

**Utah Laws Recognizing Constitutional
Freedoms in the Schools**

Local Education Agencies (LEAs) have asked the Utah State Board of Education staff for direction regarding the rights of teachers and students. This information is current as of March 11th, 2021 and has been compiled and reviewed by the Superintendency of the Utah State Board of Education (USBE) and the Assistant Attorney Generals of USBE. The issues and case law are documented through the following topics:

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A teacher’s right to use or display symbols, signs, and other materials falls under the First Amendment of the Constitution. In reviewing this right, the Supreme Court in *Hazelwood School District v. Kuhlmeier* [\(1988\)](#) ruled that public school officials can regulate school-sponsored student speech as long as there is a legitimate educational purpose for their action. In *Miles v. Denver Public Schools* [\(10th Cir. 1991\)](#), the Tenth Circuit Court of Appeals applied *Hazelwood* to teachers’ classroom expressions “[b]ecause of the special characteristics of a classroom environment . . .” The Supreme Court later held that [public employees](#) do not retain First Amendment protection for speech as part of their official job duties. In light of *Hazelwood* and its progeny, a Local Educational Agency has the authority to enact a policy restricting a teacher’s right to display symbols, signs, and other materials.

It has also been asked if **students** can wear hats, shirts, or display other materials. This is different than a teacher’s right to use or display symbols, signs, and other materials. A **student’s right to free speech** was established under *Tinker*

v. Des Moines Independent Community School District (1969), where the Supreme Court asserted that these displays are allowed in a school as free speech under the First Amendment if they are not “materially and substantially interfering with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others.”

Because this is a local control issue, we recommend that each LEA work with their legal counsel to establish and enact a policy regarding the symbols, signs, and other materials allowed to be displayed in a school by teachers and by students.

Utah laws address the issue of religion in public K-12 schools.

Religion in modern public schools has been a source of controversy and confusion for many. "What would appear to some to be essential to good citizenship might well for others border on or constitute instruction in religion."

The Utah legislature has adopted three statutes specific to addressing this issue. "*Maintaining constitutional freedom in the public schools*," "*Expressions of belief – Discretionary time*," and "*Waivers of participation*" seek to clarify, within appropriate state and federal constitutional constraints, choices available to parents, students, employees and educators regarding religion, speech, and freedom of conscience in the public schools.

What general topics are covered by the statutes?

The statutes address three general aspects of religion and public education:

- Specific guidelines are given for administrators and teachers as they design and implement curricula and school activities.
- The right to exercise freedom of conscience is afforded significant protection.
- Student expression of belief (whether religiously based or not) inside the classroom and continued expression or religious practice outside of the classroom are protected.

Teaching About Religion in Public Schools

It is appropriate to teach **about** religion in public schools when appropriately addressed within the established standards and approved curriculum. What is not appropriate is for a representative of the public school system to attempt to inculcate religious belief.

Does teaching about religion violate the separation of church and state?

No. The United States Supreme Court has held that the United States Constitution does not require references to religion and deity be removed from public school classrooms.

"[I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historical qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program may not be effected consistently with the First Amendment."¹

The Tenth Circuit Court of Appeals (which includes Utah within its jurisdiction) has also addressed the constitutionality of teaching about religion.

"It is neither wise nor necessary to require school officials to sterilize their classrooms and libraries of any materials with religious references in order to prevent teachers from inculcating specific religious values."²

Teaching about religion is supported by modern judicial interpretations of both the Utah and United States constitutions.

What are some examples of theistic, agnostic, or atheistic ideas that could be relevant in the curriculum?

Aspects of cultural heritage, political theory, moral theory, or societal values may not be inserted into the curriculum because they explicitly or implicitly contain theistic, agnostic, or atheistic assumptions; rather, the course

content regarding these general matters should reflect what is relevant to the current educational and learning objectives. The legislative history adopted with [the statute](#) states:

"[W]here relevant, public school curriculum could not exclude study of the Declaration of Independence or Utah Constitution from the curriculum if the exclusion was done primarily because each contains explicit theistic assumptions, acknowledgments about or reference to Deity or an absolute moral standard.

Likewise, where relevant, the public-school curriculum could not exclude the writings of Karl Marx or the Humanist Manifesto if the exclusion was done primarily because each contains explicit agnostic or atheistic assumptions, acknowledgments or references denying the relevance of existence of Deity, supernatural reality, absolute moral standards or inalienable rights."³

Music curricula has attracted particular attention. A significant portion of choral music, including almost all major choral works of a long-standing nature, is religiously based. The Utah statute prohibits selection of choral music for the primary reason that it was religiously (or agnostically or atheistically) based, but allows selection of music even though it was religiously based if it was selected to achieve legitimate pedagogical objectives. For example, a holiday program that includes sacred as well as secular music need not be prohibited.

