



Judges in the Classroom

Religion in the Schools

Source:

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Objectives:

1. To identify the requirements of the Equal Access Act.
2. To apply the Act to factual situations.
3. To understand the difficulties faced by administrators in deciding whether or not to permit non-curriculum-related groups to meet on campus.
4. To identify the tension between the First Amendment's Free Exercise Clause and the Establishment Clause.

Grade Level:

Grades 9-12

Time:

One class period (approximately 50 minutes)

Materials:

One copy of Handout 1 (The Equal Access Act) for each student
One copy of Handout 2 (Roles for the Equal Access Role-Play)

Prior to class, make one copy of the roles on Handout 2 and then cut out the individual roles so that one role appears on each slip of paper.

Procedures:

1. **Begin the class by introducing yourself** and setting the students at ease. Tell students that the purpose of today's class is to examine religion in public schools. Explain they will have an opportunity to role-play students and school administrators.

2. Take about five minutes to introduce the Equal Access Act by telling students that:

This statute became law on August 11, 1984, passing the Senate 88 to 11 and the House 337 to 77. According to the U.S. Supreme Court, the primary purpose of Congress in passing the Act was to end "perceived widespread discrimination" against religious speech in public schools. While Congress recognized the constitutional ban on government promotion of religion, it believed that nonschool sponsored student speech, including religious speech, should not be excluded from the school environment. Later, Congress extended the protections of the Equal Access Act to a limited open forum for religious, political, philosophical, and other speech content.

The Supreme Court, by a vote of 8 to 1, ruled in *Board of Education of the Westside Community Schools v. Mergens*, 110 S. Ct. 2356 (1990), that this statute was constitutional.

The statute has three basic concepts:

- (1) **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. This means the school cannot discriminate against any students conducting such meetings "on the basis of religious, political, philosophical, or other content of the speech at such meeting." This language was used to make clear that religious speech was to receive equal treatment, not preferred treatment.
- (2) **Protection of student-initiated and student-led meetings.** The Supreme Court has ruled unconstitutional state-initiated and state-endorsed religious activities in the public school. In 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."
- (3) **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 faculties.*

*Quoted from *The Equal Access Act and the Public Schools: Questions and Answers*.

- 3. Clarify that this lesson does not analyze what a school can do or teach under the Establishment Clause.** The First Amendment's Establishment Clause prohibits the government from making any law "respecting an establishment of religion." For example, with regard to prayer during school activities, the Supreme Court has held that a school district is in violation of the Establishment Clause where "the degree of school involvement makes it clear that the [prayer activities] bear the imprint of the State and thus put school-age children who objected in an untenable position." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 305, (2000).
- 4. Pass out Handout 1** and instruct students to take five minutes to read through the Equal Access Act, keeping in mind the questions that go along with the law. Tell students that they will need to understand this statute for the role-plays that follow.
- 5. After reading the statute**, lead a general discussion of the questions that follow the statute. Spend about 10 minutes on this activity.

On a related issue, the U.S. Supreme Court ruled in *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995), that the Free Speech Clause requires a public university not to discriminate against student organizations with a religious message when handing out student activity fee money, as that would be viewpoint discrimination. In *Agostini v. Felton*, 521 U.S. 203 (1997), the Supreme Court ruled in a 5-4 decision that publicly paid teachers can go into parochial schools to provide Title I educational services without violating the Establishment Clause.

Answers to the Questions on Handout 1

a. When does the Equal Access Act apply?

The Act applies to public secondary schools (high schools) that receive federal financial assistance and that have a limited open forum.

b. Define limited open forum and give an example.

A limited open forum is created whenever a public secondary school provides an opportunity for one or more "noncurriculum-related student groups" to meet on school premises during noninstructional time. The forum created is said to be "limited" because it is only the school's own students who can take advantage of the open forum. Outsiders are not granted an independent right of access by the Act.

Permitting a community services club that is not related to the curriculum to meet during noninstructional time creates a limited open forum.

c. What requirement is put on a public secondary, federally assisted school with a limited open forum?

The school is required to give a fair opportunity to students who wish to conduct a meeting without discrimination on the basis of religious, political, philosophical, or other content of the speech.

d. What are the characteristics of a fair opportunity to conduct a meeting?

The meeting is voluntary and student-initiated.

There is no sponsorship of the meeting by the school, government, or its agents/employees.

Employees or agents of the school or government are present only in a nonparticipatory capacity.

The meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school.

