

**Religious**

**Released-Time Programs:**

A Guidebook for

School Administrators

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## **The Purpose of This Guidebook: Helping Schools Deal With a Complicated Issue**

Religious released-time programs allow public school students to be excused from class during the school day for religious instruction. These programs have been ruled legal by the U.S. Supreme Court. To be legal, released-time programs require parental permission, may not be held on school grounds, and must follow a number of other court-determined guidelines.

Released time can be a complicated issue for schools to deal with. It touches on sensitive topics such as religion, quality of education, and parental rights. Because the rules are not widely known, it's possible to inadvertently put schools at risk of violation.

This guidebook is designed to help school officials understand the rights and responsibilities of all parties involved—schools, teachers, parents, children and released-time programs—and to maintain high academic performance while minimizing conflict within school communities and the risk of litigation.

## Summary of Legal Guidelines

U.S. Supreme and Lower Courts rulings suggest basic legal guidelines for religious released-time programs. For more details, see the Court Rulings that follow.

- Released-time programs may not be created or implemented using public funds.
- Released-time programs may not be held on school grounds.
- Released-time programs may not park trailers or busses on school property or just outside school grounds.
- Written permission from the student's parent or legal guardian is required.
- Public school personnel may not show approval or disapproval of the program.
- Public school personnel may not encourage or discourage students from attending.
- Public school personnel may not assist in recruiting or registering students.
- Schools may not punish students for not attending, including giving extra work or stopping instruction.
- Schools may not provide or assist with transportation.
- Schools may not report released-time grades or information other than attendance records.
- Released-time programs' daily attendance records must be maintained by program administrators and not by public school officials.
- Released-time program teachers are not allowed into classrooms to recruit students.
- Released-time program teachers may not assume responsibilities at public school programs and events unless they are acting as parents or regular citizens and not as school officials.
- Public school class schedules may not list released-time classes.

## Legal Overview

Released-time programs, generally speaking, do not violate the First Amendment (*Zorach v. Clauston* 343 U.S. 306 (1952)).

Nevertheless, schools that choose to implement released-time programs must comport with constitutional limitations. (*McCullum v. Board of Education* 333 U.S. 203 (1948)). Specifically, a released-time program violates the Constitution when a public school gives the program 1. access to school property; 2. financial aid; or 3. actual or perceived governmental approval.

Courts strictly prohibit on-site instruction and financial assistance. Therefore, schools may not: 1. allow programs access to tax-supported facilities and property, 2. cover any transportation costs associated with the programs; or 3. pay private instructors (*McCullum, Zorach*).

Schools also may not allow released-time instruction to occur in trailers on school property, or in facilities attached to a school's power grid (*Moore v. Metropolitan School District of Perry Township* 2001 WL 243292 (S.D. Ind. 2001)).

Schools and their officials are prohibited from encouraging or discouraging participation in released-time programs (*Zorach*). Moreover, because students are particularly susceptible to indirect coercion (*Lee v. Weisman* 505 U.S. 577 (1992)), district courts have deemed certain school actions—like suspending regular curriculum during release hours (*Moore*), allowing program buses to park near school curbs (*Doe v. Shenandoah* 737 F.Supp. 913), and allowing released-time employees into school classrooms—likely unconstitutional. At times, even unintentional, *perceived* state approval can render a released-time program unconstitutional.

Schools, however, may collect released-time program permission slips (*Zorach*). They may also accept academic credit from the programs, so long as the schools do not evaluate the quality or content of the religious instruction, and the class is taught or approved by an accredited private school (*Moss v. Spartanburg County School Dist. Seven* 683 F.3d 599 (2012)).

Schools may also prepare and supply attendance slips to the programs, but the schools may not retrieve them (*Lanner v. Wimmer* 662 F.2d 1349 (1981)).

In summary, if a school chooses to host a released-time program, it must ensure that public-school administrators and teachers are as neutral as possible in handling the program; ensure no state funds or facilities support the program, and avoid direct and indirect coercion to participate.

## Supreme Court Rulings

### ***McCollum v. Board of Education, 333 U.S. 203 (1948)***

The released-time program challenged in this case was struck down as unconstitutional by the Supreme Court. In this program, students whose parents so requested were released from their regular classes during the school day to attend religious instruction for thirty to forty-five minutes per week. Students who did not choose to participate in the religious instruction remained in secular classes during that time.

