Psychological Coercion and the Public School Classroom: An Analysis of *Altman v. Bedford Central School District*

Charles J Russo, Department of Educational Leadership Fellow in the Center for International Programs, and Adjunct Professor of Law at the University of Dayton in Dayton, Ohio,USA

and

Ralph Mawdsley Department of Counseling, Administration, Supervision, and Adult Learning at Cleveland State University in Cleveland, Ohio, USA

Introduction

Defining the relationship between the American government and religion, especially for readers in Australia and New Zealand, where similar legal challenges have simply not arisen, has always been difficult. This difficulty arises, in large part, because the First Amendment to the United States Constitution, has two religion clauses, Establishment and Free Exercise,[1] each of which serves a different purpose. While the Establishment Clause is invoked when government action appears to be too supportive of religion, the Free Exercise Clause is the vehicle for challenging government intrusion into religious practices or beliefs. How these clauses interact is difficult to ascertain since the Court has designed different tests for interpreting each clause.

The oldest, and most commonly applied, of the three tests that the Supreme Court uses to interpret the Establishment Clause, enunciated in *Lemon v. Kurtzman (Lemon)*,[2] asks whether government action has a secular purpose; whether the action has a principle or primary effect that neither advances nor inhibits religion; whether the action leads to excessive government entanglement. The second test, endorsement, which emerged in *Lynch v. Donnelly*,[3] measures government action by two factors: whether a government entity has entangled itself with religion; whether government has conveyed to the community endorsement or disapproval of religion from the perspective of a reasonable observer. The newest test, psychological coercion, fashioned in *Lee v. Weisman*[4] (*Lee*), but eschewed most recently in *Sante Fe. v. Doe*,[5] wherein the Court upheld a ban on student initiated prayer prior to the start of high school football games, measures government action by two factors: the extent to which the government has a pervasive influence on the activity at issue and the extent to which there is voluntary participation.

The Free Exercise Clause has a different judicial history. Using a test fashioned from *Wisconsin v. Yoder*[6] and *Sherbert v. Verner*,[7] state action substantially burdening a sincerely held religious belief may be maintained only where the government has a compelling interest and could find no less restrictive means of furthering that interest. However, in *Employment Division v.*

Smith,[8] the Court essentially eviscerated the *Yoder*/*Sherbert* test, and, with limited exceptions, declared that it would no longer apply to government action that was neutral and generally applicable. Concern about the future of the Free Exercise Clause was muted somewhat by the Supreme Court's decision in *Lamb's Chapel v. Center Moriches Union Free School District*[9] which recognised that the Free Speech Clause could be used to protect religious beliefs subsumed under the rubric of religious speech.

Even so, while free speech became the vehicle of choice for challenging government action, the question remains whether the Free Exercise Clause can be revived. In a recent federal trial court judgment, *Altman v. Bedford Central School District (Altman)*,[10] the judge suggested that the Establishment Clause test of psychological coercion may be a way of breathing new life into the Free Exercise Clause. Thus, this article analyzes the *Altman* court's use of psychological coercion and what this means for the continuing vitality of free exercise. The article also discuss *Altman's* possible impact on the authority of public school officials to control the curriculum.

Altman v. Bedford Central School District

Roman Catholic parents in New York State objected to thirteen activities that were included in the curriculum at the public school that their children attended. A federal trial court agreed with the parents that three of the practices violated the Establishment Clause: student construction of images of Lord Ganesha, a Hindu deity; the sale and construction of worry dolls; and earth day activities. The court ruled that the remaining ten activities were constitutional: student participation in a card game, "Magic: the Gatherer;" student participation in yoga exercises; a demonstration of crystals and rocks; a teacher's reading a story about the life of Bhudda; students reading a story about Quetzalcoatl, an Aztec god; student poetry referring to God; a field trip to a cemetery; a police presentation of a Drug Abuse Resistance Education (DARE) Program; a guest speaker on right brain creativity and learning; and meditation programs.

