

MODEL POLICY
INDIANA STUDENT RELIGIOUS CIVIL LIBERTIES ACT
Public Law 220-2017¹

PREAMBLE

The public school will neither promote nor disparage any religious belief or non-belief in any of its programs or services. Rather, the public school will encourage all students and staff members to be respectful and tolerant of each other's views. The public school shall endeavor to foster understanding and mutual respect among members of its school community. Accordingly, the public school's policies and procedures will accommodate religious beliefs by not requiring students or staff members to participate in practices that are contrary to their religious beliefs, except where there is an overriding concern that would prevent the allowance of an accommodation.²

Programs of the public school that teach about religion and its role in the social, cultural, and historical development of civilization, as well as the social and political context of world events, do not violate the religious neutrality the public school must maintain: The public school may teach about—but not promote—religion.³ As the U.S. Supreme Court observed:

“[I]t might well be said that one's education is not complete without a study of comparative religion⁴ 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 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.”⁵

¹ Pursuant to Ind. Code § 20-33-12-5 (Pub. L. 220-2017, Sec. 2), the Indiana Department of Education, in collaboration with the Office of the Attorney General and organizations with expertise in religious civil liberties, is to establish a Model Policy for consideration by school corporations and charter schools in addressing the requirements of Ind. Code Chapter 20-33-12, the Indiana Student Religious Civil Liberties Act.

² *Florey v. Sioux Falls District 49-5*, 619 F.2d 1311, 1319 (8th Cir. 1980), *cert. den.*, 449 U.S. 987 (1980).

³ *Clever, et al. v. Cherry Hill Township Board of Education*, 838 F. Supp. 929, 932 (D. N.J. 1993).

⁴ Neither the Indiana Constitution nor the United States Constitution defines “religion.” A religion “addresses fundamental and ultimate questions having to do with deep and imponderable matters.” A religion also “is comprehensive in nature,” consisting of “a belief system” as opposed to “an isolated teaching.” Lastly, a religion “can be recognized by the presence of certain formal and external signs.” *Altman v. Bedford Central Sch. Dist.*, 45 F.Supp.2d 368, 378 (S.D. N.Y. 1999). Affirmed, reversed, vacated, and remanded in part, *Altman v. Bedford C.S.D.*, 245 F.3d 49 (2nd Cir. 2001), *cert. den.*, *Dibari v. Bedford C.S.D.*, 534 U.S. 827 (2001). In similar fashion, “[w]hether a belief is ‘religious’ and thus deserving of some protection by the First Amendment does not depend on whether the belief is true or false. Nor does it depend on whether the belief is reprehensible to the majority of society. Instead, . . . the ‘religious’ nature of the belief depends on . . . whether the belief is based on a theory ‘of man’s nature or his place in the Universe’ . . . which is not merely a personal preference but has an institutional quality about it, and . . . which is sincere.” *Brown v. Dade Christian Schools*, 556 F.2d 310, 324 (5th Cir. 1977) (citations omitted).

⁵ *School District of Abington Township v. Schempp*, 374 U.S. 203, 225 (1963).

MODEL POLICY⁶

Elective Coursework: Comparative Study of World Religions

Authority: Ind. Code § 20-30-6.1-1

The social, cultural, and historical role of religion on the development of civilization “is an appropriate, if not desirable, subject of secular study.”⁷ To this end, the public school may provide an elective course in the comparative study of world religions. Such a course shall be presented in a neutral and objective manner so as not to promote or inhibit religion or religious practices or beliefs, or to excessively entangle the public school with religion.⁸ The public school shall not censor the curriculum based on objections to the content, viewpoint, or inclusion of the religions addressed therein.⁹

Instructional materials shall be sufficiently comprehensive and appropriate to the students enrolled in the course. Such instructional materials will be selected so as to:

- Provide representative selections from many religious, ethnic, and cultural groups so as to demonstrate their contributions to world civilization and American heritage;
- Provide a background of information that will enable students to make intelligent judgments in their daily lives;
- Stimulate growth in factual knowledge, literary and artistic appreciation, aesthetic values, and ethical standards;
- Enrich and support the overall curriculum of the public school;
- Provide contrasting sides of issues so that students may develop, under guidance, the practice of critical analysis; and
- Place principle above personal opinion and reason above prejudice.

Religious Viewpoint Generally

Authority: Ind. Code § 20-33-12-2; Ind. Code § 20-30-5-6(b)(13)

The public school will not discriminate against or otherwise sanction a student or the student’s parent or guardian based on expression of a religious viewpoint regarding an otherwise permissible subject to the same extent the public school will not discriminate or sanction a student or the student’s parent or guardian for expression of a secular or non-religious viewpoint on an otherwise permissible subject.

⁶ For the purposes of the Model Policy, “public school” shall include a school corporation and a charter school. “Student” shall refer to a pupil enrolled in a “public school.”

