

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

McKEESPORT BLACK STUDENT UNION,)
an unincorporated association; GRACE FAWN)
WALKER, a minor, by and through her parents,)
VALIAN FAWN WALKER-MONTGOMERY) 2019-CV-_____
and GEORGE CEPHUS MONTGOMERY;)
RaSONA WEBB, a minor, by and through her)
parent, AMBER WEBB; SIYA WEBB, a)
minor, by and through her parent, SHAMEENA)
WEBB; AYRIAUNA BURNS, a minor, by and)
through her parent, MYLISHA BURNS;)
TYNESHIA BOWLING, a minor, by and)
through her parent, TIMIKA BOWLING;)
DEJA and DENAJA NEWBY, minors, by and)
through their parent, TAMIKA LLOYD;)
TARYN VASQUEZ, a minor, by and through)
her parent, AMBER VASQUEZ; AMYA)
WEBB, a minor, by and through her parent,)
PATRICIA WEBB; JASONA BELYEU, a)
minor, by and through her parent, JASON)
BELYEU; and TAHJANAE LOVE-ELSTON, a)
minor, by and through her parent, TODD)
ELSTON,)
)
)
Plaintiffs,)
)
)
v.)
)
)
McKEESPORT AREA SCHOOL DISTRICT;)
and MARK P. HOLTZMAN, Jr., School)
District Superintendent,)
)
)
Defendants.)
_____)

VERIFIED COMPLAINT

A. INTRODUCTION

1. Plaintiffs in this case are McKeesport Area High School students who have been trying to gain permission for their student-led, non-curriculum-related group to meet at

their school for the past three months. Despite the existence of a federal law, the Equal Access Act, and a school district policy that allows such student groups to meet, the plaintiffs' efforts have been stymied at every turn. The reason for the obstruction is the school district superintendent's objection to the name of the group, the McKeesport Black Student Union ("MBSU"), and its focus—the cultural, social, and academic needs of black and brown students attending McKeesport Area High School. He would prefer that the group be called the McKeesport Student Union and work on creating fun activities for the student body. But the superintendent's preferences are not controlling. The purpose of the Equal Access Act is to prevent the kind of discrimination against student groups that the school district has evinced here. When a school district allows at least one non-curriculum-related student group to meet, as the McKeesport Area School District ("MASD") has done, the Equal Access Act and First Amendment compel it to allow all non-curriculum-related student groups uniform access to school facilities.

2. The District's refusal to allow the McKeesport Black Student Union the same access to school facilities that it allows other clubs violates plaintiffs' rights under the Equal Access Act, 20 U.S.C. § 4071, *et seq.*, and the First Amendment to the U.S. Constitution.

3. Plaintiffs seek declaratory and injunctive relief, preliminary and permanent thereafter, requiring Defendants to allow the MSBU the same access to school facilities as other non-curricular student clubs, including but not limited to advertising meetings and activities inside the school and holding meetings on school premises during non-instructional time.

B. JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a) because the matters in controversy arise under the Constitution and laws of the United States. Jurisdiction is also proper over the plaintiffs' claim for declaratory relief pursuant to 28 U.S.C. §§ 2201-02.

5. Venue is proper in this district under 28 U.S.C. § 1391.

6. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of law, of rights secured by the Constitution and laws of the United States, and also pursuant to the Equal Access Act, 20 U.S.C. § 4071, *et seq.*

C. PARTIES

7. The McKeesport Black Student Union ("MBSU") is an unincorporated association of MASD students seeking the MASD's approval to operate a non-curricular student club at the high school. The MBSU brings this action on behalf of itself and on behalf of its student members.

8. Plaintiff Grace Fawn Walker is, and at all relevant times hereinafter mentioned was, a student in the ninth grade at the MASD high school. She is a founding member of, and active participant in, the MBSU. As a minor, she brings this action through her next friend and guardians, her mother Valian Fawn Walker-Montgomery and stepfather, George Cephus Montgomery.

