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The ACLU Fight for LGBT Rights

1936
First Case

1956
LGBT Program

1986
LGBT Project

2006
ANNIVERSARY

Dear School Principal, Administrators, and School Board Members:

Students in your school are interested in forming a student organization, often called a gay/straight alliance, to focus on combatting anti-gay harassment and discrimination and on educating the school community about these issues. Federal law requires that you treat such organizations the same as any other non-curricular club at your schools. But allowing the club to meet is not just a legal duty; it makes sense from an educational and a safety perspective, too.

According to the federal Equal Access Act, if a public high school allows any student group whose purpose is not directly related to the school's curriculum to meet on school grounds during lunch or before or after school, then it can't deny other student groups the same access to the school because of the content of their proposed discussions. Schools may not pick and choose among clubs based on what they think students should or should not discuss. As a federal judge concluded in one Equal Access Act case:

> The Board Members may be uncomfortable about students discussing sexual orientation and how all students need to accept each other, whether gay or straight. . . . [But] Defendants cannot censor the students' speech to avoid discussions on campus that cause them discomfort or represent an unpopular viewpoint. In order to comply with the Equal Access Act, Anthony Colin, Heather Zeitin, and the members of the Gay-Straight Alliance must be permitted access to the school campus in the same way that the District provides access to all clubs, including the Christian Club and the Red Cross/Key Club.
> —*Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000).

The judge went on to emphasize that the gay/straight alliance provides an important forum for students who are concerned about sexual orientation. Recognizing the impact of discrimination on gay youth, the judge wrote: "This injunction is not just about student pursuit of ideas and tolerance for diverse viewpoints. As any concerned parent would understand, this case may involve the protection of life itself." (*Id.* at 1150)

In ruling as he did, the judge recognized that anti-gay harassment and violence are widespread among teenagers, especially in schools. Some of the most common epithets that teens use today to disparage each other are "faggot," "dyke," and "queer." A disproportionate amount of physical violence against gay men, lesbians, bisexuals, and transgendered people of all ages is perpetrated by teenage boys. Gay/straight alliances help to combat verbal and physical harassment. They create a space where students can come together to share their experiences, to discuss anti-gay attitudes they may experience in school, or to debate different perspectives on gay-related issues. Students talking openly and honestly with other students is a uniquely effective way of making young people aware of the harms caused by discrimination and violence.

School officials should not silence these student-initiated debates and discussions, as long as they do not involve targeted harassment of an individual student or group of students. Silencing ideas in a non-curricular setting because some people don't like them is not only incompatible with the educational values of open inquiry and wide-ranging debate that are central to our free political system—it is against the law. The Equal Access Act was signed into law in 1984 after being heavily promoted by religious groups who wanted to ensure that students could form Christian clubs in public schools. The authors of the law understood that if this right were extended to students who wanted to start religious clubs, then it must be extended to all students.

Common ways schools try to block GSA's—and why you shouldn't try them

1. **Refusing to approve a GSA on the basis of morality:**
   The Equal Access Act specifically provides that a school cannot deny equal access to student activities because of the "religious, political, philosophical, or other content of the speech at such meetings." 20 U.S.C. § 4071(a). Since any moral objections the school may have to a Gay/Straight Alliance are based on the religious, political, or philosophical views of its members, such an objection isn't recognized by the Act. Simply put, the school cannot ban a GSA based on issues of morality if the GSA doesn't interfere with the orderly conduct of educational activities in the school.

2. **Refusing to approve GSA because the school doesn't want to be viewed as "endorsing homosexuality":**
   Simply allowing a GSA to meet at a school does not indicate that the school approves or endorses the subject matter of the meetings. Observing that "the proposition that schools do not endorse everything they fail to censor is not complicated," the Supreme Court has held that secondary school students are mature enough to understand that a school does not endorse or support speech that it merely permits on a nondiscriminatory basis. *Mergens*, 496 U.S. at 250. Congress recognized the same point, stating that "Students below the college level are capable of distinguishing between State-initiated, school sponsored, or teacher led religious speech on one hand and student-initiated, student-led religious speech on the other." *Mergens*, 496 U.S. at 250-51 (quoting S.Rep. No. 98-357, p. 8 (1984)). In short, this excuse is no answer to a lawsuit that students can bring under the Equal Access Act.

3. **Refusing to approve a GSA because the discussion of sex is not appropriate for high school students:**
   In *Colín v. Orange Unified School District*, one of the many federal court cases in which the Equal Access Act rights of GSA's have been upheld, the court recognized that the focus of most GSA's is not sex, but issues related to sexual orientation and how to combat unfair treatment and prejudice. The court also noted that assuming a GSA will discuss sex and other clubs will not unfairly singles out the GSA based on a stereotype. Finally, as indicated by the fact that even religious groups in school sometimes discuss sex-related topics and sex-education is taught in classes, there is no reason to believe that high school students can't discuss sex-related topics. An administrator's discomfort is not

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sufficient reason to ban a GSA if the GSA does not create a substantial disruption.