Activities Violating the Establishment Clause

A fourth grade teacher, as part of an elaborate lesson plan to introduce her students to Indian culture, read them "How Ganesha got his Elephant Head," a story which tells how Lord Ganesha, one of the most important deities in Hinduism, took on the appearance of a human with an elephant head. In addition, students were assigned to construct images of Ganesha out of clay but were unable to do so because the class period ended before they could carry out the project. Even though the story about Ganesha was not part of the State's curriculum guide, both the building principal and district superintendent supported the teacher. A Catholic priest who served as an expert witness for the plaintiffs testified that constructing images of false gods violated the First Commandment and Catholic teaching. In finding for the parents, the court explained that instructing students to construct images, "however benign in purpose of intent, [had] the appearance to a child of that age that the school is communicating a message endorsing Lord Ganesha and the Hindu religion. [The First Amendment did not permit schools to use] coercive pressure [for] instructing young impressionable students to make images of a god other than their

own."[11] The court added that while constructing an image of Lord Ganesha violated the Establishment Clause, reading a story about the Hindu god did not.

The court next addressed worry dolls, constructed by students in the elementary school and sold in its store, that could be placed under their pillows to take away their worries and permit them to dream. The priest testified that the use of such charms is forbidden by scripture as an offence against the First Commandment. The court agreed with the parents that making and selling the worry dolls "is a rank example of teaching superstition to children of a young age. It assumes that an inanimate object has some occult power to relieve us of worry and assure good sleep."[12] As such, the court reasoned that making and selling the worry dolls violated the First Amendment because "it prefers superstition over religion."[13]

In reviewing the district's earth day celebration, the court pointed out that it expanded from the Conservation Day authorised under the original purposes of a state statute "encourag[ing] the planting, protection and preservation of trees and shrubs… [as well as] increas[ing] the interest and knowledge of pupils in the fish and wild life, soil and water"[14] and had become a worship of the earth through the recognised religion of Gaia. In fact, over the years, an elaborate ceremony developed including the erecting symbolic structures equivalent to an altar and use of a chorus of drums; assembling students outside of the school building in a circle where prayers and a creed worshipping the earth were encouraged; developing a liturgy that included recitation of prayers and a creed that were attributed to American Indian tribes; and encouraging students to bring gifts to the earth. At trial, the superintendent declared that he had no problem with use of the earth day prayers or with students presenting gifts to the earth. The court struck down the prayers and creed as religious teaching as well as a statement regarding too many people on earth as "directly contrary to the teachings to Genesis I."[15] The court concluded that the district promoted earth worship in violation of both the Free Exercise and Establishment Clauses.

Activities Not Violating the Establishment Clause

The court found that use of the card game, "Magic – The Gathering," did not violate the Establishment Clause even though the cards contained graphic illustrations that the plaintiffs claimed were offensive to Catholics. The court asserted that the cards neither "advanc[ed] nor promot[ed] Satanism or the occult."[16] The game, which was used as an extracurricular activity in elementary and middle schools, required prior written parental permission and the cards, which contained unrealistic fantasy representations, were neither overtly nor implicitly religious. From the court's perspective, the voluntary nature of the game argued against the district's having "asserted coercive pressure for students to participate in the game . . . . "[17]

The court decided that the activities of a Sikh yoga instructor who taught stress reduction did not amount to religious teaching. The court remarked that even though "the presenter was dressed in a turban and wore the beard of a Sikh minister, [he made no] effort to teach religion or foster any religious concept or idea connected with Yoga."[18] In addition, evidence indicated that children could, on request, opt out of the yoga exercise, a factor the court considered important in not uncovering a constitutional violation.

Where the parents challenged a teacher's having invited a guest into elementary classes to speak on rocks and crystals, the court rejected the charge that this amounted to fostering superstition and idolatry. The court reflected that, even if the speaker told the students what other people believe about the magical powers of crystals, he did not present those views as his own.