Nonschool persons may not direct, conduct, control, or regularly attend activities of student groups.

e. **What is a noncurriculum-related student group?**

The statute does not define this term, which became an important issue when the United States Supreme Court ruled that this statute was constitutional. In *Board of Education of the Westside Community Schools v. Mergens*, 110 S. Ct. 2356 (1990), the U.S. Supreme Court defined noncurriculum-related student group as any student group that does not directly relate to the body of courses offered by the school. A student group directly relates to a school's curriculum if the subject matter of the group is actually taught, or will soon be taught, in a regularly offered course; if the subject matter of the group concerns the body of courses as a whole; and/or if participation in the group results in academic credit.

6. **Set up the role-play** by recruiting three volunteers to serve as school administrators who must decide whether the Equal Access Act *requires* them to grant the requests. The administrators need to reach a decision based on the Equal Access Act and notify the student or teacher making the request for the reason why or why not to grant the request.

Distribute one role to each of 12 students in the room. Inform them they will make presentations to the school administrators to try to persuade them to grant their request. They should be instructed to refer to the statute to support their request.

Assign the remaining students to serve as legal counsel to the school. They will listen to the presentations and decisions of the administrator, refer to the statute, and deliver a legal opinion as to whether or not the administrators made the correct decision.

Give students five minutes to prepare for their roles.

7. **Begin the role-play** by calling on "Role 1" to make a presentation. Following the student request, the three-person administrator panel should discuss and then inform the student of its decision. The legal counsel (the rest of the class) should then comment as to whether or not it agrees with the decision of the administrators. Provide the correct answer after legal counsel has made its analysis. Spend about 20 minutes on the role-plays.

8. **Conclude** by asking students what they think of the law.

Answers To The Role-Play On Equal Access

Role 1: You are a student at St. Mark's School and you want to have the Buddhist Society meet after school.

Answer: There is no right to meet, because St. Mark's School is not a public school.

Role 2: You are a student at a public school that gets federal financial assistance and you want to have a Bible Study Club.

Answer: The decision depends upon whether or not there are other noncurriculum-related student groups.

Role 3: You are a student at a public school that gets federal financial assistance and you want to have a Bible Study Club. Presently the school only has a French Club that meets after class for participation in this club.

Answer: Since the school does not have a limited open forum, the school is not required to allow the Bible Study Club.

Role 4: You are a student at a public school with a limited open forum; you wish to hold your Bible Club meetings on Sundays at the school.

Answer: Under the language of the statute, there appears to be no right to require the schools to be open for noncurriculum groups on Sunday. Schools are obligated to make time available during "noninstructional time" which is time set aside by the school before actual classroom instruction begins or after it ends.

Role 5: You are a student at a public school with a limited open forum; you wish to hold meetings of your Bible Club, which consists of you and one other student.

Answer: Schools may not require a minimum number of students to form a noncurriculum-related club; although, they make reasonable accommodations if the number of clubs begins to tax available space.

Role 6: You are a student at a public school with a limited open forum; you have been asked by your minister to set up a Bible Study Club at your school.

Answer: There is no right under the statute since these classes fail to meet the requirement of being student initiated.

Role 7: You are a student at a public school with a limited open forum; you want to invite your minister to attend a meeting of your Bible Study Club at school and lead students in some prayers.

Answer: So long as the nonschool person does not direct, conduct, control or regularly attend activities, s/he may come. A school may decide not to permit any nonschool person to attend any club during the academic year nonschool

person may be invited.

Role 8: You are a student at a public school with a limited open forum; you object to the presence of a school teacher during Bible Club meetings.

Answer: School teachers may be present if for insurance purposes or because of state law or local school policy, teachers, or other school employees are commonly required to be present during student meetings. To avoid any appearance of state endorsement of religion, the teachers or employees may only be present in a nonparticipatory capacity.

Role 9: You are a teacher at a public school with a limited open forum. You have been assigned to be present at the Student Bible Reading Club; although, you yourself are an atheist. You object to the assignment, but the principal does not change it.

Answer: You as a teacher have the right not to have to attend a student meeting when you do not share the beliefs of the students.

Role 10: You are a student at a public school with a limited open forum; you want to set up a student club that wishes to advocate changes to the law to legalize marijuana. A similar club in a crosstown school has caused discipline problems.

Answer: A group cannot be barred at a particular school because of speculative harm.

Role 11: You are a student at a public school with a limited open forum; you want to hold Neo-Nazi meetings at school.

Answer: The school may not ban groups unless they are unlawful or if they materially and substantially interfere with the orderly conduct of educational activities. Freedom of speech includes ideas the majority may find repugnant. Depending upon the context of the organization at the school, the administrators may or may not ban this group.

