

Illinois School Law Survey ¹ 2014-16

(Braun, B. (2014). *Illinois School Law Survey*. Illinois Association of School Board. Champaign, IL.

“Illinois School Law Survey provides answers to general questions regarding statutes and case law in force and reported as of January 1, 2014 and administrative rules in effect as of January 1, 2014 and administrative rules in effect as of December 15, 2013. Illinois Law Survey is not intended to provide advice in the handling of specific situations. Because the law is in a state of continual change, the reader should treat this publication as a source of instruction in the basic principles of school law and as a guide to matters meriting further study or the assistance of legal counsel.” (Braun, 2014).

14:10: What constitutional principle underlies all legal questions regarding separation of church and state? The First Amendment to the United States Constitution provides in part: “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof.” The first part is known as the “establishment” clause and the second part is known as the “free exercise” clause. It is balancing the establishment clause against the free exercise clause that makes the analysis of religious freedom questions difficult. Often a situation that seems clearly consistent with the establishment clause is not so clearly consistent with the free exercise clause, and vice versa.

14:25: What is the Religious Freedom Restoration Act? In 1998, the State of Illinois enacted the Religious Freedom Restoration Act that provides that the government may not “substantially burden a person’s exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person is in furtherance of a compelling government interest and is the least restrictive means of furthering the compelling governmental interest.” The constitutionality of the Religious Freedom Restoration Act is uncertain. 775 ILCS 35/1. *City of Boerne v. P.F. Flores* (1997)

14:35 May a school district release students during the school day for religious instruction? A school district must allow any child over 12 and less than 14 years of age release time to attend confirmation classes. Whether release time is permissible for other kinds of religious instruction depends upon the underlying facts. The more the facts suggest public school endorsement of, or entanglement with, religion, the less likely the courts will approve any particular practice. Release time for religious classes held within the public schools or the expenditure of public funds for religious education are, in most cases, prohibited. 105 ILCS 5/26-1 *Zorach v. Clauson* (1952); *Illinois ex rel. McCollum v. Bd. Of Education of School District No. 71 Champaign County, IL* (1948); *People ex rel. Latimer v. Bd. Of Education of the City of Chicago* (1946).

¹ All information on this document is from the *Illinois School Law Survey* (Braun, 2014).

14:37 May a school district directly or indirectly penalize a student who is absent from school for religious reasons? A school district must permit students to freely exercise their religions. A policy limiting the number of excused student absences or exacting an academic penalty for absences resulting from the celebration of religious holidays or participation in other religious activities would violate the free exercise clause. *105 ILCS 5/26-1 Church of God v. Amarillo Independent School District (1981).*

14:40 May students pray in school? Yes. So long as the students respect school rules, regulations and policy regarding disruption of the educational process, students may pray in school. This means students may read their Bibles during study hall or other non-structured time, may say grace, and may discuss religions with their peers during non-directed free time, such as time spent on the playground, on a school bus, in the hallways or in the cafeteria. *105 ILCS 20/5 Chandler V. James (1997); Bown V. Gwinnett County School District (1997); Wallace v. Jaffree (1985).*

14:50 Is a moment of silence for voluntary student prayer permissible? The recitation of any state composed or endorsed prayer in school is constitutionally prohibited. This is true even if students are not required to participate in the prayer, and even if the prayer is facially neutral as to religious denomination. Illinois has a statute, known as the Silent Reflection and Student Prayer Act. The Act was amended in 2007 to make a moment of silence mandatory (before the 2007 amendment, the moment of silence was permissive). The statute's constitutionality was challenged by a Chicago-area atheist and his daughter. After lengthy litigation, the statute was found constitutional because the court found it serves the secular purpose of having a uniform moment of quiet reflection to calm school children before they start the day, it does not have the principal or primary effect of promoting religion, nor is the statute unconstitutionally vague. *105 ILCS 20/1 Sherman v. Koch (2010); Bown v. Gwinnet County School District (1997); Wallace v. Jaffree (1985); School District of Abington Township v. Schempp (1963); Engel v. Vitale (1962).*