The court was not convinced that a teacher's reading a story of the life of Buddha violated the First Amendment since it was not done in a way that sponsor belief in Buddha. In so doing, the court rejected the plaintiffs' argument which was apparently that since school officials had not shown a video of the life of Christ at their request or that of a student, the reading of the life of Buddha should not be permitted. The court dismissed this claim in noting that "it is not clear that public school children could not be told of the life of Christ. Certainly, it could be done lawfully without sponsorship, merely as an exercise in history of for the study of comparative religion."[19]

The plaintiffs claimed that having fourth grade students read a story about Quetzalcoatl, an Aztec god, along with having another child make an image of the Quetzal Bird, violated the Establishment Clause. The court identified four reasons as to why this did not violate the First Amendment: no student was required to make a Quetzal Bird; the teaching about Quetzalcoatl was consistent with the state's curriculum guide on comparative religions; Quetzalcoatl, unlike Lord Ganesha, is not currently worshipped; and it lacked jurisdiction to order a school that teaches about an ancient religion to also require instruction in a current religion.

The court next rebuffed the claim that some student poetry in a booklet disparaged God and amounted to endorsement of an anti-religious message in discerning that since the authors intended it to be funny and including it did not rise to "the level of a promotion or disparagement of a religious concept."[20] In response to the school's claim that leaving the poetry out of the booklet would have presented constitutional claims, the court wrote, with a certain amount of dry humour, that "[n]o First Amendment violation is found in connection with this very poor poetry."[21]

The plaintiffs objected to a student visit to a cemetery that was led by an employee of the Putnam County Board of Cooperative Educational Services (BOCES) since a child had to lie on a grave while others took rubbings from tombstones and the BOCES employee waved a magic wand to ward off animal attacks. In rejecting the parents' claim that these activities amounted to "teaching of a superstitious belief … [and] a desecration,"[22] the court offered four reasons why the district did not commit a constitutional violation. First, the court observed that even if the waving of the magic wand occurred, it was by a BOCES employee rather than a teacher from the district. Second, the court was satisfied that lying down on the grave, which to it "seem[ed] terminally dumb," was an appropriate teaching practice in social studies to "show that a full grown person in Colonial times was of much shorter stature."[23] Third, the court indicated that a teacher's presence at the activities did not amount to district approval since "mere silence on the part of the observing teachers would not constitute a ratification by them or the school district."[24] Fourth, the court acknowledged that the activity required advance written parental permission.

The plaintiffs criticised the DARE Program because it did "not involve telling children that drugs are morally wrong."[25] The court rejected the claim that this was unconstitutional because DARE "is relatively free of moral overtones, contains no religious emphasis whatsoever, and leaves the decision whether or not to use tobacco, alcohol or drugs to the student after evaluating

both positive and negative effects."[26] Additionally, the court pointed out that students could, as did one of the children of the plaintiffs, opt out of the program.

The parents objected to a class lecture by a minister, "a self-proclaimed psychic," designed to "improve creativity, learning and memory [by] improv[ing] the function of the right hemisphere of the brain."[27] The expert witness testified that "the notion that one's right brain must be stimulated so as to overcome linear thinking with the left brain is quackery."[28] The court, while recognising that the lecture may have been nothing but humbug, could not uncover a First Amendment problem since there was no evidence that the minister taught any religion or performed intuitive counselling, exercised her psychic powers, or engaged in telepathy.

Turning to the last claim, the court rejected the plaintiffs' objections to non-yoga meditation activities which they charged was a form of hypnosis that asked students to imagine that they were in a strange place or that their bodies were filling with blue liquids. The court, although suggesting that the exercises may have been useless, did not think that they rose to the level of a First Amendment violation.

The court entered a final injunction preventing school sponsorship of prayers and liturgy on earth day, ordering officials to remove Worry Dolls from the system, and prohibiting the making of graven images of a god. The court also directed district officials to create a policy, requiring neutrality toward religion and prohibiting sponsorship of religion or coercion of any student "to participate in religion or its exercise or to violate any religious precept held by a child or his or her parents."[29] The court then concluded that the plaintiffs were entitled to recover costs and attorney fees attributable to the portions of the claims on which they prevailed.

