



GAY/STRAIGHT ALLIANCES

Does a public school have to allow a Gay/Straight Alliance (GSA) to form at a high school or middle school?

Under the Equal Access Act (EAA),¹ a federal law passed in 1984 that applies to all public secondary schools that receive federal funding, a secondary school that allows student-initiated non-curriculum-related clubs to meet on school groups during lunch or after school cannot deny other non-curricular student groups access to the school or otherwise discriminate against the group due to the content of the students' proposed discussions.²

As a federal judge concluded in an 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.³

Does the school have to give a GSA the same privileges as other clubs?

Under the EAA, if a public school allows at least one non-curriculum related student group to use its facilities for a meeting place during non-instructional time, it cannot "deny equal access or a fair opportunity to, or discriminate against" any students who wish to conduct club meetings, such as a GSA. This means that the school must give the GSA the *same privileges* as other clubs, including access to such things as meetings spaces, bulletin boards, use of the PA system, etc.⁴

¹ 20 U.S.C. § 4071(a), (b).

² *Board of Educ. of Westside Community Sch. v. Mergens*, 496 U.S. 226, 271 (1990).

³ *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000).

⁴ *See id.* (holding school that permitted Christian club to meet informally after school but did not allow it to be part of student activities program – which would carry with it access to school newspaper, bulletin boards, public address system, and annual club fair – violated EAA).

Failure to grant a GSA the same privileges may also violate the Equal Protection Clause of the federal or state constitutions, the First Amendment, and/or state statutes prohibiting discrimination on the basis of sexual orientation.

Can the school require the club to change its name to something less “divisive” like the “Tolerance Club” or to broaden its mission statement?

No. The group has first amendment speech and associational rights in its name and its mission.⁵ As one federal court explained:

A group’s speech and association rights are implicated in the name that it chooses for itself. The board is not allowed to require the student group to change its name merely because the Board finds that it would be less “divisive.” . . . [The students] testified that these name changes would attack the very core reason for having the club. . . . [One student] said that the use of the word “Gay” in the title is important to announce that “being gay or homosexual is not bad, it’s who you are.” . . . [Another student] said that taking the word gay out would take the focus away from the issues people face and would imply that there’s something wrong with the word “gay.” . . . For all of the reasons that [the students] mentioned when talking about being forced to change the club’s name, the Board’s suggested name change clearly infringes on profound expressive meaning that the group attaches to its name.⁶

Moreover, as discussed above, once the Act has been triggered, a school cannot “deny equal access or a fair opportunity to, or discriminate against” a student club based on the content of the students’ proposed discussions. Requiring the club to change its name or mission statement based on the content of the name or the mission violates the Act’s prohibition against discrimination.

Is a club “curriculum-related” simply because the school says it is?

No. Whether a club is curriculum-related or not for purposes of the Act is a fact-based inquiry based on the connection between the subject matter of the group and the school’s courses.

The Supreme Court has defined a curriculum related group as one “that has more than just a tangential or attenuated relationship to the courses offered by the school.”⁷ “[A] student group

⁵ See, e.g., *Latino Officers Ass’n v. City of New York*, 196 F.3d 458, 461, 465-66 (2d Cir. 1999) (describing as expressive conduct the marching of uniformed Latino police officers in parade carrying banner bearing name of organization); *Hurley v. Irish-American Gay, Lesbian & Bisexual Group*, 515 U.S. 557, 570, 574 (1995) (noting that a group merely marching behind a “banner with the simple inscription ‘Irish American Gay Lesbian and Bisexual Group of Boston’” expresses the point “that some Irish are gay, lesbian or bisexual” and suggests “their view that people of their sexual orientations have as much claim to unqualified social acceptance as heterosexuals”); *Gay Activists Alliance v. Lomenzo*, 31 N.Y.2d 965, 966 (1973) (reversing secretary of state’s refusal to accept filing of certificate of nonprofit corporation because it used the word “gay” which the secretary of state deemed “inappropriate”).

⁶ *Colin*, 83 F. Supp.2d 1335, 1147-48.

⁷ *Mergens*, 496 U.S. at 238.

directly relates to a school's curriculum if the subject matter of the group is actually taught, or will soon be taught, in a regularly offered course; if the subject matter of the group concerns the body of courses as a whole; if participation in the group is required for a particular course; or if participation in the group results in academic credit.”⁸

Examples of groups likely to be found curriculum related include: the French club, student government, and the school band. A non-curriculum related club, on the other hand, is one “that does not directly relate to the body of courses offered by the school.”⁹ Examples of non-curriculum-related clubs include the juggling club, the ski club, the scuba club, and the Christian club.

For More Information, Contact:

Courtney Joslin
Staff Attorney
National Center for Lesbian Rights
870 Market St., Ste. 570
San Francisco, CA 94102
(415) 392-6257
www.nclrights.org

This fact sheet is intended to provide general information regarding legal rights. Because laws and legal procedures are subject to frequent change and differing interpretations, the National Center for Lesbian Rights cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency.

⁸ *Id.*

⁹ *Id.* at 239.