



INSTITUTE FOR JUSTICE

Questions and Answers About the Involvement of Religious Organizations And Individuals in Charter Schools

The New York charter school law provides that “a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations”¹ and that “[a] charter shall not be issued to any school that [is] wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine [is] taught.”² Likewise, the First Amendment of the United States Constitution and the Blain Amendment of the New York Constitution place limits on the power of government to directly fund religious instruction and activities. At the same time, however, the First Amendment forbids discrimination against religious entities.

In this document, we respond to question from the New York Charter School Resource Center on the role that religious institutions can play in expanding educational opportunities through the state’s charter school law. Certainly, any particular case will be viewed in light of the totality of circumstances at a school, and charter schools should seek legal advice before embarking on a specific course of action implicating this sometimes murky area of the law.

It is always important to keep in mind that a charter school is a *public* school. Its uniqueness stems from its quasi-independence from any school district and its exemption from many state and local regulations. A charter school, however, remains a public institution and will be treated as a traditional public school in litigation over church-state issues.

The answers given here are intended to provide general guidance under the applicable state and federal legal framework. Two crucial themes predominate. First, religious organizations may not legally sponsor or otherwise exercise control over charter schools. And, second, while charter schools, like all public schools, must be nonsectarian, the very purpose of charter schools is to foster innovation and creativity. Within certain legal constraints, therefore, religious leaders and churches can make important contributions to the success of charter schools, as can all private individuals and organizations.

¹ N.Y. EDUC LAW § 2854(2)(a).

² N.Y. EDUC LAW § 2854(2)(b).

ADMINISTRATION

1. What role can religious officials, such as church leaders, play in applying for a charter, establishing a charter school, and serving on the school's board of directors?

A religious institution may not control or direct the operation of a charter school but people of faith, including church leaders, may, like all other community residents, submit an application for a charter school and/or serve on the school's board of trustees. A high level of involvement by leaders of a particular church in a particular charter school, however, may generate suspicion. For example, it might be wise for there not to be a substantial overlap between a church's governing body and a charter school's board of trustees. Such an arrangement would give rise to the perception that the charter school is actually under the control of the church. It is imperative that a charter school have its own autonomous organizational structure.

2. Can a religious institution provide services—such as legal, accounting, payroll, maintenance, etc.—to a charter school, either for free or for a fee?

The charter school law allows schools to accept assistance from private organizations, including religious organizations, in establishing or operating a charter school. Schools may accept "gifts, donations, or grants" of any kind, which presumably include services. Again, no control by a religious entity should accompany any contribution of services, and charter schools must remain nonsectarian in all their operations.

3. What role can religious institutions play in advertising, marketing, and recruiting students for a charter school?

Religious institutions should not be the primary vehicle for advertising, marketing, and recruiting students but can be utilized as one means of notifying potential students of a charter school so long as care is taken to advertise in other venues. It is vital that any advertisements posted at religious institutions or recruiting efforts occurring at religious institutions not give the impression that the school is denominational or is controlled or directed by a religious institution.

4. Can religious organizations raise money for and donate funds to charter schools?

Yes. A religious organization, however, when raising money for a charter school, may not imply that the school is sectarian or otherwise under the control of a religious organization. Moreover, a religious organization may not be given any degree of control over a charter school in exchange for a donation. All donations should come with no strings attached.

INSTRUCTION

5. Can charter schools teach classes about religion?

Yes, to the same extent that any public school can. The Supreme Court has stated that “it might be well said that one’s education is not complete without a study of comparative religion 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.”³

Charter schools, for example, may teach comparative religion, the history of religion, the Bible (or other religious books) as literature, and the effect of religion on the history of the United States and the world. These subjects, however, must be taught from an academic perspective; teachers must not endorse the truth of any of the religious beliefs to be studied or instruct students to engage in any religious practice. In addition, schools should seek to educate students about all major religions and must not promote or denigrate any specific religious denomination.

While New York’s Blaine Amendment prohibits the state from maintaining any school “in which any denominational tenet or doctrine is taught,”⁴ New York courts have not strictly interpreted this provision as forbidding any teaching about religion. Rather, they have stated that schools may not “teach tenets as doctrine of a particular religious denomination to the exclusion of other denominations.”⁵

6. Can religious persons—such as nuns, clergy, Hasidim, etc.—teach at charter schools?

Yes, although there may be a problem with having a large number of such teachers at the same school. For example, were all or a large proportion of the teachers at a charter school to be nuns, the argument would be made that the nuns were contributing to a pervasively sectarian atmosphere in violation of the Establishment Clause and Blaine Amendment.

7. Can charter schools conduct joint activities with private religious schools, including such things as athletics, field trips, or other extracurricular activities?

It is all a matter of degree. Charter schools, for example, may participate in athletic leagues with religious schools, just as other public schools may do so. To the extent, however, that activities between charter schools and religious schools are jointly conducted on a regular basis, concerns could be raised about the appearance of such activities creating a symbolic union of church and state, which is constitutionally impermissible.

³ *School Dist. Of Abington v. Schempp*, 374 U.S. 203, 225 (1963).

⁴ N.Y. CONST.art.XI, § 3.

⁵ *Matter of College of New Rochelle v. Nyquist*, 326 N.Y.S.3d 765 (3rd Dep’t 1971).