Analysis and Implications

Altman presents two kinds of constitutional issues. One focuses on how the court's selection of the psychological coercion test affects the interplay between free exercise and Establishment Clauses. The second focuses on the court's role in monitoring the public school curriculum.

Psychological Coercion in Relationship to the Free Exercise and Establishment Clauses

The Supreme Court first articulated the role of coercion in relation to the religion clauses over thirty five years ago in *School District of Abington v. Schempp*[30] when it invalidated Bible reading in public schools. In differentiating between the Free Exercise and Establishment Clauses, the Court wrote that: "[i]t is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion. The distinction between the two clauses is apparent -- a violation of the Free Exercise Clause is predicated on coercion while the Establishment Clause violation need not be so attended."[31] Since *Schempp*, the Court, primarily using the *Lemon* test, has analyzed each Establishment Clause case as to whether government involvement with religion has the effect of sponsoring or advancing religion. If the Court is convinced that religion is advanced or sponsored, then the activity has been struck down as violating the Establishment Clause.

The fundamental evidentiary problem under free exercise has been determining what proof is necessary to demonstrate governmental coercion. For example, in *Thomas v. Review Board of the Indiana Employment Security Division*,[32] where a state employee was denied unemployment benefits despite his claim that his religious beliefs prohibited him from working on military equipment, the Court found an unacceptable burden to religion if the government puts "substantial pressure on an adherent to modify his behavior and to violate his beliefs . . . . "[33] Conversely, in *Employment Division v. Smith*,[34] where the Court upheld a denial of unemployment benefits to religious claimants, it held that free exercise would no longer be a defence to neutral and generally applicable government action, the definition of coercion changed. After *Smith,* religious claimants could no longer argue coercion based on the effect on individual religious beliefs; they must demonstrate that government, in creating a coercive effect on religion, did so out of hostility toward religion.[35] Consequently, in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*[36] the Court, relying on the Free Exercise Clause, struck down four ordinances purportedly passed to invalidate the killing of animals, but, when all of the exceptions are factored in, it applied only to the church involved in the litigation.

If coercion requires evidence of hostility, it would be difficult, if not impossible, to find in *Altman*.[37] Absent evidence of hostility, has the court in *Altman* breathed new life into free exercise by reducing the proof necessary to demonstrate coercion? If so, how does one align *Altman* with *Smith,* especially in light of *Altman's* failure to discuss whether the three invalidated school activities were other than neutral and generally applicable? Indeed, it was the general applicability of the activities that led to the plaintiffs' complaints. If the issue is the neutrality of the activities, one must wonder whether the court correctly identified this as a free exercise case. In the end, the lack of clarity regarding the meaning of coercion suggests that, despite its purported use of psychological coercion to cure a free exercise problem, the court has really kept its moorings in psychological coercion as used under the Establishment Clause.

For those who would like to see a revitalisation of the Free Exercise Clause, the *Altman* court's lack of focus as to which religion clause it addressed leaves readers confused. Even though the court declared at the outset that the issue was "the students' right to exercise their own religious beliefs free from state coercion,"[38] clearly reflecting the Free Exercise Clause, its assertion is belied by its conclusion for each of the invalidated three activities that violated the First Amendment.[39] How, then, does one define the nature of the coercion that the court referred to in these activities? Does coercion exist because of the apparent absence of opt out provisions for students (a free exercise issue) or due to of the presence of specific, identifiable religions (an Establishment Clause issue)? In terms of traditional Free Exercise and Establishment Clauses analyses, does the coercion in *Altman* refer to the absence of voluntary choice (opting out) or to government advancement/ sponsorship of identifiable religions? Unfortunately, the court's handling of the other ten activities did not add much clarity to these questions.

