

LEGAL MATTERS

Christmas in Public Schools: What Is and Is Not Constitutional

BY SUZANNE E. ECKES AND DAVID M. SCHIMMEL



Suzanne E. Eckes,
JD, PhD



David M. Schimmel, JD



Where do you stand on this hot-button issue? Share your opinion on Twitter @NASSP or Facebook at www.facebook.com/principals.

Are public school teachers being sued for telling a student “Merry Christmas” or “Happy Hanukkah?” We don’t think so. In fact, we were not able to locate any court decision on this issue. Why we are debating this issue is puzzling, since wishing students “Merry Christmas” is already legal, and lawsuits about this issue do not exist.

While the legality of Christmas greetings may not be up for current debate, the promotion of the religious songs and symbols of Christmas in public schools is a divisive issue.

Some parents—especially of minority religions—see Christmas celebrations as an unconstitutional violation of the separation of church and state. To many others, anyone who wants to end traditional Christmas celebrations is viewed as antireligious and anti-American. To minimize these misunderstandings, we’ll try to help clarify how public schools may celebrate Christmas or other holidays without violating the Constitution.

Religious Tests of the Establishment Clause

The First Amendment is made applicable to the states via the Fourteenth Amendment. Under the First Amendment, Congress “shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” When determining whether a school policy violates the Establishment Clause, the Supreme Court has developed three tests. Under the Lemon test, a school’s practice is unconstitutional if it offends one of these three conditions: (1) its purpose is religious; (2) its primary effect either advances or impedes religion; or (3) it creates an excessive

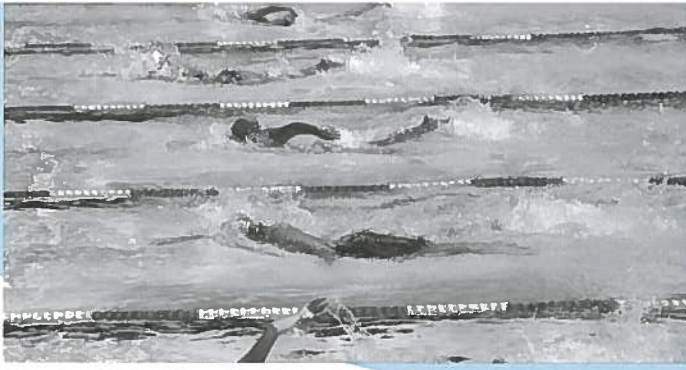
entanglement between government and religion (*Lemon v. Kurtzman*, 1971).

An alternative to the Lemon test is the “endorsement test,” where a school’s policy will be struck down if the court finds that a reasonable person would perceive the policy as endorsing or disapproving of religion. Justice Sandra Day O’Connor explained that government endorsement of religion is unconstitutional because it “sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community,” (*Wallace v. Jaffree*, 1985).

Finally, under Justice Anthony Kennedy’s “coercion test,” we find that the Establishment Clause is violated if, for example, school officials coerce students to focus on one specific religious holiday. As Justice Kennedy wrote, “If citizens are subjected to state-sponsored religious exercises, the State disavows its own duty to guard and respect” the diversity of religious belief (*Lee v. Weisman*, 1985).

The Supreme Court has made clear distinctions between children in schools and adults outside the school setting with regard to Establishment Clause concerns. Specifically, public school students should not feel compelled by the state to tolerate religious messages in a place where attendance is not voluntary (*Edwards v. Aguillard*, 1987). In addition, the Court has observed that K–12 students have impressionable minds and are more likely to be indoctrinated by the presentation of religious material than adults.


It is important to note, however, that the First



and increase participation and completion rates with even more dramatic results.

Advice to Principals

Here's his advice to principals who want to initiate a similar program at their schools: "Plan ahead, plan ahead, plan ahead." That's important for organizing partnerships with local fitness centers and for promoting the program, he explains.

The program is a special cause for Mangum. "I would have been a candidate for In It to Thin It when I was in high school, so I really understand what these kids are going through. This is so important, because you want to reach these kids in secondary school—or before—rather than have to rescue them at 21," he says. 

Michael Levin-Epstein is senior editor of Principal Leadership.

