

RELIGION IN THE PUBLIC SCHOOLS

STUDENT-INITIATED RELIGIOUS CLUBS

The Equal Access Act ("EAA") (20 U. S. C. §§ 4071-74) requires public secondary schools which meet certain criteria to treat all student-initiated groups equally, regardless of the religious, political, philosophical or other orientation of the groups. This means that to the extent that a school board opens up its school facilities to *any* student-led and run non-curriculum related group, it must uniformly open its facilities to all student-led and run groups, including religious ones. The EAA was adopted by Congress in 1984, and its constitutionality was upheld by the U. S. Supreme Court in *Board of Education of Westside Community Schools v. Mergens*, 496 U. S. 226 (1990).¹

SPECIFIC ISSUES & QUESTIONS

Does the EAA apply to all schools? No. The EAA only applies to schools that meet a three-part test. The school must:

- Be a public secondary school;
- Receive federal financial assistance; and
- Have designated certain facilities as a "limited open forum."

What is a "Secondary School" in the context of the EAA? The EAA does not define "secondary school." Rather, a secondary school is usually defined by state statute or regulation, and it typically means grades 9 - 12.

What is a "limited open forum" in the context of the EAA? A "limited open forum" is created when a public secondary school allows one or more "non-curriculum related student groups to meet on school premises during non-instructional time." 20 USCA § 4071(b). Local school boards decide whether to create and maintain limited open forums.

What is a "non-curriculum related student group?" "Non-curriculum related student group," as used in Equal Access Act, refers to those student groups whose activities are not directly related to the body of courses offered by the public school (e. g., the chess club). Student groups that are

¹ This section is limited to a discussion of student-initiated religious clubs. For information about after-school religious clubs run by outside religious organizations see the section entitled, "Use of School Facilities by Outside Religious Organizations and Clubs."

directly related to the subject matter of courses offered by the school (e. g., the Spanish club) do not fall within the non-curriculum-related category and thus would be considered curriculum-related.^{2 3}

What restrictions does EAA place on non-curriculum related student groups?

- The group must be student-initiated.
- The group must be student-sponsored and student-led.
- Participation in the group must be voluntary.

What are the rights of non-curriculum related student groups under the EAA?

The EAA grants these groups equal access to school facilities for meetings, and equal access to school media (e. g. school publications, school bulletin boards and public address systems) for publicizing their activities.⁴ They may choose their own leaders, restricting certain leadership roles to people of their own faith.⁵ However, general membership probably cannot be limited, including limitations based on religion.⁶

What is "non-instructional time?" "Non-instructional time" is time during the school day which a school sets aside before classroom instruction begins or after classroom instruction ends. Non-instructional time also encompasses an activity period or lunch period during which instruction does not occur and during which other groups are allowed to meet.⁷

What are the rights retained by school authorities under the EAA? School officials have the right to monitor club meetings to ensure compliance with provisions of the EAA. School authorities can "maintain order and discipline on school premises" and may prohibit club meetings which "materially and substantially interfere with the orderly conduct of educational activities within the school." School officials have the duty of protecting the "well-being of students and faculty." School officials should require religious clubs to follow the same rules as all other student clubs, including adherence to any nondiscrimination policy.⁸

² See *Board of Educ. of Westside Community Schools v. Mergens*, 496 U. S. 226 (1990).

³ Many state constitutions have establishment clause provisions that are more restrictive than the First Amendment. In some such instances, state law bars all religious meetings on public school grounds and thus comes into direct conflict with the EAA. One appellate court found that, when these conflicts arise, the EAA preempts (overrules) the state law. *Garnett v. Renton*, 987 F. 2d 641 (9th Cir.), cert. denied, 510 U. S. 819 (1993).

⁴ See *Straights and Gays for Equality v. Osseo Area Schools*, 540 F.3d 911 (8th Cir. 2008); *Krestan v. Deer Valley Unified Sch. Dist. No. 97*, 561 F. Supp. 2d. 1078 (D. Ariz. 2008); *Bowler v. Town of Hudson*, 514 F. Supp. 2d 168 (D. Mass. 2007); *ALIVE v. Farmington Public Schools*, 2007 U.S. Dist. LEXIS 65326 (E.D. Mich. 2007).

⁵ *Hsu v. Roslyn Union Free School. Dist.*, 85 F. 3d 839 (2nd Cir.), cert. denied, 519 U. S. 1040 (1996).

⁶ In *Truth v. Kent Sch. Dist.*, the court found that uniform application of a non-discrimination policy, which covered religion, to all non-curriculum-related clubs, including religious clubs, did not violate the EAA or the First Amendment. 542 F.3d 634 (9th Cir. 2008), *rehearing en banc denied*, 551 F.3d 850, *cert denied*, 129 S. Ct. 2866 (2009).

