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Curriculum Excusal for Religious Students

While it would be inappropriate for The Rutherford Institute to provide you with legal advice at this time, we have reviewed the current materials relating to your inquiry and are pleased to provide the following comments and information which we hope you find useful.

The content of school curriculum decisions is largely a matter left to the discretion of the states. However, to some degree these decisions can be shaped by national trends.

There is an inherent tension between the interest of the state in educating its future citizens and the interest of parents in shaping the development and education of their children. Parents of public school children may object to particular curriculum requirements due to their personal and religious values.[i] A parent's right to control his/her child's education is supported by common law notions and constitutional precedents.[ii]

Since the turn of the century, state courts have supported the parents' right to have their children excused from objectionable instruction in the classroom.[iii] A child may be excused as long as such excusal does not hinder the efficiency and good order of the schools or interfere with the rights of other students.[iv] Through the years, students have been excused from many different types of classes, including family education classes, for religious reasons.[v]

The Supreme Court has found that the Due Process Clause of the Fourteenth Amendment also includes a parent's right to direct the education of one's child.[vi] The Free Exercise Clause of the Constitution has been used to obtain excusal of Amish students from compulsory school attendance laws.[vii] Although this decision is probably limited because of the unique facts of the case,[viii] the Court found that the purposes of compulsory education could not override the Amish way of life and the free exercise of the Amish religion, which limits education to the eighth grade.[ix] Additionally, public schools cannot require students to act against their religious beliefs; if a school's regulation has a coercive effect, accommodation for religious objectors is proper.[x]

The government may only burden Free Exercise where it has a compelling interest.[xi] Nonetheless, some courts have ruled that school board policies and required courses that

run afoul of parents' religious beliefs are unconstitutional only to the extent that the required courses or policies serve no legitimate educational purpose.[xii] One federal appellate court has even held that mere exposure to offensive ideas where a student is not required to affirmatively act against his or her beliefs is an insufficient reason for excusal in Free Exercise challenges.[xiii]

Several courts have recently construed educating children about AIDS to battle the spread of the disease and other health-related issues to be sufficient state interests.[xiv] In Alfonso v. Fernandez,[xv] a New York appellate court ruled that condom distribution was a health service, separate from the basic educational mission of the school.[xvi] The court's determination was based upon an understanding that condom distribution was intended to stop the spread of HIV infection and effectuate disease prevention, rather than to simply educate students regarding the proper use, risks and benefits of condoms.[xvii] In this New York jurisdiction, since the school-based distribution of condoms is a health service outside the scope of education, such distributions are subject to the same requirements that govern other medical services, namely parental consent.[xviii]

In general, excusal of children from objectionable instruction is a matter of cooperation between parents, administrators, and teachers.[xix]

The Rutherford Institute hopes that this information is helpful to you. For more information, please contact The Rutherford Institute, P.O. Box 7482, Charlottesville, Virginia, 22906, or visit our website at www.rutherford.org.

ENDNOTES

i. See Hirschoff, Parents and the Public School Curriculum: Is There a Right to Have One's Child Excused from Objectionable Instruction?, 50 S. Cal. L. Rev. 871, 875 (1977).

ii. Id. at 885.

iii. Id. at 886.

iv. See Hardwick v. Board of School Trustees, 54 Cal. App. 696, 205, p. 49 (1921) (objection to dancing exercises); Trustees of Schools v. People, 87 Ill. 303 (1877) (objection to grammar instruction); Rulison v. Post, 79 Ill. 567 (1875) (objection to bookkeeping class); and Morrow v. Wood, 35 Wis. 59 (1874) (objection to geography lessons). See also School Bd. Dist. #18 v. Thompson, 24 Okla. 1 (1909) (holding that a parent's request for excusal is presumed reasonable without need for justification).

v. See Citizens for Parental Rights v. San Mateo Co. Board of Education, 51 Cal. App. 3d 1, 124 Cal. Rptr. 68 (1975); Medeiros v. Kuyosaki, 52 Haw. 436, 478 P.2d 314 (1970); Epperson v. Arkansas, 393 U.S. 97 (1968).

vi. Meyer v. Nebraska, 262 U.S. 390 (1923).

vii. Wisconsin v. Yoder, 406 U.S. 205 (1972).

viii. See Ware v. Valley Stream High Sch. Dist., 550 N.E.2d 420 (N.Y. 1989). See also Hirschoff, supra note 1, at 902-3, and Yoder, 406 U.S. at 235, indicating that Yoder may only apply to organized religious groups.

ix. Id.

x. West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943) (ruling that ordinance requiring Jehovah's Witnesses to salute American flag was unconstitutional restraint on Free Exercise).

xi. Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707, 718 (1981).

xii. Davis v. Page, 385 F.Supp. 395 (D.N.H. 1974).

xiii. Mozert v. Hawkins County Bd. of Educ., 827 F.2d 1058 (6th. Cir. 1987), cert. denied 484 U.S. 1066 (1988).

xiv. See Ware, 550 N.E.2d at 167 (holding that AIDS education did not admonish children's religious beliefs because it serves a greater state interest in disease prevention); Citizens for Parental Rights, 124 Cal.Rptr. at 68 (ruling that noncompulsory health courses did not impinge free exercise); Smith v. Ricci, 446 A.2d 501 (N.J. 1982) (holding that family education programs are not unconstitutional if they include opt-out provisions no penalties with excusal). See also Parents United for Better Schools, Inc. v. School District of Phil. Bd. Of Educ., 149 F.3d 260 (3rd Cir. 1998).

xv. 195 A.D.2d 46, 606 N.Y.S.2d 259 (A.D. 2 Dept. 1993).

xvi. 195 A.D.2d at 52, 606 N.Y.S.2d at 263.

xvii. Id. See also Larry Witham, Lawsuits Grow as Schools Pass Out Condoms, Wash. Times, May 24, 1992, at A3. The article contains an excellent quote from Rutherford Institute regional coordinator Dave Melton, "Giving a condom to a child is an act which goes beyond the role of an educator . . . It inevitably entangles the school and the child with and issue which is, at its core, both religious and ethical and is an invitation to liability."

xviii. Id.

xix. See Hirschoff, *supra* note 1, at 876, n. 14.