BIG IDEAS MATH[®]

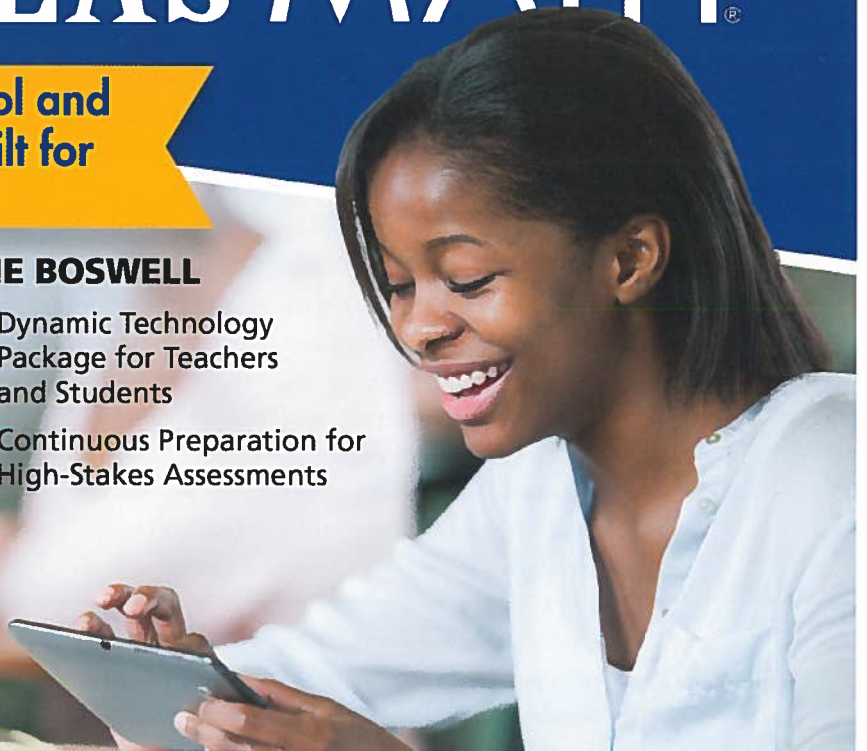
A Complete Middle School and High School Solution Built for Student Success

BY RON LARSON AND LAURIE BOSWELL

- ▶ Rigorous, Focused, and Research-Based Curriculum
- ▶ Dynamic Technology Package for Teachers and Students
- ▶ Balanced Approach to Instruction with Real-Life Applications
- ▶ Continuous Preparation for High-Stakes Assessments

877-552-7766

BigIdeasLearning.com





WHAT PRINCIPALS NEED TO KNOW ABOUT PUBLIC SCHOOLS AND RELIGION

- The Establishment Clause commands that public schools be neutral about religion. This means that schools cannot endorse one religion over another.
- Public schools may teach about religion objectively in a variety of secular courses, including lessons about pluralism and diversity.
- The “wall of separation” is higher among K–12 students than among adults because students are young, impressionable, and compelled to be in school.
- In the context of Christmas, schools may not promote the religious aspects of the holiday but may, if they wish, celebrate the secular songs and symbols of the holiday season.

Amendment does not eradicate religion from the school environment. On the contrary, the Supreme Court has carefully distinguished between promoting or endorsing religion (which is prohibited) and teaching about religion (which is not). The Court wrote that a person’s education may not be complete “without a study of comparative religion” and that the study of religion “where presented objectively as part of a secular program of education” would not violate the Establishment Clause (*Abington School District v. Schempp*, 1963).

A Significant Distinction

It is important for principals, teachers, and parents to recognize that in the United States, Christmas is a national, secular, legal holiday *and* a religious one. Therefore, there is a way to accommodate those who wish to celebrate Christmas in public schools and those who argue that it is unconstitutional—distinguish the secular from the religious aspects of Christmas.

