



**TEACHERS' RIGHTS ON  
PUBLIC SCHOOL CAMPUSES**  
by Mathew D. Staver

**Chapter 4 from  
Eternal Vigilance  
Knowing and Protecting Your Religious Freedom**

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## TEACHERS' RIGHTS ON PUBLIC SCHOOL CAMPUSES

### Classroom As The Battleground

Teachers in today's public schools often find themselves in difficult positions. Most teachers sincerely want the best for their students. Unfortunately, they work in often combative, even litigious, environments. For the most part, discipline has all but disappeared under the threat of lawsuits. Child abuse allegations against public school teachers have increased. Trying to protect their school, administrators often side with parents rather than teachers in student-teacher disputes. The classroom is becoming more violent and disruptive. Many school administrators are so cautious that they have erroneously erased all traces of religion. Some have run roughshod over teachers while others have attempted to squelch all discussion of religion. Many are simply uninformed about the basics of constitutional rights.<sup>1</sup>

The public school has become a battleground for religion. John Dunphy, a secular humanist, wrote in *The Humanist* magazine:

I am convinced that the battleground for humankind's future must be waged and won in the public school classroom by teachers who correctly perceive their role as the proselytizers of a new faith: a religion of humanity that recognizes and respects the spark of what theologians call divinity in every human being. These teachers must embody the same selfless dedication as the most rabid fundamentalist preacher, for they will be ministers of another sort, utilizing a classroom instead of a pulpit to convey humanist values in whatever subjects they teach regardless of the educational level – preschool daycare or large state university. The classroom must and will become an arena of conflict between the old and the new – the rotting corpse of Christianity together with all its adjacent evils and misery and the new faith of humanism, resplendent in its promise of a world in which the never realized Christian idea of “love thy neighbor” will be finally achieved.<sup>2</sup>

John Dewey, the so-called father of modern education, hoped to replace sectarian religion with “a religious faith that shall not be confined to sect, class, or race.”<sup>3</sup> Some have referred to the religion envisioned by John Dewey as a religion of secular humanism. Indeed, the Supreme Court has recognized secular humanism as a religion.<sup>4</sup> As a result of the secularization of public education, many teachers have the mistaken view that religion is forbidden on public school campuses.

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<sup>1</sup>A survey of 900 school administrators and 902 teachers found that “roughly one in five can not recall any of the five freedoms” guaranteed under the First Amendment. The survey was conducted in 2001 by the Center for Survey Research and Analysis at the University of Connecticut, and was reported at <http://www.freedomforum.org/>.

<sup>2</sup>John Dunphy, *A Religion for a New Age*, THE HUMANIST, Jan.-Feb. 1982, at 26.

<sup>3</sup>John Dewey, *A COMMON FAITH* 86-7 (Yale U. Press 1934).

<sup>4</sup>*Torcaso v. Watkins*, 367 U.S. 488 (1961).

Notwithstanding the confusion over religion, teachers still have constitutionally protected liberties and should exercise them. Teachers play a critical role in educating future generations. Indeed, schools were originally founded to instill religious principles.<sup>5</sup> With the exception of the University of Pennsylvania, every collegiate institution prior to the Revolutionary War was established by some branch of the Christian church.

The Greek philosopher Aristotle understood the importance of teaching when he stated, “All who have meditated on the art of governing mankind are convinced that the fate of empires depends on the education of youth.”<sup>6</sup> Martin Luther once stated that he was

afraid that schools will prove to be great gates of hell, unless they diligently labor in explaining the Holy Scriptures, engraving them in the hearts of youth. I advise no one to place his child where the Scriptures do not reign paramount. Every institution in which men are not increasingly occupied with the word of God must become corrupt.<sup>7</sup>

However, Martin Luther was not operating under the present-day interpretations of the United States Supreme Court.

Teachers are in a unique position to inculcate values for the next generation. Under the present constitutional makeup, teachers still have great latitude in reviewing religious topics. As the former United States Secretary of Education recognized, “Public schools must treat religion with fairness and respect . . . .”<sup>8</sup> The United States Supreme Court has observed: “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”<sup>9</sup>

### **Teacher As Individual And State Agent**

Although the First Amendment of the Constitution initially restricted the authority of the federal government and not the states, the United States Supreme Court, in 1940, nevertheless

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<sup>5</sup>The first compulsory education law was enacted by the Colony of Massachusetts in 1647. See COLONIAL ORIGINS OF THE AMERICAN CONSTITUTION 129 (Donald Lutz, ed., Liberty Fund 1998). Known as “The Olde Deluder Satan Act,” the law required universal education in order to teach children how to read the Scriptures. Next to the Bible, *The New England Primer* was the beginning textbook for students, instructing them on the alphabet, grammar and religion. This book contained what is known as “The Shorter Catechism” which instructed public school children in religious doctrine by means of questions and answers. Forty questions dealt specifically with the Ten Commandments. For 200 years of American education from the 1700s to the early 1900s, almost every child entering school studied from the pages of this fascinating book. On July 13, 1787, the Continental Congress re-enacted the Northwest Ordinance which proclaimed: “Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged.” ORD. OF 1789, art. A3 (July 13, 1789), reprinted in DOCUMENTS ILLUSTRATIVE OF THE FORMATION OF THE UNION OF AMERICAN STATES 52 (Charles C. Tansell ed., 1927); see also *An Act to Provide for the Government of the Territory Northwest of the River Ohio (Northwest Ordinance)*, Ch. 8, 1 Stat. 50-51 (Peter’s ed. 1845).

<sup>6</sup>Aristotle, 384-322 B.C.

<sup>7</sup>Martin Luther, “To the Christian Nobility of the German Nation Concerning the Reform of the Christian Estate,” in *What Luther Says*, ¶ 1327 (Ewarl Plass, ed., Concordia Publishing 1972).

<sup>8</sup>Richard W. Riley, U.S. Secretary of Education, *Statement on Religious Expression*, <http://www.ed.gov/Speeches/08-1995/religion.html>.

<sup>9</sup>*Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 506 (1969).

applied the First Amendment to the states through the Fourteenth Amendment.<sup>10</sup> The First Amendment is now interpreted to protect the free exercise of religion of individuals and to prohibit the establishment of religion by state and federal entities.

