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# California Three Rs

## Rights, Responsibility, and Respect

*A Project of the California County Superintendents Educational  
Services Association and The First Amendment Center*

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### **Teacher's Religious Rights in Public Schools**

Adapted from David L. Hudson - First Amendment Center

The U.S. Supreme Court stated in its famous 1969 opinion in *Tinker v. Des Moines* that "it can hardly be argued that neither students nor teachers shed their constitutional rights to freedom of speech and expression at the schoolhouse gate." The Court articulated that public school teachers, as public employees, do not forfeit all of their First Amendment freedoms when they come to school.

#### **But what religious-liberty rights do teachers enjoy?**

School districts limit teachers' religious expression in order to avoid violating the Establishment Clause, which requires separation between church and state. When teachers speak to their classes, they represent the school and the school board. Teachers, as agents of the government, may not inculcate students in religious matters. Otherwise, they run afoul of the Establishment Clause.

However, this does not mean that teachers can never speak about religion, for religion is an important part of history, culture and current events. A social studies class would likely need to include a discussion of religion. For instance, no complete study of the Crusades could occur without some discussion of Christianity and Islam. The 10th U.S. Circuit Court of Appeals pointed out in *Roberts v. Madigan* (1990) that there is a "difference between teaching about religion, which is acceptable, and teaching religion, which is not."

The confusion about permissible and impermissible religious expression by teachers has led to disciplinary action and even lawsuits. Many times these lawsuits pit a teacher's free-exercise and free-speech claims against a school's Establishment Clause defense. The cases outlined here feature the clash between teachers and school officials over teachers' religious liberty. Federal courts have often sided with school officials, recognizing that public schools, as arms of the government, must take care not to appear to indoctrinate students in religious matters.

The courts have been clear that public school teachers cannot teach religion to their students or read the Bible to the class as a way of promoting their faith. (See *Breen v. Runkel*, 1985, and *Fink v. Board of Education*, 1982.) "It is clear that teachers cannot distribute religious material to students, lead students in prayer, join students in Bible readings and encourage students to attend the teachers' church," says Jeremy Leaming, spokesman for Americans United for Separation of Church and State. "In the classroom, the job of a teacher is to teach secular subjects."

In its 1999 decision *Marchi v. Board of Cooperative Educational Services*, the 2nd Circuit ruled that school officials could order a special education teacher to refrain from using religious references in his instructional programs. Dan Marchi, who converted to Christianity, had modified his teaching program to discuss subjects like God, forgiveness

and reconciliation. “For his part, the employee must accept that he does not retain the full extent of free exercise rights that he would enjoy as private citizen,” the 2nd Circuit wrote. “A school risks violation of the Establishment Clause if any of its teachers’ activities gives the impression that the school endorses religion.”

In *Downing v. West Haven Board of Education* (2001), a federal district court determined that high school administrators did not violate the First Amendment rights of teacher Ella Downing when they ordered her to remove or cover up a T-shirt reading “JESUS 2000 — J2K.” “In short, whatever First Amendment rights were implicated by Downing wearing her T-shirt must give way to the defendants’ legitimate concerns about a potential Establishment Clause violation in a public school,” the court wrote.

In *Helland v. South Bend Community School Corp.* (1996), the 7th Circuit ruled that school officials did not violate the First Amendment rights of a substitute teacher who proselytized in elementary school classrooms. The teacher claimed that school officials removed him from the substitute-teaching list because of his religious beliefs. School officials countered that they had a right to remove the teacher to avoid Establishment Clause problems. The 7th Circuit sided with the school officials: “A school can direct a teacher to refrain from expressions of religious viewpoints in the classroom and like settings.”

A more controversial case is *Roberts v. Madigan*. In that 1990 decision, the 10th Circuit ruled that a school district could constitutionally require teacher Kenneth Roberts to remove two religious books from his fifth-grade classroom and to quit his silent reading of his Bible during a silent reading period. Roberts, along with some parents and students, sued school officials, claiming that they had violated the Establishment Clause by showing hostility toward religion. They also alleged that the school officials violated the teacher’s rights of free speech and academic freedom. A three-judge panel of the 10th Circuit ruled 2-1 in favor of the school district. The majority determined that the district did not violate the Establishment Clause and did not show hostility toward religion. “The removal of materials from the classroom is acceptable when it is determined that the materials are being used in a manner that violates Establishment Clause guarantees,” the court wrote. The majority reasoned that the school district acted properly in preventing a teacher from promoting Christianity. The majority also rejected Roberts’ free-speech claim, finding that under the Tinker standard the teacher was infringing on the rights of his students by promoting religion.

The following Q & A provides additional information and more is available at the First Amendment Center website. **May teachers and administrators pray or otherwise express their faith while at school?** [http://www.firstamendmentcenter.org/rel\\_liberty/publicschools/faqs.aspx?id=19445&#q19445](http://www.firstamendmentcenter.org/rel_liberty/publicschools/faqs.aspx?id=19445&#q19445). Teachers and administrators — like students — bring their faith with them to the schoolhouse. Because of the First Amendment, however, school officials who wish to pray or engage in other religious activities— unless they are silent — should do so outside the presence of students. If a group of teachers wishes to meet for prayer or scriptural study in the faculty lounge during free time in the school day, most legal experts see no constitutional reason why they should not be permitted to do so, as long as the activity is outside the presence of students and does not interfere with their duties or the rights of other teachers. When not on duty, of course, educators are free like all other citizens to practice their faith. But school officials must refrain from using their position in the public school to promote their outside religious activities.

