

REAL WORLD PROBLEMS AND EXAMPLES

The following “Real World Problems and Examples” may be helpful in understanding and implementing the School District’s Religion policy. However, the correct response to a particular “real world” scenario may depend upon facts that are not present in the following examples. If any teacher, principal, or other administrator is unsure about how to respond to an incident, he or she should bring the incident to the attention of appropriate District personnel.

1. Athletic Teams and Prayer

On the day of the homecoming game, Coach Dale gave his team a last-minute pep talk in the locker room. He then led the team in prayer, as he traditionally did before each athletic event. If any player complained, the coach would say that the player could either stand silently or leave the room while his teammates prayed. Are the coach’s prayers constitutional?

Analysis:

No. It is unconstitutional for the coach to participate in a prayer with his students. Although the coach allows players to stand silently or leave the room, this solution is unacceptable. Objecting players would feel isolated and that they belonged less to the group than the other athletes. Also, as a school official, the coach cannot participate in the prayer without implying that the school endorses it.

However, if the students initiated the prayer on their own, the coach did not participate in the prayer with the students, the coach did not sanction or approve of the prayer and other students were not coerced to participate (e.g., other students pressured or intimidated those students to pray), then the prayer would be constitutional.

2. Religious Discussion by Students at Recess

Every day at recess, Melissa reads her Bible, recites prayers and discusses religion with her fellow students. Melissa is not disruptive and does not coerce any student into participating with her. A teacher, worrying that Melissa might have violated the District’s policy on Religion, tells Melissa to stop. Was the teacher’s decision constitutional?

Analysis:

No. So long as Melissa does not disrupt the learning process, does not coerce or pressure any other student to participate, nor violate any other student’s rights, the teacher was wrong to tell Melissa to stop.

However, if Melissa interrupted one of her classes to lead other students in prayer, then the teacher would be correct in telling Melissa to stop. In fact, if the teacher allowed Melissa to interrupt a class for prayer, and the teacher wouldn’t allow any non-religious interruption, then the teacher would create the impression of state endorsement of religion which would be unconstitutional.

3. Religious Discussion by Students at Recess – Variation

Now assume that Melissa wants to include her friend, Peter, in her religious discussions during recess. Peter does not want to participate because his parents have raised him in a different belief system than Melissa's. Melissa bothers Peter on a daily basis to join her discussions. When that doesn't work, she decides to quote scripture to Peter whenever she sees him at the start of the day. Peter complains to his teacher that Melissa is bothering him and that she won't stop. Can the teacher tell Melissa to stop quoting scripture to Peter or to stop trying to get Peter to discuss religion?

Analysis:

Yes. Peter does not wish to attend Melissa's religious meetings and Melissa has been harassing him in order to force attendance. Now Melissa's conduct has become unacceptable and the teacher can tell Melissa to stop.

4. Graduation Prayer

Members of the student council approach the principal of their high school and ask to include a prayer at the graduation. The students say that they are the elected representatives of the student body and if it were put to a vote, everyone would agree. Can the principal allow a prayer at graduation?

Analysis:

No. Even though students are asking to include a prayer in the graduation, there are two problems with the request. First, it uses the machinery of student government to include a prayer at the graduation, and student elected prayers at graduation are unconstitutional. Second, the school would approve the prayer at the school-run graduation ceremony. This would be an example of state endorsement of religion and would be unconstitutional.

5. Valedictorian Speaker gives Prayer

A district high school has a tradition of allowing the Valedictorian to give a speech to the graduating class as a part of the official graduation ceremonies. However, the school also edits the Valedictorian's speech to make sure that it is appropriate for the occasion. These edits go beyond making sure that it isn't disruptive, but also suggest changes to the content of the speech until the school deems the speech appropriate for a graduation ceremony. If Chris, the current Valedictorian, wishes to include a prayer in the speech, may the school allow it?

Analysis:

No. Because the school exercises editorial control over the contents of the speech, allowing a prayer would amount to state endorsement of religion.