Teachers are in a unique position because they are both individuals *and* agents of the state. Consequently, the First Amendment serves to protect their freedom of speech and free exercise of religion and to prohibit them from establishing a religion.<sup>11</sup> In other words, since teachers are employees of the state, they are, in a sense, an extension of the state. As such, the First Amendment Establishment Clause, which prohibits the government from establishing a religion, places certain restrictions on teachers' activities in matters of religion. On the other hand, teachers do not lose their rights to free speech and freedom of religion simply because they are employees of the state. Teachers' freedom of religion rights are also protected by other federal laws.<sup>12</sup>

The First Amendment has been interpreted to mean that a state may not affirmatively promote or proselytize a particular religious viewpoint, but neither may the state be hostile toward religion. Thus, while teachers may not encourage students to accept Jesus Christ as Lord and Savior, teachers may not try to convince students that Jesus is a fictional character. Teachers may objectively overview the teachings of Jesus as long as the overview is consistent with the subject matter being taught.<sup>13</sup>

### **Asserting Your Rights**

The teacher is protected by the Constitution and should assert constitutional protection when deemed appropriate. A teacher can assert not only constitutional rights but also the status of tenure, which should at least guarantee notice and opportunity for a hearing in the event of a complaint.<sup>14</sup>

### ***Freedom Of Speech***

Teachers have the constitutional right to free speech while on a public school campus.<sup>15</sup>

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<sup>10</sup>*Cantwell v. Connecticut*, 310 U.S. 296 (1940) (Free Exercise Clause); *Everson v. Board of Educ.*, 330 U.S. 1 (1947) (Establishment Clause); *Illinois ex rel. McCollum v. Board of Educ. of Sch. Dist. No. 71*, 333 U.S. 203 (1948) (same).

<sup>11</sup>Originally the term "establishment of religion" referred to the federal government establishing a national religion or national church. The First Amendment prohibited the federal government from establishing such a national church. While the individual states could establish their own religion, the federal government had no jurisdiction in this matter. However, this term has been interpreted over time by the United Supreme Court to mean endorsement or promotion of religion. Essentially, the Supreme Court has required that the government remain neutral in matters of religion, neither inhibiting, nor promoting religion. Applying this concept of neutrality to the public school teacher means that the teacher must not only be neutral but objective when overviews religious topics. Consequently, a teacher should not ignore, nor should a teacher actively proselytize, a particular religion or faith. To ignore, censor, or denigrate religion is just as prohibited by the Supreme Court's interpretation as is active promotion or proselytizing of religion by government. For a discussion on the origin and meaning of the phrase "separation of church and state," see Mathew D. Staver, TAKE BACK AMERICA 33-44 (2000).

<sup>12</sup>In addition to having constitutional rights and obligations, teachers are public employees and therefore have rights under state and federal employment laws. See the chapter in this book entitled "Religious Rights in the Workplace."

<sup>13</sup>See *Brown v. Woodland Joint Unif. Sch. Dist.*, 27 F.3d 1373,1380, (9th Cir. 1994) ("[A] reenactment of the Last Supper or a Passover dinner might be permissible if presented for historical or cultural purposes.")

<sup>14</sup>On occasion the Apostle Paul utilized his status as a Roman citizen to his benefit. See Acts 22:25. Indeed, Paul used his status as a Roman citizen to have his case heard in Rome before Caesar where he stated "I am standing before Caesar's tribunal, where I ought to be tried." Acts 25:10.

<sup>15</sup>*Tinker*, 393 U.S. at 506.

Neither students nor teachers “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”<sup>16</sup> A teacher can discuss religious topics with other teachers in the school lounge or between classes. If a school allows its facilities to be used by teachers for meetings unrelated to the curriculum, it probably cannot prohibit teachers from meeting with other teachers during noninstructional time solely on the basis of religion.<sup>17</sup>

Clearly, during nonschool hours and while off school property, teachers are individual citizens and not actors of the state. As such, they enjoy the affirmative protection of the Free Speech and Free Exercise Clauses. In this context, they are not actors of the state and, therefore, do not have the restrictions imposed by the First Amendment Establishment Clause.

While on school campus but before or after school hours, teachers may have certain restrictions imposed by the First Amendment Establishment Clause.<sup>18</sup> In this context, courts often balance the interest of the teachers against the interest of the school.<sup>19</sup>

Some courts have considered the age and impressionability of students.<sup>20</sup> The younger the student, the more careful the teacher must be in matters of religion. The courts have reasoned that younger students are not able to easily separate the acts of the teacher from the acts of the school. The courts have considered that older students have the capability of making a distinction between the teacher as an individual and the actions of the school. Unfortunately, no clear line has been drawn as to when this age differential changes. No matter the age, however, teachers may not proselytize students in a captive setting. For example, if several teachers were to congregate before school in a classroom to pray, the teachers could not invite students and could not publicize the meeting to the students. To do so may give the impression that the school is affirmatively promoting religion. However, a teacher does not have to be so paranoid as to avoid a student’s religious inquiry.

### ***Teaching About Religion***

Academic freedom is “the principle that individual instructors are at liberty to teach that which they deem to be appropriate in the exercise of their professional judgment.”<sup>21</sup> According to the Supreme Court, academic freedom “is a special concern of the First Amendment.”<sup>22</sup> However, academic freedom is not absolute. A teacher cannot use the classroom to indoctrinate students in religious faith, but a teacher is free to disseminate information in an objective manner so long as the information is reasonably related to the subject matter being taught in the curriculum.<sup>23</sup> Therefore,

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<sup>16</sup>*Id.*

<sup>17</sup>*Cf. Widmar v. Vincent*, 454 U.S. 263 (1981); *May v. Evansville-Vanderburgh Sch. Corp.*, 787 F.2d 1105 (7th Cir. 1986); *Police Dep’t of Chicago v. Mosley*, 408 U.S. 92 (1972).

