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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

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CLERK OF DISTRICT COURT
MIDDLE DISTRICT OF FL
OCALA, FLORIDA

CARVER MIDDLE SCHOOL
GAY-STRAIGHT ALLIANCE, an
unincorporated association; and H.F.,
a minor by and through parent Janine
Faughnan,

Plaintiffs,

v.

No. 5:13-cv-623-OC-10PRL

SCHOOL BOARD OF LAKE
COUNTY, FLORIDA,

Defendant.

COMPLAINT
(with Declaratory and Injunctive Relief Sought)

Plaintiffs CARVER MIDDLE SCHOOL GAY-STRAIGHT ALLIANCE, an
unincorporated association ("Carver GSA"), and H.F., a minor by and through
parent Janine Faughnan,¹ sue Defendant SCHOOL BOARD OF LAKE COUNTY,
FLORIDA ("School Board"), and allege as follows:

¹ Because there has been substantial media attention to many of the matters
asserted herein, H.F. waives the privacy protection afforded to her by Fed.R.Civ.P.
5.2(a). See Fed.R.Civ.P. 5.2(h). For the purposes of this complaint, however, Plaintiffs'
counsel will use H.F.'s initials rather than her full name.

INTRODUCTION

1. Plaintiff H.F. is a seventh grader at Carver Middle School (“Carver”) in Leesburg, Florida. To continue to create a safer and more welcoming environment for all students, including lesbian, gay, bisexual, and transgender (“LGBT”) students and allied straight students, H.F. wants the Carver Middle School Gay-Straight Alliance (“Carver GSA”), which was permitted to meet last year as the result of a consent decree issued by this Court, to continue meeting at her school. The School Board, relying on a newly enacted student club policy, refuses to allow the Carver GSA to continue as an official student club at the school. This denial violates the federal Equal Access Act, which protects students’ ability to form and run school clubs, as well as the First and Fourteenth Amendments to the United States Constitution.

2. Plaintiffs ask this Court to (1) enjoin school officials from refusing to recognize the Carver GSA as a student club and require them to allow it to function as a school club on equal footing with other clubs at school; and (2) declare that school officials’ refusal to permit the operation of the Carver GSA violates federal law and Plaintiffs’ constitutional rights.

JURISDICTION AND VENUE

3. Plaintiffs bring this action pursuant to (1) 42 U.S.C. § 1983, for violations of civil rights under the First and Fourteenth Amendments to the United States Constitution; and (2) the Equal Access Act, 20 U.S.C. §§ 4071, *et seq.*

4. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights).

5. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391(b) and M.D. Fla. Loc. R. 1.02(c). The parties reside in this district and division, and the unlawful practices that give rise to the claims herein occurred within this district and division.

PARTIES

6. Plaintiff H.F. is a seventh grader at Carver. As a student at Carver, H.F. remains subject to the policies, practices, and customs of Defendant. H.F. is under the age of eighteen and sues individually and pursuant to Federal Rule of Civil Procedure 17(c) by and through H.F.'s mother.

7. Plaintiff Carver Middle School Gay-Straight Alliance ("Carver GSA") is an unincorporated voluntary association of students who attend Carver Middle School in Lake County, Florida. The Carver GSA brings this suit on behalf of itself

as an organization and on behalf of its members, who are comprised of individual students attending Carver Middle School.

8. Defendant School Board of Lake County, Florida (“School Board”), pursuant to the Florida K-20 Education Code, is the governing body of the School District that controls, operates, and supervises all District schools, including Carver. Defendant School Board resides in Lake County, Florida. The School Board, as a political subdivision of the State of Florida, is a state actor. The School Board is subject to civil lawsuits pursuant to Florida Statutes Section 1001.41(4).

9. The School Board sets the policies for the School District. Pursuant to School Board Policy 4.502, the School Board has delegated final decision making authority to Superintendent Susan Moxley with respect to approval of student clubs in the School District. Accordingly, through its delegation of final decision making authority to Superintendent Moxley with respect to approval of student clubs at Carver, the School Board is liable for Superintendent Moxley’s refusal to allow the Carver GSA to meet at school as an official student club.

10. The School Board appoints the Superintendent, and the Superintendent’s continued employment is subject to her performance being satisfactory to the School Board.