Jointly conducted activities also may not be of a sectarian character or be pervaded by a sectarian atmosphere, and charter school funds may not be spent on behalf of the religious school's students (for example, the charter school's buses may not transport religious school students on field trips for free, although the government may fund the transportation of students from their homes to religious schools and vice versa).⁶ In any joint activities, the charter school should take care to preserve its independent identity and autonomy.

SCHOOL FACILITIES

8. Can a charter school lease classroom space owned by a church or other religious institution?

Yes, but the propriety of such an arrangement should be evaluated on a case-by-case basis. If a charter school chooses to lease classroom space owned by a religious institution, such as a church, there are several precautions that should be taken to guard against legal challenge. Church signs and religious symbols, artwork, and literature should be removed from the leased space. A charter school should use a separate entrance from a church's main entrance (children should not be required to walk through the church to enter the school), and the school should have complete control over the leased premises during the school day. The church and the charter school also should have no more than a landlord-tenant relationship. In short, the leased space must offer students a nonsectarian environment.

9. What limits, if any, exist on the use of charter school facilities by religious organizations outside of school hours?

A charter schools may allow religious organizations to use its facilities outside of school hours as part of a formal policy allowing community groups to utilize school facilities. Such a policy should be laid out in writing and made available to members of the general public upon request. A charter school should neither discriminate in favor of religious organizations nor against such organizations in granting outside groups use of its building.

The New York statute currently governing the use of schoolhouses does not allow school buildings to be utilized for primarily religious purposes.⁷ But because public schools at the same time may not constitutionally discriminate against religious viewpoints, this has led to a rather confusing body of law. Current policy is perhaps best summarized by the New York City Board of Education's Standard Operating Procedure, which reads, "No outside organization or group may be allowed to conduct religious services or religious instruction on school premises after school. However, the use of school premises by outside organizations or groups after school for the purpose of discussing religious material or material which contains a religious viewpoint or for distributing such material is permissible."

⁶ See *Wolman v. Walter*, 433 U.S. 229 (1977).

⁷ See N.Y. EDUC LAW § 414; *Trietly v. Board of Educ. Of City of Buffalo*, 409 N.Y. S.2d 912 (4th Dep't 1978).

Due to § 2854(b) of the charter school law, it does not appear that the New York statute regulating the use of school buildings applies to charter schools. Therefore, charter schools probably will have the freedom to allow religious organizations to use their facilities in a nondiscriminatory manner. If a religious organization, however, conducts afterschool religious instruction in a charter school, it is vitally important that a charter school in no way encourage students to attend such classes. If afterschool religious classes are offered, special care must be taken to preserve the independent identity of the charter school.

10. Can a charter school establish a non-denominational “meditation room” available to students and staff?

Although there is no precedent precisely on point, such a room is probably permissible so long as a charter school does not encourage student to use the room for silent prayer. A “meditation room” might also be less problematic from a legal perspective were it to be called a “silent activity room.”

OTHER

11. Can charter schools have students observe a “moment of silence”?

Yes. New York law authorizes school districts and teachers to begin every school day with a brief period of silent meditation.⁸ This silent meditation is not intended to be a religious exercise and should be considered as an opportunity for students to reflect on the anticipated activities of the day or to meditate on a religious theme if they so choose. Students may not be required to stand during the moment of silence.

The United States Supreme Court did strike down an Alabama statute authorizing a one-minute period of silence. In that case, however, the sponsor of the relevant legislation testified that the only purpose of the law was to return voluntary prayer to the public schools so the justices concluded that the law had no secular purpose. The Court, however, was careful to distinguish between laws, such as Alabama’s, designed to promote prayer and those recognizing “an appropriate moment of silence during the schoolday.”⁹ A majority of the Court explicitly recognized that certain moment-of-silence statutes may be constitutional so long as their purpose is not to encourage prayer.

Recently, the United States Court of Appeals for the Eleventh Circuit upheld the constitutionality of Georgia’s Moment of Quiet Reflection in Schools Act, which in many ways is similar to the New York statute.¹⁰ The court reasoned that the purpose of the law was to allow students time to reflect upon the upcoming day and there was no evidence teachers encouraged students to pray during the moment of silence.

⁸ N.Y. EDUC LAW § 3029-a.

⁹ *Wallace v. Jaffree*, 472 U.S. 38, 59 (1985).

¹⁰ *See Bown v. Gwinnett County School District*, 112 F.3d 1464 (11th Cir. 1997)

We thus believe that New York charter schools may observe a moment of silence so long as it is clear that the purpose of the silence is to provide a time for quiet reflection rather than promoting voluntary prayer. Teachers may not encourage students to pray during this time but may not discourage them from doing so either.

12. Can religious artifacts, such as nativity scenes or menorahs, be displayed at charter schools whether or not the facility is leased from a religious institution?

The display of religious symbols such as a cross or menorah is permitted as a teaching aid or resource provided such symbols are displayed as an example of the cultural and religious heritage of a religious holiday or a religion being studied in the academic curriculum and are temporary in nature. So, for example, in December a teacher may display pictures of a nativity scene and a menorah on a bulletin board related to holiday celebrations.

Religious artifacts, however, may not be displayed permanently or may not even be displayed temporarily if they have no relation to the curriculum or have the effect of endorsing a particular religion. For example, the Supreme Court has struck down the permanent display of the Ten Commandments in a public school classroom as unconstitutional.¹¹

¹¹ See *Stone v. Graham*, 449 U.S. 39 (1980).