<sup>18</sup>*See, e.g. Marchi v. Board of Coop. Educ. Svc of Albany*, 173 F.3d 469 (2d Cir. 1999) (special education teacher prohibited from expressing religious viewpoint as part of instructional program); *Pelozo v. Capistrano Unif. Sch. Dist.*, 37 F.3d 517 (9th Cir. 1994) (teacher prohibited from discussing his religious views with students at school); *Bishop v. Aronov*, 926 F.2d 1066, 1077 (11th Cir. 1991) (university professor required to stop interjecting his personal religious beliefs into class discussions); *Downs v. Los Angeles Unified Sch. Dist.*, 228 F.3d 1003 (2000) (teacher did not have First Amendment right to post personal viewpoint on school bulletin board that was used for official purposes).

<sup>19</sup>*See, e.g. Bishop v. Aronov*, 926 F.2d at 1072, 1074 (There is “no substitute for a case-by-case inquiry into whether the legitimate interests of the authorities are demonstrably sufficient to circumscribe a teacher’s speech.”)

<sup>20</sup>*See, e.g. Roberts v. Madigan*, 921 F.2d 1047 (10th Cir. 1990) (teacher prohibited from silently reading personal Bible while fifth graders were in class).

<sup>21</sup>*Edwards v. Aguillard*, 482 U.S. 578, 586 n.6 (1987).

<sup>22</sup>*Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967).

<sup>23</sup>Free speech or academic freedom is not unlimited. *Cf. Krizek v. Cicero-Stickney Township High Sch. Dist.*, 713 F.

academic freedom, or the right to free speech, permits an objective discussion of religion as it relates to the curriculum. In fact, no subject can be thoroughly taught without some discussion of religion.<sup>24</sup>

The teacher would probably be prohibited from talking about a biblical reason for sexual abstinence before marriage in a math class, but a teacher in a health class may discuss sexual abstinence, including various religious views on sexual abstinence. Biblical literature can be discussed in literature class, but probably not in a math class. However, it is permissible to discuss numerology in math class. The Egyptians used mathematics as part of their religion. Both Old and New Testaments use numbers and mathematical formulas to represent symbolic meanings.<sup>25</sup> If the content of speech is consistent with the course being studied, the teacher may objectively overview religious contributions and viewpoints dealing with the issue.

Certainly schools have “important, delicate and highly discretionary functions” to perform.<sup>26</sup> These functions, however, must be performed “within the limits of the Bill of Rights.”<sup>27</sup> “The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”<sup>28</sup> Since the “classroom is peculiarly the market place of ideas,”<sup>29</sup> teachers may lead robust discussions and present information, including religious information, in an objective manner.

One of my teacher friends taught space technology in a public high school. His innovation earned him teacher of the year. He used unique teaching techniques in the classroom, including having his class directly linked to the space shuttle and communicating with the astronauts on board. This class addressed topics related to space technology, including the technology used in laser-guided bombs during the Persian Gulf War, astronomy, satellite hookups, and other forms of technology.

During the Persian Gulf War, this teacher focused on the technology used by the military. During one discussion, he brought up the issue of war in the Middle East, which naturally led to a discussion regarding the various confrontations among the warring religious sects. It is virtually

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Supp. 1131 (N.D. Ill. 1989) (school did not renew the contract of a nontenured teacher who showed an R-rated film during class).

<sup>24</sup>“The fact is that, for good or for ill, nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with religious influences, derived from paganism, Judaism, Christianity -- both Catholic and Protestant -- and other faiths accepted by a large part of the world’s peoples. One can hardly respect a system of education that would leave the student wholly ignorant of the currents of religious thought that move the world society for a part in which he is being prepared.” *McCullum*, 333 U.S. at 236 (Jackson, J., concurring).

<sup>25</sup>For example, the number 3 and 7 occur throughout the Bible. The number 12 is also frequently used. This number plays an integral role when describing the new heaven, which when measured, forms a perfect cube. See Revelation 21:9-21. Some ancient Hebrews often assigned mathematical significance to the Hebrew alphabet. This is done in different ways. One way is to assign a number to each successive letter of the alphabet. One example is the name David. In Hebrew it is spelled Dwd. The Daleth or “d” is the fourth letter in the Hebrew alphabet. The Waw or “w” is the eighth letter in the Hebrew alphabet. When added together, David’s name equates to the number 14. This is probably the reason that the first chapter of Matthew describes three series of fourteen generations, fourteen from Abraham to David, fourteen from David to the Babylonian deportation, and fourteen from the Babylonian deportation to Christ. See Matthew 1:1-17. Actually, there are more than fourteen generations if every individual is counted, but when one understands how genealogies were counted in the Old Testament, the number 14 makes perfect sense. Counting genealogies did not mean counting every single individual in the lineage. Rather, genealogies highlight certain individuals throughout time which show a link from the past to the present. One final example of numerology used in the Bible is the infamous “666,” which is the mark of the beast. See Revelation 13:18.

<sup>26</sup>*West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943).

<sup>27</sup>*Id.* at 637.

<sup>28</sup>*Shelton v. Tucker*, 364 U.S. 479, 487 (1960).

<sup>29</sup>*Keyishian*, 385 U.S. at 603 (1967).

impossible to address the Persian Gulf War without looking at the religious and cultural issues involved.

This teacher also focused on astronomy, and as such, must address the Big Bang theory and the origin of the universe. Not long ago the Big Bang theory was brought into question by scientists. This theory is replete throughout many science books, and even after its repudiation by some well-known scientists, many science books continue to rely on this theory. A good teacher brings up this information, critiques it, and then the natural question arises as to what other theories have been put forth regarding the origin of the universe. Within this context, the teacher may overview theories of abrupt appearance or punctuated equilibrium. As Wendell Bird has shown in his two-volume work entitled *The Origin of the Species Revisited*,<sup>30</sup> abrupt appearance can be taught as science. The theory of abrupt appearance is a classic example of a topic that can be objectively overviewed in class.<sup>31</sup> Abrupt appearance does not need to use the Bible as the textbook. However, when overviewing theories of the origin of the universe, the astute teacher may present evidence proffered for evolution and for abrupt appearance. In the final analysis, neither can be scientifically proven. Both theories must be accepted by faith. However, when discussing the scientific data, in order to adequately overview the entire subject, cultural and religious views may be discussed in an objective manner. Many religions have theologies regarding creation in addition to the Judeo-Christian religion. Egyptian theology on this matter can be found in *The Memphite Theology of Creation*.<sup>32</sup> Likewise, the Akkadians, as well as those in the Far East, had creation epics.

