



# The California Three Rs Project

*Rights, Responsibility, and Respect*

January 2014

## BULLETIN

Volume 11, Number 2

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### Combat bullying, but protect religious and political speech

Charles C. Haynes  
Director, Religious Freedom Education Project

After years of benign neglect — neglect that was anything but benign for the victims — bullying has finally moved to the top of the school-climate agenda.

Today, 49 states and the District of Columbia have anti-bullying laws in place. (Montana is the lone hold-out.) The U.S. Department of Education has issued guidance on how schools can fight bullying and harassment. And many local school districts are moving vigorously to address a serious and widespread problem.

But as school officials act to stop bullying, they need to know when and where to draw the line on student expression. The challenge is to stop bullies without overreacting by censoring students' protected religious and political speech.

It goes without saying that creating and sustaining a safe learning environment is "job one" for school administrators. But how can public schools balance the

need for school safety with a commitment to freedom of expression?

To help answer this question, a coalition of 17 education and religious groups released guidelines on May 22 designed to help public schools combat bullying and harassment while simultaneously upholding the rights of students to free speech and free exercise of religion under the First Amendment.

"Harassment, Bullying and Freedom of Expression: Guidelines for Free and Safe Public Schools" has been endorsed by diverse religious voices such as the Christian Legal Society, the Muslim Public Affairs Council, and the Hindu American Foundation as well as leading educational associations, including the National School Boards Association, the American Association of School Administrators, and the National Association of State Boards of Education.

My own organization, the

First Amendment Center's Religious Freedom Education Project, worked closely with the American Jewish Committee over the past year to produce the document.

As the guidelines explain, much harassment and bullying is physical, "targeting an individual student or classes of students for unwanted touching, bodily assault or threats of violence." Prohibiting such actions in schools raises no First Amendment concerns.

But bullying can also be  
(See "Combat bullying," Page 2)

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The California Three Rs Project co-sponsored by Constitutional Rights Foundation, California County Superintendents Educational Services Association, and the Religious Freedom Education Project at Newseum



**RELIGIOUS FREEDOM EDUCATION PROJECT**  
AT THE NEWSEUM

*Schools should help students master the skills of civil discourse, including the skill of listening to speech with which one profoundly disagrees.*

## CA3Rs *Bulletin* editorial statement

*The California Three Rs Bulletin* is a newsletter of the work and mission of the CA3Rs. We intend to make it informative for all stakeholders in California's public schools, including district and county superintendents, administrators, teachers, and parents.

To reach our important goals, we often invite specialists and concerned persons to contribute articles and relevant news items to the *Bulletin*.

We intend for the opinions and information expressed on the pages of the *Bulletin* to execute the CA3Rs mission of finding common ground on vital issues of religious liberty and free speech in schools. We intend to help schools build cultures of mutual respect and shared responsibility to protect the rights of all students.

Some of the views expressed on these pages are personal to the authors and may not re-

flect the opinion of the CA3Rs directors and advisory or planning committees. Some legal information may be provided for educational purposes only, but none of the views expressed in the *Bulletin* are meant to serve as legal advice to any reader. For specific legal questions concerning your school or community, please seek legal counsel or consult with your district's legal office.

## Combat bullying (cont'd)

verbal, creating a hostile school climate. Following current law, the guidelines draw a distinction between student speech that expresses an idea, including religious and political views, and student speech that is intended to cause (or school officials demonstrate is likely to cause) emotional or psychological harm to the listener. The former is, in most circumstances, protected speech, but the latter may and should be stopped.

As the guide puts it, "Words that convey ideas are one thing; words that are used as assault weapons quite another."

Although student speech about religious and political issues receives a high level of protection under the First Amendment, such speech can also be controversial, unpopular, and offensive to some listeners.

To cite an example mentioned in the guidelines: One student may wear a "gay? fine by me" T-shirt to express support for gay rights, and another student may wear a "be happy, not gay" T-shirt to express an opposing viewpoint.

Students on each side may be tempted to label the views of the other side "harassment or bullying" and demand that the school censor the speech.

But as the guide explains, student speech conveying religious or political ideas is protected by the First Amendment and therefore "may not be the basis for disciplinary action absent a showing of substantial disruption (or likely disruption) or a violation of another student's legal rights."

Rather than shutting down student speech about poli-

tics and religion, schools should help students master the skills of civil discourse, including the skill of listening to speech with which one profoundly disagrees.

Censorship doesn't make schools safer. On the contrary, suppressing speech only deepens divisions and fuels intolerance.

To prepare students for citizenship in a pluralistic democracy that values the First Amendment, schools must be places that are both safe and free.

A safe school is free of bullying and harassment — and a free school is safe for student speech, including speech about issues that divide us.

The above article first appeared as a commentary for the First Amendment Center in 2012. It is reprinted here with generous permission from the author.

## Anti-bullying research and resources for the classroom

Damon Huss  
Director, California Three Rs Project

In recent years, school administrators, teachers, parents, and students have become increasingly aware of the causes and effects of bullying in the school environment.

Unfortunately, recent research has shown that certain anti-bullying programs have yielded undesirable consequences. Dr. Seokjin Jeong at the University of Texas in Arlington conducted a study of intervention programs from 195 different K-12 schools and found that students at those schools are more likely to be victims of bullying than students at schools without the programs.