Of the ten activities that were upheld, three involved parental consent (Magic-The Gatherer and the cemetery visit) or an opt out (the DARE program) while the remaining seven did not involve what the court considered to be public school instruction in religions or religious ideas. The message for these ten, as for the three activities that were struck down, is a mixed one. While voluntary participation may be a defense to a free exercise claim, it traditionally has not been a

defense in Establishment Clause cases. One is left with uncertainty as to whether the *Altman* court was concerned about the coercive effect of school activities on specific religious beliefs (a free exercise question, hence the issue of voluntariness) or the coercive effect that district involvement with religion had on impressionable students (an Establishment Clause issue, over the concern about religions and religious ideas).

For public school officials who face parental claims that their children's involvement in activities violates religious beliefs, which aspect of coercion is relevant? Is an assignment that students create an image of a deity defensible as long as students with religious objections can opt out? Or, would this activity be unconstitutional in all cases because it represents identification with a specific religion, regardless of opting out arrangements? For school officials, like those in *Altman*, who may see this activity as an integral part of a multi-cultural experience, this question involves not only religion clause questions, but also cuts to the heart of a district's control of its curriculum.

Federal Courts and the Public School Curriculum

Federal courts have traditionally given great latitude to school officials in formulating their curricula. Much of this deference comes from the fact that curricular choice not only represents the expertise of those trained in education but also reflects a hierarchical and/or political process within a state. In fact, *Altman* reflects curricular decisions at both the state and local levels. When plaintiffs challenge curricular decisions under constitutional theories, courts are reluctant to superimpose constitutional limitations on the instructional process. The leading case in this area continues to be *Hazelwood School District v. Kuhlmeier* (*Kuhlmeier*).[40] In *Kuhlmeier*, the Supreme Court upheld the right of school officials to exercise control over school-sponsored "activities [that] may fairly be characterised as part of the school curriculum, whether or not they occur in a traditional classroom . . . . "[41] Although *Kuhlmeier* dealt with a free speech, rather than free exercise, challenge to curricular decisions of school officials, the broad issue concerned who controls the curriculum. In *Kuhlmeier*, the Court declared that "education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, not of federal judges."[42] Interestingly, while the Supreme Court has never decided a case where a Free Exercise or Establishment Clause claim was the basis for challenging a public school's curriculum, lower federal courts have addressed the question.

In *Settle v. Dickson County School Board*,[43] the Sixth Circuit upheld a ninth-grade teacher's refusal to accept "The Life of Christ" as an acceptable biography topic, resulting in the student's receiving a zero grade for the assignment. Among the reasons the teacher gave for rejecting the topic was that teachers "don't deal with personal religion - personal religious beliefs. People don't send their children to school for a teacher to get into a dialogue with personal religious beliefs."[44] In upholding the teacher's refusal to accept the religious topic over an alleged religious speech claim, the Sixth Circuit was satisfied that the teacher's reasons "[fell] within the broad leeway of teachers to determine the nature of the curriculum and the grades to be awarded students . . . . [T]eachers have broad discretion in limiting [student] speech when they are engaged in administering the curriculum."[45] Previously, in *Mozert v. Hawkins County Board of Education*,[46] the same Sixth Circuit did not find a free exercise violation where a public school

district refused to institute a separate reading series for students whose parent complained that the content of many of the stories was contrary to her "fundamentalist Christian" views. In upholding the district's refusal to provide a separate reading series acceptable to the parent, the court noted that, in the absence of evidence that students were required "to affirm or deny a belief or engage or refrain from engaging in a practice prohibited or required by their religion,"[47] school officials were free to select the reading series of their choice.

The judicial deference accorded public school officials under the Free Exercise Clause also extends to the Establishment Clause. For example, in *Smith v. Board of School Commissioners of Mobile County*,[48] the Eleventh Circuit upheld a district's use of textbooks that supposedly promoted the religion of secular humanism, thereby allegedly selecting a religion in preference to other religious views. In denying the challenge, the court observed that the issue of public school curriculum "requires a sensitivity on the part of the court to both the broad discretion given school boards in choosing the public school curriculum … and the pervasive influence exercised by the public schools over the children who attend them . . . . "[49]