Similarly, when studying geographical topography such as the Grand Canyon, the theory of deluge must be overviewed. The Sumerians, the Akkadians, and the Babylonians all had similar flood stories.<sup>33</sup> To ignore this rich religious and cultural history is to neglect the topic and to cheat the students of a broad education.<sup>34</sup>

No topic can be adequately studied without objectively overviewing religious contributions. When studying sociology, demographic studies may be brought in showing the geographical

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<sup>30</sup>Wendell R. Bird, 1-2 THE ORIGIN OF THE SPECIES REVISITED (NY: Philosophical Library 1989).

<sup>31</sup>The United States Supreme Court struck down the State of Arkansas' anti-evolution statute which prohibited the teaching of evolution within public schools because the court found that the primary purpose of this statute was religious and had no objective secular basis. *Epperson v. Arkansas*, 393 U.S. 97 (1968). The Supreme Court ruled in *Edwards v. Aguillard*, 482 U.S. 578 (1987), that a state could not mandate the teaching of creationism by requiring that creation theories be taught whenever evolutionary theories are taught. The principle in this case was that the state statute had primarily a religious and not a secular aspect which indeed required the teaching of creationism. It is an entirely different matter when a teacher objectively overviews origin of the universe theories without religious advocacy. A federal appeals court has ruled that a principal may prohibit a teacher from teaching nonevolutionary theories of creation in the classroom without violating the teacher's First Amendment rights. *Webster v. New Lenox Sch. Dist.*, 917 F.2d 1004 (7th Cir. 1990). In the *Webster* case, the issue was not so much whether teaching evolutionary creation violates the First Amendment Establishment Clause, but whether a principal had the right to control the curriculum within the school contrary to the individual desires of teachers within that school. The court noted the essence of the case was that "an individual teacher has no right to ignore the directives of duly appointed education authorities." *Id.* at 1008. The court further noted that the teacher had "not been prohibited from teaching any nonevolutionary theories or from teaching anything regarding the historical relationship between church and state" but that the teacher was merely prohibited from "religious advocacy." *Id.* at 1006.

<sup>32</sup>1 THE ANCIENT NEAR EAST 1 (James B. Pritchard, ed., Princeton U. Press 1958).

<sup>33</sup>*Id.* at 28, 31; READINGS IN ANCIENT HISTORY FROM GILGAMESH TO DIOCLETIAN 12 (N. Bailkey, ed., Lexington, MA: D.C. Heath & Co.1976).

<sup>34</sup>One of the best videos addressing a modern day catastrophe which may give insight to the theory of deluge has been produced by the Institute for Creation Research regarding the eruption of Mt. St. Helens. The video, entitled "Mt. St. Helens: Explosive Evidence for Catastrophe" is worth viewing and is highly recommended. Information may be obtained by writing ICR, 10946 Woodside Ave. N., Santee, CA 92071, calling (619) 448-0900, or on the internet at [www.icr.org](http://www.icr.org).

distribution of the various religious faiths. Demographic maps of the United States showing the distribution of religious faiths within the states are very informative. Such maps are certainly relevant to sociology, history and political science. Religious contributions and musical compositions may be studied in music class. Religious art may be studied in art class. History and political science cannot be studied properly without considering the Roman Catholic, Protestant, evangelical, or charismatic impacts. Literature cannot be adequately studied without considering religious influences. For example, today's book format arose out of Christian evangelization. Prior to the formation of books, Old Testament scriptures were contained on bulky scrolls. The New Testament Christians cut these scrolls in pieces and sewed the edges together to form a codex, now known as a book. Printing presses were developed primarily to reproduce the Bible. In short, no subject matter can be taught adequately without considering and overviewing the impact of religion. Teachers have a constitutional right to teach about religion and should not shirk their responsibility to do so.

In *School District of Abington Township v. Schempp*,<sup>35</sup> the Supreme Court stated that study of the Bible or religion, when presented objectively as part of a secular program of education, is consistent with the First Amendment. The United States Department of Education has issued Guidelines on Religious Expression in Public Schools, noting that the Bible may be taught in school and that a teacher may instruct the class about religious influences relevant to the subject matter being discussed.<sup>36</sup>

The Bible can be studied as literature in a literature course.<sup>37</sup> Religious literature can be used in any course in which the message is relevant to the subject matter.

The Bible is an excellent literary source. For example, the entire Book of Lamentations is written in acrostic form. An acrostic is a mnemonic device utilizing the twenty-two letters of the Hebrew alphabet. Chapter one of Lamentations contains twenty-two verses, and each verse successively begins with the corresponding letter of the alphabet. Verse one begins with the aleph (A), the first letter of the alphabet. Verse two begins with the beth (B), the second letter of the alphabet. Verse twenty-two ends with a tau (T), the last letter of the Hebrew alphabet. Chapter two continues this sequence and also contains twenty-two verses. Chapter three, the middle chapter, triplicates the Hebrew alphabet. This chapter contains sixty-six verses, the alphabet multiplied by three. These verses follow the alphabet in sequence but are grouped in three's. Verses one, two, and three begin with the first letter of the alphabet while verses four, five, and six begin with the second letter of the Hebrew alphabet and so on. Chapter four again contains twenty-two verses, each starting with the successive letter of the alphabet. Chapter five, though containing twenty-two verses, departs from the acrostic pattern.

The most famous acrostic of all is Psalm 119. This psalm contains twenty-two sections,

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<sup>35</sup>374 U.S. 203 (1963).

<sup>36</sup>Regarding teaching about religion in schools, the guidelines, first released in 1995 and then again in 1999, state:

Public schools may not provide religious instruction, but they may teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture)-as-literature, and the role of religion in the history of the United States and other countries all are permissible public school subjects. Similarly, it is permissible to consider religious influences on art, music, literature, and social studies.

See <http://www.ed.gov/Speeches/08-1995/religion.html> and <http://www.ed.gov/inits/religionandschools/>.

<sup>37</sup>An excellent resource is Leland Ryken's, *THE BIBLE AS LITERATURE* (1974). This book was published by Zondervan. Although this book may be out of print, there are many similar available resources.

each section containing eight verses. The first eight verses begin with the first letter of the Hebrew alphabet while the second series of eight verses begin with the second letter of the Hebrew alphabet and so on.

