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California Three Rs

Rights, Responsibility, and Respect

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Services Association and The First Amendment Center*

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Student Religious Clubs in Public Schools

As California schools become more religiously diverse, more school leaders are coming to the California Three Rs Project with questions related to student religious clubs on public school campuses. In some cases the answers are quite clear. In others, the answers are still evolving. The following overview information is designed as a guide to school policy related to issues where the law is clear.

Equal Access Act

The clearest guidance for religious clubs is at the secondary school level and is found in the Equal Access Act which became law in 1984 and was held Constitutional in 1990 by the *Westside Community School v. Mergens* ruling of the Supreme Court. The Equal Access Act is triggered when the school has a "limited open forum." A limited open forum is created whenever a public secondary school provides an opportunity for one or more non-curriculum-related student groups to meet on school premises during non-instructional time. The forum created is said to be limited because it is only the school's own students who may take advantage of the open forum. Outsiders are not granted an independent right of access by the act. Curriculum related clubs are those that have a subject matter that is taught in the school (e.g. French club or History Club), or those that relate to the curriculum generally (e.g. band, student council) or when participation in the group is required for course credit (team sport that serves for PE credit). In *Mergens*, the Court identified three non-curriculum related student groups including the scuba club, the chess club and a service club. The Court has upheld the three underlying concepts in the Equal Access Act (see consensus guidelines http://www.firstamendmentcenter.org/rel_liberty/publicschools/topic.aspx?topic=religious_clubs).

The first concept is nondiscrimination. If a public secondary school permits student groups to meet for student-initiated activities not directly related to the school curriculum during non-instructional time, it is required to treat all such student groups equally. This means the school cannot discriminate against any students conducting such meetings on the basis of the religious, political, philosophical, or other content of the speech at such meetings. All the same, religious speech is to receive equal treatment, not preferred treatment.

The second basic concept is protection of student-initiated and student-led meetings. Student initiated means that the students themselves are seeking permission to meet and that they direct and control the meetings. Teachers, other school employees, or outsiders may not initiate or direct the meetings. The Supreme Court has held unconstitutional state-initiated and state-endorsed religious activities in the public schools. However, in its 1990 decision upholding the constitutionality of the act, the Court noted the crucial difference between government speech endorsing religion,

which the Establishment clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise clauses protect.

The third basic concept is local control. The act does not limit the authority of the school to maintain order and discipline or to protect the well-being of students and faculty. Because of this, the school can regulate the time, place, and manner in which non-curriculum related clubs operate. The key is that the regulations are the same and administered in an even-handed manner for religious and nonreligious groups alike. For example, non-school persons may attend religious club meetings if such people are allowed to attend other non-curriculum related club meetings.

Teachers may be present at religious club meetings but in a “non-participatory” capacity. However, legal experts are divided about whether an employee may be required to serve as a monitor for a club “if the content of the speech at the meetings is contrary to the beliefs” of that employee.

Elementary and Middle Schools

Since elementary and middle schools are not covered by the Equal Access Act, the issue of school clubs at those sites is much less clear. A middle school principal may not have to allow student religious clubs because the Equal Access Act doesn’t apply. But some legal experts believe that if middle schools allow some student-initiated clubs, then they may not deny students the right to form clubs with a religious viewpoint. This is an issue that hasn’t been fully litigated. Charles Haynes of the First Amendment Center advises middle school principals to allow such clubs if they have other student-initiated, student-led non-curriculum related clubs. But – and this is key –they should follow the provisions of the Equal Access Act to maintain policies consistent with the First Amendment. That would mean, among other things, that teachers may be present as monitors only.

If a teacher wants to form an after-school religious club that is a community-sponsored club, then the teacher (as a community member) probably may do so. Such groups/clubs may use the school facility on the same basis as other community groups/clubs. This was what the *Good News Club v. Milford Central School* (<http://www.oyez.org/oyez/resource/case/1191/>) case was all about. This request would then be considered in the same way as a request from the Boy Scouts, the Good News Club, or any other group with programs for youth. If the school opens its facilities for such clubs during non-school hours, then the school must allow clubs with a religious viewpoint to meet on the same basis as the others. This is “equal access” – but has nothing to do with the Equal Access Act.

The teacher, however, may not promote this club during school hours. And the club may not have any more or less access to kids during school hours than any other community group that meets at the school. If the Boy Scouts get to send home fliers or post notices on a particular bulletin board, then so may this group.

Since some questions about student religious clubs below the secondary level are unsettled, it would be wise for districts dealing with contentious school club issues not covered by the Equal Access Act, to consult their school board attorney before deciding upon an action or policy.

Sources:

First Amendment Center - **Religious Clubs**

http://www.firstamendmentcenter.org/rel_liberty/publicschools/topic.aspx?topic=religious_clubs

Dr. Charles C. Haynes, First Amendment Center, Senior Scholar. Correspondence October 13, 2005

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Religious Freedom Day - January 16

Learn more at <http://www.firstamendmentcenter.org/commentary.aspx?id=14678>



California Three Rs Project
Desert Area Teaching American History Institute
and
San Bernardino County Teaching American History Project
invite
middle and high school teachers
to



Foundations of Religious Freedom in America

David Bobb – Hillsdale College, Hoogland Center for Teacher Excellence
Thomas Krannawitter- Hillsdale College, Assistant Professor of Political Science

DATE: February 24, 2006

LOCATION: Best Western Heritage Inn

8179 Spruce Ave (near Foothill & Haven)

TIME: 8:30 a.m.— 3:30 p.m.

Rancho Cucamonga, CA 91730

(handicapped accessible)

COST: \$25 per person, includes lunch and 450 page primary source manual

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; of abridging the freedom of speech, or of the press; of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The First Amendment of the U.S. Constitution

The natural rights identified in the First Amendment are every American’s most precious possession and it is one of education’s most important roles to guarantee that the next generation understands and upholds them. This is why these basic democratic principles are the centerpiece of the History-Social Science Content Standards for middle and high school. Where did the ideas of freedom of conscience and expression come from and what did the Founders mean by them? Participants will hear noted scholars, experience instructional processes on how to teach these important ideas, and receive a manual of almost 100 classroom-ready primary source documents tracing the historical evolution of constitutional principles in American society.

Online Registration: http://ci.sbcss.k12.ca.us/ci/events_sbcss/
REGISTRATION DEADLINE – February 15, 2006 (no refunds after deadline)

----- **Foundations of Religious Freedom** -----

Name: _____ District: _____

School: _____ Mailing Address: _____

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Make check or P.O. payable to SBCSS. Mail completed registration coupon and \$25 per person to: San Bernardino County Superintendent of Schools, Attention Margaret Hill, CA 3Rs Lead, 601 North E Street, San Bernardino, CA 92410-3093 Fax (909) 386=2667

California Three Rs Project Website:

http://score.rims.k12.ca.us/score_lessons/3rs/

Common Ground Resources:

Finding Common Ground: A Guide to Religious Liberty in Public Schools by Charles C. Haynes and Oliver Thomas. First Amendment Center, 2001.

This book has guidelines on how to handle a wide range of issues related to religious liberty and public schools.

First Amendment Center: Religious Liberty http://www.firstamendmentcenter.org/rel_liberty/index.aspx This is an up-to-the-minute resource with current issues and court cases. A PDF version of *Finding Common Ground* is available here.

For California Three Rs program information, contact...

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For First Amendment religious liberty information, contact...

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chaynes@freedomforum.org

For information on teaching about world religions, contact...

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