

Is it Permissible?

Christmas and Religious Holidays in Government Schools



Christmas and other religious holidays can be a confusing time for students, parents, and school officials. “Christian students face a lot of conflict over how much freedom they have to express their faith in school during this time,” said Tom Prichard, president of the Minnesota Family Council. “And school officials often aren’t really sure about the parameters, either. Sometimes this results in principals and superintendents being unnecessarily restrictive during holiday seasons.”

The following guidelines answer many of the questions and conflicts faced by parents, students, and school officials. This information is not a substitute for the advice of an attorney, but can help in the development of general guidelines.

1. Singing Christmas carols is permitted in government schools.

In 1980, the United States Court of Appeals for the 8th Circuit (which includes Minnesota) ruled in *Florey v. Sioux Falls School District*, 619 F.2d 1311 (8th Cir. 1980) that students may sing religious Christmas carols in government schools. However, the purpose of the performance must be the “advancement of the students’ knowledge of society’s cultural and religious heritage, as well as the provision of an opportunity for performing a full range of music, poetry, and drama that is likely to be of interest to the students and their audience.” The school board policy upheld by the court said that singing of the carols needs to be done in a “prudent, objective manner and as a traditional part of the cultural and religious heritage of the particular holiday.”

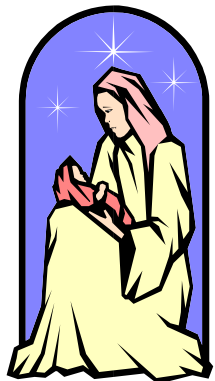
2. Presence of creche scenes in government schools is permitted.

The United States Supreme Court, in *Lynch v. Donnelly*, 465 U.S. 668 (1984), upheld the right of a city government to display a creche scene in the context of secular symbols of Christmas, e.g. a Christmas tree, reindeer, Santa Claus, etc. In the context of a government school, the school policy upheld by the Florey court said that creches, crosses, the Star of David, and other symbols may be used as a teaching aid or resource provided the use is temporary in nature and there is a clear educational purpose for it.

3. Use of the words “Christmas Holiday” is government schools is allowed.

School personnel certainly may be free to use the term “Christmas Holiday” based on the freedom of speech protection. Government school districts may also use the term since Congress and the President “have proclaimed both Christmas and Thanksgiving National Holidays in religious terms,” and government workers receive a paid holiday on December 25th which the federal government refers to as “Christmas” *Lynch v. Donnelly*, 465 U.S. 668, 675, 680 (1984)). It is not required, therefore, to purge the word “Christmas” from government schools.

4. Studying the Bible in government schools is allowed.



For instance, school teachers may read portions of the Bible which relate the Christmas story for the purpose of providing a literary or historical context for the Christmas season but not for religious or devotional purposes. The United States Supreme Court in the *School District of Abington Township v. Schempp*, 375 U.S. 203, 225 (1963) banned organized prayer and devotional Bible reading from government schools but also said, “It certainly may be said that the Bible is worthy of study for its literary and historic 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 of education, may not be effected consistently with the first amendment.” In the U.S. Supreme Court’s 1980 decision, *Stone v. Graham*, 449 U.S. 39, 42 (1980) the Courts said that “the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like.”

5. Use of Christmas trees is permitted.

Christmas trees are permissible because they are a secular symbol of Christmas, e.g. they don’t have religious significance like a cross, nativity scene, or a menorah. There is no establishment clause issue if the items in question are not religious in nature (*Allegheny County v. American Civil Liberties Union*, 492 U.S. 573 (1989)).

6. Student distribution of religious materials, e.g. Christmas cards, is protected speech.

The right of students in government schools to distribute religious literature is protected by the First Amendment right of Free Speech. The distribution of printed material is considered “pure speech” by the United States Supreme Court (*Texas v. Johnson* 491 U.S. 397, 406 (1989)). The fact that the speech or literature is religious in nature does not diminish its protection by the Constitution (*Widmar v. Vincent*, 454 U.S. 263, 269 (1982)). The only basis for restricting students’ speech is if the school can show that such distribution would “materially and substantially interfere with school operations or with the rights of other students,” (*Tinker v. Des Moines School District*, 393 U.S. 503, 509 (1969)). Merely showing that the regulation is designed to “avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint ...[is insufficient],” (*Johnson-Loener v. O’Brien*, 859 F. Supp. 575, 579, 580 (M.D. Fla 1994)).



7. Students painting a religious picture, writing religious essay, or delivering religious-based speeches are permitted.

Here again, students have constitutional rights of free speech and free exercise of religion. Students engaging in certain expressions of religious views or beliefs does not mean the government endorses those views. The only requirement is that the verbal or written speech must fall within the parameters of the course. For instance, a student cannot stand up in math class and begin giving a speech talking about religion, because the speech has no relation to the subject being studied. There is no endorsement of religion when schools accommodate student speech on religion. “[T]here is a crucial difference between government endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect,” (*Board of Education v. Mergens*, 496 U.S. 226, 250 (1990)(emphasis in the original)).



8. Allowing student-initiated Bible studies or prayer meetings on government school premises is required if nonreligious groups can meet on school premises.

The Supreme Court has recognized and upheld the Equal Access Act (1984) passed by Congress which prohibits schools from discriminating against religious-based non-curricular related student groups meeting on school premises. In other words, they must treat Bible studies or prayer meeting the same as the chess club, computer club, and other non-curricular activities. If the non-religious groups are allowed to meet on school premises, so must the religious groups. All groups must be treated equally, without discrimination (*Board of Education v. Mergens*, 496 U.S. 226 (1990)).

9. Saying “Merry Christmas” in government schools is protected free speech.

Government schools cannot ban the use of the word “Christmas” under the Free Speech Clause of the First Amendment, (*Cohen v. California*, 403 U.S. 15 (1971)). The Supreme Court has found that simply because other students object to the speech in the absence of any other justification is no reason to prohibit the speech. The court has ruled that speech that “interferes with the rights of students” means speech that is sexually explicit, libelous, or defamatory toward another student (*Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 274 (1988)).

10. Use of religious symbols of the cross, menorah, creche, Star of David, in classroom teaching is permitted.

The use of religious symbols is permissible when used as a teaching aid. The purpose of the symbol, however, must be educational and not devotional or religious in nature and temporary in use (*Florey v. Sioux Falls School District*, 619 F.2d 1311, 1319-20 (8th Cir. 1980)).