Hebrew literature also contains parallelisms. Approximately one-third of the Old Testament and parts of the New Testament are written in poetry. By and large, there is no rhyme in terms of sound as we know it in English. Hebrew rhyme is based on thought parallelisms. For example, synonymous parallelism is found in Isaiah 1:3 where the same thought is expressed in successive stichs: "The ox knows its owner, and the ass its master's crib." The "ox" is equivalent to the "ass" and the "owner" is equivalent to the "master." Another example is found in Amos 5:24. Antithetic parallelism means that the second stich is in contrast to the first, as found in Psalm 1:6, "For the Lord knows the way of the righteous, but the way of the wicked will perish." In Matthew 7:18, Jesus stated: "A sound tree cannot bear evil fruit, nor can a bad tree bear good fruit." The most famous one of all is in Matthew 10:39 where Jesus declared: "He who finds his life will lose it, and he who loses his life for my sake will find it." Formal or synthetic parallelism contains neither repetition nor contrasted assertions but is where the first stich is carried further in thought through the second stich. Psalm 14:2 is an example: "The Lord looks down from heaven, upon the children of men." Climactic parallelism is found in Psalm 28:1 where the second stich echoes or repeats the first part of the stich and adds to it an element of thought such as the following: "Ascribe to the Lord, oh heavenly beings, ascribe to the Lord glory and strength." These examples are what is known as Internal Parallelism. Examples of External Parallelism are found between dystichs, such as that found in Isaiah 1:27-28:

Zion shall be redeemed by Justice,  
And those in her who repent, by righteousness.  
But rebels and sinners shall be destroyed together,  
And those who forsake the Lord shall be consumed.

The first stich (first two lines) speaks of redemption using synonymous terms of "justice" and "righteousness." The second stich (second two lines) contrasts the thought of the first stich and speaks of destruction using synonymous terms such as "destroyed" and "consumed."

Hebrew poetry also has meter, with the most frequent pattern being 3:3, which is a dystich with three stressed syllables in each stich. An example is found in Job 14:1-2. The shorter 2:2 meter is used to convey intense emotion and urgency as found in Isaiah 1:16-17. The 3:2 pattern is known as the Qinah or the Lament or dirge meter. This is the prevailing meter used in the book of Lamentations. An example is also found in Amos 5:2. Other, but less frequently used, patterns are 4:4, 2:2:2, and 3:3:3. In the original Hebrew, alliteration is found in Psalm 122:6-7, where the effect of the passage is gained by juxtaposition of words or syllables which begin with the same consonant.

Assonance is found in Psalm 90:17, where the same vowel sound is often deliberately repeated. An interesting concept is found in Judges 5:2 known as onomatopoeia, where the writer uses words which actually sound like the described activity. This is the Song of Deborah describing the galloping of horses. The Hebrew words, when spoken together, sound like the galloping of horses' hooves. Paranomasia, or a play on words, is aptly found in Isaiah 5:7. There, Isaiah says that God looked for "justice" (mishpat), but instead he found only "bloodshed" (mispah); he looked for "righteousness" (sedhaqah) but instead found only a "cry" (seaqah).

Clearly the Bible is a fascinating literary book. The *Chronicles of Narnia* is also a work that

can be studied from a literary point of view. When studying religious works from a literary standpoint, the teacher should be objective. Indeed, to ignore religious literature, including the Bible, ignores a vast amount of educational material and ultimately is to the detriment of the student.

### **Symbols, Music, Art, Drama And Literature**

The constitutional principle regarding symbols, music, art, drama, or literature, whether in public school or in association with other public entities, is simple -- mix the secular and the sacred. In other words, if a public entity, or a teacher as an agent of that entity, displays or presents a secular aspect or purpose along with the religious symbol, music, art, drama, or literature, then the display or the presentation is considered constitutional. For example, a publicly sponsored nativity scene without any other accompanying symbols on public property would be unconstitutional. However, the same nativity scene becomes constitutional when secular symbols of the holiday are presented in the same context. A nativity scene in the classroom follows the same guidelines. A school-sponsored Christmas concert on a public school campus containing only Christian music would be unconstitutional, but Christian Christmas songs mixed with secular songs of the holiday make the presentation constitutional.<sup>38</sup> In art class, the teacher can overview religious art so long as secular art is also discussed. Religious literature can be read and studied so long as it is objective and combined with other secular aspects of literature.

Probably the best illustration of the permissibility for the use of symbols, music, art, drama, and literature within the public school system is the school board policy of Sioux Falls School District in Sioux Falls, South Dakota. This policy has been court tested and serves as an example to other schools. The school policy begins by stating that tolerance and understanding should be promoted and that “students and staff members should be excused from participating in practices which are contrary to their religious beliefs” unless there are clear overriding concerns that would prevent excusal.<sup>39</sup>

The policy also states the following:

1. The several holidays throughout the year which have a religious and a secular basis may be observed in the public schools.
2. The historical and contemporary values and the origin of religious holidays may be explained in an unbiased and objective manner without sectarian indoctrination.
3. Music, art, literature, and drama having religious themes or basis are permitted as part of the curriculum for school-sponsored activities and programs if presented in a prudent and objective manner and as a traditional part of the cultural and religious heritage of the particular holiday.
4. The use of religious symbols such as a cross, menorah, crescent, Star of David, creche, symbols of Native American religions or other symbols that are part of a religious holiday [are] permitted as a teaching aid or resource provided such symbols are displayed as an example of the cultural and religious heritage of the holiday and are temporary in nature.

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<sup>38</sup>See *Bauchman v. West High Sch.*, 132 F.3d 542 (10th Cir. 1997), *cert. denied*, 524 U.S. 953.

<sup>39</sup>*Florey v. Sioux Falls Sch. Dist.* 49-5, 619 F.2d 1311, 1319 (8th Cir. 1980), *cert. denied*, 449 U.S. 987 (1980).

Among these holidays are included Christmas, Easter, Passover, Hanukkah, St. Valentine's Day, St. Patrick's Day, Thanksgiving and Halloween.