The released-time classes were taught by Protestant, Catholic, and Jewish clergy who were employed by private religious groups but approved and supervised by the superintendent of the school. The instruction took place within school classrooms. Students who signed up for religious instruction were required to be there and the religious instructors reported their attendance to the secular teachers.

This released-time program was found unconstitutional for two main reasons. First, by conducting the program in school classrooms, the program used tax-supported property for religious instruction. Second, the school administration's involvement in approving religious teachers and monitoring the program violated the separation of church and state. The close cooperation between school administrators and religious teachers promoted religion by providing pupils for religious instruction.

*This case established that*

- 1. taxpayer money and resources cannot be used to provide religious instruction and*
- 2. public school staff cannot promote religious instruction to their students.*

### ***Zorach v. Clauson, 343 U.S. 306 (1952)***

The New York City released-time program challenged here was found constitutional by the U.S. Supreme Court. Under this program, parents could request that their child leave school during regular hours to attend religious instruction off school property. The private religious instructors reported to the schools any students who failed to attend their religious instruction.

The program was found constitutional because it did not involve religious instruction in public schools or the use of public funds to promote religion. No student was forced to participate in religious instruction.

In *McCollum*, the religious instruction took place within public school classrooms, creating the perception that the school was promoting religious instruction. In this program, the instruction took place off school property, so the link between public school and private religious instruction was minimal. And while public school teachers and administrators may not coerce students to participate in released-time programs, no students had been coerced in this case.

*This case established that released-time programs can be constitutional provided that they:*

- 1. do not use any public funds or resources to provide religious instruction; and*
- 2. do not use the influence of the public school to encourage or coerce students to participate in religious instruction.*

## Lower Court Rulings

### ***Moss v. Spartanburg County School Dist. Seven*, 683 F.3d 599 (4th Cir. 2012)**

In this case, the court held that *accepting credit for a released-time program was constitutional so long as it was treated similarly to a public school accepting transfer credits from a private school's academic program.*

But the Court clarified that if a public school accepts academic credit from released-time programs, it may not do so based on its own judgements about the quality or content of the instruction: To avoid these entangling judgements, the released-time class must be taught by an accredited private school or approved by one, if credit is to be awarded at all.

### ***Pierce v. Sullivan West Central School Dist.*, 379 F.3d 56 (2d Cir. 2004)**

Released-time programs that (a) do not occur in the public school, (b) do not use public funds, and (c) are not promoted by the public school beyond taking permission slips are constitutional.

### ***Lanner v. Wimmer*, 662 F. 2d 1349 (10th Cir. 1981)**

This case dealt with a released-time program in Logan School District where many students attended an LDS church seminary. The seminary and the school were interconnected in many ways; the program and the school shared attendance and credit records, and the school's PA system was hooked up to the seminary's.

The Court parsed through many elements of the program and found that while some were necessary for its continued functioning (connected PA system), others were unconstitutional because they excessively entangled the government in the program's affairs; the school could not, for instance, grant credit based on what it judged to be "mainly non-denominational" teaching.

*Released-time programs must avoid unnecessary entanglement between public schools and religious institutions in order to maintain constitutionality.*

### ***H.S. v. Huntington County Community School Corp.*, 616 F.Supp.2d 863 (N.D. Ind. 2009)**

The released-time program challenged in this case was found likely unconstitutional due to the appearance of support by the public school. The religious instruction took place in a trailer in the school's parking lot. Although the school did not financially support the program in any way, its proximity to the school resulted in an unacceptable impression of school support for the program.

*Released-time programs must be entirely separate from public school property in order to ensure that public schools' influence over students does not encourage or coerce them to participate.*

***Moore v. Metropolitan School District of Perry Township, 2001 WL 243292 (S.D. Ind. 2001)***

An Indiana district court found the released-time program in this case unconstitutional because it used public funds and encouraged students to participate. The religious instruction took place in trailers that were 1. on school property; and 2. connected to the school's electric grid. The program, therefore, benefitted from public resources.

Students who did not participate in the program were also not provided instruction or allowed to do schoolwork while the other students attended religious instruction. The Court found that this complete halt in secular education encouraged participation in the religious released-time program.