Visits or field trips to religious facilities may also be appropriate to some parts of the curriculum. Subject to the requirement to allow students the right to be excused on grounds of conscience, an appropriate field trip may include visiting a facility owned by a religious group if the visit occurs when religious services are not being conducted and the purpose of the visit is in the pursuit of permissible educational objectives such as those relating to art, music, architecture, or history.

How does teaching about religion differ from impermissible proselytizing, endorsement, or sponsorship?

Teaching about religion is significantly different from certain impermissible actions that have been discouraged by courts, as follows:

- The school's approach to religion is academic, not devotional.
- The school strives for student awareness of religions but does not press for student acceptance of any one religion or any religion at all.
- The school sponsors study about religion, not the practice of religion.
- The school exposes students to a diversity of religious views; it does not impose any particular view.
- The school educates about all religions; it does not promote or denigrate any one religion or religion generally.
- The school informs students about various beliefs; it does not seek to conform students to any particular belief.

Is the study of comparative religion allowed?

Yes. The objective study of comparative religions is permissible, but no religious tenet, belief, or denomination may be given inappropriate emphasis.

Can an educator share personal beliefs regarding religion or a theistic, agnostic, or atheistic belief?

Due to the age of the students and compulsory education attendance requirements, the traditional notion of “academic freedom” is generally inapplicable to educators in the K-12 context. Public school officials and employees may not use their positions to endorse, promote, or disparage a particular religious, denominational, sectarian, agnostic, or atheistic belief or viewpoint.

A public-school employee's rights relating to voluntary religious practices and freedom of speech do not include proselytizing of any student regarding atheistic, agnostic, sectarian, religious, or denominational doctrine while the employee is acting in the employee's official capacity. Nor may an employee attempt to use his/her position to influence a student regarding the student's religious beliefs or lack thereof.

In a classroom, however, children may raise religious issues by spontaneous questions. In this situation, even though acting in an official capacity, an employee may respond in an appropriate and restrained manner to a spontaneous question regarding the employee's personal

belief or perspective. Nevertheless, because of the special position of trust held by school employees, employees may not advocate or encourage acceptance of belief or perspective.

Furthermore, as explained before, various U.S. Supreme Court opinions have forbidden public school teachers or school districts from engaging in a variety of religious activities. In addition, the state legislature has required that certain topics and civic virtues be taught in all aspects of public schooling.⁴ Nonetheless, the statutory provisions draw clear lines to ensure that educators are afforded significant protections regarding the discussion of ideas when they seek to teach matters of cultural heritage, political theory, moral theory, or societal values.

Can educators' direct prayers or religious devotionals while functioning as employees?

No. The Legislature has directed that “school officials and employees may not use their positions to endorse, promote, or disparage a particular religious, denominational, sectarian, agnostic, or atheistic belief or viewpoint.”⁵

No school employee or student may be required to attend or participate in any religious worship service, whether in an individual capacity or as a member of a performing group, regardless of where or when the service is held.

Examples of these situations include:

- a school district employee acting as a sports coach may not direct nor authorize a prayer before a game.
- a drama coach may not lead the cast in prayer before a performance.
- a dance teacher may not lead nor authorize a prayer before a performance. On the other hand, the school employee may not interfere with nor discourage students who wish to do so privately.

May performing student groups such as choirs sing on church-owned or operated property?

Yes. Subject to the requirements of a claim for waiver based on freedom of conscience or exercise of religious freedom, students who are members of performing groups such as school choirs may be required to rehearse or otherwise perform in a church-owned or operated facility if the following conditions are met:

- the performance is not part of a religious service.
- the activity of which the performance is part is neither intended to further a religious objective nor under the direction of a church official.
- the activity is open to the general public.

Can students who are members of school choirs sing in church meetings and be directed by their choir teacher?

No. Students may voluntarily attend and perform during a religious service as individuals or as members of a non-school group, provided all arrangements are made by students or non-school personnel. School employees may attend such services as part of the congregation but must refrain from participating in the performance.

U.C.A. § 53G-10-205. Waivers of participation.

Who may request a waiver of participation in a classroom or other activities on the grounds of freedom of conscience?

It is assumed that the school curriculum will not violate the conscience of students or parents, but a student's custodial parent or legal guardian, or a secondary student, may request to be excused from any portion of the curriculum or school activity based on conscientious objections. The objecting parent or student has a duty to notify school authorities of the objections.

To whom does the parent or student direct the request regarding either the waiver of participation or the substitution of an academic alternative?

