

Religion-free Zone?



<http://www.dfamily.com/philosophy/teach/hswtl/journal.html>

[Dwelling on religious expression in schools. Good, Bad, Right, Wrong, Legality, and it's conflict.] American History - 1700s

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NEW YORK - It's already been a tough year for Mary Czajowski.

As superintendent of the 4,400-student school district in Agawam, Mass., she has spent much of the school year worrying about testing, school choice, teacher certification, and paperwork - all to comply with the No Child Left Behind federal education act of 2001.

But now, as graduation approaches, the law is creating a new worry. As the result of a little-noticed provision in NCLB, Dr. Czajowski's schools - like all US public schools - face a double-barreled threat.

If schools allow any religious speech at the graduation ceremony, most are aware that they could face a lawsuit. But now, if they don't - according to the dictates of NCLB - they could risk losing federal funds.

[Is there anyway to be neutral here?

Why does a school have to care what is said unless it is crude, vulgar, and immoral?

Can the school keep any crude, vulgar, and immoral speech from graduation ceremonies?

Did the writers of the Constitution ever envision something like this?

What was on their minds as a major concern involving religion?

What was on their minds concerning public school?

Aside from the conflict the schools have, what is the underlying problem?

Is it legal to have religious speech in a graduation ceremony?

Is it preferable to have religious speech in a graduation ceremony?

Does the School authorities have control over their graduation ceremony?

Is it a right to include religious speech in a graduation ceremony?

Is this statements are true?

Allowing religious speech in graduation ceremonies may be sued for illegal behavior.

Allowing religious speech in graduation ceremonies may be sued for poor judgement.

Not allowing religious speech in graduation ceremonies may lose federal funding for illegal behavior.

Not allowing religious speech in graduation ceremonies may lose federal funding for

poor judgement.

Is there a conflict in what is considered legal and illegal?

If so, how did we get there?

Could we have got there if the Constitution was the absolute resolution of all laws?]

"School districts are in a very, very difficult position," Czajowski says.

The decades-old struggle over the place of religion in American public schools may be about to flare up yet again. A provision in NCLB mandates that **if a school has any policy in place that curtails a student's right to "religious expression"** as spelled out in recent government guidelines, it could lose its federal funding.

[We're not just speaking of graduation ceremonies then, are we?

Why would a school have any policy which takes a stand on religious expression @ all?

What about religious jewelry?

Would it not be more appropriate to disallow jewelry all together, if there were valid reasons for concern in the first place?

What about religious expression which is against a dress code?

Does religious expression in a public institution amount to an infraction of the virtual "separation of Church and States"?]

For groups that advocate greater freedom of religion in public schools, the guidelines mailed out to all districts Feb. 7 from the US Department of Education are cause for rejoicing.

The threat to cut off funding "gives [these guidelines] teeth," says Anthony Picarello, vice president and general counsel for the Becket Fund for Religious Liberty in Washington. For too long, he says, school administrators **frightened of lawsuits have squashed legitimate religious discourse on school grounds.** From now on, Mr. Picarello adds, "the safest course will no longer be to break all ties with religion."

[Is there a problem here?

What is it?

What would have been your solution?]

But for groups that promote the separation of church and state, the guidelines spell danger.

"The 800-pound gorilla of these regulations is the threat of cutting off financial aid," says Barry Lynn, executive director of **Americans United for the Separation of Church and State in Washington.**

[There is an organization of people who make Church / State relations their overriding concern?

Do you believe the organization really consists of "united Americans" on this issue?

What do you believe the founding fathers would say?]

Especially with graduation season approaching, Mr. Lynn worries that "the [Education Department] guidelines are so heavily weighted toward supporting alleged student-speech rights that schools will ignore **legitimate concerns that a captive audience at graduation will be subjected to evangelism.**"

[What are the legitimate concerns?

What is the implicit insult here?

How old are you when you graduate?

How many years have you been going to school?

Is it possible, here in America, you have never heard the Christian message?

