

## **Released Time Programs**

While it would be inappropriate for The Rutherford Institute to provide you with legal advice at this time or under these circumstances, we are pleased to provide the following information in response to your inquiry which may be useful to you.

Released time is the period when public schools excuse children from classes during the school day, allowing the students to leave school to attend sectarian religious classes. Released time programs are motivated by a desire to provide religious instruction for children who attend government schools without violating the contemporary understanding of the First Amendment's Establishment Clause. This brief will outline the constitutional boundaries of what is permissible and will look at released time policies established by several states.

### **I. The Constitutional Boundaries**

The Supreme Court has held that released time programs are constitutional if conducted in an appropriate manner. In *Zorach v. Clauson*,<sup>1</sup> the Court reviewed a New York City released time program. The New York program permitted schools to excuse students to attend religious classes held in religious centers off school premises. The board expended no public funds for the program. In holding that the New York released time program did not violate the First Amendment, Justice Douglas wrote:

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. When the state encourages the religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs.<sup>2</sup>

The Court's understanding of the Establishment Clause of the First Amendment has evolved since the Court's decision in *Zorach v. Clauson*; nevertheless, *Zorach* is still a valid statement of current law.<sup>3</sup>

Not every released time program established by a state or a school district would be judged by the courts to be constitutional. For example, the Supreme Court has held that a released time program violates the Establishment Clause where the released time classes are held in the government school building and where the released time program is conducted by outside teachers subject to the approval and supervision of the school.<sup>4</sup>

To be constitutional, a released time program should follow general rules. First, no public funds should be expended to implement the program.<sup>5</sup> In addition to understandable illustrations of inappropriate expenditures such as paying for released time materials and instructors, even minimal public expense must be avoided. For example, forms used for obtaining parental consent to participate in the released time program and forms used for recording attendance should be paid for with private money.<sup>6</sup> Also, public funds should not be used to advertise the released time program in flyers or on bulletin boards.<sup>7</sup>

Second, the released time classes should not be held on school property.<sup>8</sup> One court held that released time classes conducted in trailers parked on streets adjacent to the school were constitutional<sup>9</sup> while another court ruled that a released time class could not meet in a private bus parked directly in front of the school entrance.<sup>10</sup> Many released time classes are held in church buildings located near the students' schools.

Third, the school should avoid using its coercive power to promote the released time program. Public school teachers should not recruit students or endorse the released time program.<sup>11</sup> The school should not give academic credit toward graduation for successful completion of the released time program.<sup>12</sup> The released time instructors should not enter school property to recruit students for the program.<sup>13</sup> One method of recruitment that has been used successfully is to obtain a list of student addresses and to mail the parental consent forms directly to the parents.<sup>14</sup>

## **II. Released time statutes**

While properly conducted released time programs are constitutional, students do not have a constitutional right to be excused from school to participate in a released time program. Whether a released time program can be instituted in a particular school depends on the policy of the state and, in many cases, the policy of the local school board.

The legislatures of at least nineteen states have enacted statutes establishing a state policy concerning released time programs.<sup>15</sup> Those states include Arizona,<sup>16</sup> California,<sup>17</sup> Florida,<sup>18</sup> Hawaii,<sup>19</sup> Idaho,<sup>20</sup> Indiana,<sup>21</sup> Iowa,<sup>22</sup> Maine,<sup>23</sup> Michigan,<sup>24</sup>

Minnesota,<sup>25</sup> Montana,<sup>26</sup> New Mexico,<sup>27</sup> New York,<sup>28</sup> North Dakota,<sup>29</sup> Oregon,<sup>30</sup> Pennsylvania,<sup>31</sup> South Dakota,<sup>32</sup> Vermont,<sup>33</sup> Wisconsin.<sup>34</sup> No state has expressly outlawed the practice of granting released time.