*Public funds cannot be used to support religious instruction and that the programs should not affect the education of students who choose not to participate.*

***Doe v. Shenandoah, 737 F. Supp. 913 (W.D. Va. 1990)***

The released-time program in a Virginia elementary school was struck down in district court for multiple reasons. For one, the religious instruction took place in repurposed school buses that did not significantly differ in appearance from regular school buses. The school buses were often parked on or near school property, which gave the appearance that the school promoted the religious instruction. Additionally, religious instructors entered the school at times and tried to encourage participation by promising students candy if they signed up for religious instruction.

*Schools cannot use their influence over students to promote released-time programs. Even the appearance of public school support for religious instruction can violate the separation of church and state.*

*Note: Depending on the program's location, some of these rulings may state constitutional requirements. Regardless, these rulings are useful in determining appropriate restrictions for released-time programs.*



## Frequently Asked Questions

### **Is parental consent required?**

Yes, parents must fill out consent forms and deliver them to the school before students are allowed to leave school grounds for released time. Consent forms must be provided by released-time programs, but schools may require that certain information such as disclaimers be included on the forms. Program administrators should choose the method for obtaining parental consent that will require the least amount of school involvement. [*Lanner v. Wimmer*, 662 F.2d 1349, 1358 (10th Cir. 1981)]

### **May released-time classes take place on school grounds?**

No. The U.S. Supreme Court has ruled that released-time classes may not be held on public school grounds. (Compare *Illinois ex rel. McCollum v. Board of Educ.*, 333 U.S. 203, 209 (1948) with *Zorach v. Clauson*, 343 U.S. 306, 308 (1952)). In the former, religious teachers entered public school classrooms and thus the released-time program was declared unconstitutional; in the latter, the released-time program was held constitutional because, among other reasons, classes were not held on public school grounds.

Religious classes must occur off campus and must be wholly organized and run by the released-time program. The released-time program must arrange for facilities without any participation by the school. Schools may not rent their facilities for religious instruction during the school day.

### **Are schools allowed, or required, to provide financial support for released-time programs?**

No. Schools are neither required nor allowed to spend any taxpayer funds on released-time programs. “No tax, in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.” [*Illinois ex rel. McCollum v. Board of Educ.*, 333 U.S. 203, 210 (1948)] The U.S. Supreme Court prohibits “government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith.” (*Grand Rapids School District v. Ball*, 473 U.S. at 385.) For example, schools may not print permission slips for released-time programs. [*Holt v. Thompson*, 66 Wis. 2d 659, 225 N.W.2d 678, 683 (Wis. 1975)]

### **Can schools promote or discourage released-time programs?**

No. As secular, governmental institutions funded by all taxpayers, public schools are required by the First Amendment to remain neutral on religious issues. They may do nothing to support or nothing to discourage religious released-time programs. They may not take any part in creating, promoting or facilitating released-time programs.

Students who do not attend released-time programs cannot be penalized or stigmatized by schools in any way. Neither the school nor the state may take any action that would “coerce anyone to attend church, to observe a religious holiday, or to take religious instruction.” [*Zorach v. Clauson*, 343 U.S. 306, 313 (1952). 26 Id. at 314.]

### **What may teachers and administrators say and do about released-time programs?**

In their words and actions, teachers and administrators may not encourage or discourage the participation of students or parents in released-time programs. Public school teachers and administrators may not comment on the released-time program or on the students who choose to attend or not to attend. [*Zorach v. Clauson*, 343 U.S. 306, 311 (1952).]

### **Who is responsible for making up lost instruction?**

Students who attend released-time programs and their parents are responsible for making up lost instruction. This should be done with an eye toward minimizing the impact on teachers. Teachers should not have to repeat instruction for released-time students or field phone calls and emails from multiple parents asking for lesson plans. Students who do not attend released-time programs should not receive less instruction or less attention from their teacher because the teacher is helping released-time students make up for missed classes.

### **How is student recruitment restricted?**

Public school teachers and religious-group representatives may not distribute consent cards or explain released-time programs in public school classes. Released-time personnel should not enter classrooms to recruit students and public school teachers should not take an active part in the recruitment effort, either by physical participation in the enrollment process or by verbally encouraging students. [*Doe v. Shenandoah County School Board*, 737 F. Supp. 913, 918 (W.D. Va. 1990)]

*Perry v. School District No. 81*, 344 P.2d 1036, 1037-38 (Wash. 1959) ruled that neither public school instructors nor religious-group representatives may distribute permission cards in schools or make announcements or explanations in schools for the purpose of obtaining parents' consent because such actions violate the state constitution.