**May a teacher wear religious jewelry or garb to school provided the teacher does not proselytize to the students?** [http://www.firstamendmentcenter.org/rel\\_liberty/publicschools/faqs.aspx?id=6246&#q6246](http://www.firstamendmentcenter.org/rel_liberty/publicschools/faqs.aspx?id=6246&#q6246). Most experts agree that teachers are permitted to wear unobtrusive jewelry, such as a cross or Star of David, but they should not wear clothing with a proselytizing message (e.g. a “Jesus Saves” T-shirt). As far as religious garb is concerned, many courts would allow schools to prohibit teachers’ religious garb in order to maintain religious neutrality. The courts may view such garb as creating a potential Establishment Clause problem, particularly at the elementary school level.

For more information about teacher religious rights, go to [www.religionpublicschools.org](http://www.religionpublicschools.org) a special site about religion and public schools developed by the First Amendment Center under the direction of Dr. Charles Haynes, First Amendment Advisor for the California 3Rs Project.

Religion in American History Institute, Orange County Department of Education, San Joaquin County Office of Education, San Bernardino County Superintendent of Schools, and Placentia Yorba Linda USD

Invite Religion in American History institute teachers and U.S. & world history teachers from the region to:



## World Religions in Our Midst: America's Expanding Religious Pluralism Since the 1965 Immigration Act

October 15, October 29, and  
November 12, 2009  
4:00 - 8:00 p.m.

Placentia Yorba Linda Unified School District  
Board Room  
1301 E. Orangethorpe Avenue  
Placentia, CA 92870

**RELIGION IS ESSENTIAL TO THE TAPESTRY OF CULTURE, POLITICS, ECONOMICS, AND HISTORY THROUGHOUT THE WORLD.**

This mini-institute series is designed to serve both U.S. and World History classroom and curriculum issues. At each session participants will receive a **lesson/resource packet** with suggested ideas for teaching the standards in **grades 6, 7, and 10** related to the religion under study, lessons/resources related to the religion in American history, and general **California 3Rs Project guidelines for dealing with religious diversity and teaching about religion in a constitutional manner**. Each participant will also receive the **book** *An Educator's Classroom Guide to America's Religious Beliefs and Practices* by Hatfield, Santucci, and Hubbard. Please join religious history scholars in deepening your content expertise and understanding of the profound influence of religion in history.

Session 1: October 15, 2009

*Many Faces of Christianity in Modern America and the World presented by Dr. Nancy Martin, Chapman University*

Session 2: October 29, 2009

*Beliefs and Traditions of Islam in America and the World presented by Dr. Hamid Marvani, Claremont Graduate University*

Session 3: November 12, 2009

*Hinduism in American Society and the World: Roots, Influence, and Perspectives on History presented by Dr. Nancy Martin, Chapman University*

**Registration Deadline is October 9, 2009**

To pre-register: email Margaret Hill, Religion in American History Institute Director, at [mhill@csusb.edu](mailto:mhill@csusb.edu).  
Please provide the following information: Name, school, school district, grade level, and email address.

**Please check the box of the session(s) that you will be attending:**

- Session 1: October 15, 2009  
*Many Faces of Christianity in Modern America and the World*
- Session 2: October 29, 2009  
*Beliefs and Traditions of Islam in America and the World*
- Session 3: November 12, 2009  
*Hinduism in American Society and the World: Roots, Influence, and Perspectives on History*

There is no fee for the workshop series but pre-registration is required. A light supper will be provided.



WILLIAM M. HABERMehl  
County Superintendent of Schools

### **Common Ground Resources:**

*Finding Common Ground: A Guide to Religious Liberty in Public Schools* by Charles C. Haynes and Oliver Thomas. First Amendment Center, 2007.

This book has guidelines on how to handle a wide range of issues related to religious liberty and public schools.

**First Amendment Center: Religious Liberty** [http://www.firstamendmentcenter.org/rel\\_liberty/index.aspx](http://www.firstamendmentcenter.org/rel_liberty/index.aspx)

This is an up-to-the-minute resource with current issues and court cases. A PDF version of *Finding Common Ground* is available here.

#### **For California Three Rs program information, contact...**

Dr. Margaret Hill, California 3Rs Project Lead, Department of Educational Leadership & Curriculum, California State University San Bernardino, 5500 University Pkwy., San Bernardino, CA 92407  
(909) 537-5459, [mhill@csusb.edu](mailto:mhill@csusb.edu)

#### **For First Amendment religious liberty information, contact...**

Dr. Charles C. Haynes, Senior Scholar, Freedom Forum First Amendment Center, 555 Pennsylvania Avenue, NW, Washington D.C. 20001 Tel: 202/292-6293 [chaynes@freedomforum.org](mailto:chaynes@freedomforum.org)

#### **For information on teaching about world religions, contact...**

Dr. Bruce Grelle, Director, Religion and Public Education Resource Center, Department of Religious Studies, California State University, Chico, 400 West First Street, Chico, CA 95929-0740,  
(530) 898-4739, [bgrelle@csuchico.edu](mailto:bgrelle@csuchico.edu)

Sign up to receive the **Three Rs Bulletin** and program announcements electronically at [mhill@csusb.edu](mailto:mhill@csusb.edu) or see <http://ca3rsproject.org/> for the CA3Rs Project Bulletin archive.

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