



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 provides a meeting place during non-instructional time for any voluntary, student-initiated non-curriculum-related club is required to provide the same meeting facilities to *all other* non-curriculum related clubs no matter what their “religious, political, philosophical or other” beliefs or discussions may be.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.

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

Curriculum Related

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.”³ “[A] student group 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.”⁴ Examples of groups likely to be found curriculum related include: the French club, student government, and the school band. A non-

¹ 20 U.S.C. §§ 4071-4074.

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

³ *Id.* at 238.

⁴ *Id.*

curriculum related club, on the other hand, is one “that does not directly relate to the body of courses offered by the school.”⁵

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..⁶

Other Relevant Constitutional and Statutory Provisions

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.

For More Information, Contact:

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⁵ Id. at 239.

⁶ 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).

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