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California Three Rs

Rights, Responsibility, and Respect

*A Project of the California County Superintendents Educational
Services Association and The First Amendment Center*

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Maintaining Government Neutrality Toward Religion in Public Schools

From First Amendment Center Consensus Guide on Student Religious Clubs

As I work with educators throughout California I am finding more and more examples of policy and practice that cross the lines of neutrality toward religion that public school officials are mandated to maintain. In some cases the majority has essentially denied minority rights by instituting practices, especially in the area of extracurricular clubs, that violate the First Amendment and/or the 1984 Equal Access Act (EEA). Public schools belong to the entire community, regardless of religious or secular persuasion. But even more importantly, schools are the public institutions charged with nurturing the dispositions and understandings necessary for America's experiment in constitutional democracy to thrive in our diverse nation.

What are the fundamental ideas that schools not only need to teach, but to practice? Though the constitution itself, in Article VI, Section 3 says "no religious test shall ever be required as a qualification to any office or public trust under the United States," it is the First Amendment that has been used most often in relation to public schools. This Constitutional guarantee, now applied to all levels of government states that "Congress shall make no law regarding an establishment of religion or prohibiting the free exercise thereof..." These words must be the guide for schools in developing policy and practice for how administrators and teachers deal with religion and beliefs during school time. When schools don't follow these constitutional principals, the freedom not only of the students, parents, and staff suffer, but the liberty of the larger society is damaged as well. As Charles Haynes, director of the Religious Freedom Education Project at the Newseum, often says, these two parts of the U.S. Constitution are the "articles of peace" that undergird America's diverse civil society allowing us to live with our deepest differences, and to be one of the most religiously vibrant societies in the world.

Questions surrounding student-initiated religious clubs in secondary schools have been addressed by Congress in the Equal Access Act, a 1984 law upheld by the U.S. Supreme Court. The First Amendment Center explains how this law works in its consensus document interpreting the Equal Access Act signed by 21 religious and educational groups representing a wide spectrum of views. It is chapter 7 of Finding Common Ground: A First Amendment Guide to Religion and Public Schools available from county offices of education or from the California Three Rs Project. It may also be found online at http://www.fac.org/rel_liberty/publicschools/topic.aspx?topic=religious_clubs.

Here are some of the key concepts in the document that many schools need to review in responding to student requests related to forming religious clubs on campus this fall. First is nondiscrimination. If a public secondary school permits student groups to meet for student-initiated activities not directly related to the school curriculum, it is required to treat all such student groups equally. For example if a school allows a chess club, it needs to allow a Bible, gay-straight alliance, Buddhist, or humanist club. The school cannot discriminate "on the basis of the religious, political, philosophical, or

other content of the speech at such meetings.” The Equal Access Act makes clear that religious speech is to receive equal treatment, but at the same time, not preferred treatment.

The second basic concept is protection of student-initiated and student-led meetings. Since the Supreme Court has held unconstitutional state-initiated and state-endorsed religious activities in the public schools, “employees or agents of the school or government are present at religious meetings only in a non participatory capacity.” For insurance purposes, and because of state law or local school policy, teachers or other school employees are commonly required to be present during student meetings. But if the student club is religious in nature, school employees may be present as monitors only. They cannot lead or participate with students in religious activities.

The third basic concept is local control. The EEA does not limit the authority of the school to maintain order and discipline or to protect the wellbeing of students and faculty. For example, if guest speakers are allowed to attend other extracurricular student clubs, religious leaders may occasionally attend the Bible club meetings upon the invitation of the students. But, the Equal Access Act states that the nonschool persons “may not direct, conduct, control, or regularly attend activities of student groups.” In addition, schools maintain control by establishing reasonable meeting times, providing the appropriate facility, and enforcing order and discipline during the meetings. The key, however, is that these time, place, and manner regulations must be uniform, nondiscriminatory, and neutral in viewpoint. For example, students who do not participate in the club activities may not be barred from essential school facilities like the lunchroom or the library to accommodate student school clubs in a preferential manner.

There are a number of frequently asked questions about the Equal Access Act.

