



Christmas in the Public Schools

General Principles

It is well established that students have First Amendment rights in public schools.¹ Because public schools are dedicated places for learning, however, courts apply students' rights differently than in other contexts.

There is an important distinction between government speech (the speech of the school district and its employees) and private student speech.² Although there are some limits that apply to government speech, the First Amendment fully protects a student's private religious expression.³

Along those lines, the First Amendment prohibits the public school district and its employees from being hostile toward religious belief and expression. The proper role of the district is to remain neutral and accommodating toward private religious beliefs.⁴ Unlike the government, students may promote specific religious beliefs or practices.⁵

Finally, the government is allowed 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.⁶

¹ *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."); *Morgan v. Swanson*, 659 F.3d 359 (5th Cir. 2011) (en banc).

² *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000) ("[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.") (internal quotations omitted).

³ See *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.")

⁴ *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.")

⁵ See *Pinette*, 515 U.S. at 760.

⁶ See *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 601 (1989) (The "government may celebrate Christmas in some manner and form, but not in a way that endorses Christian doctrine.")

Frequently Asked Questions

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.⁷ While public schools may celebrate Christmas, they do not have to; “holiday parties” are legally acceptable as well.⁸

Can a public school display Christmas decorations?

Yes, a school district may include the temporary use of decorations and symbols to demonstrate the cultural and religious heritage of the Christmas holiday.⁹ 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.¹⁰

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 has 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 truncated view of our culture.¹¹

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.¹² 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.¹³ Another court, recognizing that most choral music is

⁷ *Florey v. Sioux Falls Sch. Dist.*, 619 F.2d 1311, 1314 (8th Cir. 1980).

⁸ *Stratechuk v. Bd. of Educ.*, 587 F.3d 597, 610 (3rd Cir. 2009).

⁹ *Florey*, 619 F.2d at 1314.

¹⁰ *Lynch*, 465 U.S. at 671-72.

¹¹ *Florey*, 619 F.2d at 1316.

¹² *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).

¹³ *Bauchman*, 132 F.3d. at 554.

religious, stated that preventing public schools from including religious songs would demonstrate an unlawful animosity towards religion.¹⁴

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 giving out their gifts just because the gift includes a religious message.¹⁵

Please note, however, that a few courts have deviated from this generally accepted rule in cases involving student religious expression in class assignments when younger students, such as kindergarten and first grade students, are involved. Some federal appeals courts in the Third Circuit, which consists of Delaware, New Jersey, and Pennsylvania, and in the Sixth Circuit, which consists of Kentucky, Michigan, Ohio, and Tennessee, have granted more discretion to schools in these situations depending on the particular facts. If this situation arises, please contact Liberty Institute for further analysis and guidance.

Can students express their faith in classroom and homework assignments?

Yes. The First Amendment protects a student's private work 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."¹⁶

Another example is if a teacher instructs the students to write a story about the winter season, students may write about Christmas or Hanukkah as much as they may 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.

¹⁴ *Duncanville Indep. Sch. Dist.*, 70 F.3d at 407-08.

¹⁵ *Morgan*, 659 F.3d at 410, 412.

¹⁶ 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.

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.”¹⁷

Similarly, outside of the school day, school officials are allowed to participate in private religious events, such as Christmas parties, in their personal capacities.¹⁸ This is even true when the private religious event takes place on school grounds before or after school hours.¹⁹ 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.

Liberty Institute is committed to defending the religious rights of students in public schools. This information is only intended to provide general guidance and should not be construed as legal advice. To request specific legal help, please visit: <http://www.libertyinstitute.org/take-action/request-legal/>

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *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).