9. Plaintiff RaSona Webb is, and at all relevant times hereinafter mentioned was, a student in the ninth grade at the MASD high school. She is a founding member of, and active participant in, the MBSU. As a minor, she brings this action through her next friend, her mother Amber Webb.

10. Plaintiff Siya Webb is, and at all relevant times hereinafter mentioned was, a student in the tenth grade at the MASD high school. She is a member of the MBSU. As a minor, she brings this action through her next friend, her mother Shameena Webb.

11. Plaintiff Ayriauna Burns is, and at all relevant times hereinafter mentioned was, a student in the ninth grade at the MASD high school. She is a member of the MBSU. As a minor, she brings this action through her next friend, her mother Mylisha Burns.

12. Plaintiff Tyneshia Bowling is, and at all relevant times hereinafter mentioned was, a student in the ninth grade at the MASD high school. She is a member of the MBSU. As a minor, she brings this action through her next friend, her mother Timika Bowling.

13. Plaintiff Deja Newby is, and at all relevant times hereinafter mentioned was, a student in the ninth grade at the MASD high school. She is a member of the MBSU. As a minor, she brings this action through her next friend, her mother Tamika Lloyd.

14. Plaintiff Denaja Newby is, and at all relevant times hereinafter mentioned was, a student in the ninth grade at the MASD high school. She is a member of the MBSU. As a minor, she brings this action through her next friend, her mother Tamika Lloyd. Deja Newby and Denaja Newby are twin sisters.

15. Plaintiff Taryn Vasquez is, and at all relevant times hereinafter mentioned was,

a student in the ninth grade at the MASD high school. She is a member of the MBSU. As a minor, she brings this action through her next friend, her mother Amber Vasquez.

16. Plaintiff Amya Webb is, and at all relevant times hereinafter mentioned was, a student in the ninth grade at the MASD high school. She is a member of the MBSU. As a minor, she brings this action through her next friend, her mother Patricia Webb.

17. Plaintiff Jasona Belyeu is, and at all relevant times hereinafter mentioned was, a student in the ninth grade at the MASD high school. She is a member of the MBSU. As a minor, she brings this action through her next friend, her father Jason Belyeu.

18. Plaintiff Tahjanae Love-Elston is, and at all relevant times hereinafter mentioned was, a student in the tenth grade at the MASD high school. She is a member of the MBSU. As a minor, she brings this action through her next friend, her father Todd Elston.

19. Defendant McKeesport Area School District (“MASD”) is a political subdivision of the Commonwealth of Pennsylvania. The MASD operates McKeesport Area High School, a public secondary school that receives federal financial assistance. MASD maintains its administrative office at 3590 O’Neil Boulevard, McKeesport, Pennsylvania, 15132.

20. Defendant Mark P. Holtzman Jr., is and at all relevant times referenced hereinafter was, the Superintendent of the MASD. Defendant Holtzman is acting, and has at all times hereinafter mentioned acted, under color of state law. In his capacity as Superintendent, Holtzman is responsible for, *inter alia*, ensuring that the school district and its officials act in conformity with the U.S. Constitution and applicable federal and state laws. He

is sued in both his individual and official capacities.

21. As the highest ranking administrative official, Dr. Holtzman is a policy maker for the MASD.

D. FACTS

22. Plaintiffs are African-American students attending McKeesport Area High School.

23. By virtue of their experience attending schools within the MASD, Plaintiffs have grown concerned about the racial dynamics in all of the district's schools.

24. The MASD employs relatively few African-American teachers.

25. Plaintiffs have observed that the MASD appears to discipline students of color, particularly black students, at rates and in ways that are disproportionately harsh.

26. Data collected for 2017-18 by the Pennsylvania Department of Education ("PDE") indicates that the MASD punishes black students disproportionately to white students. The district is 43.5% Black, 45.9% White, and most other students are coded multi-racial. 68% of the total expulsions were issued to black students, while 26% of them were issued to white students. Regarding out-of-school suspensions, 71% of the total out-of-school suspensions were issued to Black students; while 20% were issued to white students.

