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STUDENT RELIGIOUS CLUBS IN PUBLIC SCHOOLS**Overview**

For more than fifty years, student clubs have functioned in most public secondary schools across this nation. Today, as in the past, student government, student clubs and interscholastic athletics are important in rounding out the array of offerings made available to students. In fact some experts claim that students do better academically and are more attractive to college recruiters and potential employers when they are involved in student government, student clubs, and varsity athletics.

Generally, student clubs in secondary schools fall into three categories. First, there are clubs directly linked to course and/or program offerings. Examples of *curricular clubs* (in some situations this category also includes *co-curricular clubs*) are French Club, Drama Club, Debate Club, HOSA (Health Occupations Student Association), and Journalism Club. More often than not membership is required and students often receive some form of credit for belonging to the club. The second category includes *service clubs*. One recognized and respected example of a service club is Key Club. More often than not, students are selected for service club membership based on specific criteria. As a general rule they do not receive academic credit for membership. The third category includes those classified as *student-initiated interest clubs*. Ski Club, Chess Club, and Scuba Club are three examples from a very long list. Students self-select for membership in these clubs, the clubs do not relate directly to a course or program of study, and credit for membership is not possible. Students belong to the club based purely on their interests.

In the 1970's the popularity of student clubs seemed to wane. However, student interest in club membership picked up again in the 1980's and rapidly escalated throughout the decade of the 1990's. It was during this period that new clubs emerged both on college campuses and in public secondary schools.

In recent years, there has been a resurgence of student club activity, especially in the *student-initiated interest club* category. Of all new clubs wanting to establish their presence on school grounds, *student religious clubs* (sometimes referred to as Bible clubs) were most popular; and as students requested official recognition of these clubs (along with access to a meeting place on school grounds) the legal and policy issues grew in number.

Emerging Issues

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As a general rule, student-initiated religious clubs have the potential to produce First Amendment issues. As such, when dealing with student-initiated religious clubs, local boards of education and public school principals are faced with the difficult task of balancing their prerogatives as government officials engaged in state action with the free exercise of religion, association, and speech (expression) rights of students. (Millhouse and Vacca, 1996) In addition, school officials must treat religious clubs in the same way they treat other student-initiated clubs.

The first major court case treating student religious clubs involved college students at the University of Missouri, and the issues of (a) *permission to meet on school premises*, and (b) *equal access to school facilities*. In Widmar v Vincent (1981), the request of a group of students to use campus facilities to hold meetings of their religious club was denied by school officials. School officials said that their refusal was based on a need to avoid possible First Amendment Establishment Clause problems. Ultimately, the United States Supreme Court ruled in favor of the student club. In the Court's view, refusing to grant the religious club access to campus facilities while allowing access to other student groups amounted to a violation of the free speech protected by the First Amendment. (Alexander and Alexander, 1998) More specifically, the Court opined that any *infringement* on a student group's "access to a forum created for student expression on state supported campuses must be justified by a compelling state interest." (McCarthy, 2000)

In 1984, the United States Congress passed and President Ronald Reagan signed into law the Equal Access Act. (20 USC 4071) This statute clearly states: "It shall 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." As used in the Equal Access Act (EAA), a *limited open forum* exists whenever school authorities have designated a period of time during the school day when student initiated non-curriculum groups are allowed to meet on school grounds during non-instructional time. (Millhouse and Vacca, 1996)

Board of Education of Westside Community Schools v Mergens (1990) was the first decision of the United States Supreme Court applying the requirements of the EEA to student religious clubs in public secondary schools. In this case a student group had requested permission to establish a Christian club at school. All student clubs at Westside High School (and there were 30 clubs) had to meet the requirements of local school board policy, including a requirement that they only could meet on school grounds after school hours. Despite the fact that the Christian club agreed to fulfill all policy requirements, the school principal denied the request. Following an unsuccessful appeal to the school board, the students filed suit.