⁷ *Donovan v. Punxsutawney Area School Board*, 336 F. 3d 211 (3rd Cir. 2003); *Ceniceros v. Board of Trustees*, 106 F. 3d 878 (9th Cir. 1997).

⁸ See *Truth*, 542 F.3d 634.

School authorities may establish time, place and manner regulations applicable to club meetings, provided that the restrictions are uniform and nondiscriminatory.⁹ School officials have the right to close the limited open forum at any time by prohibiting all non-curriculum related clubs from meeting on school premises, thus ending the school's obligations under the EAA.¹⁰ School officials also have the right to uniformly eliminate non-curriculum club access to particular resources or facilities such as school publications, school bulletin boards or public address systems.

What are the restrictions and obligations placed upon the school, its agents and employees by the EAA? School personnel, including teachers, may not initiate, sponsor, promote, lead or participate in religious club meetings. However, school personnel may be required to monitor club meetings. 20 USCA §4071.

May outsiders attend meetings? Outsiders, such as clergy members, may not initiate club meetings. Outsiders "may not direct, conduct, control or regularly attend activities of student groups."¹¹ Outsiders may occasionally attend club meetings if invited by the students and if the school does not generally prohibit such guests. However, school officials may totally forbid non-school persons from attending all student club meetings.¹²

What are some concerns that arise when a club meets pursuant to the EAA?

The meeting of religious clubs in school facilities pursuant to their rights under the EAA may create an appearance of school endorsement of religion in violation of the Establishment Clause. School officials must protect against such impressions and may do so by issuing disclaimers clearly stating that the school is not sponsoring, endorsing or promoting any non-curriculum related student groups.

Schools must also recognize and guard against the threat of coercive peer pressure, which may be substantial. Student club members may be able to coerce students into joining sectarian groups and adhering to the club's beliefs, particularly if the student body is composed largely of the same religious faith as that practiced by club members. Such clubs might create "insider" and "outsider" student groups, and, as a result, students may be ridiculed, harassed or ostracized.

⁹ See *Krestan*, 561 F. Supp. 2d. 1078, (Uniform application to all non-curriculum-related clubs of leaflet distribution to "17-day club rush and election periods" did not violate First Amendment rights of religious club.

¹⁰ *Hsu*, 85 F. 3d 839; *Pope v. East Brunswick Bd. of Educ.*, 12 F. 3d 1244 (3rd Cir 1993).

¹¹ 20 U. S. C. A. § 4071(c); *Hsu*, 85 F. 3d 839 (footnote 16); *Student Coalition for Peace v. Lower Merion School Dist.* 776 F. 2d 431 (3rd Cir 1985).

¹² *Student Coalition for Peace*, 776 F. 2d 431.

SAMPLE SCENARIOS & SITUATIONS

High School Principal Rejects Student

Application for Bible Club, but Permits Other Non-Curriculum Related Clubs

Three students at Hawthorne High School decide to form a Bible study club. To organize and structure their club, they enlist the help of their local minister. A school science teacher agrees to become the club advisor. The principal has allowed a wide variety of clubs to meet during the school lunch hour, including the chess club, the audiovisual squad, and the Spanish club, but is concerned about the controversy that this club could create. The students claim that the Equal Access Act protects their right to form this club. When he rejects the club proposal, the principal states that all other school clubs are related to the curriculum and hence the Equal Access Act does not apply.

Is the principal correct?

The school has created a limited open forum by allowing other non-curriculum related clubs such as the chess club to meet, and therefore it must allow the Bible study club to meet. However, the roles of the minister and science teacher in the club have to be carefully controlled pursuant to the dictates of the EAA.

High School Principal Limits Bible Club's Access to School Facilities

Hawthorne High School allows all non-curriculum clubs to make morning announcements and show promotional videos over the school's P.A. and video feed system. Although pursuant to the EAA the principal recognizes the Bible study club and allows to meet during non-curriculum time, he prohibits the club from making morning announcements or showing promotional videos, none of which contain prayers or are proselytizing.

Can the principal place such limits on the Bible Study Club?

No – Non-curriculum-club access or limitations to use of school resources and facilities must be uniform. However, if the Bible study club's announcements or videos, included prayers or proselytizing messages, it is likely that the principal could prohibit such announcements or videos to avoid an Establishment Clause violation.

People in Community Object to Controversial Non-Curriculum Related Club

A high school allows non-curriculum related student-organized, student-led clubs to meet before and after the school day. A very controversial club has been proposed by a student, and many in the community are opposed to this club's meeting.



What are the school's options?

Under any circumstance, a school may prohibit clubs and organizations that are contrary to the educational mission of the school or present a danger to the health and safety of a school. This is a very high standard: a school district may not bar a student club merely because the school or the community disagrees with its message, even if they disagree strongly. Should the District so elect, it can ban all such non-curriculum related clubs (such as service clubs), including this one.

PROVIDED BY: Civil Rights Division