27. Plaintiffs are disappointed with the quality of the MASD's instruction in black culture and history.

28. Plaintiffs are also disappointed in how the MASD has handled recent incidents involving racially insensitive remarks by teachers. For instance, in October 2018, the MASD

did not discipline a middle school teacher who told a class that black people benefited from being property during slavery. In addition, MASD retained another teacher despite his repeated use of physical aggression against black students.

29. In short, Plaintiffs long have been dissatisfied with the MASD's failure to address racial bias in the MASD.

30. After speaking with community leaders, civil rights activists, and students at the local Penn State University Black Student Union club, Plaintiffs decided to form a Black Student Union of their own to create a place where students of all races would be able to discuss openly the aforementioned concerns and to work constructively toward addressing racial inequities and deficiencies.

31. It is the policy of the MASD that secondary students be provided:

the opportunity for noncurriculum-related student groups to meet on the school premises during noninstructional time for the purpose of conducting a meeting within the limited open forum on the basis of religious, political, philosophical, or other content of the speech at such meetings. Such meetings must be voluntary, student-initiated, and not sponsored in any way by the school, its agents or employees. Non-instructional time is the time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.

A copy of the policy is attached as Exhibit 1.

32. The MASD allows a number of non-curricular student clubs to meet at McKeesport Area High School during non-instructional time, including:

- a. Chess Club, which meets during every open homeroom period when students get to practice and compete against one another.

- b. SADD (Students Against Destructive Decisions), a peer-to-peer education, prevention, and activism organization dedicated to preventing destructive decisions, particularly underage drinking, other drug use, risky and impaired driving, teen violence, and teen suicide.
- c. Future Business Leaders of America, a club for students who are interested in preparing for careers in business or who might have an interest in learning more about the free enterprise system. FBLA meets once a week during Activity Period with occasional meetings two times per week.
- d. Future Nurses Club, a service-oriented club for students seeking careers in the field of health care.
- e. Future Educators Association, an organization for students who desire to pursue a career in the field of education. The FEA meets every Thursday during the homeroom period.
- f. Heritage Club, whose purpose is to recognize and appreciate the numerous nationalities and heritages among the students, faculty, staff, and administration of McKeesport Area High School.
- g. Interact Club, a community service club that meets every Tuesday after school.
- h. The Future is Mine, a club committed to encouraging all students to find their passion and pursue their dreams in an informed way.
- i. Senior Class, a club that promotes school spirit and activities for the McKeesport Senior Class.

33. In early January 2019, plaintiffs Grace Fawn Walker, RaSona Webb and other like-minded MASD students met outside of school to discuss forming the MBSU as a school club.

34. On January 17, Grace emailed Superintendent Holtzman the following:

We meet again on the 28th to talk about how we want to run it. If we want [a] president, vice president or committees.

McKeesport Black Student Union (MBSU)

The MBSU will be structured to have two community advisors Take Action Mon Valley and Penn State Greater Allegheny. MBSU is to be a recognized student club within the McKeesport Area School District (MASD), with MASD serving as school advisors. MBSU will do work consecutively within the community and schools. Thus, having all systems working together to create a sense of community for students.

Advisors: Ms. Mallory & Dr. Tia Wanzo

35. On January 23, Grace once again emailed Superintendent Holtzman to ask permission to display a flier in the high school advertising a “BLACK STUDENT UNION PLANNING MEETING” they were conducting outside of school on January 28.

36. Dr. Holtzman replied the next morning, writing as follows:

Before the group meets ... Mr. McCall needs to meet with the group’s leadership and the sponsor to establish common goals and clear expectations. Dr. Wanzo shared with me that she is not a sponsor so we have to be sure Mrs. Mallory is willing and available to monitor all meetings. Please wait to distribute any flyers until that initial meeting occurs.

37. Grace replied to Dr. Holtzman on the evening of January 24, advising him that the meeting was only to discuss internal operations, that they will not distribute any materials, and asking if he wants to meet with the students.

38. Holtzman replied on January 25 that the high school principal, Dale McCall,

would “meet with our students involved and the advisor for the group to get everyone on the same place.”