### **How is the distribution of consent forms restricted?**

Schools may not facilitate the distribution of consent forms in any way. Consent forms may not be distributed on school property, by school personnel, in school mailings, or in school information packets. They may not be posted on school bulletin boards. Registration for released-time programs should occur off school campuses and involve only the released-time program administrators and forms supplied by the released-time programs.

### **May students distribute released-time literature on school grounds?**

Yes, generally students have a right to distribute religious literature on public school campuses subject to reasonable time, place and manner restrictions imposed by the school. This means that the school may specify at what times the distribution may occur (e.g., lunch hour or before or after classes begin), where it may occur (e.g., outside the school office) and how it may occur (e.g., from fixed locations as opposed to roving distribution). These restrictions should be reasonable and must apply evenly to all non-school student literature. (*Tinker v. Des Moines School District*)

### **May adults or school staff distribute released-time literature on school grounds?**

No. Adults from outside the school have no right to distribute materials to students in a public school. Schools generally may not give religious groups (e.g., the Gideons) access to distribute their materials on campus. Even passive distribution of literature by outside groups is legally problematic.

### **Who provides insurance?**

Released-time programs must provide insurance without any participation by schools. Schools may require liability insurance and other reasonable regulations relating to student health, education and safety, provided such regulations apply neutrally to all participating religious communities.

### **Who provides transportation?**

According to the U.S. Supreme Court, public schools are prohibited from providing students with transportation to religious released-time activities. (*Zorach v. Clauson*, 343 U.S. at 308-9, 314.) The Court has explained that cooperating with religious released-time programs does not justify significant financial expenditures to assist those programs. Generally, religious organizations and parents must assume full responsibility for a student's transportation to religious activities, and the school is not allowed to assist in any way.

### **Who takes attendance?**

Public schools may require attendance reports from released-time administrators, since schools have a legitimate interest in knowing the whereabouts of students during school hours. [*Zorach v. Clausen*, 343 U.S. at 311 n.6; *Lanner v. Wimmer*, 662 F.2d 1349, 1358-59 (10th Cir. 1981); *Holt v. Thompson*, 66 Wis. 2d at 682.] Released-time programs should take attendance and provide schools a regular report. Schools should not be involved in taking attendance, and should choose the method of overseeing attendance that requires their least involvement.

### **May schools take action against students who sign up for released-time programs, but fail to attend?**

Yes, it is permissible for public schools to take some action against students who are enrolled in released-time education, but do not attend. Public schools may report repeated absences to a child's parents, although they probably may not report more occasional absences. (*Lanner v. Wimmer*, 662 F.2d at 1355.) Also, public schools may deny permission to attend released-time classes to students who, in the past, have requested the privilege and deceived authorities. (*Holt v. Thompson*, 66 Wis.2d at 682.)

### **May released-time programs be included in class schedules?**

No. Public school class schedules, catalogs, and registration forms may not contain any information about or schedules for released-time classes.

### **May schools give academic credit for released-time programs?**

No. The court ruled that giving academic credit would require schools to oversee and approve the content of religious classes, and that would create too much entanglement. (*Lanner v. Wimmer*) However, schools may provide elective or eligibility credit.

## **Addressing Parental Concerns: Specific Actions School Administrators Can Take**

Parents, especially those whose children do not attend released-time programs, may have concerns about released-time programs. The way school administrators address parental concerns can have an impact on the school's success in fulfilling its role in the community and its responsibilities to students.

Parental concerns fall into three main categories:

### **1. Threats to Academic Excellence**

Parents whose children do not attend released-time programs may be concerned that their children will suffer academically:

- Parents are often concerned that their children will lose hours of instruction because teachers stop presenting new material while some students are attending released-time classes.
- Parents (and teachers) are often concerned that teachers' time will be taken up helping released-time students make up for missed lessons instead of working on new lesson plans, teaching new material, and grading homework.