Is it your right to enter society without having every heard the Christian message?

Is being captive do something to your mind?

How old must you be before you can hear the Christian message without suffering great harm?

What is wrong with an education system which mindless graduates who are so dull that upon hearing the Christian message, will have their lives completely changed? I presume while the audience was held captive, kicking and screaming.

]

In many respects, however, the guidelines mailed out in early February differ little from a similar set of guidelines from the Clinton administration.

In both 1995 and 1999 the Ed Department under President Bill Clinton joined with a broad array of public groups and drew up a set of guidelines designed to curb excesses on both sides of the church-school equation. They sought to address both schools so frightened of lawsuits that they squashed legitimate religious expression, and schools that tended to promote religion.

The Clinton guidelines were far from hostile to the place of religion - including student-initiated prayer - in schools. On the contrary, they opened with a quote from Mr. Clinton that affirmed, "I believe that one of the best ways we can help ... schools ... is by supporting students' rights to voluntarily practice their religious beliefs, including prayer in school."

The Bush administration guidelines cover much of the same ground - but with a few significant differences.

One is the way they treat the question of "religious expression" at assemblies. While the Clinton guidelines stressed that "the right of religious expression in school does not include the right to have a 'captive audience' listen," the Bush guidelines draw a different conclusion.

They acknowledge that **prayer or religious speech initiated by school officials would be illegal** but then assert that "the **speech of students** who choose to express themselves through religious means such as prayer is **not attributable to the state, and therefore may not be restricted** because of its religious content."

[Is the first statement true? School officials may not engage in prayer or religious speech?
What is the religion was not Christian?
Has it always been illegal for school officials to engage in prayer or religious speech?
Does it follow a student is not employed by the state, so this should adequately satisfy the "separation of Church and State" argument?
Was the student not educated on State \$
Has not more money been spent on each student than the school officials receive in salary?
New Jersey spends over \$10,000 per student per year.
Again, we ask, does the school have some jurisdiction over their policies?
Should the local schools do their own thing, as they deem best?
What are 2 opposing factors which heavily influence what the schools deem best?
What are the common factors?]

But that advice is not consistent with some recent court rulings, say legal experts, and could be dangerous for school systems if they assume that by relying on the guidelines they'll be in accord with the law.

"The [Bush] guidelines gloss over some real splits in court readings, and that can really mislead administrators," says Tom Hutton, attorney for the National School Board Association in Alexandria, Va. "Court decisions really vary on these things - notably prayer at graduations."

The Ninth Circuit Court of Appeals, he points out, recently reaffirmed that a school must prevent a captive audience from being exposed to prayer.

"The Bush administration has given a selective slant and then said, 'Now if you don't follow this you won't get funding.'" says Perry Zirkel, professor of law and education at Lehigh University in Bethlehem, Pa. "Legally, politically, and morally, they've pushed school administrators out onto a dangerous limb."

[What is the legal trouble?
What is the political trouble?
Where is the moral issue here?
Aside from these issues, was it right to add these provisions to the education bill?
What would you have done?]

The Bush guidelines also support the right of public school teachers to participate in religious activities on school grounds - an area that the Clinton guidelines don't touch and that has met with mixed reaction in US courts.

[Is this good news or bad news?
How can it work to the good?
How can it work to the bad?
Is it right?

Is it legal?
What should happen?]

Both the Clinton and Bush guidelines support the right of students to include religious material in their homework and art assignments, although the Clinton guidelines are more cautious here. This is another area where court decisions vary.

But the big difference between the Clinton and Bush conclusions, some point out, is that the Clinton guidelines don't threaten a loss of funding.

And yet, argue some observers, the right to freedom of speech granted under the **First Amendment of the US Constitution is so widely ignored by school administrators when it comes to religion that the funding threat was the only way** to make them sit up and take notice.

[Is the 1st Amendment being ignored?
Is the 1st Amendment being abused?
If yes, is funding the proper place to correct the illegality?]