6. Valedictorian Speaker gives Prayer (Alternative)

Unlike in the example above, the school limits its editorial control to ensure only that the speech would not be likely to cause a disruption or provoke a violent reaction. Beyond that, the speaker has full control over the content of

the speech and can discuss any topic that the speaker chooses. If Chris now wants to include a prayer, can Chris do so?

Analysis:

Yes. Now that Chris has final say over the content of his speech, the school cannot prohibit the speaker from giving a prayer. In fact, if the school were to do so, it would infringe on Chris's rights to free speech and free exercise of religion.

7. Teaching the Bible

Mr. Mather wants to include in his lesson plan some instruction on the Bible as a literary source. One of the reasons for it is that Mr. Mather's course also includes material on early American writers who frequently cite the Bible. Mr. Mather intends to limit his instruction on the Bible solely as the source material for some of those writers. Mr. Mather will not include in the discussion any comments as to the veracity of the Bible or the nature of his own religious beliefs. May Mr. Mather include this instruction in his lesson plan?

Analysis:

Yes, but the teacher needs to present the material in a secular, objective and non-doctrinal manner. Because this can be a difficult subject matter, the teacher may wish to obtain additional training on how to discuss Bible, or any other religious material, before proceeding.

8. Bible Club

Students have asked Ms. Springfield to supervise a Bible Club that the students have formed. Instead of just supervising the club, however, Ms. Springfield prepares topics for discussion and reads from scripture to the students. Finally, Ms. Springfield also discusses with the students how she reconciles her own religious beliefs with subjects that the students cover in their classes (for example, her views on creation compared to the theory of evolution). Is Ms. Springfield's conduct appropriate?

Analysis:

No. The Equal Access Act allows students to form non-curriculum related student groups that meet during non-instructional time. However, the act prohibits school officials from running or leading those clubs. Ms. Springfield is actively involved in managing what goes on at Bible Club meetings. As such, the Club violates the Equal Access Act. Ms. Springfield's conduct also violates the Constitution because she, acting as a teacher, provides religious instruction to her students. Unlike Mr. Mather in Question 7, above, Ms. Springfield does not present an objective view-point and her conduct signals an endorsement of a specific religious belief.

9. Teaching Creationism

In addition to teaching about the theory of evolution in his biology class, Mr. Carter also teaches his students about the Theory of Creationism, which

posits that the earth is 6,000 years old and follows the Biblical account of Genesis. Is this instruction constitutional?

Analysis:

No. The Theory of Creationism is a religious doctrine and not a scientific theory. Therefore, much like Ms. Springfield's lessons in Question 8, above, Mr. Carter's lessons have made an official endorsement of religion and, as such, violate the constitution.

10. Religious Text Distribution

The Church of Scientology approaches the principal of a District school with a request to distribute copies of Dianetics (the Church's principal religious text) to the school's students. The principal agrees and offers his help. He not only allows the Church of Scientology to set up a table in the main hallway of the school, but he also makes a morning announcement over the school intercom reminding students to pick up their copies of Dianetics before leaving that day. Fearing that the reminder won't be enough, the principal also has teachers dismiss students from class so they could go and get their own copies. Is the school's participation in the distribution of a religious text constitutional?

Analysis:

No. The school actively encourages students to pick up their own copies of a religious text (the same would apply if it were the Gideons wishing to distribute the Bible or if the Islamic Society of North America wished to distribute the Qu'ran). The school has interrupted classes and reminded students to get their copy of this religious text, which would give an impression of state approval of a religious belief. This goes beyond a merely passive participation in the distribution of material and as such is unconstitutional.

11. Religious Text Distribution – Variation

Instead of the active involvement described in item 10, the school has a history of allowing outside groups some limited access to the school in order to distribute materials. These groups can set up a table outside of the main entrance to the school. The items they wish to distribute are then left on the table for any interested student to pick up (no adult is present to encourage or entice students into picking up the materials). The school is not actively involved in either promoting or discouraging students from picking up these materials. Groups that have distributed materials through this process include the 4-H Club, the Boy and Girl Scouts of America, the local Little League Association and the Future Farmers of America (among others).

Now, the Church of Scientology requests the same access; it wishes to set up a table and leave copies of Dianetics of the table for students to take if they so choose. Can the school prohibit them from doing so?