Observing the secular aspects of Christmas is clearly constitutional, but promoting the religious aspects is not. Thus an assembly filled with traditional Christmas carols would probably violate the Establishment Clause. This is because the words of such carols (such as “Silent Night” or “O Little Town of Bethlehem”) clearly promote Christian beliefs, and therefore would be viewed as an unconstitutional endorsement of religion. As the Supreme Court noted, “Government may celebrate Christmas in some manner and form, but not in a way that endorses Christian doctrine,” (*County of Allegheny v. ACLU*, 1989). In contrast, secular Christmas songs (such as “White Christmas” or “Rudolph the Red-nosed Reindeer”), arguably, do not convey a religious message. Saying the words of the songs clarifies the difference. Similarly, featuring Christmas symbols such as the cross and the nativity scene which convey distinctly religious

messages would be unconstitutional. But secular holiday symbols such as candy canes or Christmas lights pose no Establishment Clause problems. For the same reason, school officials may celebrate the nonreligious aspects of other religious holidays. For example, students might make Hamentashen for Purim, dreidels on Hanukkah, or decorate for the Islamic or Buddhist New Year.

Another important distinction to keep in mind is the difference between promoting religion by students and teachers or principals. For example, during Christmas, students should be permitted to give cards to their classmates with the message “Jesus loves you” or during Eid al-Adha, Muslim students might distribute cards that say “Allah loves you.” This is allowed because the First Amendment’s Free Exercise Clause protects students’ rights to promote their religious beliefs in public schools if they are not disruptive. But it would clearly be unconstitutional for a teacher or administrator to give Christmas or other religious-type cards to students with the same message.

In sum, the Supreme Court has ruled that teaching, endorsing, or promoting religion in public schools is unconstitutional. However, according to the Court, teaching about religion is not only permitted, it is encouraged. 📖

Suzanne E. Eckes, JD, PhD, is a professor at Indiana University. She has been widely published on school legal matters.

David M. Schimmel, JD, is the author of numerous school law articles and books. He has taught school law at University of Massachusetts Amherst and Harvard University.

References

- Abington School District v. Schempp*, 374 U.S. 203 (1963).
County of Allegheny v. ACLU, 492 U.S. 573 (1989).
Edwards v. Aguillard, 482 U.S. 578 (1987).
Lee v. Weisman, 505 U.S. 577 (1992).
Lemon v. Kurtzman, 403 U.S. 602 (1971).
U.S. Department of Education. Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools (68 Fed. Reg. 9645–01, 2003).
Wallace v. Jaffree, 427 U.S. 38 (1985).

ADVOCACY AGENDA

An Occasion to Celebrate—and Advocate

BY AMANDA KARHUSE



Amanda Karhuse

This month, principals will have more than football victories to celebrate. NASSP, along with the National Association of Elementary School Principals and the American Federation of School Administrators, have declared October National Principals Month.

NASSP launched this initiative in 2008 as a way to call attention to the important role principals play in advancing student success. Over the years it has evolved into a highly anticipated celebration throughout the education community, the policy community, and the nation.

Demystifying Your Work

While principals receive well-deserved accolades for their work during the monthlong celebration, the most impactful and long-lasting effects come

from your own efforts to demystify your work and share with a larger audience exactly what a principal does and why it matters so much.

To that end, there is no substitute for observing your work firsthand. We at NASSP regularly share the important conclusions from The Wallace Foundation's research that principal

leadership is second only to instruction in school-based factors that affect student achievement. We take every opportunity to remind policymakers and general audiences that no documented incidence

of sustained school turnaround took place absent an effective leader. But those words, powerful though they are, take us only so far. People really get it only when they see it.

The Shadow Experience

In 2012, with the enthusiastic support of Secretary of Education Arne Duncan, we introduced a shadowing event at the U.S. Department of Education (ED). During a week in October, 40 high-ranking officials spent a day shadowing principals throughout the Washington, D.C., area. In a debriefing session with the secretary, ED staffers revealed that they ended their day more exhausted than ever and far wiser about how their policies look once they are implemented.

Secretary Duncan was so taken with the experience that he directed his staff to act on a recommendation by one of the shadowed principals. It outlined that the Department of Education should create a principal-in-residence program so the department could get regular "reality checks" on policies they were seeking to enact.

Several months later, Secretary Duncan announced the creation of the Principal Ambassador Fellowship program at NASSP's national conference Ignite in 2013. The program continues to pay dividends in a diversity of voices involved in creating policy.

Suffice it to say that no letter-writing campaign would have had the same effect; only a firsthand experience could produce such a result. ED plans to repeat the shadowing experience this month—as they have each October since 2012—

The Principal Ambassador Fellowship Program continues to pay dividends in a diversity of voices involved in creating policy.