- **Do students have the right to form religious or political clubs below the secondary level?**
Probably not, but current law is unclear on this point. Although the EAA does not apply to public schools below the secondary level, some courts have held that the free-speech clause protects the right of middle school or elementary school students to form religious or political clubs on an equal footing with other student-initiated clubs. When the EAA was debated in Congress, many lawmakers expressed doubt that young children could form religious clubs that would be truly initiated and led by students and would tend to infer that these clubs were school sponsored. For these and other reasons, Congress declined to apply equal access below the secondary level.
- **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, they may monitor student behavior and use of the school facility.
- **What are some concerns that arise when a club meets pursuant to the EAA?**
The meeting of religious clubs in school facilities 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. 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.
- **Are faculty members allowed to exercise their religious freedom at school?**
When faculty members are with students they represent government and are subject to the Establishment Clause. They need to remain neutral toward religion, neither promoting nor denigrating it and also refrain from using their position at school to promote their own outside religious activities. However, on their own time and away from students, they may participate in religious practice.

These are tricky issues for school administrators, teachers, and parents. Take the time at the beginning of the new school year to review school policies and practices in light of California Education Code, the Equal Access Act, the National School Boards Association policy briefs, etc. Education budgets are too limited to spend any unnecessary funds defending uniformed practices at schools from religious liberty challenges.

Have a great, litigation free school year!

*We the People...Citizen and the Constitution Regions 8 and 9, One Nation: Many Faiths TAH Project, FIRST at CSU
Fullerton, Orange County Department of Education, and Constitutional Rights Foundation
Invite K-12 Teachers and Administrators*



What Matters Most in a Constitutional Democracy?

***A Celebration of America's
Constitutional Freedoms***

**Constitution Day in
Your Classroom**

On Thursday, September 17, 2010, schools throughout America will celebrate our nation's commitment to freedom at the official Constitution and Citizenship Day Celebration in compliance with a 2005 federal law. This conference will inspire educators about the importance of celebrating the oldest constitution in the world and the ideals and structures it has set for our nation to govern for the common good while protecting individual freedom. In addition to the session handouts, all participants will receive a CD of resources for implementing Constitution Day celebrations and other constitution related activities in their own schools and classrooms.

**Keynote - Dr. Matthew Beckmann, U.C. Irvine, Dept. of Political Science and the
Center for the Study of Democracy**

Date: Saturday, August 28, 2010
Time: 8:00 a.m. to 2:00 p.m.
Location: Diamond Bar HS - Golden Horseshoe, 21400 Pathfinder Rd.
Diamond Bar, CA 91765 (near the 60 & 57 frwy interchange)
Benefits: \$100 stipend for participants who attend the conference and
provide evidence of implementing a Constitution Day/patriotic
activity. All receive a free CD of K-12 Constitution Day lessons,
hand-outs, and lunch.
Registration Deadline: August 13, 2010
Questions: Deborah Granger dgranger@ocde.us

Name (s): _____ School _____

Address _____ City _____ Zip _____

Phone () _____ Email _____ Grade _____

Send completed flier to Orange County Department of Education, 200 Kalmus Drive, Costa Mesa CA 92628
Attention: Deborah Granger, H-SS Coordinator Fax : 714-662-3148 Phone: 714-966-4447

Common Ground Resources:

Finding Common Ground: A Guide to Religious Liberty in Public Schools by Charles C. Haynes and Oliver Thomas. First Amendment Center, 2007.

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...

Dr. Margaret Hill, California 3Rs Project Lead, Department of Educational Leadership & Curriculum, California State University San Bernardino, 5500 University Pkwy., San Bernardino, CA 92407
(909) 537-5459, mhill@csusb.edu

For First Amendment religious liberty information, contact...

Dr. Charles C. Haynes, Senior Scholar, Freedom Forum First Amendment Center, 555 Pennsylvania Ave. NW, Washington D.C. 20001 Tel: 202/292-6293 chaynes@freedomforum.org

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

Dr. Bruce Grelle, Director, Religion and Public Education Resource Center, Department of Religious Studies, California State University, Chico, 400 West First Street, Chico, CA 95929-0740,
(530) 898-4739, bgrelle@csuchico.edu

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