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Released-Time Programs and Equal Access to Government Facilities Opened for Public Use

Equal Access is a principle of constitutional law that requires that the government treat religious individuals and organizations the same as non-religious ones—including when accessing government facilities and government funding programs.

Equal Access is rooted in both the Free Exercise Clause and the Establishment Clause of the First Amendment. The Free Exercise Clause "forbids discrimination on the basis of religious status." That means that the government violates Equal Access if it "exclude[s] religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits."[1] The Establishment Clause also requires neutrality towards religion. "No historically sound understanding of the Establishment Clause begins to 'mak[e] it necessary for government to be hostile to religion.'"[2] That means that the government violates Equal Access if it "single[s] out private religious [activity] for special disfavor."[3]

How does this principle apply to released-time religious education programs? For example, if a school leases buses to non-religious groups to transport individuals to and from secular activities during the school day, may it also lease buses to a religious group to transport students to and from released-time activities?

Federal courts have consistently recognized a religious group's constitutional right to equal access to benefits and opportunities that a public school opens up to the community.[4] For example, in *Daugherty v. Vanguard Charter School Academy*, a school had a "parent room" that it allowed community members to use during the school day.[5] The court ruled that the Constitution allowed the school to permit a "Moms' Prayer Group" to use the room on the same terms as non-religious groups because the school was merely granting neutral, equal access to all groups.

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[1] *Carson as next friend of O. C. v. Makin*, 596 U.S. 767, 789 (2022).
[2] *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 510 (2022) (quoting *Zorach v. Clauson*, 343 U.S. 306, 314 (1952)).
[3] *Id.* at 514.
[4] *See, e.g.*, *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Prince v. Jacoby*, 303 F.3d 1074 (9th Cir. 2001).
[5] *Daugherty v. Vanguard Charter Sch. Acad.*, 116 F. Supp. 2d 897, 903 (W.D. Mich. 2000).

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The same rule applies when a school allows a non-religious organization to use or rent school buildings during the school day. Not only do the Free Exercise and Establishment Clauses allow schools to let religious groups do the same. But schools would actually risk violating both religious liberty protections if they disfavor religious groups because of their religious identity. This also applies to the use of other government buildings, such as a library or community center, that may provide a convenient location for released-time programs.

This principle of Equal Access applies in various other circumstances. If a school permits community groups such as the Scouts or local student sports teams to distribute informational materials to students through a website or take-home folder, a released-time program must be given the same opportunity to distribute information. Likewise, a school should allow a released-time program to rent its buses for transportation to and from the program if other community groups may also rent its buses for the same purpose.

The Constitution guarantees equal access to religious groups so they are not treated worse than non-religious local community groups when accessing benefits offered by the government.