

LEGAL ISSUES THAT CAN AFFECT SCHOOL ACCESS FOR COUNTER- RECRUITMENT GROUPS

Presenter: Rick Jahnkow, Project YANO (rjahnkow@projectyano.org)

The legal rules for what can be said in schools by teachers, students and non-school community groups are not the same:

Teachers: can control which topics will be introduced in their classrooms—but they also must conform to state and local school district rules on curriculum content and teacher behavior.

Students: have an inherent right to engage in free speech activities at school, including the right to express themselves on controversial topics—but their expressive activities can be limited by “reasonable” time, place and manner guidelines.

Non-school groups from the community: have NO automatic right to enter schools. If given access, the content of their speech can be limited.

“Public Forum Doctrine” is used by the courts to determine if a non-school group should be granted access to address students.

- Public schools are generally considered “nonpublic” forums.
- Administrative discretion governs the granting of access to non-school groups.
- A limited public forum can be created by a school for discourse on a specific topic.
- If a school creates a limited public forum, the content of speech can be limited to the narrow scope of the topic.
- Guidelines for who can participate must be “reasonable” and not a disguise for viewpoint discrimination.

Equal access can only be requested when a specific forum has been created by the school.

The type of access will depend on the type and topic of a forum.

For example, a career fair is a type of forum for table displays or speakers. The topic is on career options. However, if the military is included, it also is a forum on the controversial topic of military enlistment.

The key to gaining access is whether your proposed activity and speech content would fall within the narrow definition of the forum.

Speech and activity that falls outside the type and topic of a forum could be prohibited.

In the career fair example, information about the negative side of military enlistment would be permissible. A flier on climate change would not.

Examples of what could lead to a speaker or organization being banned from a school:

- Speech that encourages students to break the law.
- Speech that falls outside the narrow topic of the forum.
- Bullying behavior.
- Speech containing profanity, racism or other messaging harmful to students.
- Speech that is disruptive of the educational process.

Some examples of c-r groups being denied access or threatened with it in California:

- San Mateo, CA: Group banned when it sought to distribute literature that was mostly about the draft. [Not resolved]
- San Rafael, CA: Group lost previous access after it sought to bring a court-martialed soldier to a school to speak about war resistance. [Access eventually restored.]
- El Cajon, CA: Group banned due to (false) accusation of a physical altercation with a recruiter in another school district. [Access later granted.]
- El Cajon, CA: Group was (falsely) accused of encouraging students to refuse to register for the draft. [Access gained via lawsuit.]

Four federal lawsuits were won in the 1980s that upheld the right to equal access for counter-recruitment groups.

San Diego CARD, 9th Circuit Appeals Court (Western U.S.). Emphasis added:

“When schools provide representatives of the military with access to high school students, a forum is thereby created on the controversial topic of military service. When schools create such a forum for proponents of military service, they must, under the First and Fourteenth Amendments, provide equal access for those with opposing points of view.”

“It has long been recognized that the subject of military service is controversial and political in nature. . . The government’s interest in promoting military service is not an economic one; it is essentially political or governmental.”

VERY IMPORTANT:

- The military has wanted a new lawsuit that it could intervene in and use for an appeal to the Supreme Court.
- New court action could lead to the good precedents all being overturned and, therefore, should not be pursued.
- One lawsuit filed by an activist in New York state court was lost in 2010. The military did not notice it, but the negative decision was later instrumental in banning a c-r group from a school district in Illinois.
- BEFORE even considering litigation, please contact Project YANO to discuss other ways to overcome school administration resistance.

Some alternative ways to reach students:

- Work with students who can use their right to distribute information in schools (e.g., by leafleting, forming a club, etc.).
- Leaflet from public property outside school gates in the morning.
- Offer speakers directly to friendly teachers, avoid seeking administrative approval.
- Campaign for a district policy to regulate recruiting.