5. The school district's calendar should be prepared so as to minimize conflicts with religious holidays of all faiths.<sup>40</sup>

The same school board policy also correctly addresses religious literature in the curriculum as follows:

Religious institutions and orientations are central to human experience, past and present. An education excluding such a significant aspect would be incomplete. It is essential that the teaching about and not of religion be conducted in a factual, objective and respectful manner.<sup>41</sup>

The policy then outlines the following:

1. The District supports the inclusion of religious literature, music, drama, and the arts in the curriculum and in school activities provided it is intrinsic to the learning experience in the various fields of study and is presented objectively.

2. The emphasis on religious themes in the arts, literature and history should be only as extensive as necessary for a balanced and comprehensive study of these areas. Such studies should never foster any particular religious tenets or demean any religious beliefs.

3. Student-initiated expressions to questions or assignments which reflect their beliefs or non-beliefs about a religious theme shall be accommodated. For example, students are free to express religious belief or non-belief in compositions, art forms, music, speech and debate.<sup>42</sup>

The above-cited school board policy of the Sioux Falls School District is presented here because it concisely and correctly outlines the parameters for the celebration of religious holidays, the display of symbols, the performance of music, art, or drama, and the study of religious literature within the public school system. The constitutionality of this school board policy has been upheld by the Eighth Circuit Court of Appeals. As it pertains to religious literature within the public school system, the United States Supreme Court declared that the "study of the Bible or of religion, when presented objectively as a part of a secular program of education," is consistent with the First Amendment.<sup>43</sup> Indeed, the Supreme Court has reiterated that the Bible may constitutionally be used as an appropriate study of history, civilization, ethics, comparative religion, or the like.<sup>44</sup> In other

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<sup>40</sup>*Id.* at 1319-20.

<sup>41</sup>*Id.* at 1320.

<sup>42</sup>*Id.*

<sup>43</sup>*Abington Township*, 374 U.S. at 225.

<sup>44</sup>*Stone v. Graham*, 449 U.S. 39, 42 (1980). The Supreme Court in *Stone* struck down the display of the Ten Commandments on a classroom bulletin board because, standing alone in the absence of a secular context, it was not integrated into the school curriculum, where the Bible may constitutionally be used as an appropriate study of history, civilization, ethics, comparative religion, or the like. Presumably, if the Ten Commandments were displayed on the

words, a public school teacher may teach about religion in an objective manner, but should avoid promoting belief in a particular religion and should likewise avoid degrading or showing hostility toward any religion.

Commenting on religious themes in public schools, the federal court noted in the *Florey* case, “The close relationship between religion and American history and culture has frequently been recognized by the Supreme Court of the United States . . . Total separation (between church and state) is not possible in an absolute sense.”<sup>45</sup> The court declared that “the Constitution does not necessarily forbid the use of materials that have a ‘religious basis.’ Government involvement in an activity of unquestionably religious origin does not contravene the Establishment Clause if its ‘present purpose and effect’ is secular.”<sup>46</sup>

Public performance of religious songs is a legitimate part of secular study. “We view the term ‘study’ to include more than mere classroom instruction: public performance may be a legitimate part of secular study.”<sup>47</sup> “[T]o allow students only to study and not to perform (religious art, literature and music, when) such works . . . have developed an independent secular and artistic significance, would give students a truncated view of our culture.”<sup>48</sup>

In response to the argument that certain Christmas songs will have a religious effect on the listener, the *Florey* court stated, “It would be literally impossible to develop a public school curriculum that did not in some way affect the religious or nonreligious sensibilities of some of the students or their parents.”<sup>49</sup> The court also rejected the argument that singing Christian carols would entangle the school with religion.<sup>50</sup> Certainly, “[m]usic without sacred music, architecture minus the Cathedral, or painting without the Scriptural themes would be eccentric and incomplete, even from a secular view.”<sup>51</sup>

In *Doe v. Duncanville Independent School District*,<sup>52</sup> a federal court held that a public high school choir’s adoption of the song, *The Lord Bless You and Keep You*, as its theme song, did not violate the Establishment Clause and was constitutional. The religious song had been the school’s theme song for twenty years. Even more importantly, in *Doe*, the song was sung every Friday during practice, at the end of some performances and choral competitions, and on the bus to and from performances, which the students were “required to sing.”<sup>53</sup>

The court found that 60-75 percent of serious choral music is based on sacred themes or text. “Given the dominance of religious music in this field, [the school district] can hardly be presumed to be advancing or endorsing religion by allowing its choirs to sing a religious theme song.”<sup>54</sup> The court noted the obvious, stating:

As a matter of statistical probability, the song best suited to be the theme is more likely to be religious than not. Indeed, to forbid DISD from having a theme

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bulletin board in association with other secular symbols of law-based society, the Supreme Court may well have ruled the display to be constitutional.

<sup>45</sup>*Florey*, 619 F.2d at 1313-14 (quoting *Lemon v. Kurtzman*, 403 U.S. 602, 614 (1971)).

<sup>46</sup>*Id.* at 1315 (quoting *McGowan v. Maryland*, 366 U.S. 420 (1961)).

<sup>47</sup>*Id.* at 1316.

<sup>48</sup>*Id.* (quoting *Florey v. Sioux Falls School District* 49-5, 464 F.Supp. 911 (D.S.D. 1979)).

<sup>49</sup>*Id.* at 1317.

<sup>50</sup>*Id.*

<sup>51</sup>*McCollum*, 333 U.S. at 236 (Jackson, J., concurring).

<sup>52</sup>70 F.3d 402 (5th Cir. 1995).

<sup>53</sup>*Id.* at 404, 407.