Role 12 You are a student in a public school with a limited open forum; you want to organize a Gay-Straight Alliance at the school to provide support to students.

Answer: Federal courts have found such clubs to be protected and order schools to provide access to use of the facilities.

9. When all roles have been played and debriefed, conclude by explaining to students that the exercise they have just completed is the job that judges perform. They must read and apply the law to a wide set of facts.

Handout 1

The Equal Access Act

QUESTIONS WHILE READING THE EQUAL ACCESS ACT

Read the Equal Access Act, keeping in mind the following questions:

- a. When does the Equal Access Act apply?
- b. Define limited open forum and give an example.
- c. What requirement is put on a public secondary, federally assisted school with a limited open forum?
- d. What are the characteristics of a fair opportunity to conduct a meeting?
- e. What is a noncurriculum-related student group?

EQUAL ACCESS ACT (20 U.S.C. SECTIONS 4071-72)

Section 4071.

- (a) 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.
- (b) A public secondary school has a limited open forum whenever such school grants any offering to, or opportunity for, one more noncurriculum-related student groups to meet on schools premises during non-instructional time.
- (c) Schools shall be deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum if such school uniformly provides that --

(1)	the meeting is voluntary and student-initiated;
(2)	there is no sponsorship of the meeting by the school, the government, or its agents or employees;
(3)	employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity;
(4)	the meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and
(5)	nonschool person may not direct, conduct, control or regularly attend activities of student groups.

- (d) Nothing in this subchapter shall be construed to authorize the United States or any state or political subdivision thereof --
 - (1) to influence the form or content of any prayer or other religious activity;
 - (2) to require any person to participate in prayer or other religious activity;
 - (3) to expend public funds beyond the incidental cost of providing the space for student-initiated meetings;
 - (4) to compel any school agent or employee to attend a school meeting if the content of the speech at the meeting is contrary to the beliefs of the agent or employee;
 - (5) to sanction meetings that are otherwise unlawful;
 - (6) to limit the rights of groups of students which are not of a specified numerical size; or
 - (7) to abridge the constitution rights of any person.
- (e) Notwithstanding the availability of any other remedy under the Constitution or the laws of the United States, nothing in this subchapter shall be construed to authorize the United States to deny or withhold federal financial assistance to any school.
- (f) 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.

DEFINITIONS

Section 4072. As used in this subchapter--

- (1) The term "secondary school" means a public school which provides secondary education as determined by State law.
- (2) The term "sponsorship" includes the act of promoting, leading or participating in a meeting. The assignment of a teacher, administrator or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting.
- (3) The term "meeting" includes those activities of student groups which are permitted under a school's limited open forum and are not directly related to the school curriculum.
- (4) The term "noninstructional time" means time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.

Handout 2

Roles for the Equal Access Role-Play

- Role 1:** You are a student at St. Mark's School and you want to have the Buddhist Society meet after school.
- Role 2:** You are a student at a public school that gets federal financial assistance and you want to have a Bible Study Club.
- Role 3:** You are a student at a public school that gets federal financial assistance and you want to have a Bible Study Club. Presently the school only has a French Club that meets after class for participation in this club.
- Role 4:** You are a student at a public school with a limited open forum; you wish to hold your Bible Club meetings on Sundays at the school.
- Role 5:** You are a student at a public school with a limited open forum; you wish to hold meetings of your Bible Club, which consists of you and one other student.
- Role 6:** You are a student at a public school with a limited open forum; you have been asked by your minister to set up a Bible Study Club at your school.
- Role 7:** You are a student at a public school with a limited open forum; you want to invite your minister to attend a meeting of your Bible Study Club at school and lead students in some prayers.
- Role 8:** You are a student at a public school with a limited open forum; you object to the presence of a school teacher during Bible Club meetings.
- Role 9:** You are a teacher at a public school with a limited open forum. You have been assigned to be present at the Student Bible Reading Club; although, you yourself are an atheist. You object to the assignment, but the principal does not change it.
- Role 10:** You are a student at a public school with a limited open forum; you want to set up a student club that wishes to advocate changes to the law to legalize marijuana. A similar club in a cross-town school has caused discipline problems.
- Role 11:** You are a student at a public school with a limited open forum; you want to hold Neo-Nazi meetings at school.
- Role 12:** You are a student in a public school with a limited open forum; you want to organize a Gay-Straight Alliance at the school to provide support to students.