39. In light of Holtzman’s refusal to allow the group to advertise or hold a meeting on school premises, Grace, RaSona, and several other students met once again in the community on January 28 to discuss how they wanted the club to operate.

40. On February 3, Grace emailed Holtzman saying, “Ok we are ready to meet. Let us know.” The email also included the following information (identity of under-age-minor students who are not named herein as plaintiffs is redacted with *****):

McKeesport Black Student Union (MBSU)

Name:

McKeesport Black Student Union (MBSU)

Mission:

The McKeesport Black Student Union (MBSU) allows students of all races to rejoice in Black culture, lifestyle, history, and activities. MBSU focuses on the cultural, social, and academic needs of black & brown students attending McKeesport Area High School. It seeks to build cultural and community bridges in the McKeesport area. The MBSU is committed to the development of cross-cultural ties at McKeesport High School as well as in the community.

MBSU will be structured to have two community advisors Take Action Mon Valley and Penn State Greater Allegheny. MBSU is to be a recognized student club within the McKeesport Area School District (MASD), with MASD serving as school advisors. Thus, having all systems working together to create a sense of community for students.

History/Background:

MBSU was founded by community organization Take Action Mon Valley (TAMV). TAMV took a group of students from the area to see the movies “Hidden Figures”, “Black Panther” and “The Hate You Give”. Afterward they facilitated an open feedback session. Several youths communicated a need to have a BSU. Therefore, on January 6, 2019 McKeesport students

Rasona Webb, Grace Walker, ***** and ***** created the BSU and became the founding committee.

Structure:

The MBSU will be structured to have two community advisors Take Action Mon Valley and Penn State Greater Allegheny. MBSU is to be a recognized student club within the McKeesport Area School District (MASD), with MASD serving as school advisors. MBSU will do work consecutively within the community and schools. Thus, having all systems working together to create a sense of community for students. The MBSU is open to all students, regardless of race, creed, color, religious affiliation, or sexual orientation. Membership in the MBSU requires a commitment to the mission of the MBSU.

The BSU will have 2 grade level captains in junior and senior high school. The captains and advisors will make up the executive committee (EC). The EC will vote on all decisions effecting the MBSU. If needed the advisors will serve as the tie breaking vote. Present grade level captains are:

9th Grade
Grace Walker
Rasona Webb

10th Grade

7th Grade

Things to work on:
Maybe have an assembly to introduce the BSU
Recruit students
Have meetings in the school
Work on panel for March

41. On February 4, Grace saw Dr. Holtzman in the lunch room. She asked if he received her email and the information about the club.

42. Dr. Holtzman told Grace that she needed to print out the material and give it to

him.

43. After Grace bought ink to replenish their home printer, she printed out her email and gave it to Dr. Holtzman during lunch on February 8.

44. Dr. Holtzman told Grace that Principal McCall would meet with her.

45. On or about February 11, Mr. McCall met with Grace and RaSona. He told them they needed to get a school advisor. They had already spoken with Ms. Mallory, the guidance counselor who had agreed to be the club sponsor, and had conveyed that fact to both Dr. Holtzman and Mr. McCall.

46. Mr. McCall then told RaSona and Grace that they needed to await school board approval, and that the Board could vote on the matter at the next scheduled meeting, which was February 27.

47. Grace and RaSona subsequently met with Ms. Mallory, who confirmed that she would serve as the MBSU school advisor. The three agreed that the club would meet on Wednesdays after school.

48. Plaintiffs heard nothing further about their club until February 26, when Assistant Superintendent Wanzo called Grace's mother, Valerian Fawn Walker-Montgomery, to advise her that approval of the MBSU was not on the board's agenda for the upcoming meeting. Dr. Wanzo did not give a reason.

49. Grace, RaSona, their parents and other club supporters attended the February 27 board meeting.

50. After the formal portion of the board meeting concluded with no discussion of

the MBSU, Mr. Walker-Montgomery asked during the public comment period why the board did not consider approval of the MBSU.