Analysis:

No. If the school prohibited the Church of Scientology from setting up its own table, then the school would probably violate the constitution. The school has provided limited access to outside groups to distribute materials to students. There is no encouragement involved in the distribution. To deny a religious group similar access to distribute a religious text may be taken as disapproval of religion or that specific religion, which would be unconstitutional.

12. School Official Encouraging Bible Club

Middle school students have created their own Bible Club, which meets during lunch time. While a teacher is present during the club’s meetings, the teacher is there simply to monitor the students and, in fact, spends most of the time grading homework. The Bible Club students really enjoy going, and they invite all of their friends to join.

They have invited their classmate John numerous times and now John is feeling pressured to go. John complains to his dad, Bertrand, about the peer pressure. Bertrand then raises the issue with a school counselor. The school counselor, misunderstanding Bertrand’s complaint, tells Bertrand that John could go to Bible Club. Bertrand then points out that they are agnostics and that John doesn’t want to go. The school counselor then says that John should go to Bible Club. Is the school counselor’s insistence that John go to Bible Club constitutional?

Analysis:

No. First, the counselor cannot encourage students to attend a voluntary student club, let alone a religious one.

Second, the school counselor insisted that John attend Bible Club after learning that his family was not Christian. Not only is this insensitive, but the school took sides between two different religious beliefs and expressed its approval of one of them.

Instead, the counselor should have told the Bible Club students that they cannot continue to ask John to go (or any other student who has declined an invitation to attend).

13. Proselytizing Messages

Because of her outstanding academic accomplishments, Mary has been selected to deliver a speech at her high school graduation. Mary submits her proposed speech to her school’s principal to make sure that it wouldn’t be disruptive. The speech reads:

“I urge you to seek out the Lord, and let him guide you. Through His power, you can stand tall in the face of darkness, and survive the trends of “modern society”.

“As Psalm 146 says, do not put your trust in princes, in mortal men, who cannot even save themselves. When their spirit departs, they return to the

ground; on that very day their plans come to nothing. Blessed is he whose help is the God of Jacob, whose hope is in the Lord his God, the Maker of heaven and earth, the sea, and everything in them – the Lord, who remains faithful forever. He upholds the cause of the oppressed and gives food to the hungry. The Lord sets prisoners free, the Lord gives sight to the blind, the Lord lifts up those who are bowed down, the Lord loves the righteous. The Lord watches over the alien and sustains the fatherless and the widow, but he frustrates the ways of the wicked.”

“‘For the wages of sin is death; but the gift of God is eternal life through Jesus Christ our Lord.’ Have you accepted the gift, or will you pay the ultimate price?”

May the school principal prohibit Mary from making this speech?

Analysis:

Yes. Mary’s speech is a proselytizing speech. The speech is not only overly sectarian, but she is trying to convert others to her beliefs.

However, if Mary simply wished to make reference to her personal beliefs with a statement of “Good Luck and God Bless” the message would not be proselytizing and the school could not prevent her from saying it.

14. Baccalaureate Services

Principal Skinner plans to hold an Episcopalian baccalaureate service two days before the high school graduation. Principal Skinner writes a letter on school stationery inviting a local reverend to officiate. The school’s formal invitations to the graduation include an invitation to the baccalaureate service. Principal Skinner also arranges for the school orchestra to perform at the service and, unless the student has a valid excuse, if an orchestra member does not perform, then they would receive a failing grade in orchestra. Finally, in order to discipline three students who were caught drinking on a school trip, Principal Skinner prohibits them from attending the service. Is the baccalaureate service constitutional?

Analysis:

No, because the school has sponsored the service and a reasonable observer would conclude that the school has endorsed a religious service. A school official (Principal Skinner) was actively involved in planning the service. The school also included an invitation for the service with the school’s official invitation for graduation. Finally, the school has exercised control over student attendance at the service by either requiring or prohibiting student attendance. The baccalaureate service is unconstitutional.