FACTS

11. Students at Carver have been trying to have a GSA at their school since the spring semester of 2012. They first sought permission from the principal of Carver to start the club, but the principal refused to permit a GSA to operate at the school. In November 2012, the students renewed their request by identifying a faculty advisor and formally submitting application materials to the principal. Again, school officials denied their request to operate a GSA at Carver, this time by simply refusing to make a decision about the club's application. Instead of approving or denying the GSA, school officials delayed any decision for approximately six months while the School Board discussed their proposed club and considered making changes to the school board clubs policy. After the School Board decided in April 2013 to table any revisions to the policy until after the school year ended, a student leader sued the School Board. *See* Compl. (DE 1), *B.N.S. v. Sch. Bd. of Lake Cnty., Fla.*, No: 5:13-cv-00205-ACC-PRL (M.D. Fla.), attached as Exhibit 1. Within a day, the parties agreed to a consent order that allowed the Carver GSA to form and to meet for the remainder of that school year. *See* Consent Order (DE 8), *B.N.S. v. Sch. Bd. of Lake Cnty., Fla.*

12. Between the date of the consent order and the end of the school year, the Carver GSA met three times. The Carver GSA elected leadership for the following 2013-2014 school year. H.F. was elected Vice President.

13. Principal Cunningham or an Assistant Principal sat in on each of these meetings even though they did not have a practice of sitting in on the meetings of other clubs at Carver. This chilled the discussions during the club meetings.

14. On August 12, 2013, the School Board enacted revised student clubs and organizations policies for elementary, middle, and high schools.

15. School Board Policy No. 4.502 (“Middle School Student Clubs and Organizations”) defines what clubs the School Board permits in middle schools:

(2) Middle School clubs and organizations are an extension of the school curriculum. Middle School clubs must be sponsored by the school and are limited to organizations that strengthen and promote critical thinking, business skills, athletic skills, and performing/visual arts. Schools may also establish organizations relating to academic honor societies and student government and clubs that are directly related to the curriculum.

A true and accurate copy of School Board Policy 4.502 is attached and incorporated as Exhibit 2.

16. Through Policy 4.502, the School Board has created and maintains a limited public forum at the middle school for student clubs. Policy 4.502 limits the forum to three types of student groups: (1) non-curricular clubs “that strengthen

and promote critical thinking, business skills, athletic skills, [or] performing/visual arts”; (2) non-curricular clubs that “relat[e] to academic honor societies and student government”; and (3) “clubs that are directly related to the curriculum.”

17. In addition to the three types of clubs specified in the policy, the Superintendent has approved student clubs that do not fit within any of these categories. In and through participating in this forum, students and clubs derive many benefits and opportunities: The clubs (a) are officially recognized as school clubs by school officials, (b) may meet on school property, (c) may have their finances accounted through and by the school, (d) may appear in the school’s yearbook, (e) may use school resources and equipment for meetings and activities, (f) may use school resources to advertise their meetings, information, and purpose as well as solicit new members, (g) may hold social events, and (h) have a School Board employee or sponsor (possibly compensated by the School Board) appointed by the principal to assist the club.

18. Carver has curricular and non-curricular student groups that have availed themselves of this limited public forum. Non-curricular groups at Carver include “Junior National Honor Society” and a cheerleading squad. Non-curricular clubs approved at other district middle schools include chess club; AVID, a

community service club;² a robotics club, and a news production club. Some of these clubs do not fall within the terms of Policy 4.502.

19. These non-curricular student groups meet on school premises during non-instructional time.

20. The Carver GSA and H.F. wanted and still want to avail themselves of this limited public forum for student clubs.

21. At the start of the 2013-2014 school year, the Carver GSA, Plaintiff H.F., and other students at Carver wanted to resume club meetings at the school. H.F. and another student identified a faculty advisor, and Plaintiffs prepared an application. On October 29, 2013, the Carver GSA club application was submitted to Principal Mollie Cunningham by the Carver GSA's faculty advisor at Plaintiffs' request. The club application included a cover letter from H.F. A true and accurate copy of the Carver GSA club application is attached as Exhibit 3.

22. As listed on its application, the Carver GSA's purpose and goals are as follows:

² The AVID club that was approved at East Ridge Middle School listed the following as its anticipated activities: "service activities towards the community and staff." The club provided solely the following for its club purpose: "We will be bonding with each other and working towards making our school, community, and world a better place." The AVID club that was approved at Umatilla Middle School was approved even though the applicants did not list the anticipated activities for the year, provide a club meeting time and place, or attach a club charter.

- (1) to create a safe, supportive environment at school for students to discuss experiences, challenges, and successes of LGBT students and their allies;
- (2) to create and execute strategies to confront and work to end bullying, discrimination, and harassment against all students, including LGBT students; and
- (3) to promote critical thinking by discussing how to address bullying and other issues confronting students at Carver Middle School.

23. Plaintiffs' application to operate a GSA at Carver complied with all procedural requirements to gain recognition as a student club.

24. When after two weeks had passed without any response to the application from a school official, on November 13, 2013, Plaintiffs' counsel contacted Defendant's counsel for an update on the status of the GSA application. Defendant's counsel responded that the Superintendent "will be making a decision shortly."

