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Policies That Restrict Performance of Religious Music at Holiday Concerts Upheld

By Anthony P. Sciarrillo

A decision last year by the United States District Court for the District of New Jersey, *Stratechuk v. Board of Education, South Orange-Maplewood School District*, held that the Board of Education policy barring the performance of religious music at holiday concerts in the District did not violate the students' right to receive information and ideas, their right to learn, and their right to academic freedom.

In April of 2001, the School Board adopted Policy 2270, which addressed religion in the schools. Under this policy, traditional holiday music, including Christmas carols and Hanukkah songs, was performed by students at the District's December concerts. In the fall of 2003, the mother of a student complained about the inclusion of religious-themed songs in the December concert, and she objected to her child's participation in the school event. In response to the parent's complaint, the School Board clarified its "religion in the schools" policy. Policy 2270, as clarified by new regulations, prohibited the inclusion of religious holiday songs, traditional holiday carols, and performances by the Martin Luther King Gospel Choir at any school's holiday concert.

Further, programs for music concerts were to avoid graphics that refer to religious holidays, like a Christmas tree or a dreidel. The School Board asserted that the performance of celebratory religious music at school-sponsored events was prohibited under Policy 2270 because such performances were not necessary to achieve the specific goals of the music curriculum and could be perceived as an overt endorsement of religion. Policy 2270, however, did not prevent the District's music teachers from discussing different holidays in their classrooms. It only prevented religious songs associated with a particular holiday from being performed at school concerts.

The School Board's newly clarified policy on "religion in the schools" sparked a strong reaction. The School Board received many complaints from members of its community, as well as the wider New Jersey population, who were angry that the performance of religious holiday music would no longer be permitted at District schools' holiday concerts. Subsequently, a parent filed suit (cont'd ➔)

against the District. The plaintiff-parent alleged that through Policy 2270, the School Board violated his family's civil rights, conveyed an impermissible, government-sponsored message of disapproval of and hostility toward religion in violation of the Establishment Clause, and unconstitutionally deprived him and his children of their right to receive information and ideas, their right to learn, and their right to academic freedom, guaranteed under the First Amendment. The District Court, however, disagreed.

The Court held that Policy 2270 did not violate the Establishment Clause. The Establishment Clause refers to the first of several pronouncements in the First Amendment to the United States Constitution, stating that "Congress shall make no law respecting an establishment of religion." The establishment clause has generally been interpreted to prohibit (1) the establishment of a national religion by Congress, or (2) the preference of one religion over another or the support of a religious idea with no identifiable secular purpose. The Clause forbids an official purpose to be disapproval of a particular religion or religion in general.

Courts have used a three-prong test to analyze a claim under the Establishment Clause. Under the test, a State action violates the Clause if (1) it lacks a secular purpose, (2) its principal or primary effect advances or inhibits religion, or (3) it fosters an excessive entanglement with religion.

The Court held that Policy 2270's interpretation had the valid secular purpose of preventing an overt endorsement of religion or an improper focus on religious holidays. Also, the policy did not convey a message of disapproval of religion because the District emphasized the objective presentation of religion within the confines of the curriculum, continuing to allow the performance of religious music that did not focus on a particular holiday and to teach all religious music, even holiday music, inside the classroom. The School Board's policy restricted the performance of religious holiday music only at the time of the religious holiday that the music honors. Further, the Board's interpretation of Policy 2270 did not foster an excessive entanglement with religion.

The court also held that Policy 2270 did not unconstitutionally deprive the parent and his children of their right to receive information and ideas, their right to learn, and their right to academic freedom because the school concerts were not public forums and the interpretation of Policy 2270 was reasonably related to pedagogical concerns.



The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at edlawgroup@lindabury.com.



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