15. Baccalaureate Services – Variation

Proud of their children’s graduation from high school, a group of parents decide to hold a baccalaureate service. First, they apply for and obtain permission to use the high school auditorium under the District’s open use

policies. Second, the parents arrange who the speakers will be and take all necessary steps to set up the facilities on the appointed day. Third, the parents place an ad in the Delaware Wave which reads:

“Proud parents of students graduating from high school have leased the high school auditorium for a privately sponsored baccalaureate service, to be held this coming Sunday. We invite the general public to attend.”

Can the district allow the baccalaureate ceremony to proceed?

Analysis:

Yes. Unlike in the example above, the District is not sponsoring the ceremony. Instead, parents have obtained the use of school facilities in compliance with other District policies. The District’s involvement is neutral to this particular use. And because of the newspaper ad, a reasonable observer would know that the baccalaureate service is privately sponsored, not sponsored by the District. There is no fear here that the baccalaureate service would violate the constitution.

16. Prayer by District Employees

The high school football team is playing their arch-rivals at home before an enthusiastic crowd of teachers, parents, and students. The team takes a timeout before an attempt at a field goal that could win the game. During the timeout, a student speaker introduces Mr. Hundert, a high school history teacher, over the stadium’s public address system. Mr. Hundert steps to the microphone and shouts into it “parents, teachers and students, let us pray to God to bring our Golden Knights victory.” Is Mr. Hundert’s conduct constitutional?

Analysis:

No. Even though Mr. Hundert is not acting as a history teacher at the football game, he nevertheless represents the District when he speaks over the public address system. Mr. Hundert is a school employee using the school’s public address system to address a crowd at a school-sponsored event on school property. Because a reasonable observer would perceive his message as government speech endorsing religion, his conduct is unconstitutional.

17. Prayer by District Employees - Variation

Mr. Hundert’s son is the Sussex Central team’s kicker. During the timeout, Mr. Hundert does not address the crowd but instead bows his head and quietly prays to God to bring the Golden Knights victory (and his son back to the sideline unhurt). Is Mr. Hundert’s conduct constitutional?

Analysis:

Yes. Mr. Hundert is entitled to pray. Since he is not using the school’s public address system to address people who perceive him to be representing the District, his prayer constitutes private speech protected by the First Amendment.

18. Homework Assignments

Mr. Smith, a 10th grade English and literature instructor, has assigned his students a book report project in which they are to read a book about a female hero or leader in history or in fiction. He leaves it up to the students to choose the book or piece of literature they will report upon, except that it cannot be something obscene or indecent. Lori, who is Jewish, has a life-long admiration of Esther, as depicted in the Old Testament of the Bible. When Lori makes her proposal to do her report on the Book of Esther known to Mr. Smith, he tells her that she cannot do a report on the Book of Esther because it is religious in nature. Mr. Smith tells Lori that she must choose a different piece of literature. Is Mr. Smith's instruction that Lori choose another book constitutional?

Analysis:

No. The Establishment Clause only forbids state sponsorship or endorsement of religion or religious activities. When a student independently chooses to address a homework assignment from a religious viewpoint, the Establishment Clause is not implicated because no state actor is involved in either promoting or endorsing the viewpoint. So long as Lori's choice is within the scope of the assignment, she is entitled to have her choice accepted by Mr. Smith. Furthermore, Mr. Smith must judge it against the standards applied to the work of other students.

19. Panel Discussions and Forums

The District dedicated a week at each high school to promote and celebrate diversity. At one of the schools, school officials decided to present a panel discussion on sexual orientation and religion. School officials invited only religious leaders to the panel who represented institutions that accommodated homosexuality. School officials also extended an invitation to students to allow them to participate in the panel discussion. The school vetted the panelists to ensure that they would discuss interpretations of the Bible and other religious documents which supported the argument that homosexuality is not condemned in the Bible. Elizabeth, the class president, asked to be a part of the panel so that she could express her views that homosexuality was against her religious beliefs. The school would not allow Elizabeth to speak because the school considered her views to be inconsistent with the message the school was trying to promote. Was the school's decision to prevent Elizabeth from participating constitutional?

Analysis:

No. First, the school's decision to exclude Elizabeth violated her free speech rights because the decision to prevent her from speaking was not view-point neutral. The school's decision was based on its unconstitutional desire to suppress Elizabeth's view-point.