51. She told the audience that she had heard “a lot of complaints about the treatment of black and brown students in the district.” Deana Carpenter, *Residents ask McKeesport school board to create a black student union*, Pittsburgh Post-Gazette, March 7, 2019, available online at <https://www.post-gazette.com/local/south/2019/03/07/Residents-ask-McKeesport-school-board-to-create-black-student-union/stories/201903070003>. She also said there was, “some kind of disconnect with the black community as a whole and you all,” referring to the board members and Defendant Holtzman. *Id.*

52. Dr. Holtzman took umbrage at Ms. Walker-Montgomery’s comments, saying that he “disagreed” with her, and that in the past 15 years he had “changed the lives of many young people.” *Id.* He continued by saying that, “the color of [students’] skin has never been an issue. To say our children are mistreated in the school is very offensive to me.” *Id.*

53. The MASD board did not approve the MBSU at that February 27 meeting.

54. After the February 27 board meeting, plaintiffs heard nothing from Dr. Holtzman or any other MASD official about the status of their request to form the MBSU.

55. On March 19, undersigned counsel sent a demand letter to Dr. Holtzman and the school board president laying out the relevant law under the Equal Access Act and requesting that MASD approve the MBSU within ten days. A copy of the letter is attached as Exhibit 2.

56. On March 26, the MASD solicitor facilitated a telephone conference call

between Dr. Holtzman and undersigned counsel, during which time counsel refused Holtzman's request that Plaintiffs withdraw the demand communicated in the March 19 letter.

57. On or about March 26, Dr. Holtzman used the high school public address system to summon 15 students from their respective classes to the auditorium. These students were chosen by Dr. Holtzman or other school administrators. Grace, RaSona and a 10th-grade student were the only three students previously identified with the MBSU who were invited to this meeting.

58. Of the 15 students summoned by Dr. Holtzman, 9 were Caucasian and 6 were African-American. Most of the students were older than Grace and RaSona.

59. Dr. Holtzman, Assistant Superintendent Wanzo, Principal McCall, and two other MASD officials attended this in-school meeting.

60. Dr. Holtzman did most of the talking during the meeting. He told the students that he selected them because of their "leadership" abilities, that he wanted them to set up some form of club, and that he did not care what the club was called, so long as it supported *all students*.

61. Dr. Holtzman singled out Grace during the meeting for advocating for the formation of a Black Student Union and for having attended the February board meeting. Many of the other students spoke out against the formation of a *Black* Student Union. Feeling intimidated and outnumbered, Grace and RaSona did not participate further in the meeting. The meeting lasted an entire class period, 45 minutes. The group did not reach any decisions about a name, mission, or next meeting date.

62. Plaintiffs' proposed charter for the MBSU was never discussed at the meeting.

63. On Wednesday, April 3, Dr. Holtzman convened another in-school meeting of the 15 pre-selected students. Dr. Holtzman and other school officials departed soon after the students arrived, saying they wanted the students to handle the meeting. A white high school senior student essentially ran the meeting. He informed the group that Dr. Holtzman had told him that only two students wanted to call the group a "Black Student Union." He asked for a vote on whether to use that name and only Grace and RaSona voted for it. The students took another vote and decided to call it the "McKeesport Student Union." Although Grace and RaSona were present for the meeting, they felt intimidated and outnumbered and thus did not participate in the meeting. The students did not discuss the MBSU charter or schedule any further meetings and activities.

64. When RaSona sent a text message to the group of students at the meeting asking whether any students would be interested in joining a Black Student Union, three previously uninvolved students volunteered.

65. Later that day, Dr. Holtzman told a reporter that the new club would "focus on creating fun activities for the student body." An-Li Herring, ACLU Demands McKeesport Schools Approve Black Student Union, WESA, April 3, 2019, available online at <https://www.wesa.fm/post/aclu-demands-mckeesport-schools-approve-black-student-union>.