“One possible reason for this,” states Dr. Jeong, “is that the students who are victimizing their peers have learned the language from these anti-bullying campaigns and programs.” Potential bullies may learn from well-intentioned prevention presentations or videos how to conceal bullying behavior or how to answer questions of concerned adults.

The study, published in 2013

in the *Journal of Criminology*, suggests that anti-bullying prevention programs and heightened school security are not enough. Anti-bullying interventions should be more sophisticated. Specifically, Dr. Jeong recommends that future research focuses on the fact that bullying is a relationship problem.

Many educators are promoting alternative approaches that often seem to dovetail with the Three Rs’ philosophy of finding common ground through dialogue. In the article “Student-Centered Ways to Teach Anti-Bullying: A Conversation Starter,” on the blog of The Right Question Institute, Esther Lee describes benefits of using Question Formulation Technique (QFT) rather than teacher-directed or prescribed questions that “too often leave students trying to guess what the teacher wants to hear as an answer to the questions.”

Lee describes one model of using QFT, in which students

are presented with “a real-life photo, a drawn image, or a photo specifically depicting cyber-bullying.” From this, students would generate their own questions about the material. This alone would make “a significant cognitive and affective difference” in students’ thinking about bullying, and would address the particular problems faced by young people growing up in the digital media age.

### Sources

Lee, Esther. “Student-Centered Ways to Teach Anti-Bullying: A Conversation Starter.” The Right Question Institute. The right Question Institute, 10 Dec. 2013. [Web](#). 15 Jan. 2014.

“Should our democracy allow schools to punish students for off-campus cyberbullying?” Cyberbullying. *Deliberating in a Democracy in the Americas*, n.d. [Web](#). 15 Jan. 2014.

“Youth More Likely to Be Bullied at Schools With Anti-Bullying Programs,” UT Arlington Researcher Finds.” *News Center*. University of Texas at Arlington, 12 Sep. 2013. [Web](#). 15 Jan. 2014.

## CA3Rs New Publications

by

Dr. Margaret Hill

## Chinese or Lunar New Year 2014

(information and resource guide for schools)

And

## What Is Yoga?

(classroom lessons about yoga and its religious origins for social studies, art, and English-language arts)

*Find them at*

[ca3rsproject.org](http://ca3rsproject.org)

## California’s Diversity at the upcoming CCSS conference

On Friday, March 7 from 9:45 to 10:45 a.m., Three Rs Project Director Damon Huss will facilitate a session at the 53rd Annual California Council for the Social Studies (CCSS) conference in Los Angeles called “California’s Diversity: Past and Present.” The session will introduce participants to the

five-lesson sequence developed by Constitutional Rights Foundation for the CA3Rs to provide teachers and local educational authorities with resources to comply with the Fair Act, a new anti-discrimination educational law in California.

Governor Brown signed SB 48,

aka the Fair Act, in 2011. The law mandates that school districts approve curriculum that includes the contributions of LGBT persons, as well as persons with disabilities and others in California’s history, politics, and economy.

The session will involve the use of interactive discussion

and materials aligned to the Common Core State Standards.

The CCSS conference will be held from March 7–9 at the Sheraton Gateway Hotel. For more information, please visit the CCSS web site at [www.ccss.org](http://www.ccss.org).

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For information on teaching world religions:

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**The California Three Rs Project (CA3Rs)** is a program for finding common ground on issues related to religious liberty and the First Amendment in public schools. The CA3Rs' approach is based on the principles of American democracy and citizenship, reflected in the First Amendment of the Bill of Rights and applied in a public school setting.

For over a decade, the CA3Rs has provided online resources, professional development, and leadership training for teachers and education professionals in order to disseminate essential information about religious liberty and the history of religion in America.

**Common Ground Resources**

Haynes, Charles C., and Oliver Thomas. *Finding Common Ground: A Guide to Religious Liberty in the Public Schools*. Nashville: First Amendment Center, 2007. Print. <<http://www.firstamendmentcenter.org/madison/wp-content/uploads/2011/03/FCGcomplete.pdf>>

Religious Freedom Education Project at the Newseum.  
<<http://religiousfreedomeducation.org>>

## ***News for Schools***

### **Lawsuit looms over first grader's right to distribute religious message**

WEST COVINA — In early January, Advocates for Faith and Freedom ("Advocates"), a non-profit religious-liberty law firm, alleged that a West Covina teacher infringed on a student's right to distribute a story about Jesus at school.

The Advocates are representing first grader Isaiah Martinez in the West Covina Unified School District. The incident in question occurred in December 2013 when Mar-

tinez attempted to distribute candy canes to his classmates with a printed message about Jesus attached to each one.

According to the complaint letter sent to the school and district by Robert Tyler, general counsel for the Advocates, Martinez's teacher allegedly removed the messages and said, "Jesus is not allowed in school."

Tyler is threatening to sue the school district

and demands that the school apologize to Martinez and institute a policy specifically against bullying of people for religious reasons.

West Covina's District Superintendent Debra Kaplan responded that the incident is still under investigation, but that there is no reason yet to believe that the teacher did not display the "appropriate degree of religious neutrality."

In 2012, the U.S. Supreme Court refused to review a decision of the 5<sup>th</sup> U.S. Circuit Court of Appeals in New Orleans on a similar issue of religious messages attached to candy canes. In that case, the lower court ruled that school principals may have violated students' rights, but that they also had immunity from liability.

(Sources: [First Amendment Center](http://www.firstamendmentcenter.org), [San Gabriel Valley Tribune](http://www.sangabrielvalleytribune.com))