<sup>54</sup>*Id.* at 407.

song that is religious would force DISD to disqualify the majority of appropriate choral music simply because it is religious. Within the world of choral music, such a restriction would require hostility, not neutrality, toward religion.<sup>55</sup>

In *Bauchman v. West High School*,<sup>56</sup> another federal court held that singing songs with Christian lyrics, including *The Lord Bless You and Keep You* and *Friends*, was constitutional even in settings such as graduation ceremonies and concerts at churches.<sup>57</sup> “The Constitution does not require that the purpose of every government-sanctioned activity be unrelated to religion.”<sup>58</sup> “Courts have long recognized the historical, social and cultural significance of religion in our lives and in the world, generally.”<sup>59</sup> Consequently, the court concluded that in order to show an improper purpose, the plaintiff “must allege facts indicating the defendants have no ‘clearly secular purpose’ for selecting songs with religious content and requiring the choir to perform in religious venues.”<sup>60</sup> The court found that there was a secular purpose for singing religious songs, and even if they were performed at religious venues.<sup>61</sup>

Here, we discern a number of plausible secular purposes for the defendants’ conduct. For example, it is recognized that a significant percentage of serious choral music is based on religious themes or text. Any choral curriculum designed to expose students to the full array of vocal music culture therefore can be expected to reflect a significant number of religious songs. Moreover, a vocal music instructor would be expected to select any particular piece of sacred choral music, like any piece of secular choral music, in part for its unique qualities useful to teach a variety of vocal music skills (i.e., sight reading, intonation, harmonization, expression.). *Plausible secular reasons also exist for performing school choir concerts in churches and other venues associated with religious institutions.* Such venues often are acoustically superior to high school auditoriums or gymnasiums, yet still provide adequate seating. Moreover, by performing in such venues, an instructor can showcase his choir to the general public in an atmosphere conducive to the performance of serious choral music.<sup>62</sup>

The court also stated that the possibility some member of the public might be offended is no reason to censor the religious theme.

The Establishment Clause prohibits only those activities which, in the eyes of a reasonable observer, advance or promote religion or a particular religious belief. This is an objective inquiry, not an inquiry into whether a particular individual might be offended by the content or location of the Choir’s performance, or consider such

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<sup>55</sup>*Id.* (emphasis added).

<sup>56</sup>132 F.3d 542 (10th Cir. 1997).

<sup>57</sup>*Id.* at 547.

<sup>58</sup>*Id.* at 553.

<sup>59</sup>*Id.* at 554.

<sup>60</sup>*Id.*

<sup>61</sup>*Id.*

<sup>62</sup>*Id.* (emphasis added).

performances to endorse religion.<sup>63</sup>

The reasonable observer must be a person with knowledge of the facts surrounding the community in which the activities happened. “We believe a reasonable observer aware of the purpose, context and history of public education . . . and the traditional and ubiquitous presence of religious themes in vocal music . . . would not perceive the religious music to be the advancement or endorsement of religion.”<sup>64</sup>

In summary, religious symbols, music, art, drama, and literature may clearly be taught and presented in public school so long as the presentation is done in an objective manner consistent with the topic or the holiday occasion. Contrary to some popular opinion, religious Christmas carols are still permitted in the public school, religious art, drama, and literature are still permitted as part of the curriculum, and religious symbols are still permissible. The key is to present the information, display, or performance objectively and in combination with other secular aspects surrounding the holiday or subject matter. To exclude religion from public school creates an atmosphere of hostility, rather than neutrality, toward religion. Clearly, the First Amendment demands accommodation and absolutely forbids hostility.

### **Answering Questions Posed By Students**

Teachers are frequently asked questions related to the subject matter being studied and about their personal opinions. What if following the 9/11 terrorist attack a teacher is asked how he or she copes with the tragedy? Must a teacher remain silent because the question evokes some discussion about the teacher’s personal faith? Absolutely not! Teachers may respond to questions raised by students. To answer every question except those which require some response touching on religion would evince discrimination or hostility toward religion rather than the constitutionally mandated neutrality. A teacher may preface the remarks by noting that the answer reflects a personal opinion.

### **Religious Holidays**

The Supreme Court has upheld the display of religious symbols on public property if the context of the religious symbols has other nonreligious symbols that acknowledge the secular aspects of the holiday.<sup>65</sup> The classic example is a nativity scene in the context of a Christmas tree, a menorah, or Santa Claus. The nativity scene should be in close proximity to a secular symbol.

The Eighth Circuit Court of Appeals ruled in 1980 that a school Christmas program may include religious carols so long as they are presented “in a prudent and objective manner and as a traditional part of the cultural and religious heritage of the particular holiday.”<sup>66</sup> The Supreme Court has long ago acknowledged that “[m]usic without sacred music, architecture minus the cathedral, or painting without the Scriptural themes would be eccentric and incomplete, even from a secular view.”<sup>67</sup> Teachers should not shun celebrations of religious holidays. This includes permitting

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<sup>63</sup>*Id.*

<sup>64</sup>*Id.*

<sup>65</sup>*Lynch v. Donnelly*, 465 U.S. 668 (1984); *County of Allegheny v. ACLU*, 492 U.S. 573 (1989); see also *ACLU of N.J. v. Schundler*, 168 F.3d 92 (3d Cir. 1999) (appeals court upheld display of nativity scene along with Kwanzaa symbols, sled, figures of Frosty the Snowman and Santa Claus, and two signs referring to cultural and ethnic diversity).

<sup>66</sup>*Florey*, 619 F.2d at 1311.

<sup>67</sup>*McCullum*, 333 U.S. at 236 (Jackson, J., concurring).

students to give reports, whether oral or written, on religious holidays or topics. This also includes the display of a nativity scene within the classroom setting. A nativity scene is certainly permissible in a classroom setting if, within the same nativity scene setting, secular symbols of Christmas are also displayed. For example, a teacher can display a nativity scene so long as secular symbols are displayed within the same context, such as a Christmas tree, Santa Claus or reindeer. Jewish celebrations of Hanukkah may also be displayed.<sup>68</sup>

### **Clothing And Jewelry**

Teachers should be permitted to wear religious symbols. Like the students in *Tinker v. Des Moines Independent School District*, a federal appeals court permitted teachers to wear black arm bands in symbolic protest to the Vietnam War.<sup>69</sup>

In contrast to a student's ability of free expression through articles of clothing, a teacher has a few limitations.<sup>70</sup> If the content of the message is not religious, a teacher probably has greater latitude to wear clothing with inscribed words. However, the First Amendment Establishment Clause places certain restrictions on a teacher with respect to promoting religion. Nevertheless, a teacher should be able to wear religious articles of clothing or jewelry. Clothing with religious writing moves into a gray area. The more objective the writing without promoting a religious view, the more likely the teacher is able to wear the article of clothing.