⁷ *Clever, et al. v. Cherry Hill Township Board of Education*, 838 F. Supp. 929, 939 (D. N.J. 1993).

⁸ *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

⁹ *Florey v. Sioux Falls District 49-5*, 619 F.2d 1311, 1318 (8th Cir. 1980), *cert. den.*, 449 U.S. 987 (1980) (“The public schools are not required to delete from the curriculum all materials that may offend any religious sensibility”).

The public school will encourage its students to respect the rights of others to have their own views and religious beliefs. The public school will not permit in any of its publications or other media of expression any statements that seek to establish the supremacy of a particular religious denomination, sect, or point of view. In all such matters, the public school shall remain neutral and shall not be considered to have endorsed any view.¹⁰

Classroom Assignments; Religious Content

Authority: Ind. Code § 20-33-12-3; Ind. Code § 20-30-5-3(e)

A student will not be sanctioned or rewarded for religious content in homework, artwork, or in any other written or oral classroom assignment. A classroom assignment will be graded based on the ordinary academic and pedagogical standards applicable to all student work.¹¹

Religious Expression By Students

Authority: Ind. Code § 20-33-12-4(a)

Students may pray or engage in religious activities or religious expression before, during, and after the school day to the same extent that students may engage in nonreligious activities or expression.¹²

Moment of Silence

Authority: Ind. Code § 20-30-5-4.5

Each student is guaranteed the free exercise of religion while at the public school, subject to the least possible coercion from the school. Each public school shall provide its students a daily opportunity for a moment of silence, either in the classroom or on school grounds. During the moment of silence, each student may make the individual choice to pray, meditate, or engage in

¹⁰ *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 270-71, 273-76 (1988) (school could exercise editorial control over the style and content of student articles in school newspaper because newspaper was part of journalism class experience and, accordingly, was part of a school-sponsored expressive activity; however, such editorial control must be “reasonably related to legitimate pedagogical concerns.” Editorial discretion applies to other media of expression controlled by the public school). See also Policy 5722, Evansville-Vanderburgh School Corporation, at <http://district.evscschools.com/cms/One.aspx?portalId=74772&pageId=157497> (“The Board reserves the right to...prohibit...publications or productions which are not protected by the right of free expression because they violate the rights of others. Such unprotected materials are those which...seek to establish the supremacy of a particular religious denomination, sect, or point of view over any other religious denomination, sect, or point of view.”)

¹¹ See *Religious Expression in Public Schools: A Statement of Principles*, United States Department of Education (June 1998), available at <http://files.eric.ed.gov/fulltext/ED416591.pdf>.

¹² “Students may also participate in before or after school events with religious content, such as ‘see you at the flag pole’ gatherings, on the same terms as they may participate in other noncurriculum activities on school premises. School officials may neither discourage nor encourage participation in such an event.” *Religious Expression in Public Schools: A Statement of Principles*, United States Department of Education (June 1998), available at <http://files.eric.ed.gov/fulltext/ED416591.pdf>.

any other silent activity so as not to impede or interfere with another student's individual choice.¹³

Accommodation of Religion

The public school will accommodate the religious beliefs of a student or the student's parent or guardian where it is reasonable to do so and the accommodation will not impede or interfere with the rights of other students.

The following accommodations will be provided by the public school based on religious beliefs:

- Excusal from the requirements of compulsory immunizations. Ind. Code § 20-34-3-2.
- Excusal from participation in the Pledge of Allegiance, although expression of a religious objection is not a precondition under Indiana law.¹⁴ Ind. Code § 20-30-5-0.5.
- Excusal from health and hygiene courses. For secondary students, one (1) credit from either a science, family and consumer science, or health and physical education may be substituted for the hygiene course the student objects to on religious grounds. Ind. Code § 20-30-5-9; 511 IAC 6-7-6.1(c)(6).

The following accommodations may be made by the public school based on religious beliefs:

- Excusal from curricular content that is objectionable to the student or the student's parent or guardian based on religious beliefs.
- Release for religious instruction, at the discretion of the building principal, subject to the policies of the governing body of the public school. Such a release may be for up to 120 minutes a week. Permission will not be unreasonably declined.¹⁵ Ind. Code § 20-33-2-19.

Educationally Related Nonclassroom Activity; Exception to Compulsory Attendance Authority: Ind. Code § 20-33-2-17.5.

A student who may be absent from school for religious reasons shall have the same opportunity as a student absent from school for non-religious reasons to apply for an "educationally related nonclassroom activity" exception to compulsory attendance.¹⁶

¹³ See *Wallace v. Jaffree*, 472 U.S. 38 (1985) and *Sherman ex rel. Sherman v. Koch*, 623 F.3d 501 (7th Cir. 2010).

