

STUDENT RELIGIOUS CLUBS IN MA PUBLIC SCHOOLS

The rights of religious student clubs in public schools are protected by both state and federal law in Massachusetts. When a public school treats a religious or faith-based student club differently than other clubs (for example, in the approval process, the use of classrooms or posters, or whether the supervising teacher receives a stipend), the school engages in unlawful religious discrimination.

The First Amendment to the U.S. Constitution and the Equal Access Act (“the Act”), passed by Congress in 1984,¹ put religious and political clubs on equal footing with all other student clubs by allowing them the same privileges and access to school facilities that other recognized student clubs enjoy.² Once the school provides an opportunity for a non-curricular club to meet, it is said to have created a “limited open forum,” triggering the Act and entitling all other qualified student clubs (like a Bible Club) to the same access and benefits of school facilities as that first club.³ A “qualified student club” is one which is student initiated and student led. Faculty can be involved only to monitor, facilitate, or supervise, and non-school persons cannot be regularly and directly involved in the meetings.⁴ The school still retains the ability to regulate and restrict clubs that “materially and substantially interfere with the orderly conduct of educational activities within the school.”⁵ Schools also have the right 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.”⁶

The rights of religious student clubs also stem from the First Amendment to the U.S. Constitution, which offers protection beyond that which the Act provides.⁷ Religious student clubs are allowed in public schools because there is a 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.”⁸

¹ 20 U.S.C. § 4071 (2005).

² *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 238 (1990) (“[T]he purpose of granting equal access is to prohibit discrimination between religious or political clubs on the one hand and other non-curriculum-related student groups on the other...”).

³ 20 U.S.C. § 4071(b). The Act defines a “limited open forum” as existing in a public high school “whenever such school grants an offering to or opportunity for one or more non-curriculum related student groups to meet on school premises during noninstructional time.” *Id.*

⁴ 20 U.S.C. § 4071(c)(1)-(3), (5).

⁵ 20 U.S.C. § 4071(c)(4); cf. *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 509 (1969); *Mergens*, 496 U.S. at 241.

⁶ 20 U.S.C. § 4071(f); *Mergens*, 496 U.S. at 241.

⁷ U.S. CONST. amend. I.

⁸ *Prince v. Jacoby*, 303 F.3d 1074, 1094 (9th Cir. 2002) (quoting *Mergens*, 496 U.S. at 250 [emphasis added]). The Establishment, the Free Exercise, and the Free Speech Clauses read as follows: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech ...” U.S. CONST. amend. I.

Public schools cannot exclude certain clubs based on their religious viewpoints or practices.⁹ Once a school allows access to any student club, school officials cannot deny recognition or benefits to Christian clubs based on students' desires to exercise their religious freedom.¹⁰

It is also a violation of Massachusetts law to discriminate against students, teachers, or student organizations, such as clubs, on the basis of their religion. The MA Student Rights – Freedom of Expression Act of 1988 expands upon the federally guaranteed rights for students in the Commonwealth by stating the following:

The right of students to freedom of expression in the public schools of the commonwealth shall not be abridged, provided that such right shall not cause any disruption or disorder within the school. Freedom of expression shall include without limitation, the rights and responsibilities of students, collectively and individually,

- (a) to express their views through speech and symbols,
- (b) to write, publish, and disseminate their views,
- (c) to assemble peaceably on school property for the purpose of expressing their opinions.

Any assembly planned by students during regularly scheduled school hours shall be held only at a time and place approved in advance by the school principal or his designee.

No expression made by students in the exercise of such rights shall be deemed to be an expression of school policy and no school officials shall be held responsible in any civil or criminal action for any expression made or published by the students.¹¹

The Massachusetts Supreme Judicial Court has held that the clear and unambiguous language of the Massachusetts Students' Freedom of Expression Law protects the rights of secondary school students limited only by the requirement that any expression be non-disruptive within the school.¹² (*Westfield High Sch. L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98 (2003) citing *Pyle v. Sch. Comm. Of S. Hadley*, 423 Mass. 283, 667 (1996))

In addition, denial by school officials of any “advantages” or “privileges” to students due to the student’s religion, is unlawful discrimination and a violation of Mass. General Laws Title XII ch. 272 §5, which prohibits schools from engaging in religious discrimination:

⁹ See *Prince*, 303 F.3d at 1092.

¹⁰ *Id.* at 1091; see also *Good News Club v. Milford Cent Sch.*, 533 U.S. 98 (2001); *Widmar v. Vincent*, 454 U.S. 263, 269 (1981).

¹¹ Mass. Gen. Laws ch. 71, § 82.

¹² See generally *Westfield High Sch. L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98 (2003), *Pyle v. Sch. Comm. Of S. Hadley*, 423 Mass. 283, 667 (1996))

No person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of race, color, sex, gender identity, religion, national origin or sexual orientation.

Massachusetts Education Regulation 603 CMR 26.06 expands on this, and states in part:

(1) Advantages and privileges of public schools include all extra-curricular activities made available, sponsored or supervised by any public school.

(2) No student shall be denied the opportunity in any implied or explicit manner to participate in an extra-curricular activity because of the race, color, sex, gender identity, religion, national origin or sexual orientation of the student except as provided in 603 CMR 26.06(5). Participation in extra-curricular activities shall be actively encouraged by each school for all students regardless of race, color, sex, gender identity, religion, national origin or sexual orientation.

Any advantage, privilege, or process that is available to other students, teachers, and student organizations must be made available in the same fashion to *all* students, teachers, and organizations, regardless of religion.

In summary, absent legitimate concerns about student safety, conduct, or discipline, a school must treat all clubs – including a Bible discussion club – equally. If the school approves other clubs in a timely manner, the school must also approve this club in a timely manner. If the school allows other clubs to meet in classrooms during certain times, the school must also allow this club to meet in classrooms during those times. If the school allows other clubs to post posters, the school must also allow this club to post posters. If the school pays other teachers to supervise clubs, the school must also pay a teacher to supervise this club.