The released time statutes listed above vary from general guidelines stating the maximum hours a student may be excused for released time each week to simple statements that students may be excused for religious instruction. In most cases, however, the details of the released time program are left to the local school board.

The legislatures of many states have not yet adopted statutes articulating state policy concerning released time programs. In the absence of a released time statute, a state education department may have promulgated a released time policy.

Parents and religious organizations wishing to establish a released time program should develop a proposal within the constitutional boundaries briefly outlined above that complies with the state's released time policy. The proposal should be fair to the school board, giving them discretion to fix the time to avoid conflict with the school's academic schedule.

The Rutherford Institute hopes that this information has been helpful to you. For a more thorough treatment of the history and law of released time programs, see chapter 15 of John W. Whitehead's *The Rights of Religious Persons in Public Education* (revised edition, Crossway Books, 1994). If you desire information on other issues of religious liberty, or if you need personal legal assistance in any area regarding religious freedom, then please feel free to write us at The Rutherford Institute, P.O. Box 7482, Charlottesville, Virginia 22906-7482, email us at [tristaff@rutherford.org](mailto:tristaff@rutherford.org), or call us at (434) 978-3888..

## NOTES

- 
1. 343 U.S. 306 (1952).
  2. *Id.*, at 313-314.
  3. See *Texas Monthly v. Bullock*, 489 U.S. 1, 18 (1988); *Meek v. Pittenger*, 421 U.S. 349, 359 (1975).
  4. *Illinois Ex rel. McCollum v. Board of Education*, 333 U.S. 203 (1948).
  5. *Zorach*, 343 U.S. at 308.
  6. *McCollum*, 333 U.S. at 208; *Zorach*, 343 U.S. at 309.
  7. *Zorach*, 343 U.S. at 309.
  8. *Id.*
  9. *Smith v. Smith*, 523 F.2d 121, 122 (4th Cir. 1975), *cert. den.* 423 U.S. 1073 (1976).
  10. *Doe v. Shenandoah County School Board*, 737 F.Supp. 913 (W.D.Va. 1990).
  11. See *Zorach*, 343 U.S. at 309; *Shenandoah*, 737 F.Supp. at 915.
  12. *Lanner v. Wimmer*, 662 F.2d 1349, 1361 (10th Cir. 1981).
  13. *Perry v. School Dist.*, 344 P.2d 1036 (Wash. 1959).
  14. *Smith*, 523 F.Supp. at 122.
  15. Most of these statutes have been enacted as exceptions to compulsory attendance.
  16. Ariz. Rev. Stat. § 15-806 (2001).
  17. Cal. Educ. Code § 46014 (2002).
  18. Fla. Stat. § 1002.20(2)(c) and §1003.21(2)(b)(2002).
  19. Haw. Rev. Stat. § 302A-1139 (2002).
  20. Idaho Code § 33-519 (2002).

- 
- 21 . Ind. Code Ann. § 20-8.1-3-22 (Michie 2002).
  - 22 . Iowa Code § 299.2(3) (2002).
  - 23 . Me. Rev. Stat. tit. 20, § 1224-A (2001).
  - 24 . Mich. Comp. Laws § 380.1561(3)(d) (2002).
  - 25 . Minn. Stat. § 120A.22 subd. 12(3) (2001).
  - 26 . Mont. Code Ann. § 20-1-308 (2001).
  - 27 . N.M. Stat. Ann. § 22-12-3 (2002).
  - 28 . N.Y. Educ. Law § 3210(1)(b) (Consol. 2002).
  - 29 . N.D. Cent. Code, §15.1-19-04 (2002).
  - 30 . Or. Rev. Stat. § 339.420 (2001).
  - 31 . P.A. Stat. Ann. 24 § 15-1546 (2002).
  - 32 . S.D. Codified Laws § 13-33-10 (2002).
  - 33 . Vt. Stat. Ann. tit. 16 §§ 1051-1055 (2001).
  - 34 . Wis. Stat. § 118.155 (2001).