

RIGHTS OF COUNTER-RECRUITERS TO ACCESS SCHOOLS

INTRODUCTION

There is a small body of law which provides guidance to those wishing to do counter-recruitment at school facilities. The law is different for students as opposed to non-students who want to enter a school to do counter-recruitment.

STUDENTS' RIGHTS

Students in the schools have the best direct access, ability to start movements, and get out information to other students. The *Equal Access Act* and the U.S. Constitution itself protect students' rights to the enjoyment of free association and speech. In most U.S. high schools, student-led, special interest, non-curriculum clubs have a right to organize groups and their right to assemble is usually protected under the long-standing federal *Equal Access Act*, (20 U.S.C. §§ 4071-74). The Act's full text can be found at <http://www4.law.cornell.edu/uscode/20/> .

The Equal Access Act applies only to public secondary schools which receive federal financial assistance (i.e., almost all) and which already have what is called "a limited open forum." A limited open forum means that there is at least one student-led, non-curriculum club that meets outside of class time. (Chess clubs, political or religious groups, and many similar types of clubs are considered to be non-curriculum based - certainly an anti-war student group would be.)

Such schools to which the Act applies must allow additional clubs to be organized as long as:

- (1) attendance is voluntary,
- (2) the group is student-initiated
- (3) the group is not sponsored by the school, teachers, other school employees, or the government (such persons cannot promote, lead or participate in a meeting, though a school employee may be assigned for "custodial purposes.")
- (4) the group is not disruptive, i.e. it "*does not materially and substantially interfere with the orderly conduct of educational activities within the school.*"

(5) Persons from the community may not "*direct, conduct, control, or regularly attend activities of student groups.*"

Given that nearly every public high school receives some federal funding and has at least one extra-curricular group, **it would be ideal to try to find at least one (preferably more, of course) student who is interested in forming a counter-recruitment or anti-war group.** Outsiders could provide information to these students and assistance could be given, though the outsiders may not direct, conduct, or control the group; outsiders may or may not be able to attend the meetings, depending on whether ANY other group has outsiders attending.

RIGHTS OF NON-STUDENTS

1. Access by Peace Groups Generally

School administrators generally can restrict access to public school property and have no duty to allow non-students onto the grounds even for free speech activities.

However, if the school DOES allow speakers on a particular topic, it cannot exclude other speakers on the same topic solely because of their viewpoint. Therefore, if a school gives military recruiters access must give equal access to other recruiters. Similarly, if recruiters can speak at career day or put up posters or leave pamphlets in the counseling office, persons who want to point out the drawbacks of military service may do so as well.

There is old case law supporting this position. Both were decided in the mid-80's before 9/11 and the current "homeland security" political climate. In the case of *San Diego Committee Against Registration And The Draft (CARD) v. Grossmont Union High School District* (9th Cir., 1986) 790 F.2d 1471, the school had excluded from its newspaper an advertisement by an anti-draft organization but allowed military recruitment ads. The Ninth Circuit ruled (voting two to one) that such action violated the First Amendment. The court stated:

"[T]he Board cannot allow the presentation of one side of an issue, but prohibit the presentation of the other side. . . . Here, the Board permitted mixed political and commercial speech advocating military service, but attempted to bar the same type of speech

opposing such service. . . . Accordingly, the Board violated the First Amendment when it excluded CARD's advertisements from the newspapers." 790 F.2d at p. 1478.

It is not clear if Courts in other Federal Circuits other than the 9th (mainly West Coast states and those adjacent) would reach the same conclusion, but Grossmont is still the law today.

The next year, the Eleventh Circuit made a similar ruling in *Searcey v. Crim* (11th Cir., 1987) 815 F.2d 1389, holding that the school board's policy of barring peace activists from presenting information on non-military career opportunities on the school's campus violated the activists' First Amendment rights.

In both cases, the courts held that the plaintiffs had these First Amendment rights even though the school campus (and newspaper) might be considered to be "non-public forums." Once again, this is because the schools chose to allow the military into the schools. Having done so, the schools cannot restrict access to the schools by others based on viewpoint

As always, it is important for counter-recruiters to research the situation at each particular school to find out what level of access has been afforded to military recruiters. For example, find out how often military recruiters come and where they meet students. Determine what kind of documentation about the military is available at school or in the counseling office. Counter-recruiters can then demand the same access.

2. The "No Child Left Behind" Act

This act has received a lot of publicity due to its provision mandating that schools turn over their students' contact information to the military.

Contrary to what some school administrators believe, there is nothing in the law that requires schools to open up particular areas of the schools to military recruiters. What the federal 'No Child Left Behind' Act requires is that school administrators grant the military the same access to students that is given to prospective employers or colleges." This means that schools cannot bar military recruiters if they allow other recruiters, but can restrict them to the same rules as those that apply to every other recruiter, such as limiting the number of times they can visit the school.

Since most schools have to let military recruiters in, then the principles above apply and the school must allow counter-recruiters in as well. **While it is common for schools to give preferential treatment to military recruiters, this practice is contrary to law.** If counter-recruiters encounter this situation, they should point out to the school board or administration that a policy of preferential treatment is in violation of the law.

CONCLUSION

The law is actually quite favorable to counter-recruiters. The easiest way to counter military recruiters is to have the students themselves organize and do counter recruitment with other students. In conjunction with this, outside speakers and activists can assist by coming to the school to rebut the claims of the military. The law is clear that if the school allows in military recruiters, then counter-recruiters have an equal right of access. It is up to us to use this right!