#### *Suggestions for Maintaining Academic Excellence*

- *Use the school's power to select the day and time for released-time programs to choose times that will minimize the loss of academic instruction hours. Scheduling released-time programs when few classes are being held, such as lunch hour, can help. Scheduling released-time programs on Friday will give students who miss class and their parents time over the weekend to catch up on missed lessons. Schools may request that released-time programs schedule their classes outside of school hours, although released-time programs are not required to comply.*
- *Continue teaching new material during released-time programs. Make it clear to parents who choose to take their children out of class that they are responsible for helping their children make up for missed lessons.*
- *Post missed lessons online. This will save teachers from having to give the missed lesson to each parent individually. Make it clear to parents that it is their responsibility to obtain the missed lesson from the internet and go over it with their child,*

### **2. Religious Recruiting**

Parents whose children do not attend released-time programs may be concerned that their children will be recruited by a religious group whose doctrines they disagree with because:

- The stated mission of evangelical Christian religious groups operating released-time programs is to convert as many students as possible.
- Their policies include using children who attend released-time programs to recruit their friends and classmates.

Parents may also be concerned that their children may be lured into released-time programs by other students bringing back toys and treats from released-time classes, or pressured by being told on the playground that they will go to hell if they don't attend released-time classes.

#### *Suggestions for Preventing or Limiting Recruiting*

- *Make it clear to released-time program staff that proselytizing is not permitted on public school grounds.*
- *Educate school staff and volunteers about policies that prevent them, when on the job, from speaking or acting in a manner that can be perceived as promoting or endorsing religious instruction or practice.*
- *Prohibit released-time programs from using school or PTA-sponsored communication vehicles to promote their activities.*
- *Don't allow students to return from released-time programs with toys and treats. Toys and treats from released-time programs must be kept in backpacks while on school grounds.*
- *Don't allow students to hand out released-time program literature or permission slips to other children on school property, including school busses.*
- *Enforce student anti-harassment policies that protect students from aggressive proselytizing or religious bullying by other students.*
- *If problems arise, administrators should meet with affected parents and released-time program representatives, being firm and clear about the responsibilities of all parties.*

### **3. Conflict in the School Community**

Parents whose children don't attend released-time programs can be upset by the injection of sectarian doctrine and aggressive proselytizing into their public school. This can cause division and conflict in schools and among parents, as sides are taken. Ultimately, parents can withdraw support from the schools, donating less time and money.

#### *Suggestions for Dealing with Conflict*

*The following three principles can guide a school administrator's approach to minimizing and resolving conflict:*

- 1. Rights: Religious liberty, or freedom of conscience, is a precious, fundamental right. Every effort should be made in public schools to protect the freedom of conscience of all students and parents, both believers and non-believers.*
- 2. Responsibilities: Religious liberty is not only a universal right, but a universal responsibility to respect that right for others. Rights are best protected when each person and group protects for others the rights they wish protected for themselves. This is especially important with the increase of pluralism in our society. Religious leaders should remember that a public school is not a place for proselytizing or other overt religious activity.*
- 3. Respect: Conflict and debate are part of democracy. However, not only what we debate, but how we debate, is critical. Administrators mediating debates should insist on respectful, non-inflammatory dialog.*

*Specific actions administrators can take to avoid conflict include the following:*

- Be prepared. Understand the laws and regulations before you need to apply them. Consult with school attorneys if necessary.*
- Use the powers that you do have. Schools are allowed to select the day and time of the released-time program. Choose a day and time that will minimize the impact on the majority of students and teachers.*
- Be scrupulous about maintaining neutrality. Schools can do nothing to either promote or discourage released-time programs. Taking one side or the other will only serve to increase conflict.*
- Know and enforce the rules. Make sure that released-time programs are obeying all of the legal guidelines. Allowing them to cross the lines will increase conflict and the possibility of litigation.*
- Be very careful about the appearance of school endorsement of released-time programs. Young children are impressionable and may have a hard time distinguishing between the school and the released-time program. Allowing released-time program teachers to perform other school functions, for example, can blur the lines between the school and the released-time program. If necessary, make the difference between the school and the released-time program clear to students.*
- Be on the alert for proselytizing.*
- Meet with parents and representatives of the released-time program, if necessary. Be firm and clear about the rights and responsibilities of all parties. Work towards buy-in on your goals of maintaining high academic standards, maintaining a harmonious, conflict-free school, and respecting the rights and beliefs of everyone.*