The *Altman* court, despite having found that three activities violated the First Amendment, suggested that judicial deference is alive and well. The court supported the district's rejection of a demand for a blanket opt-out right to all objectionable activities, albeit as applied to non-first amendment issues. In justifying the behavior of school officials, the court found that their refusal to offer a general opt-out right was "rationally related to the furtherance of the district's objectives."[50]

Altman raises two additional questions about school district curricula: the authority by which educators make curricular decisions; and relevance of opt-out provisions. The court observed that the Lord Ganesha story was different than the one referenced in state curricular guidelines and that the earth day ceremonies considerably expanded the state law's requirement for a Conservation Day. Would the Lord Ganesha creating-an-image activity have been acceptable if the state guidelines had included it as part of multi-culturalism program including religion and other elements? Likewise, would the elaborate earth day ceremonies have been acceptable if permitted by state statute or state curriculum guidelines to further global awareness about the environment? In essence, can a district level curricular decision be validated if it furthers guidelines established at the state level? To phrase the question differently, to what extent will state guidelines be upheld as long as they serve a rational purpose in furthering educational objectives? If activities established at the state level are constitutional, what authority do school officials have to excuse students on the basis of religious objections? If an opt-out is permitted, must it be only on the basis of religious beliefs, and, if so, who in the district will determine whether an excusal is warranted?

Altman is unique among federal court cases since it invalidated school curricular activities. Yet, in so doing, the court sent a confusing signal to district officials about how to deal with curriculum. To select one of the activities, particularly the one involving Lord Ganesha image-making, is the issue, as the court suggests, solely that of a classroom teacher who substituted a story and assigned an activity without first seeking approval of school administrators? If so, then what is the solution to the problem: teachers cannot make changes in state (or district) curriculum

guidelines; teachers can make changes if they secure administrator permission; teachers can make changes provided that someone determines that they do not violate one of the religion clauses; or, teachers can make changes as long as students have an opt-out option?

School administrators, at least in the Southern District of New York, now face a new set of problems. The limited success that the plaintiffs had in *Altman* will very likely encourage other parents who are displeased with school curricula to seek judicial redress. Teachers who wish to implement new creative ways of delivering instruction may find themselves stymied possibly faced with disciplinary action if they do not follow curricular guidelines.[51] Administrators, sought out by teachers to authorise curricular changes, may find themselves being asked to assess Free Exercise and/or Establishment Clause implications of those changes.[52] In the end, to what extent will the teaching/learning process have been helped or harmed?

Conclusion

For school officials who must make curricular decisions, *Altman* presents a new set of problems. Parents who object to elements in a curriculum they consider to be religious may be able to secure relief under the Free Exercise Clause, a departure from past cases generally litigated under the Establishment Clause. Teachers who want to introduce new elements into the curriculum may be reluctant to do so without specific authorisation by an administrator if the elements may be perceived as religious in nature. Thus, principals may now find themselves between competing forces, parents on one side who claim free exercise violations because of the curriculum and teachers on the other who claim free speech or contractual rights to design the curriculum. Even though *Altman* is only a federal district court case, it may well have introduced a new area of conflict into American public schools.

Endnotes

1. In its relevant section, the First Amendment reads that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; …"
2. 403 U.S. 602 (1971).
3. 465 U.S. 668 (1984) (in supporting the use of a creche among other nonreligious items in a park, Justice O'Connor noted that added to institutional entanglement is "endorsement or disapproval of religion," focusing on the message that "government actively conveys to the community." *See also* Corporation of the Presiding Bishop v. Amos, 483 U.S. 327 (1987) (in her concurrence agreeing to uphold an amendment to title VII permitting religious organisations greater control over employees who perform nonreligious functions, Justice O'Connor argued for a two step "objective observer" test to use endorsement as a replacement for *Lemon*.)
4. 505 U.S. 577 (1992).
5. 120 S. Ct. 2266 (2000).
6. 406 U.S. 205 (1972) (holding that Amish parents who refused to send their children to public high schools after they completed eighth grade since their religious beliefs required them to avoid worldly influences could not be prosecuted for truancy under the Free Exercise Clause).