¹⁴ *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

¹⁵ See *Moore, et al. v. MSD of Perry Township*, 2001 WL 243292 (S.D. Ind., February 7, 2001) and *H.S. v. Huntington County Community School Corporation*, 616 F.Supp.2d 863 (N.D. Ind. 2009). See also *Illinois ex rel. McCollum v. Board of Education, School District No. 71*, 333 U.S. 203, 68 S. Ct. 461 (1948) and *Zorach v. Clauson*, 343 U.S. 306, 72 S. Ct. 679 (1952).

¹⁶ See *Church of God (Worldwide, Texas Region), et al. v. Amarillo Independent School District, et al.*, 511 F. Supp. 613 (N.D. Texas 1981), *affirmed*, 670 F.2d 46 (5th Cir. 1982) (school district's "excused absence policy" that awarded no credit for work performed during such absences substantially burdened the religious practices of religious adherents in the school district who were required to attend an annual seven-day religious convocation).

Dress Code

Authority: Ind. Code § 20-33-8-12(a)(1)(A); Ind. Code § 20-33-12-4(d)

A public school is authorized to establish an appropriate dress code or uniform policy for its students. The public school will provide a reasonable accommodation for a student whose religious beliefs may be manifested in the wearing of clothing, accessories, or jewelry not otherwise permitted by the dress code or uniform policy, provided such accommodation is for religious purposes and the accommodation will not, or is not likely to, cause a substantial disruption or material interference with school purposes or impinge on the rights of other students.

Students may wear clothing, accessories, and jewelry that display religious messages or contain religious symbols to the extent that students are permitted to wear clothing, accessories, and jewelry that display non-religious messages or contain non-religious symbols.¹⁷

The public school will not permit speech or messages that are lewd, vulgar, or indecent, or speech or messages that promote activities that are illegal for students.¹⁸

Religious Clubs

Authority: Ind. Code § 20-33-12-4(a)

Students may organize prayer groups, religious clubs, or other religious gatherings before, during, and after school to the same extent students are permitted to organize other noncurricular student groups, clubs, or gatherings before, during, and after school.

This is in addition to the requirements of the Equal Access Act, 20 U.S.C. §§4071-4074.¹⁹

¹⁷ “**Student garb:** Schools enjoy substantial discretion in adopting policies relating to student dress and school uniforms. Students generally have no Federal right to be exempted from religiously-neutral and generally applicable school dress rules based on their religious beliefs or practices; however, schools may not single out religious attire in general, or attire of a particular religion, for prohibition or regulation. Students may display religious messages on items of clothing to the same extent that they are permitted to display other comparable messages. Religious messages may not be singled out for suppression, but rather are subject to the same rules as generally apply to comparable messages.” *Religious Expression in Public Schools: A Statement of Principles*, United States Department of Education (June 1998), available at <http://files.eric.ed.gov/fulltext/ED416591.pdf>.

¹⁸ *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, 681, 683, 685-86, 106 S. Ct. 3159 (1986) (student’s sophomore speech— which contained offensive, indecent, lewd references— was not protected speech and could be regulated because vulgar or indecent speech and lewd conduct in the classroom or school context is inconsistent with the fundamental values of public school education). *Morse v. Frederick*, 551 U.S. 393, 127 S. Ct. 2618 (2007) (a message reasonably viewed as advocating illegal drug use—“Bong HiTS 4 Jesus”—need not result in a substantial disruption before school officials could restrict such speech on school property or at a school event).

¹⁹ *Board of Education of Westside Community Schools v. Mergens*, 496 U.S. 226 (1990).

Disclaimer

Authority: Ind. Code § 20-33-12-4(a), (c)

The public school is not required to promote the speech of students, including religious expression by students. The public school may indicate that any activity or expression by a student or students for religious reasons that occurs at the public school or during an activity sponsored by the public school is neither sponsored nor endorsed by the public school. Such disclaimers shall be neutral towards religion.²⁰

Equal Access to Public School Facilities

Authority: Ind. Code § 20-33-12-4(b)

Student groups shall have the same right of access to school facilities for meetings and school-based communication avenues (*e.g.*, bulletin boards, homeroom announcements), irrespective of the viewpoint of the student group or the content of the student group's message, consistent with the policies of the governing body with respect to student speech generally.

Survey, Personal Analysis, or Evaluation

Authority: Ind. Code § 20-30-5-17(b)(2)

No student shall be required, without the written consent of the student's parent or guardian or the written consent of the student, if the student is an adult or is emancipated, to submit to a survey, a personal analysis, or an evaluation not directly related to academic instruction where such survey, personal analysis, or evaluation reveals information concerning, *inter alia*, religious beliefs or practices of the student or the student's family.

²⁰ *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988). See also "Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools," U.S. Department of Education (February 7, 2003), available at http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html ("To avoid any mistaken perception that a school endorses student or other private speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's").