25. On December 5, 2013, Defendant's counsel informed Plaintiffs' counsel that the Superintendent had denied the club application and would not permit it to operate as a school club. Handwritten at the top of the Carver GSA's application was a note by Aurelia Cole, the Superintendent's designee, that stated: "Club is not an extension of the school curriculum, per policy. Not approved." Although the Superintendent purported to deny the Carver GSA's application because the club was not an extension of the school curriculum, the denial was actually based on the Carver GSA's purpose, the content of the speech and

viewpoints that will be expressed at its meetings, and the nature of the association that will take place at the meetings.

26. The Carver GSA qualifies to participate in this forum under the terms of Policy 4.502 because it strengthens and promotes critical thinking.

27. Moreover, because the only reasonable construction of Policy 4.502 is that it allows non-curricular clubs that “strengthen and promote critical thinking, business skills, athletic skills, and performing/visual arts,” even if the Superintendent or her designee considers the club to be non-curricular, she cannot deny equal access to the GSA.

28. Even if the Superintendent or her designee doubt the sincerity of the GSA’s plan to promote critical thinking, neither the Equal Access Act nor the First Amendment permit schools to limit non-curricular clubs to particular subject areas.

29. Plaintiffs have suffered and will continue to suffer an injury as a result of Defendant’s refusal to permit Plaintiffs to access the forum for non-curricular student clubs and to operate the Carver GSA at the school. Through the exclusion from this forum, Plaintiffs are and will be deprived of the many benefits of participating in the forum. Plaintiffs are and will be deprived of the opportunity at school to educate the school community about discrimination and bullying and to create a safe forum for LGBT students and their allies to discuss these issues.

30. Defendant caused and will continue to cause these injuries.

Defendant's denial of access to Carver's forum for non-curricular student clubs and the ability to operate the Carver GSA at the school infringes on the U.S.

Constitution's First Amendment free speech rights of Plaintiffs to communicate and associate in the school's forum. Defendant's denial of access to Carver's forum for non-curricular student clubs also violates the Equal Access Act.

31. Absent judicial intervention, the Carver GSA and its members will have to divert resources to counteract Defendant's illegal and unconstitutional denial of access to Carver's forum for non-curricular student clubs and the ability to operate the Carver GSA at the school. Plaintiffs will have to divert time and resources to meeting outside the school and advertising meetings without using school resources, and they will be denied the use of other benefits available to student clubs.

32. Plaintiffs face a real and immediate threat of irreparable injury as a result of Defendant's denial and threatened continued denial to Plaintiffs of access to Carver's forum for non-curricular student clubs and of the ability to operate the Carver GSA at the school.

33. Defendant has acted and threatens to continue acting under color of state law at all times alleged in this complaint. Its actions are by virtue of the official position it holds.

34. Unless restrained by this Court, Defendant will continue to deny Plaintiffs access to Carver's forum for student clubs and the ability to operate the Carver GSA at the school. Plaintiffs have been and will continue to be irreparably harmed by Defendant's denial, which deprives Plaintiffs of their constitutional right to free speech and the rights afforded by the Equal Access Act. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. § 1983.

35. Plaintiffs have no adequate remedy at law.

COUNT 1: EQUAL ACCESS ACT, 20 U.S.C. §§ 4071-4074

36. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs in this complaint.

37. Carver Middle School and Lake County Schools receive federal funding.

38. Carver Middle School is a "public secondary school" for the purposes of the Equal Access Act.

39. By refusing to permit Plaintiffs to access the forum for non-curricular student clubs and to operate the Carver GSA at the school, Defendant has denied equal access and a fair opportunity to Plaintiffs to participate and avail themselves of the benefits of that forum. This denial violates the Equal Access Act.

40. Defendant's refusal to grant access is based on the Carver GSA's purpose, the content of the speech that will take place at its meetings, and the nature of the association that will take place at the meetings.

41. Plaintiffs seek redress for these violations of the Equal Access Act through the operation of 42 U.S.C. § 1983.

COUNT 2: FREE SPEECH AND ASSOCIATION

42. Plaintiffs reallege and incorporate by reference paragraphs 1 through 35 and 40 of this Complaint.

43. Defendant has deprived, and continues to deprive, Plaintiffs of their rights to free speech and association under the First Amendment to the United States Constitution, which are secured through the Fourteenth Amendment. Defendant's refusal to grant Plaintiffs access to Carver's forum for student clubs and to allow them to operate the Carver GSA at the school is the cause-in-fact of the constitutional deprivations.

44. Defendant's denial of the GSA is based on its disagreement with the Carver GSA's views and constitutes viewpoint discrimination. Defendant's denial of the GSA is also content-based discrimination that is impermissible because it is unreasonable in light of the purpose of the forum.

45. Plaintiffs seek redress for these violations of the First and Fourteenth Amendments to the U.S. Constitution through the operation of 42 U.S.C. § 1983.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request the following relief:

A. An order declaring that Defendant's refusal to grant the Carver GSA access to the forum for student clubs and the ability to operate at the school violates the Equal Access Act because Defendant allows non-curricular clubs access to the forum.