Furthermore, the school endorsed religion by creating the panel to convey a religious view about homosexuality. The school also excessively entangled itself in religion by selecting religious leaders for the panel and vetting their religious beliefs to ensure that they complied with the message the school was trying to

promote. Because of this endorsement and excessive entanglement, the school violated the Establishment Clause.

20. Prayer as Celebration in Sports

Student athletes on the high school football team are allowed to perform on-the-field celebrations of their on-the-field accomplishments so long as those celebrations are not excessive or taunting. Jordan is a gifted running back and stars on the football team. He is also an altar boy and deeply devoted to the Roman Catholic faith. In order to dedicate his accomplishments to Jesus, Jordan kneels in the end zone after scoring a touchdown, bows his head, prays and then crosses himself. Can Jordan’s coach or the school instruct Jordan to stop engaging in this prayer after he scores?

Analysis:

No. Because the school allows on-the-field celebrations, Jordan is entitled to celebrate his accomplishments according to his conscience so long as he does not violate any rule applicable to the contest. The religious expression is a personal one that is neither encouraged nor endorsed by the school or school officials. As such, it does not violate the Establishment Clause.

21. Teacher Prayer Circle in the Cafeteria

Every day at the start of lunch, a group of teachers gather in the middle of the cafeteria and form a prayer circle. The teachers bow their heads and say grace for the assembled students before they let the students get up in lunch lines to get their meals. Is this prayer circle constitutional?

Analysis:

No. The overall context gives the impression that the teachers are acting as government employees. Students are present and would perceive the teachers as government employees while the teachers prayed. The teachers’ prayer circle excessively entangles the government in religion, suggests government endorsement of religion and is unconstitutional.

22. Teacher Prayer Circle in the Teacher’s Lounge

Every day when they gather for lunch in the teachers’ lounge, a group of teachers form a circle, bow their heads and say grace before sitting down to enjoy their lunch. No students are present when the teachers pray, and no teacher or other district employee present in the teachers’ lounge at that point is required to acknowledge or participate in the prayer circle. Can the school prohibit the teachers from praying under these circumstances?

Analysis:

No. Students are not present, so the teachers are not likely to create an impression of either governmental endorsement or excessive entanglement of religion. Furthermore, no teacher or district employee is required to participate in the prayer circle. The overall context makes clear that the teachers are not participating in the prayer circle in their official capacities.

23. Silent Teacher Prayer in the Cafeteria

Mrs. Anderson sits down with her lunch in the cafeteria while students are present eating their own lunches. Before eating, Mrs. Anderson bows her head and offers a silent prayer for grace. Can the school tell Mrs. Anderson to stop saying grace under these circumstances?

Analysis:

No. Mrs. Anderson’s expression is purely personal in nature. She is not suggesting that students participate in her prayer. The overall context makes clear that she is not acting in her official capacity.

24. Teacher Prayer in the Cafeteria – Variation

Mr. Jones, after monitoring children as they get their lunches, took his lunch and sat at a table with students. Mr. Jones then asked Timmy, a student, if he would like to join him while Mr. Jones said grace. Timmy said “sure,” bowed his head and listened while Mr. Jones said a quick prayer. Was Mr. Jones’ act constitutional?

Analysis:

No. Given the overall context, Mr. Jones would appear as a teacher to Timmy. Mr. Jones’ request that Timmy join him in prayer and his verbalization of that prayer would be a government endorsement of religion.

25. Religious Music at School Sponsored Concerts

In December, the high school sponsors a concert, which it refers to as the “Holiday Concert.” At the concert, the students are invited to sing traditional, religious holiday songs, such as “Silent Night, Holy Night,” “Chanukah, Oh Chanukah,” and “African Noel,” as well as secular songs, such as “Let it Snow.” Is the concert constitutional?

Analysis:

Yes. The celebration of winter holidays may have secular and religious aspects. The performance of religious songs does not render the concert predominately religious in nature, so long as the inclusion of a variety of secular songs creates a balanced repertoire that, taken as a whole, clearly demonstrates that no one religion is favored, and that does not endorse or denigrate any particular religious sect or belief.

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