

Educational Role Play or Religious Indoctrination?

A unit on Islam highlights the challenges in balancing religious freedom and legitimate instruction that includes religious history, themes, and ideas.

BY KELLEY R. TAYLOR, ESQ.

In fall 2001, in a middle school near San Francisco, seventh-grade world history students participated in an Islamic-themed curriculum. For three weeks, students were divided into groups named after Islamic cities and engaged in role play designed to simulate Islamic customs. Students were given Islamic names and were allowed to dress in costume, gave up items to represent Ramadan fasting, and simulated pilgrimages to Mecca. They also memorized portions of Islamic prayers and Koran verses. All of this transpired in students' efforts to complete projects representing Islamic Pillars of Faith, earn class points, and learn about Islamic history and culture.

In June 2002, parents of one of the students in the class filed suit against the Byron Union School District, arguing that the Islamic-themed unit violated their son's constitutional rights. Specifically, the plaintiffs objected to class handouts encouraging their son to "become Muslim" and instructions that their son take an Islamic name and say certain religious phrases. They contended that these aspects of the

curriculum amounted to government establishment of religion and therefore violated the First Amendment to the U.S. Constitution.

Relying in part on the fact that the plaintiff's parents did not (on their son's behalf) opt out of the classroom exercise, a district court in December 2003 ruled in favor of the school district. The district court also found the Islamic unit to be educational, rather than "devotional or religious" in intent. Finally, the district court deemed the activities included in the unit to be "approximations, rather than true religious rites."

On appeal, a panel for the federal court of appeals for the 9th Circuit also ruled in favor of the school district in a one-page, unpublished memorandum. That three-judge panel ruled that the activities associated with the Islamic unit were not "overt religious exercises" and, consequently, did not violate the Constitution.

In 2006, the U.S. Supreme Court declined to review the case, and the 9th Circuit's ruling in *Eklund v. Byron Union School District* (2005) stands. Nevertheless, the unit has apparently not been

offered in the Byron Union School District since the 2001–02 school year.

Establishment of Religion

The First Amendment states, "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof." The first portion of that statement is referred to as the "Establishment Clause." When objections like the one in the *Eklund* case arise, courts typically use a three-part test to determine whether the activity at issue constitutes a violation of the Establishment Clause. The "*Lemon* test" comes from a 1971 U.S. Supreme Court case, *Lemon v. Kurtzman*, in which the Court held that to be constitutional, government actions must have a secular purpose, have a primary effect that neither advances nor inhibits religion, and not cause excessive entanglement with religion.

As part of government establishment of religion, prevailing U.S. law prohibits government endorsement of religion in public schools as well as teacher proselytizing of religion in classrooms. But constitutional law does not require that students never be exposed to materials, textbooks, or curricula that address religion. The question is, How can school leaders balance legitimate educational exposure to religious history, themes, and ideas with prohibitions on government establishment of religion?

Overt Religious Exercise

In finding that the Byron Union School District's Islamic unit did not violate the Constitution, the 9th Circuit's panel cited *Brown v. Woodland Joint Unified School District* (1994), another case involving religious role-playing activities. *Brown* involved a parent's objection to elementary reading materials that included suggestions about



Kelley R. Taylor, Esq., (taylor_kr@msn.com) is a former NASSP General Counsel and a longtime contributor to *Principal Leadership* magazine.

religious-themed role play. In that case, students could participate in fantasy activities and chants designed to teach about witchcraft. The 9th Circuit held that such exercises were not overtly religious ones and, therefore, did not impede the Establishment Clause.

To express that the purpose of the activities in *Brown* were “secular and pedagogical,” the court used examples of acting out a “ceremonial American Indian dance” or reenacting “the Last Supper” as similar and potentially permissible activities from a First Amendment perspective—despite their religious nature. For the *Brown* court, the context, purpose, and intent surrounding the disputed activities were key to proper legal analysis. In short, secular goals and nonreligious intent can make teaching about religion, even through role play or re-creation, acceptable in a public school setting.