66. Dr. Holtzman also said there was no need for the MBSU: "Holtzman said the suggestion that minority students in the district are being mistreated is 'offensive.' If that were the case, he said, it 'means as a leader, I'm doing a poor job of not being culturally

sensitive, not building a relationship with our students.’’ *Id.*

67. The McKeesport Student Union is not the student group that plaintiffs seek to establish at McKeesport Area High School. Rather, it was initiated and is guided by school officials, notably the superintendent, and has met twice during instructional time. The club’s mission differs from the one plaintiffs established for the MBSU. In short, the McKeesport Student Union is not a substitute for plaintiffs’ club, which is called the McKeesport Black Student Union and already has a school advisor and mission statement.

68. Undersigned counsel verbally extended the deadline set in the March 19 demand letter from March 28 to April 5 for MASD to allow the MBSU to meet, but that date has now passed. As of this date, Defendants have refused to allow the MBSU the same access to school facilities as other non-curricular student clubs.

69. Defendants’ refusal to allow the MBSU to operate as a non-curricular student club is producing ongoing irreparable harm for which there is no adequate remedy at law. By denying the MBSU equal access to school facilities, Defendants are preventing the plaintiffs from organizing around common beliefs, recruiting new members, and providing a space for like-minded students to discuss issues of mutual concern.

E. CLAIMS

First Cause of Action: The Equal Access Act

(brought pursuant to 20 U.S.C. § 4071, *et seq.*, and 42 U.S.C. § 1983, against all defendants)

70. The Defendants’ actions, as described in this complaint, violate the Equal

Access Act, 20 U.S.C. § 4071, *et seq.*

Second Cause of Action: The First Amendment
(brought pursuant to 42 U.S.C. § 1983 against all defendants)

71. The Defendants' actions, as described in this complaint, violate rights secured to plaintiffs by the First Amendment to the U.S. Constitution.

F. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Declare that the Defendants have violated the Equal Access Act, 20 U.S.C. § 4071, *et seq.*, and the First Amendment to the U.S. Constitution, for the reasons described above;
- b. Enter an injunction requiring the Defendants to approve the application of the MBSU to operate as a formally recognized non-curricular student club at McKeesport Area High School and requiring them to grant the MBSU the same rights and benefits enjoyed by other non-curricular student clubs, including but not limited to advertising meetings and activities inside the school and holding meetings on school premises;
- c. Award the Plaintiffs compensatory damages of one dollar (\$1) against the Defendants for their violations of the Equal Access Act and the First Amendment;
- d. Award Plaintiffs reasonable attorneys' fees and costs under 42 U.S.C. § 1988 and all other applicable laws; and
- e. Grant any other relief that the Court deems necessary and proper.

Respectfully submitted,

/s/ *Witold J. Walczak*

Witold J. Walczak

PA ID No. 62976

/s/ *Sara J. Rose*

Sara J. Rose

PA ID No. 204936

AMERICAN CIVIL LIBERTIES FOUNDATION

OF PENNSYLVANIA

PO Box 23058

Pittsburgh, PA 15222

(T) 412-681-7864

Attorneys for Plaintiffs

Date: April 10, 2019

VERIFICATION

I, Grace Walker, hereby affirm on this _____ day of April 2019, under the penalties of perjury that the factual allegations in the foregoing Verified Complaint are, to the best of my knowledge and belief, true and accurate.

/s/ Grace Walker

April 9, 2019
date



MCKEESPORT AREA
School District

Book	Policy Manual
Section	100 Programs
Title	Extracurricular Activities
Code	122
Status	Active
Legal	<ol style="list-style-type: none"> 1. 22 PA Code 12.1 2. 24 P.S. 511 3. 20 U.S.C. 4071 et seq 4. Pol. 103 5. Pol. 110 6. Pol. 218 7. 22 PA Code 12.4
Adopted	August 15, 2007

Purpose

The Board believes that the district's goals and objectives are best achieved by a diversity of learning experiences, some of which are more appropriately conducted outside the regular curricular program of the schools.

All learning experiences offered by the schools, curricular and extracurricular, shall be planned and integrated toward attainment of the district's educational objectives.