7. 374 U.S. 398 (1963) (holding that a sabbatarian who refused to work on Saturdays could not be denied unemployment compensation under the Free Exercise Clause).
8. 494 U.S. 872 (1990) (upholding the dismissal of, and denial of unemployment benefits to, two state drug counselors who argued that free exercise protected their prohibited use of peyote was part of a Native American religious ceremony).
9. 508 U.S. 384 (1993) (holding that a school district that opened its facilities for use by non-school organisations could not discriminate on the basis of religious expression).
10. 45 F. Supp. 2d 368 (S.D.N.Y. 1999).
11. *Id.* at 383-84.
12. *Id*.
13. *Id*.
14. N.Y. Educ. Law § 810(2).
15. *Altman, supra* note 10 at 395.
16 *Id.* at 381 (presumably, the charge of the occult was tied to the rules of the game that allowed players drawing certain cards to cast different spells on other participants).
17. *Id*.
18. *Id*.
19. *Id*. at 387.
20. *Id*. at 388.
21. *Id*.
22. *Id.* at 389.
23. *Id.*
24. *Id*.
25. *Id*. at 390. DARE uses certified instructors and a copyrighted curriculum teaching students the message by inference that drugs are wrong. The plaintiffs claimed that DARE was not effective, an allegation that seems supported by a new study. See *News for You,* vol. 47, no. 33, August 25, 1999, p.2 (indicating that students exposed to DARE used drugs and alcohol at the same rate as those who learned about them in standard health classes).
26. *Id*.
27. *Id*. at 392.
28. *Id*.
29. *Id*. at 398.
30. 374 U.S. 203 (1963).
31. *Id*. at 223.
32. 450 U.S. 707 (1981).
33. *Id*. at 718.
34. 494 U.S. 872 (1990).

35. See Bagley v. Raymond Sch. Dep't, 728 A.2d 127 (Me. 1999) (upholding a state statute excluding sectarian schools from eligibility for tuition grants where parents failed to prove a substantial burden to religious beliefs over sending their children to a religious school since this did not place a substantial burden on their free exercise of religion where the law merely operated to make the practice of their religious beliefs more expensive).

36. 508 U.S. 520 (1993).

37. *See Altman, supra* note 10 at 380 where the court wrote that "[t]here may be a 'Bedford Attitude' which is negative towards the desires of Plaintiffs to permit their children to opt out of specific programs or school practices they deem hostile or offensive." However, since the court later agreed that the district had a valid educational purpose in not permitting a general opt out provision for all courses, it seems unlikely that is suggesting that the school district was hostile to the parents and their children).

38. *Id*. at 421 (the court also declared that this case concerned "the right of the parents to control the religious upbringing of their minor children.")

39. *Id*. at 384, 385, 395. When the court invalidated the earth day ceremony as violating "both aspects of the First Amendment," it offered no explanation of how this occurred).

40. 484 U.S. 260 (1988).

41. *Id.* at 271.

42. *Id*. at 273.

43. 53 F.3d 152 (6th Cir. 1995).

44. *Id*. at 154.

45. *Id*. at 156.

46. 827 F.2d 1058 (6th Cir. 1987).

47. *Id*. at 1070.

48. 827 F.2d 684 (11th Cir. 1987).

49. *Id*. at 689.

50. *Altman, supra* note 10 at 397.

51. *See Boring v.Buncombe County Bd. of Educ*., 136 F.3d 364 (4th Cir. 1998) (where a drama teacher transferred to another school after performing portions of a play directed by principal to be removed did not have protectable free speech right since its performance was part of the curriculum and school officials had "a legitimate pedagogical interest" its makeup).

52. *See, e.g., Cowan v. Strafford R-VI Sch. Dist*., 140 F.3d 1153 (8th Cir. 1998) (where teacher whose contract was not renewed after she sent magic rocks home to each child in her class recovered damages for religious discrimination but was not reinstated to her job).