14:53 Does the recitation of the Pledge of Allegiance in school violate the First Amendment? Ceremonial references to a deity are distinguished by the courts from prayer, benedictions or invocations. The Pledge of Allegiance in school is permissible so long as students who object are not compelled to participate. An Illinois law requires the recitation of the Pledge of Allegiance "by pupils" in Illinois public elementary and secondary schools each day. The language of the law might lead the reader to conclude students who object to the recitation of the pledge may be compelled to participate. A message from the Governor to the General Assembly at the time of 2002 amendment to the statute suggests otherwise. *105 ILCS 5/27-3 Elk Grove Unified School District v. Newdow (2004). Sherman v. Community Consolidated School District No. 21 of Wheeling Township (1993).*

14:123 May a school district erect a Christmas tree or display religious symbols? How a particular display is analyzed for its constitutionality is dependent on the nature of the display; whether it is intended to be permanent, how it is paid for and its intended purpose. Christmas decorations are usually temporary and whether any particular religious symbol or display violates the establishment clause depends upon the underlying facts. If the court determines the display has the primary effect of advancing or inhibiting religion, it is found unconstitutional. The same symbol may be found proper or improper depending upon the

context in which it is displayed. A display accompanied by a religious message might, for example, make an otherwise permissible display unconstitutional. Symbols can be used to proselytize and in appropriate circumstances coerced engagement with religious iconography and messages might take on the nature of the religious exercise or forced inculcation of religion. But the establishment clause does not shield citizens from encountering the beliefs or symbols of any faith to which they do not subscribe to determine whether or not it is constitutional. People take offense at all manner of religious and nonreligious messages, but offense is alone is not enough to establish a constitutional violation. Where religious symbols are encountered is important to determining whether or not they are constitutional. A religious symbols on school property might convey a strong belief that the government endorses the beliefs expressed in the symbol. But when a school makes temporary use of a private facility (such as a church building) for a short time, an observer would not understand the message to have been made by or approved of by the state. Any religious display must have a valid educational purpose. *Doe v. Elmbrook School District* (2011); *Pleasant Gove City, Utah V. Sumnum* (2009); *Sechler v. State College Area School District* (2000); *Capitol Square Review and Advisory Board v. Pinette* (1995); *Bloomington Public Schools v. Washgesic* (1994); *Clever v. Cherry Hill Township Board of Education* (1993); *Lee v. Weisman* (1992); *Allegheny County v. American Civil Liberties Union, Greater Pittsburgh Chapter* (1989); *Lemon v. Kurtzman* (1971).

14:200 May a school district include religious instruction in its curriculum? A school district may include instruction in comparative religions, Bible history and may educate students about religion in general, but may not sponsor or advocate the teaching of a particular religion or group of religions (such as Christianity, Judaism, or Islam), religious practice, or religious belief. *Gibson v. Lee County School Board* (1998); *Edwards v. Aguillard* (1987); *Stone v. Graham* (1981); *School District of Abington Township v. Schempp* (1963).

14:210 May parents object to curriculum content on the grounds that a student's participation violates the child's free exercise of religion? Parental objections of this type are common. Usually a school can defend by allowing the objecting child to opt out of the objectionable portion of the curriculum (by curriculum substitution or removal to home or private school). *Leebaret v. Harrington* (2003); *Mozert v. Hawkins County* (1987); *Thomas v. Review Board* (1981); *Sherbert v. Verner* (1963).

14:225 Does a school musical group performing religious songs violate the establishment clause? Whether or not there is an establishment clause violation will depend upon the facts surrounding the performance. Most school Christmas programs or holiday time choir performances do not violate the establishment clause because they would not lead a reasonable observer to conclude the activity was promoting religion advancing a particular religious belief. *Bauchman v. West High School* (1997); *RJJ v. Shineman* (1983)