Definition

For purposes of this policy, **extracurricular activities** shall be those programs that are sponsored or approved by the Board and are conducted wholly or partly outside the regular school day; are marked by student participation in the processes of initiation, planning, organizing, and execution; and are equally available to all students who voluntarily elect to participate.[1]

Authority

The Board shall make school facilities, supplies and equipment available and shall assign staff members for the support of extracurricular activities for students. Such availability and assignment shall be in accordance with the Equal Access Act.[2][3][4]

Exhibit 1

Any extracurricular activity shall be considered under the sponsorship of this Board when it has been approved by the Superintendent and reported to the Board for its review.

The Board shall maintain the program of extracurricular activities at no cost to participating students, except that:

1. The Board's responsibility for provision of supplies shall carry the same exemptions as listed in the Board's policy on regular school supplies.[5]
2. Students may assume all or part of the costs for travel and attendance at extracurricular events and trips.
3. Where eligibility requirements are necessary or desirable, the Board shall be informed and must approve the establishment of eligibility standards before they are operable.

Off-Campus Activities

This policy shall also apply to student conduct that occurs off school property and would violate the Code of Student Conduct if:[6]

1. There is a nexus between the proximity or timing of the conduct in relation to the student's attendance at school or school-sponsored activities.
2. The student is a member of an extracurricular activity and has been notified that particular off-campus conduct could result in exclusion from such activities.
3. Student expression or conduct materially and substantially disrupts the operations of the school, or the administration reasonably anticipates that the expression or conduct is likely to materially and substantially disrupt the operations of the school.
4. The conduct has a direct nexus to attendance at school or a school-sponsored activity, such as an agreement to complete a transaction outside of school that would violate the Code of Student Conduct.
5. The conduct involves the theft or vandalism of school property.

Delegation of Responsibility

The Superintendent or designee shall develop and disseminate procedures to implement the extracurricular activities program.

Guidelines

Guidelines shall ensure that the program of extracurricular activities:

1. Assesses the needs and interests of and is responsive to district students.
2. Invites the participation of parents/guardians and community in developing extracurricular activities. Such participation shall be in accordance with the Equal Access Act.[3]
3. Involves students in developing and planning extracurricular activities.
4. Ensures provision of competent guidance and supervision by staff.

5. Guards against exploitation of students.
6. Provides a variety of experiences and diversity of organizational models.
7. Provides for continuing evaluation of the program and its components.
8. Ensures that all extracurricular activities are open to all students and that all students are fully informed of the opportunities available to them.[1][7]

Equal Access Act

The district shall provide secondary students the opportunity for noncurriculum related student groups to meet on the school premises during noninstructional time for the purpose of conducting a meeting within the limited open forum on the basis of religious, political, philosophical, or other content of the speech at such meetings. Such meetings must be voluntary, student-initiated, and not sponsored in any way by the school, its agents or employees. **Noninstructional time** is the time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.[3]

The meetings cannot materially and substantially interfere with the orderly conduct of the educational activities in the school.

The Superintendent or designee shall establish the length of sessions, number per week, and other limitations deemed reasonably necessary.

The district retains the authority to maintain order and discipline on school premises in order to protect the well-being of students and employees and to ensure that student attendance at such meetings is voluntary.



March 19, 2019

BY EMAIL (mholtzman@mckasd.net)

Dr. Mark P. Holtzman, Jr.
Superintendent
McKeesport Area School District
3590 O'Neil Boulevard
McKeesport, PA 15132

Mr. Joseph Lopretto
President, Board of School Directors
McKeesport Area School District
3590 O'Neil Boulevard
McKeesport, PA 15132

RE: Request Immediate Approval of Black Student Union club

Dear Messrs. Holtzman and Lopretto:

The American Civil Liberties Union of Pennsylvania (“ACLU”) represents parents of McKeesport Area School District students who have been trying for months to form a Black Student Union school club (“BSU”), but thus far to no avail. We write to provide you with legal background relevant to student clubs. Under both the First Amendment to the U.S. Constitution and a federal anti-discrimination statute, the District must treat the prospective BSU club the same way it has treated other non-curricular student clubs, which means, among other things, subjecting it to the same approval process. It is unclear whether MASD requires board approval for new student clubs, but if it does then the Board must approve the club no later than at their March 27 meeting. If Board approval is not necessary, we will insist upon the same deadline. Please note that your failure to comply with this request will result in an ACLU lawsuit against you and the District.