Those designated by the LEA to handle such requests.

Does a parent have a right to know if a secondary student has sought to be excused from school curriculum or an activity on grounds of conscience?

Yes. If a secondary student, independent of a parent or guardian, seeks a waiver of participation or substitution of activity because of a right of conscience, the school must promptly notify the student's custodial parent or legal guardian.

May the school require that a request for waiver for reasons of conscience be based solely on religious belief?

No. The decision that certain curriculum or conduct violates one's conscience is to be made by the parent of a student or by a secondary student. The legislative history adopted at the same time as the statute indicated that the nature of conscience, and its attendant duty need not be based solely on religion. The source of one's individual conscience could include, without limitation, "an internal right-wrong standard, an external absolute standard, a standard based on learned experiences, any other kind of personal philosophy or belief system, religious teachings or doctrine, or any combination of the foregoing."⁶

Must educators design curriculum to avoid all possible violations of conscience?

No. Given the great differences of opinion in a free and open society, that would not be possible. The curriculum should be designed to meet approved educational objectives, consistent with the state core curriculum.

When waiver or substitution is requested, what are the roles of the parent, student, and employee in providing a reasonable academic alternative to the curriculum or activity?

When a parent, guardian, or secondary student assert that a right of conscience or religious belief conflicts with participation in a portion of the curriculum, the person may request a waiver of the requirement or that the school provide a reasonable alternative that requires reasonably equivalent performance by the student of the secular objectives of the curriculum or activity in question.

The school shall determine whether to waive the participation requirement, provide a reasonable alternative, or notify the requesting party that participation is required. A request for waiver or alternative participation requirement shall not be denied unless the responsible school official finds that requiring the participation of the particular student is the least restrictive means necessary to achieve a specifically identified educational objective in furtherance of a compelling governmental interest. Under this standard it would be a rare exception that would ever justify forcing a student to participate in curriculum or activities that were contrary to the conscience of the parent or secondary student. A school district can require, however, that core objectives must be met.

Can a student's academic or citizenship grade be penalized for asserting religious freedoms or right of conscience under the statute?

No. A student's academic or citizenship performance may not be penalized by school officials for the exercise of a religious right or right of conscience in accordance with the provisions of the statute.

U.C.A. § 53G-10-203 Expressions of belief – Discretionary time.

How does this statute encourage student expression?

The Legislature intended that this statute would create "a limited public forum . . . allow[ing] all students, regardless of age to formulate and express their personal views, values, and opinions."⁷

Making public school a "limited public forum" means that students are free to express their views, values, and opinions in a reasonable manner in classroom discussions or assignments.

For example, in a class examining current events, student expression of personal perspective about matters such as abortion, the welfare state, or student clubs may not be "prohibited or penalized" if appropriate to the curriculum context. On the other hand, such expressions could be strictly limited in a math class.

When can an educator place limitation on student expression of opinion in classroom discussion or assignments?

The statute provides that student expression may be limited if it "unreasonably interferes with order or discipline, threatens the well-being of persons or property, or violates concepts of civility or propriety appropriate to a school setting."

Examples of student expression that could be limited during a classroom discussion include speech that is out of order (thus making it impossible to carry on directed classroom discussion), irrelevant speech to the subject matter, speech or conduct that could be interpreted as threatening physical abuse or being slanderous, or obscene or profane expressions clearly unsuitable to the classroom.

Under this statute, when is a student free to engage in private matters of religious practice or speech?

Students may initiate and conduct voluntary religious activities or otherwise exercise their religious freedom on school grounds during discretionary time, which time includes free time before and after school, during lunch and between classes or on buses, and private time before athletic and other events or activities. Discretionary time does not include time during which a school is responsible for a student and the student is required or expected to be actively engaged in a learning activity in the classroom. Nor does discretionary time include study hall during regularly scheduled hours, required activities outside the classroom, and counseling, private conferences, or tutoring provided by school employees or volunteers acting in their official capacities during or outside of regular school hours.

Can an educator limit student speech or religious practices outside of the classroom?

Yes, but under even more limited circumstances than allowed in the classroom. While enforcing the "concepts of civility or propriety appropriate to a public-school setting" is applicable to student activities and conduct both inside and outside of the classroom, greater freedom is accorded student speech or religious practice outside of the classroom.

This is evident in two ways. First, non-classroom expression may only be restricted if it unreasonably interferes with the ability of school officials to maintain order and discipline. Second, while classroom discussion may be limited because it "threatens the well-being of persons or property," restricting activity outside of the classroom requires action that "unreasonably endangers persons or property."

An educator's ability to limit speech or religious practice inside the classroom requires only a threat which may be either expressed or exist because of perceived potential for harm, while limitation outside of the classroom requires the actual endangering of a person or property.