B. An order declaring that Defendant's refusal to grant the Carver GSA access to the forum for student clubs and the ability to operate at the school violates the First and Fourteenth Amendments to the U.S. Constitution because Defendant allows other clubs access to the forum and because Defendant impermissibly restricts Plaintiffs' speech and association based on its content and viewpoint;

C. An order permanently enjoining Defendant from continuing its unlawful refusal to allow the Carver GSA (1) the same access to the forum for student clubs that school officials grant to non-curricular clubs and (2) the ability to operate at the school;

D. An order permanently enjoining Defendant from taking retaliatory action against Plaintiffs for bringing this lawsuit or against Carver GSA's faculty advisor for fulfilling that role;

E. An award to Plaintiffs of reasonable attorneys' fees, litigation expenses, and costs incurred in connection with this action from the Defendant, pursuant to 42 U.S.C. § 1988;

F. An order directing the entry of judgment for Plaintiffs against Defendant for nominal damages of \$1;

G. An order retaining the Court's jurisdiction of this matter to enforce the terms of the Court's orders; and

H. Such further and different relief as is just and proper or that is necessary to make Plaintiffs whole.

Dated: December 19, 2013

Respectfully Submitted,

/s/ Daniel B. Tilley

Daniel B. Tilley

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Attachment to Civil Cover Sheet

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MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Ocala Division

B. N. S., a minor by and through
parent Erica Silberstein,

Plaintiff,

v.

SCHOOL BOARD OF LAKE
COUNTY, FLORIDA; SUSAN
MOXLEY, in her official capacity as
Superintendent of the School District
of Lake County, Florida; and
MOLLIE CUNNINGHAM, in her
official capacity as Principal of
Carver Middle School,

No. 5:13-cv-205-Oc-22-PRL

Defendants.

COMPLAINT
(WITH DECLARATORY AND INJUNCTIVE RELIEF SOUGHT)

Plaintiff B.N.S., a minor by and through parent Erica Silberstein,¹
sues Defendant SCHOOL BOARD OF LAKE COUNTY, FLORIDA; SUSAN
MOXLEY, in her official capacity as Superintendent of the School District of Lake

¹ Because there has been substantial media attention to many of the matters asserted herein, B. N. S. waives the privacy protection afforded to her by Fed.R.Civ.P. 5.2(a). *See* Fed.R.Civ.P. 5.2(h).

County, Florida, and MOLLIE CUNNINGHAM, in her official capacity as Principal of Carver Middle School, and alleges as follows:

INTRODUCTION

1. B.N.S. in an Eighth Grader at Carver Middle School (“Carver”) in Leesburg, Florida. To create a safer and more welcoming environment for all students, including lesbian, gay, bisexual, and transgender (“LGBT”) students and allied straight students, B.N.S. wants to start a Gay-Straight Alliance (“GSA”) as an official student club at the school. After repeated and lengthy delays, however, Defendants have not provided B.N.S with a definitive answer as to whether the request to form the club (“Carver GSA”) has been, or will be, approved. This non-response amounts to a *de facto* denial. This denial violates the federal Equal Access Act, which protects students’ ability to form and run school clubs, as well as the First and Fourteenth Amendments to the United States Constitution.

2. Plaintiff asks this Court to (1) enjoin school officials from refusing to recognize the Carver GSA as a student club and allow it to function as a school club on equal footing with other clubs at school; and (2) declare that school officials’ past refusal to permit the operation of the Carver GSA violates federal law and Plaintiff’s constitutional rights.

JURISDICTION AND VENUE

3. Plaintiff bring this action pursuant to (1) 42 U.S.C. § 1983, for violations of civil rights under the First and Fourteenth Amendments to the United States Constitution; and (2) the Equal Access Act, 20 U.S.C. §§ 4071, *et seq.*

4. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights).

5. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391(b) and M.D. Fla. Loc. R. 1.02(c). Defendants reside in this district and division, and the unlawful practices that give rise to the claims herein occurred within this district and division.

PARTIES

6. Plaintiff B.N.S is an Eighth Grader at Carver. As a student at Carver, B.N.S remains subject to the policies, practices, and customs of Defendants. B.N.S is under the age of eighteen and sues individually and pursuant to Federal Rule of Civil Procedure 17(c) by and through B.N.S. mother. B.N.S has been subject to and has witnessed harassment at her school.

7. Defendant Mollie Cunningham (“Principal Cunningham”) is the Principal of Carver Middle School in Leesburg, Florida. Pursuant to Florida

Statutes Sections 1001.32 (“Management, control, operation, administration, and supervision”), subsection 4 (“School principal or head of school”); and 1001.54 (“Duties of school principals”); and Lake County School Board Policy 3.30 (“Responsibilities of Principals”), Principal Cunningham serves as the administrative and supervisory head of Carver Middle School and is responsible for enforcing, *inter alia*, the School Board rules and the directives of the Superintendent. Principal Cunningham, as an official of the School District of Lake County, Florida (“School District” or “District”), is a state actor, is sued in her official capacity, and at all times relevant to the claims herein was acting and continues to act under color of law.

