



At this time of year, numerous questions inevitably arise regarding the role religion may play in our public schools. Liberty Institute is committed to ensuring that the First Amendment's guarantees of religious liberty to students, teachers, and parents are followed. To assist you in understanding what your First Amendment rights are at this time of year in the public school system, Liberty Institute prepared this document that sets forth general principles. This document is not to be used for legal advice, however. Because the law is constantly changing and each factual situation is unique, Liberty Institute and its attorneys do not warrant, either expressly or impliedly, that the laws, cases, statutes, and rules discussed or cited herein have not been subject to change, amendment, reversal, or revision. **If you have a legal question or need legal advice, please contact an attorney.** Liberty Institute's attorneys may be contacted by going to www.LibertyInstitute.org, selecting the "Contact" menu option at the top of the page, and then selecting "Request Legal Help."

General Principles

Students, teachers, and parents do have First Amendment rights in the public schools.¹ These rights are, however, "applied in light of the special characteristics of the school environment."²

There is also an important distinction between *government* speech (the speech of the school district and its employees) and *private* speech (the speech of students and parents).³ Although there are limits that apply to government speech, private religious speech is fully protected.⁴ One example of such a limitation on government speech is that the school district and its employees are prohibited from either being hostile to or endorsing religious belief and expression. The proper role of the district is to remain neutral and accommodating to private religious beliefs.⁵ Unlike the government, students may promote specific religious beliefs or practices.⁶

The government is allowed, however, to acknowledge the role religion plays in American history and culture as long as the purpose is to further a secular program of education and not to advance or inhibit religion.⁷

1 See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.").

2 *Id.*

3 *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000) (internal quotations omitted) ("[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.").

4 *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) ("Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.").

5 *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) ("Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any.").

6 *Pinette*, 515 U.S. at 760.

7 See *County of Allegheny v. ACLU*, 492 U.S. 573, 601 (1989) (The "government may celebrate Christmas in some

Can a school refer to “Christmas” and have a “Christmas party,” or must the school have only “holidays” and “holiday parties?”

Christmas is perfectly fine, so long as the school is not celebrating Christmas for the purpose of furthering Christianity. A federal court held that a public school is allowed to celebrate Christmas (and other holidays with both religious and secular aspects) because doing so serves the educational goal of advancing students’ knowledge and appreciation of the role that America’s religious heritage has played in the social, cultural, and historical development of civilization.⁸ While public schools may celebrate Christmas, they do not have to celebrate Christmas; “holiday parties” are legally acceptable as well.⁹

Can a public school display Christmas decorations?

Yes, a school district is allowed to include the temporary use of decorations and symbols to demonstrate the cultural and religious heritage of the holiday.¹⁰ In this way, the decorations and symbols are a teaching aid and resource, and not part of a religious exercise.

In a different context, the Supreme Court allowed the display of a Nativity scene, which depicts the historical origins of the Christmas holiday, when the religious display was next to many secular symbols, including Santa Claus, a reindeer, lights, candy-striped poles, carolers, and a teddy bear.¹¹

Can a school include religious Christmas music, art, or drama in a school play or performance?

Yes, so long as the religious music, art, or drama is presented in an objective manner as a traditional part of the cultural and religious heritage of Christmas. In fact, a federal court held that to allow students only to study, and not to participate in religious art, literature, and music when such works have developed an independent secular and artistic significance would give students a limited view of our culture.¹²

Federal courts have also affirmed that choirs can sing both religious and secular songs, as long as the religious songs are not part of a religious exercise.¹³ One court stated that if the music curriculum is designed to cover the full array of vocal music, the inclusion of religious songs is to be expected.¹⁴ Another court, recognizing that most choral music is religious, stated that preventing public schools from including religious songs would demonstrate an unlawful animosity towards religion.¹⁵

Can students give out Christmas gifts with religious messages at school parties?

If students are allowed to distribute gifts at a school party, then the students may not be prohibited from

manner and form, but not in a way that endorses Christian doctrine.”).

8 *Florey v. Sioux Falls School Dist.*, 619 F.2d 1311, 1314 (8th Cir. 1980).

9 *Stratechuk v. Bd. of Educ.*, 587 F.3d 597 (3rd Cir. 2009).

10 *Florey*, 619 F.2d at 1314.

11 *Lynch v. Donnelly*, 465 U.S. 668, 671–72 (1984).

12 *Florey*, 619 F.2d at 1316.

13 *Bauchman v. West High Sch.*, 132 F.3d 542 (10th Cir. 1997); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995).

14 *Bauchman*, 132 F.3d. at 554.

15 *Duncanville Indep. Sch. Dist.*, 70 F.3d at 407–08.

giving out their gifts just because the gift includes a religious message.¹⁶ If a school official permits students to distribute gifts but prohibits some gifts because those gifts have a religious message, that school official is demonstrating hostility to religion, which the Constitution forbids.

Can students express their faith in classroom and homework assignments?

Yes. A student's private work is protected by the First Amendment, and the school may not prevent students from expressing their faith in their assignments. According to the U.S. Department of Education:

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school. Thus, if a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards (such as literary quality) and neither penalized nor rewarded on account of its religious content.¹⁷

For example, if a teacher instructs a class to write a story about the winter season, the students are as much allowed to write about Christmas or Hanukkah as they are allowed to write about sledding or ice skating.

Can teachers and other school employees discuss religion?

During instructional time, teachers and other school employees are acting in their official capacities and must remain neutral towards religion. As stated above, school district employees can discuss the historical and cultural role of religion as part of a secular program of education.

Teachers and other school employees can only promote religion when not acting in their official capacities. According to the U.S. Department of Education, teachers may "take part in religious activities where the overall context makes clear that they are not participating in their official capacities. Before school or during lunch, for example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversation or nonreligious activities."¹⁸

Similarly, outside of the school day, school officials are allowed to participate in private religious events, such as Christmas parties, in their personal capacities.¹⁹ This is even true when the private religious event takes place on school grounds before or after school hours.²⁰ For example, if a church group rents out a classroom after school hours for a Christmas party, the teacher may attend, just like any other private citizen.

¹⁶ *Morgan v. Swanson*, 659 F.3d 359, 410, 412 (5th Cir. 2011) (en banc).

¹⁷ U.S. DEPT. OF EDUC., *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools* (Feb. 7, 2003), available at http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Wigg v. Sioux Falls Sch. Dist.* 49–5, 382 F.3d 807, 815 (8th Cir. 2004) (holding that a teacher may participate in a religious, after-school program on school grounds in her capacity as a private citizen).