and income. *Id.* § 1232h(b).

Additionally, many states have laws granting parents the right to remove their children from certain courses, typically sex or health education courses. *See, e.g.,* N.Y. Educ. Law § 3204(5) (McKinney 1992) (permitting religiously motivated parents to have their children excused from “the study of health and hygiene”); Cal. Educ. Code § 51240 (West 1996) (same). It is therefore imperative that parents with curriculum concerns consult applicable state laws before taking any action. Where there is no such statute, or where the statute does not apply because the offensive material is in courses for which no “opt-out” right is available, Christian parents can seek removal of their children based on federal constitutional law.

Thus, if your school system is trying to introduce, or has already integrated, liberal sex educators such as Planned Parenthood or homosexual advocates such as California’s Project 10, you probably have grounds to object. Such programs often cross over from objective teaching to advocating sexual amorality. Appeal to your school board that the course undermines parental authority by implying to students that everyone their age is having sex, that homosexuality is normal, or that they can easily arrange abortions without their parents’ knowledge.

In addition, if your public school system introduces practices that appear related to the New Age, or implements a program that endorses a certain religion, then the Establishment Clause of the First Amendment is on your side. The Establishment Clause forbids the state from preferring one religion over other religions. Since these practices are religious and state-sponsored, they represent a violation of your rights.

If you suspect that your child is facing such a situation, find out immediately what is happening. Anything that appears even remotely experimental demands an investigation. Additionally, do not be intimidated by the claim that because a course was not developed with federal funds, you do not have any legal recourse. The burden of proof is on the school to prove that the course used absolutely no federal tax money in its development—and this is unlikely. *See id.* 20 U.S.C. § 1232h(e). State all details of the violation in any complaint you make.

Resolve objectionable practices locally, as far as possible. Appeal to the teacher, then the principal, then the school board. If the appeals fail, and you are dealing with a clear example of an endorsement of a religion by the school, legal action could prove successful on First Amendment grounds. The Hatch Amendment also provides avenues for appeal through the Family Educational Rights and Privacy Act Office of the U.S. Department of Education.

In addition to parents, teachers also have First Amendment rights that they may wish to exercise in their role as educators. As a general principle, teachers retain their First Amendment rights in public schools. The Supreme Court has held that “teachers [do not] shed their constitutional rights to freedom of speech or expression at the school house gate.” *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 506 (1969). However, public schools have broad authority to guard against Establishment Clause violations. The Establishment Clause prohibits a state entity such as a public school, from endorsing a religion or coercing students to participate in religious activity. *Lee v. Weisman*, 505 U.S. 577 (1992). Generally, teachers represent the school in the classroom or at school-sponsored events and should thus take care to avoid any Establishment violations. *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994), cert. denied, 515 U.S. 1173 (1995).

The Establishment Clause, however, does not prohibit all religious instruction in public schools. In fact, the Supreme Court held that “the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like.” *Stone v. Graham*, 449 U.S. 39, 42 (1980) (citing *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 225 (1963)). In addition, the Court stated 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.” *Abington*, 374 U.S. at 225.

The Court’s views suggest that it is constitutionally permissible to develop a curriculum that evaluates the role of the Bible in this country and Western Civilization. For example, a school board could establish a policy allowing the Bible to be discussed as part of a literature program. Of course, students that have ideological objections to reading the Bible must be excused from such assignments. Please note, however, that school boards or officials cannot be *compelled* to utilize such curricula, as they have broad discretion in creating their curricula.

In recent years, the ACLJ has been active in advising educators and state officials on public school violations of First Amendment rights. In January 2002, the ACLJ wrote a letter to officials in California regarding a mandatory Islam course in some of their public schools. Students in the course were required to pray “in the name of Allah,” chant “Praise to Allah,” and “pretend” to be Muslims. Additionally, parents were not notified nor their permission sought. ACLJ advised that the course violated the students’ free speech and religious free exercise rights, as well as the parents’ right to direct the upbringing of their children.

Additionally, in June 2008, the ACLJ wrote a letter to the President of the Board of Trustees for a Texas school district, regarding unconstitutional religious education that occurred at a Junior High School. Representatives from the Council on American-Islamic Relations (CAIR) taught students on Islamic beliefs and practices. This was not, however, conducted in an objective manner. Students were instead indoctrinated in the tenets of Islam, without prior parental notification or permission, during a physical education class. The ACLJ requested that school officials and teachers be advised on constitutional principles to ensure that future instruction on religion will be consistent with the First Amendment.