8. Pursuant to School Board Policy 4.50(1), “All student clubs and organizations shall be approved by the principal / director before they can operate within a school center.” As such, Principal Cunningham is the final decision maker with respect to approval of student clubs at Carver Middle School. Accordingly, Cunningham is responsible for the unlawful and unconstitutional decision to refuse to allow the Carver GSA to form and operate at the school.

9. Defendant Susan Moxley (“Superintendent Moxley”) is the Superintendent of the School District. Pursuant to Florida Statutes Sections 1001.32 (“Management, control, operation, administration, and supervision”),

subsection 3 (“District school superintendent”); 1001.49 (“General Power of District School Superintendent”); and 1001.51 (“Duties and Responsibilities of District School Superintendent”); and Lake County School Board Policy 3.20, Superintendent Moxley is vested with the authority to exercise general oversight over the School District; counsel the School District on all educational matters; recommend action by the School District, including the adoption and execution of policies and rules pertaining to the District’s operation; and carry out the responsibility for the administration of the entire school system. Superintendent Moxley, as a School District official, is a state actor, is sued in her official capacity, and at all times relevant to the claims herein was acting and continues to act under color of law. Superintendent Moxley is sued because she was personally involved in the continued failure to approve and recognize the Carver GSA as a club.

10. Defendant School Board of Lake County, Florida (“School Board”), pursuant to the Florida K-20 Education Code, is the governing body of the School District that controls, operates, and supervises all District schools, including Carver. Defendant School Board resides in Lake County, Florida. The School Board, as a political subdivision of the State of Florida, is a state actor. The School Board is subject to civil lawsuits pursuant to Florida Statutes Section 1001.41(4).

11. The School Board sets the policies for the School District. Pursuant to School Board Policy 4.50, the School Board has delegated final decision making authority to Principal Cunningham with respect to approval of student clubs in the School District. Accordingly, through its delegation of final decision making authority to Principal Cunningham with respect to approval of student clubs at Carver, the School Board is liable for Principal Cunningham's refusal to allow the Carver GSA to form and operate. Further, the School Board was presented with the issue of granting recognition to the Carver GSA and made a decision not to consider the issue, again leading to a *de facto* denial of recognition of the GSA.

12. The School Board, Superintendent Moxley, and Principal Cunningham shall be referred to collectively as "Defendants."

GENERAL ALLEGATIONS

13. School officials at Carver have created and maintain a limited public forum. This forum is open to students to form and operate noncurricular student clubs and organizations focused on various topics, interests, and concerns. In and through participating in this forum, students and clubs derive many benefits and opportunities: The clubs (a) are officially recognized as school clubs by school officials, (b) may meet on school property, (c) may appear in the school's yearbook, (d) may use school resources for meetings and activities, and (e) may

use the public-announcement system to advertise their meetings and solicit new members.

14. Carver has noncurricular student clubs that have availed themselves of this limited public forum, including Future Business Leaders of America, "BR8" (a club for Christians), and a cup-stacking club.

15. Some or all of the noncurricular student clubs meet on school premises during non-instructional time.

16. Plaintiff wanted and still wants to avail herself of this limited public forum for noncurricular student clubs.

17. In the first half of 2012, students at Carver, including B.N.S, twice tried to form a GSA at Carver, but then-Principal David Bordenkircher denied these attempts.

18. In November 2012, B.N.S submitted a packet of materials regarding the club to Principal Cunningham, including the name of a faculty member who was willing to serve as the faculty sponsor for the club. During the conversation, Principal Cunningham acknowledged the potential utility of the club but stated that she needed to consult with the School Board. A true and accurate copy of this packet of materials is attached as Exhibit 1.

19. In January 2013, Principal Cunningham left a voicemail with B.N.S. mother, Erica Silberstein, stating that Cunningham needed to consult with the School Board.

20. Apart from these two indications, Principal Cunningham has not provided the Carver GSA with any indication on the status of the proposal for the GSA to be recognized as an official student club.

21. The Carver GSA has not been provided any indication as to whether the request to form the club as an official student club has been, or will be, approved.

22. On January 23, 2013, Plaintiff's counsel sent a letter to Superintendent Moxley and the School Board's attorney, Steve Johnson, informing them of the Carver GSA's purpose and of their obligations under the Equal Access Act and the U.S. Constitution to immediately recognize the Carver GSA as an official school club. A true and accurate copy of the January 23 letter is attached as Exhibit 2.

23. On January 30, 2013, Plaintiff's counsel spoke with the School Board attorney, who informed Plaintiff's counsel that the School Board would discuss the Carver GSA and the School District's noncurricular club policy at the next School Board meeting, on February 4, 2013.

