



EQUAL ACCESS PUBLIC SCHOOLS

Equal Access – Public school students who wish to meet as a student club at school and discuss religious topics are protected from discrimination based on “the religious, political, philosophical, or other content of the speech at such meetings.”

The rights of religious student clubs in public secondary schools are protected by the First Amendment to the U.S. Constitution and the Equal Access Act (“the Act”), passed by Congress in 1984.¹ The basic purpose of the Act is to put religious and political clubs on an equal footing with all other student clubs by allowing them the same privileges and access to school facilities that other recognized student clubs enjoy.² Once the school provides an opportunity for a non-curricular club to meet, it is said to have created a “limited open forum,” triggering the Act and entitling all other qualified student clubs (like a Bible Club) to the same access and benefits of school facilities as that first club.³

A “qualified student club” is one which is student initiated and student led. Faculty can be involved only to monitor, facilitate, or supervise, and nonschool persons cannot be regularly and directly involved in the meetings.⁴ The school still retains the ability to regulate and restrict clubs that “materially and substantially interfere with the orderly conduct of educational activities within the school.”⁵ Schools also have the right 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.”⁶

The rights of religious student clubs also stem from the First Amendment to the Constitution, which offers protection beyond that which the Act provides.⁷ Religious student clubs are allowed in public schools because there is a difference between “government speech endorsing religion, which

¹ 20 U.S.C. § 4071 (2005).

² ***Bd. of Educ. of Westside Cmty. Sch. v. Mergens***, 496 U.S. 226, 238 (1990) (“[T]he purpose of granting equal access is to prohibit discrimination between religious or political clubs on the one hand and other non-curriculum-related student groups on the other....”).

³ 20 U.S.C. § 4071(b). The Act defines a “limited open forum” as existing in a public high school “whenever such school grants an offering to or opportunity for one or more non-curriculum related student groups to meet on school premises during noninstructional time.” *Id.*

⁴ 20 U.S.C. § 4071(c)(1)-(3), (5).

⁵ 20 U.S.C. § 4071(c)(4); *cf. Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 509 (1969); *Mergens*, 496 U.S. at 241.

⁶ 20 U.S.C. § 4071(f); *Mergens*, 496 U.S. at 241.

⁷ U.S. CONST. amend. I.



the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.”⁸ Public schools cannot exclude certain clubs based on their religious viewpoints or practices.⁹ Once a school allows access to any student club, school officials cannot deny recognition or benefits to Christian clubs based on students’ desires to exercise their religious freedom.¹⁰

What can students do if their rights are being violated?

Students and parents should attempt to work with school administration to resolve the situation. If unsuccessful, Alliance Defending Freedom may be able to help legally defend the student’s rights. Contact Alliance Defending Freedom using the “Request Legal Help” form at www.ADFLegal.org or by calling 1-800-835-5233. A legal representative will review your situation and advise you of a course of action.

⁸ *Prince v. Jacoby*, 303 F.3d 1074, 1094 (9th Cir. 2002) (quoting *Mergens*, 496 U.S. at 250 [emphasis added]). The Establishment, the Free Exercise, and the Free Speech Clauses read as follows: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech ...” U.S. CONST. amend. I.

⁹ *See Prince*, 303 F.3d at 1092.

¹⁰ *Id.* at 1091; *see also Good News Club v. Milford Cent Sch.*, 533 U.S. 98 (2001); *Widmar v. Vincent*, 454 U.S. 263, 269 (1981).