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Equal Access Act Concerns

Q.: Must a school district permit students to voluntarily participate in student-led religious meetings or other religious activities during non-instructional time and while on school grounds?

A.: In 1984, the U.S. Congress passed the Equal Access Act, 20 USCS § 4071, a statute making it unlawful for, “any public secondary school which receives federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to or discriminate against any students who wish to conduct a meeting within that limited open forum on the basis of religious, political, philosophical, or other content of the speech at such meetings.” This Act only applies to public secondary schools which receive federal financial assistance and have limited open forums.

A school has a limited open forum whenever such school, “grants an offering to or opportunity for one or more non-curriculum related student groups to meet on school premises during non-instructional time.” 20 USCS § 4071(b). The U.S. Supreme Court has ruled that a school has a limited open forum if it permits one or more non-curriculum-related student groups to meet on campus before or after class. Board of Education of the West Side Community Schools, et al v. Mergens, 496 U.S. 226 (1990).

Furthermore, the Court found that a non-curriculum-related student group is any student group which does not directly relate to the body of courses offered by a school. *Id.* at 239. A student group directly relates to a school’s curriculum if: (1) the subject matter of the group is actually taught or will be taught as part of a regularly-offered course;

(2) the subject matter of the group concerns the body of courses as a whole; or, (3) if participation in the group is required and/or results in academic credit. *Id.* Accordingly, if the school only permits student groups that directly relate to its curriculum to meet on campus during non-instructional time then it does not have a limited open forum and may prohibit students from conducting religious meetings on school grounds during non-instructional time. However, if a school permits just one non-curriculum-related student group to meet on campus during non-instructional time, then it must give equal access or a fair opportunity to those students who wish to meet for religious purposes.

Under the Equal Access Act, schools shall be deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum if such school uniformly provides that (1) the meeting is voluntary and student-initiated; (2) there is no sponsorship of the meeting by the school, the government or its agents or employees; (3) employees or agents of the school or government are present at religious meetings only in a non-participatory capacity; (4) the meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and (5) non-school persons may not direct, conduct, control, or regularly attend activities of student groups. 20 USCS § 4071(c).

Assuming that at least one non-curriculum related student group is permitted to meet on school grounds during non-instructional time, a school district has a limited open forum for purposes of determining its obligations to student-initiated religious groups. Further assuming that the assembly is student-initiated and student-led, not sponsored by the school, is during non-instructional time and does not interfere with the orderly conduct of educational activities, it is protected by federal law.

Q. What is a school's rights and responsibilities with respect to the supervision and/or participation in student-led religious meetings?

A: It is well established that in accordance with the First Amendment to the U.S. Constitution, a school may not lead, participate, or otherwise promote religion or religious beliefs. In the landmark case, Lemon v. Kurtzman, 406 U.S. 602 (1971), the U.S. Supreme Court constructed the Lemon test which provides that a government sponsored activity with respect to religion will not offend the Constitution if the activity (1) has a secular purpose; (2) its primary or principal effect neither advances nor inhibits religion; and (3) it does not create an excessive entanglement of government with religion. With this in mind, the question becomes: How does a school provide equal access to students wishing to participate in religious activities on school grounds while not becoming excessively entangled with religion? The Equal Access Act specifically provides that schools shall not sponsor religious meetings and that teachers or other employees may only be present in a non-participatory capacity. Additionally, the Act specifically provides that, “nothing in this title shall be construed to limit the authority of the school, its agents or employees to maintain order and discipline on school premises to protect the well-being of students and faculty and to assure that attendance of students at meetings is voluntary.” 20 USCS § 4071(f). Thus, a school may retain custodial oversight of student-initiated religious groups merely to insure order and good behavior. If on the other hand, the school employees play a more active, participatory role in the religious gathering, then such conduct would cause excessive entanglement with religion and would offend the Establishment Clause.

It is unlawful for the teachers to join in and pray with the students during their assembly. School district employees clearly have the right to be present at religious meetings, however, their only proper function is to supervise and maintain order. In order to avoid excessive entanglement with religion, school employees should refrain from participating in student-led religious meetings and simply maintain order.

Q.: If it is determined that a student may conduct a religious meeting on school grounds and during non-instructional time, does a non-student (i.e., parent) have a right to participate?

A: Under the Equal Access Act, non-school persons such as parents may not, “direct, conduct, control or regularly attend activities of student groups.” 20 USCS § 4071(c)(5). This provision, however, does not speak to mere participation by non-students. In Student Coalition for Peace v Lower Merion School District, 776 F.2d 431, 442 (3rd Cir. 1985), the Court concluded that student groups wishing to invite non-students on to school property are protected by the Act if the school’s limited open forum encompasses non-student participation in other student events, as long as those non-students do not “direct, conduct, control or regularly attend such activities.” The Court went on to state that a school is, “not required to permit any and all outsiders to use its facilities or even to permit student groups indiscriminately to invite outsiders to its activities.” *Id.* at 442. However, the Act’s purpose is to enable all students to use those facilities on the same terms as all other students. Accordingly, a school must permit non-student participation in religious meetings only if the school allows non-student participation in other non-curriculum related groups and so long as the non-student does not direct, conduct, control or regularly attend the student religious meetings.

If a school district allows parental involvement in other non-curriculum related groups, the parents have a right to be present and pray along side the students. The parents, however, will not have the right to lead or control the prayer session. Additionally, should this kind of activity become a regular event, parent participation will only be permissible on a sporadic basis.