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## **ACCOMODATION IN PUBLIC SCHOOLS**

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Americans enjoy a degree of religious freedom unknown in many parts of the world, and they take full advantage of it: the United States is home to more than 1,500 different religious bodies and 360,000 churches, synagogues and mosques.

The right of each and every American to practice his or her own religion, or no religion at all, is among the most fundamental of the freedoms guaranteed by the Bill of Rights. The Constitution's framers understood very well that religious liberty can flourish only if the government leaves religion alone. The free exercise clause of the First Amendment guarantees the right to practice one's religion free of government interference. The establishment clause requires the separation of church and state. Combined, they ensure religious liberty.

These principles are applied in every agency acting under the color of State or federal law. With these principles in mind, the US Supreme Court ruled in 1948 that religious instruction was not constitutional. Fifteen years later, in 1963 the US Supreme Court again made a huge impact in the public schools. It ruled that mandatory reading of Bible verses and prayer in public schools was not constitutional. After 200 years of public schooling in America, religion was no longer to be tolerated in the classroom.

However, the federal government still has established rights for the protection of individual students in school regarding religious activities. Students are allowed to engage in religious clubs that take place on school property either before or after school if other clubs are allowed in the school. Students may express their beliefs in their schoolwork and be graded with the same criteria as other students. Students may also distribute religious literature on the same guidelines used to distribute other literature unrelated to the curriculum. Students may try to persuade peers about religious topics, as long as it doesn't constitute harassment. School authorities can impose rule of order as long as they don't discriminate against religious activity or speech.

However, even with the backing of the US Federal Laws giving students the right to have religion in the public schools, discrimination is still taking place.

## CHRISTIANITY

A student was forbidden from reading a Bible on the bus. Another was forbidden from praying before a lunch in the cafeteria. One teacher refused to accept an essay because it was on Jesus. Another district refused to allow a Bible study group, but it had other clubs.

Another example involves students' right to carry a Bible. This case occurred in the Willis Independent School District in Willis, TX. One teacher at a Middle School pulled two sisters from class after she noticed they were carrying Bibles. She took the Bibles from the girls and threw the Bibles in the trash, calling the Bibles garbage. Another teacher told a student he couldn't read the Bible during free reading time and needed to put it away. He was also required to remove a book cover of the Ten Commandments from another book. The lawsuit was dropped based on a promise that the district would work on adopting the federal guidelines on religion in school.

## JUDAISM

On August 4, 1997, a lawsuit was filed against the Pike County School Board in Alabama and its administrators. The lawsuit alleges the district: 1) violated the constitutional right of the students' freedom of religion, 2) failed to stop harassment, intimidation and threats against the students because of their religion, and 3) violated the constitutional prohibition against schools endorsing a specific religion.

The specific harassment allegations of the students include:

- being denied the right to practice their faith while other students openly and freely practice theirs;
- not being able to express their religious beliefs.
- forced to participate in Christian activities in the classroom and Christian assemblies.

The parents of the students complained to all the teachers involved, the administrators, and the school board. The superintendent allegedly told the parents the harassment would end if the family converted to Christianity. Specific acts of discrimination included:

- other students physically assaulting two Jewish children;
- Jewish children being ordered to bow their heads during Christian prayers. In one instance force was even used;
- Jewish children being disciplined by being made to write an essay on why Jesus love me;
- a local minister telling the school during an assembly that anyone who had not accepted Jesus as their Savior was doomed to hell. As one Jewish student left, the other students cheered.

## ISLAM

Following 9/11, there were many reports of hostility and discrimination against Muslims. Some took place in the workplace, while others occurred in Schools. But this wasn't the only time that Muslim students were discriminated against. Some of the discrimination that occurs is due to Muslims' need to pray five times daily. The noon-hour prayer will usually occur during the school day and the afternoon prayer can sometimes occur during the school day, depending on the time of year. One High School in Houston took it further, threatening to suspend 30 students if they prayed during the lunch hour. Also in Franklin Heights High School in Columbus, Ohio, four students were allegedly told they couldn't pray during school hours.

New York City Public Schools tried to allow students the ability to leave classes briefly to pray only during the month of Ramadan. Prayer rooms were even going to be established. The response to the proposal was varied. Some didn't believe it was fair to give special privileges to one religion and not to others. Some thought it was a violation of church and state. Still others viewed it was not discriminating against other religions since they could organize Bible clubs or similar groups either before or after school. In response, the school system relented, saying students could pray as long as it doesn't disrupt class.

In other instances, however, New York schools do not give "perfect attendance" status to students who miss school because of "Eid," the Muslim religious holidays. After contacting a few schools, we were informed that the NYC Board of Education calendar does not include Muslim holidays.

This violates the free Exercise Clause, Equal Protection Clause and the New York State Education Law. We sent a letter to the New York Board of Education on the matter and are waiting their response.

### Yasmine Case

The Yasmine case involves two sisters who were not permitted to run for a student body position at Hamilton High School in Brooklyn because they could not attend social events where alcohol would be served.

