

December 12, 2005

Ms. Becky Ervin  
Principal, Oak Ridge High School  
127 Providence Road  
Oak Ridge, TN 37830

via fax: 865.425.9679

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION  
OF TENNESSEE

P.O. BOX 120160  
NASHVILLE, TN 37212

Phone: (615) 320-7142  
Fax: (615) 320-7260  
www.aclu-tn.org

**RE: Student Club – GSA**

Dear Ms. Ervin:

It has come to our attention that students in your school are interested in forming a student organization, often called a gay/straight alliance, to focus on combating 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.

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. 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 GSAs - and why these arguments fail**

#### **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 complaint under the Equal Access Act.

### **3. Refusing to approve a GSA because the discussion of sex is not appropriate for high school students:**

In *Colin v. Orange Unified School District*, one of the many federal court cases in which the Equal Access Act rights of GSAs have been upheld, the court recognized that the focus of most GSAs 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 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. The Oak Ridge High School website lists at least 46 different student clubs, covering an impressive range of topics. Groups like the chess club, the mountain biking club, the ballroom dancing club, or a GSA are usually considered non-curricular, because what they do is not taught in any class.

### **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 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) (issuing a preliminary injunction).

Ms. Ervin  
December 12, 2005  
pg. 4

**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 a GSA, and although some national organizations like the Gay, Lesbian, Straight Education Network have attempted to compile informal contact directories of GSAs across the U.S., GSAs remain local and student-driven. There is no national organization or governing body for GSAs, and there is no indication that the proposed club at Oak Ridge High School was formed or promoted by anyone other than the students themselves.

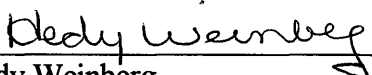
**7. Imposing conditions on the GSA that don't apply to other clubs:**


Schools cannot subject GSAs 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 is clearly unlawful.

In addition, delaying acting on the GSA's application for approval can itself be disparate treatment that violates the Equal Access Act.

---

We hope this letter provides you with the tools and information necessary to make the appropriate choices with regard to the GSA at Oak Ridge High School. If necessary, we can provide more information about gay-straight alliances, your legal duties under the Equal Access Act, and direct you to other groups that are working to promote non-discriminatory school environments for all students.

  
\_\_\_\_\_  
Hedy Weinberg  
Executive Director

  
\_\_\_\_\_  
Melody Fowler-Green  
Staff Attorney