"This is probably a necessary step to ask schools to take the **First Amendment more seriously**," says Charles Haynes, senior scholar at the First Amendment Center at the Freedom Forum in Alexandria, Va.

[As far as our system of government is concerned, is the US Constitution absolute?
If yes, then why would anyone been needed to be coerced in order to treat the US constitution as valid?]

Although the Education Department under Clinton went to some expense to get the **guidelines** into the hands of all school administrators, Mr. Haynes says, "The sad fact is that most superintendents and administrators simply ignored them."

[Why would school officials ignore the guidelines?
Are they guidelines or regulations?
Can these items be ignored?]

He points to a survey his group conducted in 2001 after the Clinton guidelines had been circulated that showed 40 percent of school administrators and 70 percent of teachers said they were not familiar with them.

Ignorance of the protection the law grants to the place of religion in schools, adds Haynes, too often fosters "the reputation that public schools are hostile to religion, and that's not good for public schools or their future."

Claudia Wehmann, an English teacher at Mount Healthy High School in suburban Cincinnati, agrees. Asked to develop a new English elective at her public school a few years ago, she wondered about teaching "Bible and Literature" but thought, "I can't do that." But, Ms. Wehmann began researching the question of religion in class, and says she was surprised to discover that groups from the **American Civil Liberties Union to the National Council of**
08/29/2003

Teachers of English supported her right to teach the Bible in a nonreligious fashion.

[How do you teach the Bible in a nonreligious fashion?
Is there any purpose for doing so?
Why would the ACLUNCTE make such a stipulation?
Is this positive or negative?
Consequences?]

She even went back and read "Abington v. Schempp," the 1963 Supreme Court ruling best remembered today for outlawing the use of the Lord's Prayer in a school's morning exercises. But the court decision also states: "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."

[Is it a valid practice to teach religion as part of a secular program?
How would the Bible come across differently btw secular and non-secular? What's the diff?]

It's a point of view Wehmann fears most public school teachers have lost sight of. Even her students, Wehmann says, are still occasionally astounded by her free talk about the Bible and sometimes ask whether she can really talk about it in school.

Wehmann says she knows of no other teacher in the greater Cincinnati area offering a class in Bible literature, but that colleagues at Mount Healthy often thank her for doing so, saying they believe the class has filled in significant gaps in student knowledge.

But if teachers haven't been given much instruction by administrators about such rights, that may be in part because most principals and superintendents are simply too busy processing too much information to worry about anything that isn't an immediate crisis.

"The sheer volume of guidance coming from the federal government on all kinds of topics is overwhelming," says Mr. Hutton, who suggests that many administrators - despite the mailing - are still not aware of the Bush guidelines and possible funding cutoff.

[Is it the Federal Government's duty (*Department of Education*) to instruct Public Schools on how to conduct their business of educating students?
Does the amount of money provided by the DE make a difference?
Does \$5 buy all guideline compliance or only \$5 worth?]

In some communities, advocacy groups have already approached schools to discuss the guidelines, Hutton says. But he believes many others will become aware only if a school is actually threatened with a funding loss.

When it comes to the new guidelines, "Somebody somewhere will make a mistake," says Bruce Hunter, director of government relations for the American Association of School Administrators in Arlington, Va. With 3 million teachers and 90,000 public schools, he predicts, "It's bound to happen."

It may have happened already. In Las Vegas, the Clark County Schools already had in place a policy permitting students to include religious material at ceremonies like graduation. But this spring, the school board voted to change the policy to bring it more fully in line with the Bush administration's religious guidelines, despite the school system's location within the Ninth Circuit Court - a court that has ruled against such speech at school ceremonies.

Sheila Moulton, president of the Clark County school board, says she is comfortable with the board's decision. "We wanted the students to have some freedom to mention a deity - not in a proselytizing way - but to express gratitude," she says.

Ms. Moulton says she's confident **students will not say anything that could make any listener uncomfortable - or trigger a lawsuit.** "It wouldn't be appropriate to give a prayer. Our students wouldn't do that," she says.