One sister was elected but the School official forced her to resign. By the time the other sister was ready to run, the School official changed the guidelines and conditions to run for office. It added a provision which would prevent the sister from running. We wrote to the Board of Education and threatened a lawsuit. The School abrogated the provision, and the two sisters were allowed to run for office again. Consequently, both were elected.

Courts have recognized that extra curricular activities are generally a fundamental part of School's educational program. To be denied the opportunity to participate in extra curricular activities can be as serious as a losing the right to an education.

As Stated above, religious accommodation in the Public School has many constitutional components and principles. I will cite few of them so that we may open a discussion on this issue.

### **Fourteenth Amendment of the Equal Protection Clause**

The Fourteenth Amendment states:

No state shall deprived any person of life liberty or property without the due process of law; nor deny person within it jurisdiction the equal protection of the law.

All laws must apply equally to all citizens who are, for legal purposes, the same as one another. For example, the government may not pass a law stating that people of one race or religion are not allowed to do something that people of another race or religion are allowed to do. In addition, and in accordance with the Fourteenth Amendment of the Equal Protection Clause, that Denial of equal access is prohibited. The United States has an interest in ensuring that all students are afforded a reasonable opportunity and access to educational curriculum on a non-discriminatory basis.

### **First Amendment Free Exercise Clause**

First Amendment Rights guarantee the freedom of religion. To determine First Amendment religious rights in School, one should keep in mind that under the Establishment Clause and the separation of state and church:

(1) School officials cannot sponsor any religious activities such as prayers or religious organizations.

(2) School officials cannot prohibit students from engaging in religious activities- for example private prayer or distribution of religious material.

### **Federal Funding**

Federal funds cannot be used to support unlawful discrimination prohibited by the Civil Rights Act of 1964.<sup>1</sup> Accordingly, Title IV authorizes the United States to bring a civil action where, inter alia, there is a written complaint that children are being denied equal

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<sup>1</sup> See, e.g. Madison and United States v. Sullivan County Board of Education. In that case, the two plaintiffs allege, among other things, that the Sullivan County Board of Education (SCBE) violated Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment by failing to appropriately address known student-on-student harassment on the basis of race. Specifically, plaintiffs' amended complaint alleges that both Michael and Marquita Madison, who are black, were subjected to ongoing racial harassment while attending Sullivan East High School ("East"). This harassment included a constant barrage of racial slurs, some made within earshot of teachers, racially derogatory graffiti on walls and desks, and racially offensive paraphernalia. Though school officials known or should have known of the harassment, they failed to take appropriate steps to address it. Marquita eventually transferred to another school after her sophomore year. Michael fell victim to a racially-motivated assault outside the school cafeteria his junior year. He did not return to East after the assault and finished high school on homebound studies.

protection of the laws and that instituting the action will materially further the orderly achievement of desegregation in public education. 42 U.S.C. § 2000c-6. Title IX confers upon the United States a right to intervene upon timely application in an existing action asserting a denial of equal protection of the laws under the Fourteenth Amendment to the United States Constitution. 42 U.S.C. § 2000h-2.

### **The meaning of the Code**

Generally language of 20 U.S.C.S. § 4071 creates judicially enforceable obligations, which give rise to private causes of action under the Equal Access Act.<sup>2</sup> Like the Fourteenth Amendment, § 4071 also prohibits denial of equal access.

### **The purpose of Act**

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<sup>2</sup> Under 20 USC § 4071:

(a) Restriction of limited open forum on the basis of religious, political, philosophical, or other speech content is prohibited. 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) "Limited open forum" defined

A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time.

(c) Fair opportunity criteria 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) non-school persons may not direct, conduct, control, or regularly attend activities of student groups.

(d) Construction of subchapter with respect to certain rights. 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 constitutional rights of any person.

(e) Federal financial assistance to schools unaffected. 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) Authority of schools with respect to order, discipline, well-being, and attendance concerns. 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.

Purpose of the Act is to prohibit discrimination between religious and political groups by allowing students to meet and discuss religion before and after their classes.

The Equal Access Act does not violate Establishment Clause of Federal Constitution's First Amendment since it does not interfere with the religion. The Equal Access Act prevents Schools from discriminating against religious groups and favoring others.

### **New York State Education Law § 224-a**

Under the § 224-a

1. No person shall be expelled from or refused admission as a student to an institution of higher education for the reason that he or she is unable, because of his or her religious beliefs, to register or attend classes or to participate in any examination, study or work requirements on a particular day or days.
2. Any student in an institution of higher education who is unable, because of his or her religious beliefs, to attend on a particular day or days shall, because of such absence on the particular day or days, be excused from any examination or any study or work requirements.

The issue of religion in the public schools is a subject about which many feel strongly and about which many disagree. Therefore, there have been many lawsuits challenging various practices that involve religion in the public Schools. Courts in these cases have often reached conflicting decisions. The Supreme Court has resolved some of these conflicts, but not all of them. Consequently, the law in this area is complicated and at times inconsistent.