

Equal Access Act & Student Clubs and Groups

2011

NMSBA

School Law Conference

Equal Access Act & Student Clubs and Groups

Presenter:

C. Emery Cuddy, Jr.

Special Counsel

Cuddy & McCarthy, LLP.

Equal Access Act

20 USC § 4071 et seq.

Equal Access Act

“ It shall be 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 the religious, political, philosophical, or other content of the speech at such meetings.”

Equal Access Act

"Nothing in this subchapter 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."

Equal Access Act

Advocacy Groups

Both ends of the political and religious spectrum:

- Fundamentalist Christian Groups:
e.g. Good News Club; Fellowship of Christian Athletes
- Gay Rights Organizations:
e.g. Gay/Straight Alliance

Equal Access Act

“But what about the
Establishment Clause?”

Equal Access Act

ONLY

applies to **non-instructional time during the school day.**

Does not apply to activities before or after school day [but First Amendment does apply then]

Equal Access Act

OPTIONS:

"Limited Open Forum"

versus

"Closed Forum"

Equal Access Act

“Closing the Forum” Considerations

- Why?
- Impact on students?
- Risks [litigation]
- Community Reaction/Demands

Equal Access Act

“Limited Open Forum” definition:

A public secondary school has a **limited open forum** whenever such school grants an offering to or opportunity for one or more **noncurriculum related** student groups to meet on school premises during **noninstructional time**.

Equal Access Act

The Act provides ... that a "limited open forum" exists whenever a covered school "grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises." Its equal access obligation is therefore triggered even if such a school **allows only one** "noncurriculum related" group to meet. Board of Educ v. Mergens, 496 U.S. 226 (1990)

Equal Access Act

"Non-Curriculum-Related"

" A group directly relates to a school's curriculum if the group's subject matter is actually taught, or will soon be taught, in a regularly offered course; if that subject matter concerns the body of courses as a whole; or if participation in the group is required for a particular course or results in academic credit."

Mergens, 496 U.S. 226.

Equal Access Act

"Non-Curriculum-Relatedness"

"Whether a specific group is "noncurriculum related" will therefore depend on the particular school's curriculum, a determination that would be subject to factual findings well within the competence of trial courts to make." Mergens, 496 U.S. 226.

Equal Access Act

Examples of Curriculum-Related Groups:

French Club
Spanish Club
Band
Choir
DECA
FFA

Equal Access Act

Examples of Clearly Non-Curriculum-Related Groups

SCUBA Club

Fellowship of Christian Athletes

Gay/Straight Alliance

Good News Club

Equal Access Act

The “Not Yet Clear” Groups

Key Club

Honor Society

Senior Class

Student Council

Etc.

First Amendment

- Applies at all times, not just during the school day.
- Prohibits “viewpoint” discrimination.
- Schools cannot refuse to allow groups [student or otherwise] to use their facilities based upon the content of their message or viewpoint.

Equal Access Act

“But what about the
Establishment Clause?”

First Amendment

Issues

Open vs. Closed Forum

- Facilities Use Policies
- After-School Student Group meetings [e.g., G/SA; FCA]
- Information Distribution System (e.g., posting or announcement of meetings/use of P.A. system or bulletin boards.)

Equal Access Act & Student Clubs and Groups

Questions?

Contact Information:



C. Emery Cuddy, Jr.
Special Counsel

(866) 679-4476
ccuddy@cuddymccarthy.com