[Do you have a problem with a school being wary of getting into a lawsuit?

Do you have a problem with making a listener uncomfortable?

I'm going to ask this again. I'm uncomfortable around foul language. Is that permissible under "freedom of expression"?

We haven't deal with an point of view yet, although we've gotten closer. Does a school, court house, airplane terminal, or any other public building, have any control over their environment?

If yes, then do the rights guaranteed in the constitution over ride this control?

For example. If you talk in the halls during class, using religious, foul, or just a pleasant hello, can send you to the principal's office.

Another example. If you talk in the court room during court, using religious, foul, or just a pleasant hello, can be found contempt of court and spend some jail time.]

But the American Civil Liberties Union of Nevada has already filed a suit against the school district. "We don't have to wait for anything to happen," says Allen Lichtenstein, general counsel of the ACLU of Nevada. "If they have an unconstitutional policy, that's sufficient for a suit."

[Now, aren't we at the crux of the problem? In 200 years, we've not resolved if this is constitutional or not.

Oh, wait, has it been 200 years?

When was this issue born?

How long will this issue continue to exist?

What could the Founding Fathers have done differently to avoid these troubles?]

Meanwhile in Agawam, Superintendent Czajowski worries that despite her best efforts she will face graduation on June 8 without any kind of policy in place governing the possibility of student-initiated prayer at the ceremony.

"It takes time and funding to research law, form committees, and pay attorneys," she says. "We're being asked to implement laws without extra resources and funding. And if

you do it too hastily, you could end up in court."

That prospect is only too real, says Professor Zirkel. Even before NCLB, he says, "You already had the materials for fire in place. Now you've added the fuel. I smell smoke."

How the high court sees it

It's one of the most delicate balancing acts in all of US constitutional law: **the conflict between the right of public school families to practice their own religion and their equally imperative right not to be imposed upon by the beliefs of others.**

[Do you see the conflict this way?
Do you see anything we have done to precipitate this problem?
Do you see a solution?]

The cases heard by the US Supreme Court on the topic tend to pit "accommodationists" (those who stress freedom of expression and hope to see public schools accommodate religion) against "separationists" (those concerned with maintaining strict division between church and state).

The court's 1963 ruling in *Abington v. Schempp* was an early victory for separationists, forbidding the reading of the Lord's Prayer and Bible verses as part of opening exercises in public schools.

Subsequent rulings on the use of religious material at school ceremonies have been consistent. In 1992, the high court ruled again in *Lee v. Weisman* against allowing a religious benediction at a Rhode Island graduation, and in 2000 against student-initiated prayer at a Texas football game in *Santa Fe Independent School District v. Doe*.

But, in 2001, accommodationists scored a victory in the *Good News Bible Club v. Milford Central School* when the Supreme Court ruled that a Bible club had the same right as any other extracurricular group to meet on school grounds.

In one unusual move, the Supreme Court revisited the same religion-in-school issue twice. In 1985, the court heard *Aguilar v. Felton*, a case debating the right of parochial schools in New York to receive Federal Title I services, and in a split decision concluded that separation of church and state was the imperative concern.

But, in 1997, the court heard *Agostini v. Felton* - the same case - and in a split decision took an accommodationist stand.

[The Supreme Court took both sides on the same case, must less issue, in 12 years.
What's to be done?
Is it possible the court made their ruling based upon the merits presented ONLY?
Thus, one set of lawyers won over another as in a debating society?]

"It's very rare for the court to revisit the same issue only 12 years later," says Perry

Zirkel, professor of education and law at Lehigh University in Bethlehem, Pa. What it demonstrates, he says, "is exactly how ambivalent we are on this issue."

2 common factors.

1. \$ money \$
2. The judiciary cannot make a decision on what is right / wrong on this issue because they do not rely upon absolutes such as the Constitution, but the mood of the moment. On one hand, they support lawsuits, and on the other hand, they grant there were no grounds for lawsuits.



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