Are there limits on how school personnel may enforce these allowable limitations on student expression, religious practice, or exercise of freedom of conscience?

Yes. While school employees are to maintain order and discipline, protect person and property, and preserve concepts of civility and propriety appropriate to a school setting, the means chosen to do so should minimally infringe on the student's rights of expression as little as possible. This standard is not absolute and requires balancing of the competing interests of the student, school, and employee, with particular concern for freedom of appropriate student expression.

Appendix

U.C.A. § 53G-10-202. Maintaining constitutional freedom in the public schools.

- (1) Any instructional activity, performance, or display which includes examination of or presentations about religion, political or religious thought or expression, or the influence thereof on music, art, literature, law, politics,

history, or any other element of the curriculum, including the comparative study of religions, which is designed to achieve secular educational objectives included within the context of a course or activity and conducted in accordance with applicable rules or policies of the state and LEA governing boards, may be undertaken in the public schools.

- (2) No aspect of cultural heritage, political theory, moral theory, or societal value shall be included within or excluded from public school curricula for the primary reason that it affirms, ignores, or denies religious belief, religious doctrine, a religious sect, or the existence of a spiritual realm or supreme being.
- (3) Public schools may not sponsor prayer or religious devotionals.
- (4) School officials and employees may not use their positions to endorse, promote, or disparage a particular religious, denominational, sectarian, agnostic, or atheistic belief or viewpoint.

U.C.A. § 53G-10-203. Expressions of belief -- Discretionary time.

- (1) Expression of personal beliefs by a student participating in school-directed curricula or activities may not be prohibited or penalized unless the expression unreasonably interferes with order or discipline, threatens the well-being of persons or property, or violates concepts of civility or propriety appropriate to a school setting.
- (2) (a) As used in this section, "discretionary time" means noninstructional time during which a student is free to pursue personal interests.

(b) Free exercise of voluntary religious practice or freedom of speech by students during discretionary time shall not be denied unless the conduct unreasonably interferes with the ability of school officials to maintain order and discipline, unreasonably endangers persons or property, or violates concepts of civility or propriety appropriate to a school setting.
- (3) Any limitation under Sections 53G-10-203 and 53G-10-205 on student expression, practice, or conduct shall be by the least restrictive means necessary to satisfy the school's interests as stated in those

sections, or to satisfy another specifically identified compelling governmental interest.

U.C.A. § 53G-10-205. Waivers of participation.

- (1) As used in this section, "school" means a public school.
- (2) If a parent of a student, or a secondary student, determines that the student's participation in a portion of the curriculum or in an activity would require the student to affirm or deny a religious belief or right of conscience, or engage or refrain from engaging in a practice forbidden or required in the exercise of a religious right or right of conscience, the parent or the secondary student may request:
 - (a) a waiver of the requirement to participate; or
 - (b) a reasonable alternative that requires reasonably equivalent performance by the student of the secular objectives of the curriculum or activity in question.
- (3) The school shall promptly notify a student's parent if the secondary student makes a request under Subsection (2).
- (4) If a request is made under Subsection (2), the school shall:
 - (a) waive the participation requirement;
 - (b) provide a reasonable alternative to the requirement; or
 - (c) notify the requesting party that participation is required.
- (5) The school shall ensure that the provisions of Subsection 53G-10-203(3) are met in connection with any required participation under Subsection (4)(c).
- (6) A student's academic or citizenship performance may not be penalized if the secondary student or the student's parent chooses to exercise a religious right or right of conscience in accordance with the provisions of this section.

¹ *Abington School District v. Schempp*, 374 U.S. 203, 225 (1963). *Stone v. Graham*, 449 U.S. 39, 42 (1980), reh'g. denied 449 U.S. 1104 (1981).

² *Roberts v. Madigan*, 921 F.2d 1047, 1055 (10th Cir.1990), cert. denied 112 S.Ct. 3025 (1992).

³ House Journal, Fiftieth Legislature, 1993 General Session, at 269; Senate Journal, Fiftieth Legislature, 1993 General Session, at 483. Further references to the Legislative History will simply refer to the House or Senate Journal. The Legislative History is unusual in the case of this legislation in that both the Senate and

House adopted a legislative history and placed it in the daily journals of each house after adoption of the legislation.

⁴ 53G-10-204. Civic and character education.

⁵ 53G-10-202. Maintaining constitutional freedom in the public schools.

⁶ House Journal, Fiftieth Legislature, 1993 General Session at 270; Senate Journal, Fiftieth Legislature, 1993 Session at 484.

⁷ House Journal at 271; Senate Journal at 485.