24. On February 4, 2013, the School Board held a public workshop. For that meeting, the School Board attorney drafted a policy endorsing a limited open forum. (2/4/13 Sch. Bd. mtg. minutes, p. 4, lines 7-9). A true and accurate copy of the February 4 Board meeting minutes is attached as Exhibit 3. Based on the direction from Board members at the meeting, the School Board attorney indicated that he would prepare two policies for a subsequent meeting: one with a closed forum, and one with a limited open forum in high schools but a closed forum for middle schools. (2/4/13 Sch. Bd. mtg. minutes, p. 4, lines 36-38).

25. On February 11, 2013, the School Board held a regularly scheduled Board meeting. The School Board attorney indicated that his intent was to bring a policy to a workshop the following week for Board discussion. (2/11/13 Sch. Bd. mtg. minutes, p. 5, line 6). A true and accurate copy of the February 11 Board meeting minutes is attached as Exhibit 4.

26. On February 18, 2013, the School Board held a special meeting session. The Board discussed Carver GSA again, and Chairwoman Kyleen Fischer noted that proposed revised Policy 4.50 would come back to the Board at a regularly scheduled Board meeting for a vote. (2/18/13 Sch. Bd. mtg. minutes, p. 1, lines 29-30). A true and accurate copy of the February 18 Board meeting minutes is attached as Exhibit 5.

27. On February 25, 2013, the School Board held a regularly scheduled Board meeting but did not discuss the Carver GSA or club policy.

28. On March 6, 2013, the School Board held a special meeting but did not discuss the Carver GSA or club policy.

29. On March 11, 2013, the School Board held a public workshop and a regularly scheduled Board meeting. At the regularly scheduled meeting, by a 3-2 vote, the Board provided tentative approval of an “open” policy, which would have allowed noncurricular clubs for both public middle and high schools in the District.

30. The School Board held a special meeting on March 18, 2013; a public workshop on April 1, 2013; a regularly scheduled board meeting on April 8, 2013; and a public workshop on April 15, 2013.

31. On April 22, 2013, the School Board held a regularly scheduled meeting. The agenda included providing final approval to club policy that had been tentatively approved at the March 11 meeting and that would have allowed noncurricular clubs for both public middle and high schools in the District. Instead of providing final approval for the policy, however, the Board voted 4-1 to table the measure.

32. On April 23, 2013, Plaintiff's counsel sent a letter to the School Board's attorney, Steve Johnson, informing him again of the Carver GSA's purpose and of the District's obligations under federal law to immediately recognize the Carver GSA as an official school club. The letter requested that the attorney advise Plaintiff's counsel by April 26, 2013, that the Carver GSA could immediately begin having meetings and activities as an approved noncurricular student club. A true and accurate copy of the April 23 letter is attached as Exhibit 6.

33. To date, Defendants have not approved or recognized the Carver GSA as a student club.

34. Plaintiff has suffered and will continue to suffer an injury as a result of Defendants' refusal to permit Plaintiff to access the forum for noncurricular student clubs and to operate the Carver GSA at the school. Through the exclusion from this forum, Plaintiff is and will be deprived of the many benefits of participating in the forum. Plaintiff is and will be deprived of the opportunity at school to educate the school community about discrimination and bullying and to create a safe forum for LGBT students and their allies to discuss these issues.

35. Defendants caused and will continue to cause these injuries. Defendants' denial of access to Carver's forum for noncurricular student clubs and

the ability to operate the Carver GSA at the school infringes on the U.S. Constitution's First Amendment free-speech rights of Plaintiff to educate, communicate, and associate in the school's forum. Defendants' denial of access to Carver's forum for noncurricular student clubs also violates the Equal Access Act.

36. Plaintiff faces a real and immediate threat of irreparable injury as a result of Defendants' *de facto* denial and threatened continued *de facto* denial to Plaintiff of access to Carver's forum for noncurricular student clubs and of the ability to operate the Carver GSA at the school.

37. Defendants have acted and threaten to continue acting under color of state law at all times alleged in this complaint. Their actions are by virtue of the official positions they hold.

38. Unless restrained by this Court, Defendants will continue to deny Plaintiff access to Carver's forum for noncurricular student clubs and the ability to operate the Carver GSA at the school. Plaintiff has been and will continue to be irreparably harmed by Defendants' denial, which deprives Plaintiff of her constitutional right to free speech and the rights afforded by the Equal Access Act. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. § 1983.

39. Plaintiff has no adequate remedy at law.

40. The last day of regularly scheduled classes at Carver for the present school year is June 5, 2013.

COUNT 1: EQUAL ACCESS ACT, 20 U.S.C. §§ 4071-4074

41. Plaintiff realleges and incorporates by reference all of the preceding paragraphs in this complaint.

42. Carver Middle School and the School District of Lake County receive federal funding.

43. By refusing to permit Plaintiff to access the forum for noncurricular student clubs and to operate the Carver GSA at the school, Defendants have denied equal access and a fair opportunity to B.N.S to participate and avail herself of the benefits of that forum. This denial is a violation of the Equal Access Act.

