BOARD OF EDUCATION OF THE WESTSIDE COMMUNITY SCHOOLS v. MERGENS (1990)

THROWING THE SCHOOL DOORS OPEN TO ALL

SUMMARY

By a vote of 8-1, the Supreme Court ruled that if public secondary schools allow any non-curriculum-related group to meet after school on the premises, then all such groups--regardless of the content of their meeting--must be granted similar access. The decision was handed down June 4, 1990 in the case of *Board of Education of the Westside Community Schools v. Mergens.*

BACKGROUND

Westside High School is a public secondary school with an enrollment of about 1,500 students in Omaha, Nebraska. As is the case in most public schools, students at Westside can participate in about 30 different student groups and clubs, all of which meet after school on the school's premises.

School board policy required that each group have a faculty sponsor and that the organizations cannot be sponsored by any political or religious group, or by any group that denies membership based on race, color, creed, sex or political belief. While there is no specific school board policy regarding the formation of clubs, students are required to submit a written request to school officials, who determine if the group would meet the district's "missions and goals."

Among the clubs already operating at the school were the Creative Writing Club, Math Club, Future Medical Assistants Club, and Subsurfers--an organization for students interested in scuba diving.

In January 1985, Bridget Mergens met with Westside's principal to request authorization to form a Christian club. Like other school clubs, membership would be voluntary and open to all students, regardless of religious beliefs and affiliation. The purpose of the club was said to be "to permit students to read and discuss the Bible, to have fellowship, and to pray together." There was to be no faculty sponsor.

Both the principal and the district's superintendent denied the request. They noted that the sponsor requirement was not met, and that even if it had been, permitting the religious club to meet on school property would be unconstitutional. The school board upheld the denial.

Mergens and her parents then brought suit in the U.S. District Court for Nebraska. They claimed that the school's action violated the Equal Access Act, which prohibits public secondary schools that receive federal funding and maintain a "limited open forum" from denying the forum to any students on the basis of the content of the speech they will use in that forum. They further alleged that their First Amendment right to free speech, association and exercise of religion had been violated.

The trial judge ruled in favor of the school, finding that the Equal Access Act did not apply in this instance because all other clubs at Westside were curriculum-related and in some manner linked to the school's educational function. However, the U.S. Court of Appeals for the Eighth Circuit disagreed with this line of reasoning and reversed the decision. It noted, for instance, that the chess club was not directly related to the school's educational function. The school district asked Supreme Court to hear the case.

ANALYSIS

In 1981, the Supreme Court invalidated a state university regulation that prohibited students from using school facilities for religious use or teaching. In the decision, the justices went out of their way to note that the ruling involves university age students, who may be less impressionable than younger students. Although the Court did not come right out and say that the opinion might have gone the other way were there high school rather than college students involved, the implication was clearly there.

Three years later Congress passed the Equal Access Act, which stated:

> "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 fair opportunity to, or discriminate against, any students who wish to conduct within that limited open forum on the basis of the religious, political, philosophical or other contend of the speech at such meetings."

By granting access to a single non-curriculum related school group, a "limited open forum" has been created. The first stop for the justices was to define "non-curriculum related student group," a term that was not defined in the Equal Access Act. Some would argue that virtually any after school activity could remotely be related to educational goals. For instance, while chess is not taught at school, proficiency in chess could develop a method of thought that might prove valuable in math and science classes.

The justices rejected this broad interpretation. The legislative history of the Equal Access to Justice Act indicated that it was passed to address discrimination against religious speech in public schools. Clearly religious speech would not be curriculum-related. Whether an after school activity is curriculum-related would certainly depend on an individual school's curriculum.

In this case, a majority of the court said that the key term means "any student group that does not **directly** relate to the body of course offered by the school." Using this interpretation, most schools that allowed the French Club, History Club, Band and Choir to meet after school would not have established a "limited open forum" and, consequently, would not have to abide by the Equal Access to Justice Act.

On the other hand, granting access to the Stamp Club or Chess Club--both noncurriculum-related activities in most instances--would open the doors to virtually all groups.
It appears then, that under the act, the Christian Club should have been allowed to meet at Westside.

However, school official contend that even if a "limited open forum" were established at Westside, allowing access to a religious club is a violation of the Establishment Clause of the First Amendment. It states that "Congress shall make no law respecting an establishment of religion." If Westside recognized the Christian Club, it would appear to be endorsing Christianity above other forms of religion, school authorities claimed.

But the justices disagreed. Equal access, they wrote, does not equate with endorsement. Further, a Jewish Club or Hindu Club also would be granted access under the Court's reasoning. This would lead one to believe that the justices do not support any single religion but merely the right of students to discuss religion. To do otherwise would violate another portion of the First Amendment, which is known as the Free Exercise Clause. It says that Congress should not establish laws that stand in way of one's right to freely exercise his or her religious beliefs.

EXCERPTS FROM THE MAJORITY DECISION (Written by Justice Sandra Day O'Conner)

"We think that secondary school students are mature enough and are likely to understand that a school does not endorse or support speech that it merely permits on a nondiscriminatory basis... The proposition that schools do not endorse everything they fail to censor is not complicated....

"The broad spectrum of officially recognized student clubs at Westside, and the fact that Westside students are free to initiate and organize additional student clubs counteract any possible message of official endorsement or preference for religion or a particular religious belief."

EXCERPTS FROM THE DISSENTING OPINION (Written by Justice John Paul Stevens)

"Can Congress really have intended to issue an order to every public high school in the nation stating, in substance, that if you sponsor a chess club, a scuba diving club or a French club--without having formal classes in those subjects--you must also open your doors to every religious, political or social organization, no matter how controversial or distasteful its views may be? I think not."