

FREEDOM FROM RELIGION *foundation*

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SENT VIA EMAIL & U.S. MAIL
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Cheryl Pedisich
Superintendent
Three Village Central School District
P.O. Box 9050
East Setauket, NY 11733-9050

Re: Unlawful Denial of Formation of Student Group

Dear Superintendent Pedisich:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a legal violation occurring in Three Village Central School District. We were contacted by a concerned student. FFRF is a national nonprofit organization with over 22,500 members across the country, including more than 1,200 members in New York. Our purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that Ward Melville High School has refused to let a Secular Student Alliance (SSA) club form. We understand that the club's founder obtained far more than the required 20 student signatures and found a teacher who agreed to be its adviser, but that the SSA was not listed on the list of clubs that are going to be starting at the school next year. We are also informed that the school funds all other clubs and pays their advisers.

Our complainant reports that he has been attempting to get this club started for over a year, and that at one point a vice principal solicited volunteers, who would not be paid like other club advisers, to supervise the club.

We understand that you dealt with a similar issue when the same school refused to let a Christian club form. It is thus disappointing that the District is not yet familiar with the requirements of the Equal Access Act. A District-wide memorandum or training on the subject seems necessary.

Under the Equal Access Act, public secondary schools receiving federal funds cannot discriminate against student groups based on their religious, political, philosophical, or other beliefs. *Bd. of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 235 (1990). Specifically, the Equal Access Act (EAA) states that:

It shall be unlawful for any public secondary school . . . to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting . . . on the basis of the religious, political, philosophical, or other content of the speech at such meetings.

20 U.S.C. § 4071(a). The EAA provides: “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.” § 4071(b). The school cannot deny our complainant’s club the same treatment as other noncurricular student clubs.

Courts have interpreted the EAA as requiring equal treatment of student groups in a variety of settings. In *Mergens*, the Supreme Court held that a school’s denial of a student request to form a Christian club denied them equal access under the EAA. 496 U.S. at 247. The Supreme Court found that denial of official recognition violated the law because school recognition allowed student clubs privileges, such as access to school resources and information channels. *Id.* at 246. *See also Prince v. Jacoby*, 303 F.3d 1074 (9th Cir. 2001), *cert denied*, 540 U.S. 813.

The First Amendment provides protection from discrimination based on a student group’s non-religious viewpoint. Discrimination against messages based on their viewpoint “is presumed impermissible when directed at speech otherwise within the forum’s limitations.” *Rosenberger v. Rector and Visitors of Univ. of Va.* 515 U.S. 819, 830 (1995) (citation omitted).

The District cannot legally limit recognition to student groups that fit preferred religious views. “The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Id.* at 829. *See also Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 392-393 (1993); *Perry Ed. Assn. v. Perry Local Educators’ Assn.*, 460 U.S. 37, 46 (1983). Ward Melville High School grants privileges to a number of student groups, including Students United in Faith. It must provide the Secular Student Alliance with the same privileges, including timely approval to form, a paid adviser, and meeting space.

Preventing our complainant’s group from forming not only violates several laws, it is also bad policy. Nonreligious and non-Christian students within the District are seeking to make their school a better place for themselves and their classmates by building a community as a nonreligious minority. Too often, students who identify as nonreligious or as a member of a religious minority encounter resistance, harassment, and bullying in their schools. Allowing this group to form will allow those students a place to connect with like-minded students and work to dispel the prejudice, born out of ignorance, that some harbor against atheists, agnostics, and other freethinkers.

We request an immediate reconsideration of the club’s denial. After more than a year, we expect that there will be no more delaying or stonewalling and that this issue will be resolved before the start of the 2015-16 school year. Please inform us in writing of the steps you are taking to resolve this issue.

Sincerely,



Madeline Ziegler
Attorney