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First Amendment Rights of Students

The Supreme Court has made it clear that students and teachers do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 506, 506 (1969). Public school students enjoy free speech rights—including the right to share their faith with their classmates. The First Amendment and the federal Equal Access Act confer important liberties on public school students that no school official may abridge unless the exercise of those rights materially and substantially interferes with school discipline. As such, students’ First Amendment rights include the right to distribute Gospel tracts during non-instructional time, the right to wear shirts with overtly Christian messages and symbols, and the right to pray and discuss matters of religion with others. Further, schools may not prevent students from bringing their Bibles to school.

At the same time, teachers and school officials acting on behalf of the state must take care not to infringe upon the First Amendment by “endorsing” religion or inhibiting the rights of students to exercise their religion free from state coercion. The Supreme Court of the United States has interpreted the Establishment Clause to mean that public school teachers and administrators, as government employees, may neither promote nor discourage or demonstrate hostility towards religion. *Westside Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990).

The ACLJ remains committed to defending the rights of students on their public school campuses because, as the Supreme Court has stated, “The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Shelton v. Tucker*, 364 U.S. 479, 487 (1960).

Sharing Your Faith/Witnessing at School

Public school students retain their constitutionally protected right to freedom of speech and expression—including the right to share their faith and witness at school. The Supreme Court has long recognized that the free distribution of literature, and religious literature in particular, is a form of expression protected by the United States Constitution. *Heffron v. Int’l Soc’y for Krishna Consciousness*, 452 U.S. 640, 647 (1981); *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938).

“This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits.” *Murdock v. Pennsylvania*, 319 U.S. 105, 109 (1943).

As applied to the school setting, several courts have held that the distribution of religious literature by students is protected speech under the First and Fourteenth Amendments. See, e.g., *Henry v. Sch. Bd. of Colorado Springs*, 760 F. Supp. 856, 859–60 (D. Colo. 1991); *Nelson v. Moline Sch. Dist.*, 725 F. Supp. 965, 972 (C.D. Ill. 1989); *Rivera v. E. Otero Sch. Dist.*, 721 F. Supp. 1189 (D. Colo. 1989); *Thompson v. Waynesboro Area Sch. Dist.*, 673 F. Supp. 1379 (M.D. Pa. 1987).

School officials may only prevent a student from distributing religious tracts and the like if it would cause a material and substantial disruption of school discipline. *Tinker*, 393 U.S. at 509. However, it is not enough for school officials to fear that allowing religious speech will offend some members of the community. Where a student wishes to peacefully distribute free literature on school grounds during non-instructional time, there simply is nothing which “might reasonably [lead] school authorities to forecast substantial disruption of or material interference with school activities” *Id.* at 514. “When [a student] is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions” *Id.* at 512–13. Thus, students have the right to discuss religious beliefs, and even share religious materials, with their peers between classes, at lunch, and before and after school.

School officials may not lump a student’s right to distribute free religious literature together with more disruptive forms of expression, such as solicitation. In reiterating the First Amendment’s protection of literature distribution, the Supreme Court stated, “One need not ponder the contents of a leaflet or pamphlet in order mechanically to take it out of someone’s hand, but one must listen, comprehend, decide and act in order to respond to a solicitation.” *United States v. Kokinda*, 497 U.S. 720, 734 (1990) (plurality).

School officials need not fear that witnessing and distribution activities of students might be imputed to them, creating an Establishment Clause violation. This very argument has been reviewed and rejected by the Supreme Court. In *Board of Education v. Mergens*, the Supreme Court held, as a general proposition, that the activities of student evangelists in a public school do not present any Establishment Clause problems. As the Court rightly noted in *Mergens*, “[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.” *Id.* at 250.

Student Free Speech Rights

The Establishment Clause requires government neutrality toward religion. The Supreme Court has repeatedly held that the First Amendment requires public school officials to be neutral in their treatment of religion, showing neither favoritism toward nor hostility against religious expression such as prayer. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 115 (2001). Accordingly, the First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by private individuals, and the line between

government-sponsored and privately initiated religious expression is vital to properly understanding the First Amendment's scope.

Local school authorities possess substantial discretion to impose rules of order and academic restrictions on student activities. In *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 683–86 (1986), the Supreme Court held that the school district acted entirely within its permissible authority in imposing sanctions upon a student in response to his offensively lewd and indecent speech.

However, authorities may not structure or administer such rules to discriminate against students' prayer or religious speech. For instance, where schools permit students' expression on the basis of genuinely neutral criteria and students retain primary control over the content of their expression, student religious speech, including prayer, is not attributable to the state and therefore may not be restricted because of its religious content. *Rosenberger v. Rector*, 515 U.S. 819 (1995); *Good News Club*, 533 U.S. 98; *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981); *Santa Fe*, 530 U.S. at 304.

Teacher Rights and Responsibilities

As the Supreme Court has held, teachers, like students, do not lose their constitutional rights to freedom of speech and expression on public school campuses. However, public school teachers play a uniquely important role in influencing students, and as such they must use special care to not inhibit the free speech rights of students

Following this current interpretation of the First Amendment, teachers and other public school officials may not lead their classes in prayer, devotional readings from the Bible, or other religious activities. *Engel v. Vitale*, 370 U.S. 421 (1962) (invalidating state laws directing the use of prayer in public schools); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (invalidating state laws and policies requiring public schools to begin the school day with Bible readings and prayer); *Mergens*, 496 U.S. 226 (1990) (plurality opinion) (explaining that “a school may not itself lead or direct a religious club”). Nor may school officials attempt to persuade or compel students to participate in prayer or other religious activities. *Lee v. Weisman*, 505 U.S. 577, 589 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985). Such conduct is “attributable to the State” and thus violates the Establishment Clause. *Lee*, at 587.

Moreover, the Establishment Clause does not prohibit all religious instruction in public schools. “[T]he 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 *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 225 (1963)). In fact, the Supreme Court has recognized that “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.” *Abington*, 374 U.S. at 225.

Thus, teachers can teach about and/or distribute material with religious content for educational purposes. In addition, teachers may discuss religious matters with their students on an individual basis if the student initiates the topic, the student is not compelled or forced to

discuss the topic, and the student is not compelled to accept the teacher's views. *Roman v. Appleby*, 558 F. Supp. 449 (E.D. Penn. 1983).

Conclusion

In summary, students have a broad range of First Amendment freedoms that include sharing their faith via verbal or written communications. While schools may prohibit students from sharing their faith during instructional times, they cannot prohibit students from doing so during non-instructional times including, but not limited to, lunch, recess, and bus rides.