In one case, a school allowed teachers to wear T-shirts to class on "Spirit Day," a day when students and teachers acknowledged the various student-initiated clubs on campus. Teacher-sponsors and others were permitted to wear T-shirts of the various clubs, but the school prohibited some teachers from wearing the Fellowship of Christian Athletes' T-shirt, claiming that to allow teachers to wear these shirts would violate the "separation of church and state." Liberty Counsel intervened and the teachers were allowed to wear the Fellowship of Christian Athletes shirts along with other teachers who wore the secular club T-shirts. In this case, to discriminate against a teacher solely because of the content of the message while allowing other teachers to wear secular messages violated the First Amendment. Whether clothes or jewelry, Christian teachers should receive equal treatment as that afforded other teachers who wear articles of clothing or jewelry with secular messages.

### **Outside Speakers**

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<sup>68</sup>The background of Hanukkah can be found by reading the Apocryphal book of Maccabees, which describes the Jews taking back and cleansing the temple from the Syrians on Kislev 25, or the ninth month of the Jewish calendar. 1 *Maccabees* 4.

<sup>69</sup>*James v. Board of Educ.*, 461 F.2d 566 (2d Cir. 1972), *cert. denied*, 409 U.S. 1042 (1972), *reh=g denied*, 410 U.S. 947 (1973), *withdrawn*, 515 F.2d 504 (1975).

<sup>70</sup>*See Downing v. West Haven Bd. of Educ.*, 162 F. Supp. 2d 19 (D. Conn. 2001) (an uncommon case where a teacher was prohibited from wearing a "Jesus 2000" t-shirt).

Teachers may bring in outside speakers to present views on a particular topic. The teacher can even utilize a debate format to present both sides of an issue. This avoids the problem of the school endorsing the speaker and allows for experts in various areas to present information to students. However, a debate format is not necessary for a teacher to bring an outside speaker on campus to present a particular view. A teacher may bring an outside speaker to present a view opposing the teacher or one in support of the teacher. There is no requirement that both sides of a topic be presented. Since the outside speaker is not an agent of the state, the speaker may address controversial topics and state an opinion on these topics. The teacher should avoid a regular pattern of inviting outside speakers to present only one viewpoint, and the school should not pay for or sponsor the outside speaker.<sup>71</sup> However, the school may pay a speaker to come on campus to present a message dealing with sexual abstinence or drug abuse. Such a message, while having moral and social concerns, also has religious concerns. The speaker may talk about all the concerns touching this topic. The only time a school should avoid paying for a speaker is if the speaker is brought to campus for the sole purpose of presenting a specific sectarian view that could be construed as proselytizing or evangelism.

### **Student Bible Clubs**

Student clubs are governed by the First Amendment and the federal law known as the Equal Access Act (hereinafter “Act”).<sup>72</sup> The protections afforded by the First Amendment are in most cases broader than those provided under the Act.<sup>73</sup> The Act only applies to public secondary schools and typically does not apply to elementary schools. In contrast, the First Amendment applies to all schools. From the teacher’s perspective, the First Amendment should be primarily relied upon if the club meets outside of school hours, while the Act should be relied upon if the club meets during the school day. During the school day, the teacher continues to wear the hat of a public school employee. After school hours, the teacher wears the hat of a private citizen.

Under the Act, a school may require that student-initiated religious clubs have a teacher sponsor. Schools may require a sponsor for religious clubs only if the same requirements are made of secular clubs. The provision of a school sponsor does not mean that the school endorses the club.<sup>74</sup> The employee or agent of the school should be present at such religious meetings “only in a nonparticipatory capacity.”<sup>75</sup> This “nonparticipatory” attendance means that the school employee should not actively lead or direct the group. The club must be student-initiated and student-led, which means that the activity must primarily be the activity of the students and not of the school. School sponsors can give advice and counsel, but the clubs should remain student-initiated and student-led. However, school employees may invite the students to their homes, and in the off-campus setting, they may take an active role.

If the club meets outside school hours, whether on or off campus, the restrictions that the club be student-initiated or student-led, including the requirement that the teacher be present in a “nonparticipatory capacity,” do not apply. The Supreme Court in the *Good News Club*<sup>76</sup> case found

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<sup>71</sup>*Wilson v. Chancellor*, 418 F. Supp. 1358 (D. Or. 1976).

<sup>72</sup>20 U.S.C. § 4071 *et seq.*

<sup>73</sup>*See Prince v. Jacoby*, 303 F.3d 1074 (9th Cir. 2002). This case undertook an excellent analysis of the different protections afforded by the First Amendment and the Act.

<sup>74</sup>20 U.S.C. § 4072(2).

<sup>75</sup>20 U.S.C. § 4071(c)(3).

<sup>76</sup>*Good News Club v. Milford Central Sch. Dist.*, 533 U.S. 98 (2001); *see also Culbertson v. Oakridge Sch. Dist. No. 76*,

that a school violated the First Amendment when it denied an after-school Christian club the right to meet on campus to conduct an adult-led club for elementary students. This case is significant for several reasons. First, the club was a religious club at the elementary level. Second, the club was adult-initiated and adult-led. Third, the meeting began immediately after school ended. Fourth, the Court rejected the argument that the young elementary students might be confused and assume that the club was a school function. The Court noted that the Good News Club required the students to obtain a signed parental permission slip in order to attend the meetings. Thus, the Supreme Court reasoned that the religious meeting should not be viewed from the child's perspective but from the perspective of the adult parent or guardian.

### **Summary**

Teachers on public school campuses are protected by the First Amendment Free Speech and Free Exercise Clauses. Teachers are also limited by the First Amendment Establishment Clause. Teachers retain the constitutional right to bring information to the classroom that is related to the curriculum being taught. The more relevant the information to the curriculum, the stronger the constitutional protection. Teachers may objectively instruct about religion but should be careful not to proselytize. Every subject taught in public school has in some way been impacted by religion. To ignore religion is to render a disservice to the curriculum being taught and to the students.

Teachers may be sponsors of religious clubs. If the club meets during the school day, the Equal Access Act may require the club to be student-initiated and student-led and may further require that the teacher be present in a nonparticipatory capacity. However, if the club meets outside school hours, whether on or off campus, the First Amendment provides greater protection. Such clubs may be adult-initiated and adult-led, and teachers may take an active role in the club. To ensure that students will not misperceive the teacher's role, the students should obtain a parental permission slip which acknowledges that the teacher is acting as a private citizen and not on behalf of the students.