4. **Refusing to approve a GSA because you think the Equal Access Act doesn't apply to the GSA at your school:**
As noted above, the protections of the Equal Access Act are triggered if the school allows just one non-curricular student activity on campus. While the Act itself doesn't define the differences between curricular and non-curricular clubs, a Supreme Court case does. In *Board of Education of the Westside Community Schools v. Mergens*, 496 U.S. 226 (1990), the court held that a non-curricular student group is any group that doesn't "directly relate" to courses offered by the school. Let's say your school teaches swimming. A swim team or club would then be considered curricular; a scuba diving club would be considered non-curricular, even though it involves swimming. Groups like a chess club, a stamp-collecting club, a community service club, or a GSA are usually considered non-curricular, because what they do is not taught in any class.

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The line between curricular student activities and non-curricular activities can be blurry, and schools that get it wrong can pay a high price. For example, a school district in Kentucky recently thought that the Equal Access Act did not apply to it because, in its view, the school had no non-curricular clubs on campus. A federal judge held otherwise, noting that the school's community service club, drama club, and class officer organizations continued to meet and were not "directly related" to the curriculum.

Even if a school successfully eliminates all non-curricular clubs, it may still have to allow a GSA to meet if that group is curricular. In Utah, a school district eliminated all non-curricular clubs in an attempt to prevent a GSA from meeting. The GSA students simply formed a different club, whose purpose was to discuss subjects taught in the school's curriculum such as American government and law, U.S. history, and sociology, but from a lesbian and gay rights perspective. When the school rejected the students' application, the students sued. The court held that the school was not applying its policy evenly because it was allowing a very broad interpretation of "curricular" for some groups but not others, and ordered the school to recognize the club.

In short, trying to prevent a GSA from meeting by eliminating all non-curricular clubs, or by limiting the kind of curricular clubs that can meet, is asking for a lawsuit. It also imposes a significant and unjustifiable cost on all students, depriving them of numerous after-school activities simply in order to silence students concerned about harassment and discrimination. That's just not a proper role for a school.

5. **Refusing to approve a GSA because a GSA will cause disruption:**
When there is disruption surrounding a GSA, school officials need to ask themselves, "Who's really being disruptive here?" If students, parents, or community members get in an uproar because they don't like a GSA, *they* are the ones causing the disruption - not the GSA itself. A court in Kentucky recently

ruled that even extensive disruption in the community and in school (thousand-person rallies, a boycott by half the student body) isn't enough to justify shutting down a GSA where the GSA members themselves are not causing the commotion. *Boyd County High School Gay/Straight Alliance v. Board of Education*, ___ F. Supp. 2d ___, 2003 WL 1919323 (E.D. Ky. 2003).

6. **Refusing to approve a GSA, claiming that it is under the control of some outside group or organization:**
Although most high school clubs that address LGBT issues are referred to as GSA's, and although some national organizations like the Gay, Lesbian, Straight Education Network have attempted to compile informal contact directories of GSA's across the U.S., GSA's remain local and student-driven. There is *no* national organization or governing body for GSA's.

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A school must apply restrictions regarding involvement of non-school persons uniformly. For example, if other clubs have names from outside organizations (for example a Key Club) and have not been prohibited, then the school cannot deny the GSA approval based on its name. *Colin, 83 F. Supp. 2d at 1146-47.*

7. **Imposing conditions on the GSA that don't apply to other clubs:**
Schools cannot subject GSA's to any conditions that do not apply to all other non-curricular clubs. Requiring a faculty advisor for the GSA but not for other groups, or placing different requirements on a GSA's posters, leaflets, and announcements than it places on other groups, are examples of differential treatment that's unlawful. In addition, delaying acting on the GSA's application for approval can itself be disparate treatment that violates the EAA.

8. **Requiring a GSA to change its name:**
Many clubs want to use the name Gay/Straight Alliance, although some come up with other names (one group wanted to call itself Helping Unite Gays and Straights, or "HUGS"). Whatever the name is, schools cannot require that any reference to sexual orientation be removed, since doing so changes the focus and goals of the club. The court in *Colin* specifically ruled that a school could not tell a GSA to remove the term "gay" from its name. *83 F. Supp. 2d at 1147-48.*

We hope this letter has given you a firm understanding of why schools should allow GSA's to form as well as how you can remain in compliance with the Equal Access Act. By acknowledging students' right to form GSA's, you are not only obeying the law and avoiding potential legal liability, you are supporting diversity in your schools and taking a strong step towards addressing anti-gay harassment.

Many resources are available in your community to help you learn more about your legal duties under the Equal Access Act. Your local ACLU affiliate can provide information about gay-straight alliances and direct you to other groups that are working to promote non-discriminatory school environments for all students. You can also learn more by visiting the Schools section of the ACLU's Get Busy, Get Equal website at www.aclu.org/getequal.

If you have questions, please feel free to contact us at getequal@aclu.org.

Sincerely,

James D. Esseks
Litigation Director

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