Mergens made it all the way the United States Supreme Court where, by a vote of 8 to 1, the Court held for the students. Applying the Equal Access Act, Justice O'Connor made it clear that the EEA applies to public secondary schools that have created a limited open forum for the purpose of permitting voluntary student initiated (*i.e.*, not school-initiated or school sponsored), non-curriculum-related clubs (*i.e.*, clubs not directly related to either to the school's curriculum or to a particular course) to meet on school grounds during non-instructional time. Where such a situation exists, said Justice O'Connor, "the school may not deny other clubs, on the basis of the content of their speech, equal access to meet on school premises during non-instructional time." (Mergens, 1990)

Examples of Recent Case Law

In 2002, the United States Court of Appeals for the Ninth Circuit decided Jacoby v Prince. This case involved a suit filed in a federal district court by a high school student challenging an administrative decision not to allow her Bible club permission to meet on school grounds. In essence the Bible club had requested and was denied comparable treatment and the same benefits granted other student groups at the school. At trial the United States District Court granted summary judgment in favor of the school officials. On appeal, however, the United States Court of Appeals for the Ninth Circuit reversed the lower court. Applying the Equal Access Act and Mergens, the federal appellate court reasoned that by treating the Bible club different from the other student initiated clubs (i.e., by not granting them the same rights, benefits, and access to school facilities), school officials had denied students in the Bible club their First Amendment rights and had violated the mandates of the Equal Access Act.

Donovan v Punxsutawney Area School (2003) involved a legal challenge brought by parents on behalf of their child, a high school senior who led a religious club named FISH. The club had applied for but was denied recognition by school officials. Official recognition would have allowed FISH access to an “official activity period” (set aside by school officials), during the school day, in which students were allowed to choose from several activities one of which was “attending club meetings.” School officials did offer a compromise by suggesting that FISH meet in the morning prior to the start of school.

Filing suit in a federal district court, the plaintiffs claimed that school officials had violated the First Amendment (free speech), Fourteenth Amendment, and the Equal Access Act. The trial court denied plaintiff parents’ request for relief. An appeal was taken to the United States Court of Appeals for the Third Circuit.

Relying on the Mergens decision and its progeny, the Third Circuit disagreed with the lower court’s rationale. The Third Circuit held that school officials’ refusal to allow FISH access to the official club period was in direct violation of both the First Amendment and the Equal Access Act. In the appellate court’s opinion, the activity period was a limited open forum where voluntary student initiated non-curricular interest clubs met on a regular basis, and the sole reason that FISH had been refused equal access to that period was on the basis of their religious viewpoint.

Implications for Policy

It would be a mistake to conclude from a reading of the either the above court decisions or the Equal Access Act that public school boards must automatically allow student-initiated religious clubs to be a part of the school system’s program. It also would be a mistake to think that, in situations where student clubs exist, school boards and their administrative staff members have no control over club activities. Such is not the case. As a general rule, school officials maintain legal authority to discipline students whenever their speech and other expressive activities are inappropriate or materially disrupt the learning environment. Tinker v DesMoines (1969); Bethel School District v Fraser (1986); and Hazelwood v Kuhlmeier (1988) More specifically, local school officials retain legal authority to control the time, place, and manner of all activities (curricular, co-curricular, and extra-curricular) that take place in and on school premises. The same authority extends to officially school-sponsored activities taking place off-school grounds. (Vacca and Boshier, 2003)

The message from the courts is twofold. First, if by policy a local school board encourages and allows student-initiated non-curricular clubs to be a part of the school program, and a procedure exists for purposes of reviewing the requests of student-initiated interest clubs for official recognition, school officials must consistently and equally apply the policies and procedures to every student club request. As Supreme Court Justice Thomas said, in Good News Club v Milford Central (2001), public schools must not show “hostility”

toward religiously based student clubs. Second, where an official activity period exists during the school day, within which students are free to voluntarily engage in activities of interest to them, and student clubs are allowed to function during that period, a student-club seeking equal access to the activity period cannot be denied access *solely* based on its religious, philosophical, or political beliefs, or other content of their speech.

What follow are some suggestions for policy formulation to help minimize the emergence of student club issues. If a local school board decides to allow student-initiated non-curricular clubs to organize and meet on school grounds, board policy must make it clear that:

- All student clubs (including religious clubs) must abide by and operate within the parameters of all school system policies, procedures, and rules.
- The principal of each school possesses the authority to decide issues associated with all student clubs.
- The principal has the authority to take appropriate disciplinary action (including withdrawing recognition of the club and prohibiting the club from meeting on school grounds) if and when student club members violate school system policies, or school rules.
- All student interest clubs (including religious clubs) must be student-led and not led by either school faculty and staff, or persons from the outside community.
- Membership in all student-initiated non-curricular interest clubs must be voluntary.
- Student clubs shall not discriminate against any student who seeks membership in the club.
- All clubs are expected to have a faculty sponsor (a volunteer), whose sole responsibility shall be to supervise club meetings.

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