44. Defendants' refusal to grant access is based on the Carver GSA's purpose, the content of the speech that will take place at its meetings, and the nature of the association that will take place at the meetings.

COUNT 2: FREE SPEECH AND ASSOCIATION

45. Plaintiff realleges and incorporates by reference paragraphs 1 through 40 and 44 of this Complaint.

46. Defendants have deprived, and continue to deprive, Plaintiff of her rights to free speech and association under the First Amendment to the United States Constitution, which are secured through the Fourteenth Amendment. Defendants' refusal to grant Plaintiff access to Carver's forum for noncurricular student clubs and to allow them to operate the Carver GSA at the school is the cause-in-fact of the constitutional deprivations.

47. Defendants' denial of the GSA is based on their disagreement with the Carver GSA's views and constitutes viewpoint discrimination. Defendants' denial of the GSA is also content-based discrimination that is impermissible because it is unreasonable in light of the purpose of the forum.

48. Plaintiff seeks redress for these violations of the First and Fourteenth Amendments to the U.S. Constitution through the operation of 42 U.S.C. § 1983.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests the following relief:

A. A temporary restraining order immediately barring Defendants from continuing their unlawful refusal to allow the Carver GSA (1) the same access to the forum for noncurricular student clubs that school officials grant to other such clubs and (2) the ability to operate at the school;

B. An order preliminarily enjoining Defendants from continuing their unlawful refusal to allow the Carver GSA (1) the same access to the forum for noncurricular student clubs that school officials grant to other such clubs and (2) the ability to operate at the school;

C. An order declaring that Defendants' refusal to grant the Carver GSA access to the forum for noncurricular student clubs and the ability to operate at the school violates (1) the Equal Access Act and (2) the First and Fourteenth Amendments to the U.S. Constitution because Defendants allow other noncurricular clubs access to the forum and because Defendants impermissibly restrict Plaintiff's speech and association based on its content and viewpoint;

D. An order permanently enjoining Defendants from continuing their unlawful refusal to allow the Carver GSA (1) the same access to the forum for noncurricular student clubs that school officials grant to other such clubs and (2) the ability to operate at the school;

E. An order permanently enjoining Defendants from taking retaliatory action against Plaintiff for bringing this lawsuit or against Carver GSA's faculty advisor for fulfilling that role;

F. An award to Plaintiff of reasonable attorneys' fees, litigation expenses, and costs incurred in connection with this action from the Defendants, pursuant to 42 U.S.C. § 1988;

G. An order directing the entry of judgment for Plaintiff against Defendants for nominal damages of \$1;

H. An order retaining the Court's jurisdiction of this matter to enforce the terms of the Court's orders; and

I. Such further and different relief as is just and proper or that is necessary to make Plaintiff whole.

Dated: April 30, 2013

Respectfully Submitted,

s/ Randall Marshall

Randall C. Marshall

Fla. Bar No. 181765

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DTilley@aclufl.org
**Attending Telephonic Attorney
Admission Ceremony for Middle
District of Florida on Wednesday, May
1, 2013, at 10:00 a.m.*

Counsel for Plaintiff

CHAPTER 4.00 - CURRICULUM AND INSTRUCTION

4.502

MIDDLE SCHOOL STUDENT CLUBS AND ORGANIZATIONS

- (1) This policy applies to all school clubs and organizations at all District Middle Schools.
- (2) Middle School clubs and organizations are an extension of the school curriculum. Middle School clubs must be sponsored by the school and are limited to organizations that strengthen and promote critical thinking, business skills, athletic skills, and performing/visual arts. Schools may also establish organizations relating to academic honor societies and student government and clubs that are directly related to the curriculum.
- (3) All student clubs and organizations must be approved by the Superintendent before they can operate at a school.
- (4) All prospective clubs must submit a District approved application. The application shall include a club charter which shall set forth the purposes, qualifications for members, and the rules of conduct and shall be maintained on file for reference by all students and school employees.
- (5) All student clubs and organizations shall obtain a Consent Form from the parents of each participating student, on a form provided by the District.
- (6) A student club or organization shall not conduct any activity or act which violates Florida Statutes, School Board rules, or the regulations of the school.
- (7) Any club or organization which engages in an initiation ceremony for its members shall prepare and submit the program of initiation exercises to the school principal for review and approval.
- (8) There shall be no type of hazing in any club or organization within any school. Hazing is defined as any action or situation for the purpose of initiation or admission into or affiliation with any club or organization operating at a school pursuant to this policy, which recklessly or intentionally endangers a student's mental or physical health or safety.
- (9) The decision of the members of an organization shall not be one of the factors in selecting additional members.