Opting Out

When *Eklund* was initially heard by a San Francisco district court, that court found that the plaintiff parents did not “opt out” (on their son’s behalf) of the Islamic unit. In California, as in many states, opt-out policies and statutes exist to address such issues as parental objections to curricula, student privacy, and dress codes. Opt-out policies and statutes do not give parents unfettered discretion to decide what subjects their children can be exposed to in schools. The *Eklund* case, however, raised the question whether opt-out policies can effectively negate certain legal questions in the school setting.

According to a publication of the California Safe Schools Coalition (n.d.), California law provides parents and guardians certain rights concerning public school curriculum. Those include the right to examine curriculum

materials, to observe classrooms and meet with teachers, to have a safe environment for their children conducive to learning, and to work with schools to adopt policies for student well-being and development. Parents have the right to be informed of these rights.

The state’s education code also provides parents a “right to receive prior notice about and/or opt their children out of...[certain] topics of instruction in California public schools.” Those topics include sexual health education; HIV-prevention education; and voluntary surveys, tests, and research and evaluation initiatives.

By and large, parents do not have a right to prevent their children from being exposed to certain topics in public schools merely because they find the topics objectionable. Again, a secular purpose and compelling interest of the state to provide a free and

Advertisement

appropriate education to students usually outweighs subjective determinations about the content of public school curricula. In instances where parents believe constitutional rights (e.g., free exercise of religion) are being violated as a result of curricula content, those parents have recourse. They may, of course, file a lawsuit. More important, however, they can sometimes work with school officials to have their legitimate and reasonable concerns considered.

Some states and their respective school districts allow parents to opt their children out of nonessential school activities. Others provide opt-out options for notable, or required, portions of school curricula. In those circumstances, some states provide for alternative assignments and others allow students to opt-out of a particular

class completely. The district court in *Eklund* proffered that the opt-out statutes and policies in California negated the coercion aspect of their First Amendment claim. Attorneys for the plaintiffs asserted that the parents were unaware of the opt-out option at the time their son was introduced to the Islamic-themed unit.

Double Standard?

Besides the Constitution and opt-out provisions, the *Eklund* case stirred controversy and rekindled questions about religion in schools. Specifically, the idea that students could participate in Islamic role play made some people question whether the same deference would be afforded Christian role play. Does the ruling in *Eklund* and the Supreme Court's refusal to hear the case mean that schools can or should teach

Christianity with equal force? There are no simple answers.

From a purely legal perspective, the Constitution and prevailing law require the government to be religiously neutral. Consequently, public schools must present religion in an educational and impartial way. Nevertheless, some might argue that a three-week focus on the history and culture associated with a particular religion is, in and of itself, biased or selective. When this unit was introduced, however, the state of California required that Islamic history (including associated customs and religion) be included in the curriculum for seventh-grade world history classes.

Despite the fact that the U.S. law does not prohibit teaching about religion in public schools, rulings like the one in the *Eklund* case heighten already-intense emotions. Perhaps three weeks of role play about Islam amount to improper religious indoctrination. Maybe those same three weeks merely provide an interactive, but entirely secular, experience. Which viewpoint you espouse is, most likely, a completely personal matter. From their a normative positions, however, school leaders must transmit the viewpoint being promulgated by the U.S. courts through cases like *Eklund*. Doing so leaves teachers free to use different instructional methods for educating students in different subjects—including religion. **PL**

References

- *Brown v. Woodland Joint Unified School District*, 27 F.3d 1373 (9th Cir. 1994).
- *Eklund v. Byron Union School District*, No. 04-15032 (9th Cir. November 17, 2005).
- California Safe Schools Coalition. (n.d.). *Question and answer guide on California's parental opt-out states: Parents' and schools' legal rights and responsibilities regarding public school curricula*. Retrieved from www.casafeschools.org/OptOutQA.pdf

Advertisement