

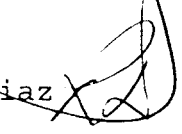
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ADMINISTRATIVE ADVISORY
MEMORANDUM NO. 95-3

October 12, 1995

To: College Presidents
From: Vice Chancellor Robert E. Diaz 
Re: Use of College Facilities by Outside Groups

From time to time, this office receives inquiries concerning the use of college facilities by outside groups. The only university policy on this subject was adopted by the Administrative Council (the predecessor to the Council of Presidents) in November 1969, which only had the authority to make recommendations¹. In the 25 years since that policy was adopted, however, the federal courts have severely limited the right of governmental institutions to exclude particular groups seeking access to public spaces for activity protected by the First Amendment. This memorandum describes the constitutional restrictions which apply whenever a college leases or otherwise provides for use of its facilities by outside groups. To the extent this law is inconsistent with the university policy, the law controls.

By way of legal background, a public's right of access to public property depends upon whether the property is considered a "public forum" as that term has been defined in First Amendment cases. Where property is considered a public forum, the government

¹The 1969 policy, which is in the form of a series of recommendations, set forth the most recent university pronouncement on this subject. As the policy was not adopted by the Board of Trustees, colleges may adopt their own policies on this subject, provided that such policies comply with the constitutional restrictions set forth in this memorandum. In the absence of a specific college policy, the 1969 university policy should be followed. In addition, colleges may adopt supplementary policies dealing with issues not addressed in the 1969 policy.

may prohibit speech in that forum only where the restriction is narrowly drawn to serve a compelling state interest -- a standard which is rarely recognized by the courts. There are two types of public forums: "traditional" public forums, such as streets and parks, which have historically been used for expressive activity; and "designated" public forums, which are created when the government designates a place or channel of communication for use by the public. Although the government is not required to maintain a "designated" public forum indefinitely, once it has been created, it cannot limit access to the forum except to serve a compelling state interest.

The university is not constitutionally required to allow any outside groups to use college facilities; it is free to close its facilities to all but students, employees and other individuals involved in the educational process. However, like most educational institutions, the university has chosen to make certain areas within college campuses available for outside uses. The 1969 policy states:

"It shall be the policy of the City University to permit the use of, or otherwise make available its facilities at such times as they are not in use for the University's primary educational mission, to non-college-connected groups or institutions, under suitable and pertinent provisions, upon their application for such facilities."

Accordingly, the policy, as well as college practices which provide for the use/rental of college facilities by outside groups, have created a "public forum" for outside groups to use college facilities that have been made available. The public forum is, in fact, so open as to include not only "non-profit organizations" but "all organizations". (Policy, pp. 6, 7). Having broadly opened its facilities for use by the public, the colleges cannot (subject to time, place and manner restrictions discussed below) refuse to allow access to any particular group based on the group's identity or the content of the group's speech.

A number of questions have been raised regarding religious organizations and religious uses. Religious discussion and worship are forms of speech and association protected by the First Amendment. Several recent court decisions have therefore held that, when an educational institution creates a public forum that is widely open for use by outside community groups, it violates the First Amendment to exclude religious groups or uses.² In light of

²Lamb's Chapel v. Center Moriches, 113 S.Ct 2141 (1993); Grace Bible Fellowship, Inc. v. Maine School Admin. Dist., 941 F.2d 45 (1st Cir. 1991); Gregoire v. Centennial School Dist., 907 F. 2d

this, we do not believe that section D (1) of the policy, which denies use of college facilities to "organizations which plan to hold denominational religious services or advocate a program against religion in general or against a particular race or religion" can be applied in a constitutional manner. That section of the policy should therefore not be followed and the Colleges should allow facilities to be used by religious organizations and/or for religious uses on the same basis as it does other activities/uses. The language in section D(1) which denies use of college facilities to organizations that "advocate a program against religion in general or against a particular race or religion" is also unconstitutional because, as recent court decisions on "hate speech" have held, advocating a program against a particular race or religion is speech protected by the First Amendment.

We have also received some inquiries regarding the use of college facilities by political organizations. The 1969 policy does not restrict political organizations from using campus facilities and therefore the facilities should be made available to political organizations on the same basis as they are made available to other groups. Where college facilities are leased to political organizations, it is essential that the organizations pay the standard user fee, which we assume is the "fair rental value" of the premises, because any lesser charge may be deemed to be an unlawful contribution by the college to the particular organization or candidate.

It should be pointed out that the 1969 policy does not give all organizations equal access to college facilities. Rather, priority is given to groups most closely related to CUNY's educational mission (i.e. academic or professional organizations and other CUNY colleges); followed by non-profit organizations, followed by all other organizations. It is permissible, in the case of a conflict, to give priority to organizations on the basis set forth at pp. 6-7 of the policy. Aside from such distinctions, however, decisions to rent to certain groups cannot be made on the basis of the group's identity or ideology.

The First Amendment rights of outside groups do not prevent the university and the colleges from adopting reasonable time, place and manner restrictions which serve a significant college interest (many such restrictions are contained in the 1969 policy). For example, the colleges may require the renting organization to provide certain basic information regarding the organization and the event. They may limit the particular facilities available for outside uses and the hours those facilities are used. They may require a certain level of security to be provided. They may charge fees. The usual restrictions in the use of college

facilities are set forth in the form "License Agreement" for the rental of college facilities, drafted by this office and previously distributed to the colleges. These restrictions are constitutional so long as they are applied neutrally to all organizations who seek to use the property.

c: Vice Presidents for Administration
Legal Affairs Designees

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