Lake 4.502

- (10) Secret societies, fraternities and sororities are prohibited per Section 1006.14, Florida Statutes.
- (11) Clubs/ organizations will be assigned an employee/sponsor by the principal. The employee/ sponsor shall be present at all meetings.
- (12) All social events shall be adequately chaperoned.
- (13) At the discretion of the School Board and consistent with School Board policy, the employee/ sponsor may be compensated by the school.
- (14) All monies accruing to a club or organization shall be accounted for through the school's internal accounting system.
- (15) All meetings shall be held on School Board property. This may be waived for special meetings and events upon the faculty sponsor's request and principal's approval.
- (16) Any dues charged shall be reasonable and not prohibitive. Admission fees will not be charged.

STATUTORY AUTHORITY:

1001.41; 1001.42, F.S.

LAWS IMPLEMENTED:

**1001.43; 1006.07;
1006.09; 1006.63, F.S.**

HISTORY:

**ADOPTED: 8/12/13
REVISION DATE(S):
BOARD REVIEW: 5/13/13**



Leading our Students to Success

Middle School CLUB/Organization Application

(ALL STUDENT CLUBS/ORGANIZATIONS MUST BE APPROVED
BY THE SUPERINTENDENT BEFORE THEY CAN OPERATE AT A SCHOOL.)

Superintendent
Susan Moxley, Ed.D.

Lake County School Board
Bill Mathias, District 1
Rosanne Brandenburg, District 2
Ted Howard, District 3
Debbie Stivender, District 4
Kylene Fischer, District 5

*Club is
Not an extension
of the school curriculum,
per policy.
Not approved*

Middle School clubs and organizations are an extension of the school curriculum. Middle School clubs must be sponsored by the school and are limited to organizations that strengthen and promote critical thinking, business skills, athletic skills, and performing/visual arts. Schools may also establish organizations relating to academic honor societies and student government and clubs that are directly related to curriculum.

Applicant: Heather Jablonski

(Circle one) Teacher Administrator

Official Club Name: Carver Middle School Gay-Straight Alliance

Club Purpose & Goals: Attach a Charter that sets forth the purposes, goals, qualifications for members and the rules of conduct.

Anticipated Activities for the Year:

Please see attached club charter.

Club Meeting Day, Time and Place: (Meetings must be held at the school unless otherwise approved.)

Tuesdays at 8:00 a.m.; Building 2, Room 120

Anticipated membership number: 25

(Parent consent forms for each member must be submitted to principal.)

Club By-Laws:

Each club/organization must establish written by-laws within the first 90 days after receiving approval, and provide a copy as a supplement to the application.

The Club/Organization agrees to comply with the Code of Student Conduct and Policy Guide and all School Board policies at all club meetings and events. (Policy 4.502 is attached)

Heather Jablonski

Print Name

Heather Jablonski
Teacher Signature

Date

*Principal Approval: _____

Signature

Date

Superintendent/Designee Approval: _____

Signature

Date

*Principal will determine the staff member assigned to supervise and/or sponsor the club/organization.

LAKE COUNTY SCHOOLS

201 W. Burleigh Blvd., Tavares, Fla., 32778-2496 • Phone 352-253-6500 • Fax 352-343-0198

Exhibit 3

Club Charter

Carver Middle School Gay-Straight Alliance

Club Purposes and Goals:

- (1) to create a safe, supportive environment at school for students to discuss experiences, challenges, and successes of LGBT students and their allies
- (2) to create and execute strategies to confront and work to end bullying, discrimination, and harassment against all students, including LGBT students
- (3) to promote critical thinking by discussing how to address bullying and other issues confronting students at Carver Middle School

Qualifications for Members:

Membership is open to all students, so long as the individual shows respect for all other members and does not interfere with the club purposes described above. There are no dues.

Rules of Conduct:

The GSA shall operate consistent with and comply with all school policies, rules, regulations, and state law, which include the requirements that members must comply with school policy, rules, regulation, and state law during meetings.

Anticipated Activities for the Year:

- hold regular meetings
- design and market student-awareness campaigns
 - create educational pamphlets, fliers, posters, and/or artistic displays related to bullying and other issues facing students—including LGBT students—at Carver Middle School
 - educate students about civil rights
- engage in after-school or weekend volunteer work in the local community

Dear Principal Cunningham and Superintendent Moxley,

My name is [REDACTED] and I am in seventh grade at Carver Middle School. I really want to make sure that the Gay-Straight Alliance started last school year keeps going this year. Bullying can make school tough for some kids, and I think helping people understand more about bullying and how to stop it will help make a lot of people more comfortable in school. Plus, we think it would be good for us to get more involved in the community by doing volunteer work. Please let us continue the GSA this year – I think it will make Carver an even better school.

Sincerely,

[REDACTED]