The federal Equal Access Act (EAA) requires federally funded secondary schools that permit meetings of any non-curriculum-related student groups to provide equal access to all students wishing to form such groups. 20 U.S.C. § 4071. The purpose of the Equal Access Act is to prohibit discrimination between religious and political groups on one hand and other non-curriculum-related groups on other hand.¹ And courts consistently uphold the Equal Access Act’s protection for students refused permission to form student clubs.²

¹ See *Board of Educ. of Westside Community Schools v. Mergens*, 496 US 226 (1990).

² See, e.g., *Pratt v. Indian River Central Sch. Dist.*, 803 F. Supp. 2d 135 (N.D.N.Y. Mar. 29, 2011); *Straights and Gays for Equality v. Osseo Area Schools-District No. 279*, 540 F.3d 911 (8th Cir. 2008); *Gay-Straight Alliance of Yulee High Sch. v. Sch. Bd of Nassau Cnty.*, 602 F. Supp. 2d 1233 (M.D. Fla., March 11, 2009); *Gonzalez v. Sch. Bd. of Okeechobee County*, 571 F. Supp. 2d 1257 (S.D. Fla. 2008); *White County High Sch. Peers Rising in Diverse Educ. v. White*

MASD allows a number of non-curricular school clubs to operate, including bowling, chess, future nurses and SADD. Under the EAA, the District may not deny approval of the BSU based on disagreement (of the District, the School Board or the community) with the club's planned speech, activities, or even its name. And the District may not subject the BSU to different treatment than that afforded other prospective non-curricular clubs. That means the District must follow the same approval process in considering the BSU as it followed for the aforementioned groups. If MASD required other clubs to receive board approval, then it may subject BSU to a similar process. Otherwise, it must simply approve the club assuming they have complied with requirements applicable to other clubs. Once approved, the MASD must provide the BSU with equal access to school facilities and school-use privileges. We hope that this background will assist the District in its handling of the BSU club's request for approval.

Please provide us with assurance that the BSU has been approved for operation by noon on Thursday, March 28, which is the day after the board meeting. If we do not hear from you by the appointed deadline, and we do not receive confirmation from our clients that the club is operational, we will construe your silence as a refusal of this request. If MASD fails to approve the club by the deadline, absent a compelling explanation conveyed to us, we will seek a federal court injunction ordering the District to comply with our request. Any request for legal redress will include a request that MASD pay our attorneys' fees. Please do not hesitate to let us know if you have any questions or concerns. If you have questions or wish to discuss our demand, please contact me at 412-681-7864 or vwalczak@aclupa.org. We look forward to hearing from you.

Respectfully,

Witold J. Walczak

Witold J. Walczak
Legal Director

Sara Rose
Senior Staff Attorney

CC: Gary J. Matta, Esq. (email, gmatta@law-dmc.com)

County Sch. Dist., No. 2:06-CV-29WCO, 2006 WL 1991990 (N.D. Ga. July 14, 2006); *Donovan v Punxsutawney Area Sch. Bd.*, 336 F3d 211 (3d Cir. 2003), cert den'd, 540 US 813 (2003); *Boyd County High Sch. Gay Straight Alliance v. Bd. of Educ. Of Boyd County*, 258 F. Supp. 2d 667 (E.D. Ky. 2003); *Franklin Cent. Gay/Straight Alliance v. Franklin Township Cmty. Sch. Corp.*, No. IP01-1518 C-M/S, 2002 WL 32097530 (S.D. Ind. Aug. 30, 2002); *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000); *E. High Gay/Straight Alliance v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 81 F. Supp. 2d 1166 (D. Utah 1999); *Pope v East Brunswick Bd. of Educ.*, 12 F.3d 1244 (3d Cir. 1993). The First Amendment's free-speech and assembly clauses also favor the students' right to form political, religious and other clubs, but courts tend to rule under the EAA because application is so straightforward.