

THE CITY UNIVERSITY OF NEW YORK

Office of the General Counsel and Vice Chancellor for Legal Affairs

535 East 80 Street, New York, N.Y. 10021

212/794-5382



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Briefing Memorandum 2-90

MEMORANDUM

To: College Presidents
Chancellor's Cabinet

From: Robert E. Diaz *RD*

Re: Westside Community Schools v. Mergens
(1990) 110 L.Ed 2d 191).
Secondary Schools Obligations Under The Equal Access Act

A recent decision of The United States Supreme Court, while not impacting on the operations of The City University of New York, is nonetheless a significant decision in the field of education. Accordingly, it is being brought to your attention.

In Westside Community Schools v. Mergens (1990) 110 L.Ed 2d 191 the United States Supreme Court upheld the constitutionality of the Equal Access Act of 1984 which provides in part that (1) public secondary schools which receive federal assistance and have a "limited open forum" * may not deny equal access to the forum to students wishing to conduct a meeting on the basis of religious, political, or other content of the speech at such a meeting.

In the 8-1 decision, the Court found that the Westside Community School, public school, had violated the Equal Access Act, when it refused to recognize and allow a student Christian Club to meet after school hours on school premises, while recognizing and allowing as many as 30 other student groups and clubs to meet at similar times. The purpose of the Christian Club was to permit students to read and discuss the Bible, to have fellowship, and to pray together. The school officials had argued that school policy required all

* Under the Equal Access Act of 1984, a "limited open forum" exists when a public secondary school grants the opportunity for one or more noncurriculum related student groups to meet on school premises during non-instructional time.

clubs to have a faculty sponsor. However, because the Christian Club was sponsored by a religious organization it could not be recognized under existing Board policy. The school board further contended that the existence of such a religious club at the school would violate the Establishment Clause of the United States Constitution. The First Amendment to the United States Constitution states that "Congress shall make no law respecting an establishment of religion....." The courts have interpreted this clause to mean that governments cannot give direct benefits to religion in such a degree that in fact establishes a state religion or religious faith or tends to do so. County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter, 492 US _____, _____, 106 L. Ed 2d 472, 109 S Ct 3086.

In rejecting the schools arguments, the Court explained that the Equal Access Act was passed by bipartisan majorities in both houses of Congress to address the perceived widespread discrimination against religious speech in public schools. The Supreme Court had previously ruled in Widman v. Vincent 454, U.S. 263 70 LED 2d 440, 102 SCT 269 (1981), that a state university regulation was unconstitutional where it prohibited student use of school facilities for purposes of religious worship or religious teaching. Thus, in 1984 Congress expressly extended the reasoning of of Widman decision to public secondary schools with the passage of the Equal Access Act. Under this Act, once a public secondary school which receives federal assistance creates a "limited open forum", the school may not deny other clubs equal access to meet on school premises on the basis of the content of their speech.

The Mergens decision breaks no new ground in public university law. The colleges should however remember that once a "limited open forum" is created it may not thereafter selectively exclude some student groups on the basis of the content of their speech.