

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

GAY-STRAIGHT ALLIANCE at)	
North Putnam High School, an)	
unincorporated association;)	
C.H., a minor child by mother and)	
next friend Suzanne Hudson;)	
D.E. and E.E., minor children by)	
mother and next friend Kimberly)	
Mitchell,)	
)	
Plaintiffs,)	
)	
v.)	No. 2:14-cv-398
)	
NORTH PUTNAM COMMUNITY)	
SCHOOL CORPORATION,)	
)	
Defendant.)	

Complaint for Declaratory and Injunctive Relief

Introduction

1. For more than a year, students at North Putnam High School have been attempting to secure approval for a recognized Gay-Straight Alliance (GSA) organization at the High School that would be a place for members of the gay, lesbian, bisexual, transgender (GLBT) and allied community to meet and provide social, emotional and educational support to one another. Proponents of the GSA at the High School followed all the procedures to establish the organization as a “non-school-sponsored club and activity” and obtained a faculty person who supports the group and will serve as its supervisor. Despite this, and despite the fact that the North Putnam Community School Corporation allows other non school-sponsored clubs and activities to meet at the High School during non-instructional time, the North Putnam School

Corporation refused to approve the GSA as a recognized club or activity that can meet during non-instructional times at the High School. The organization is therefore not allowed to meet at the school, promote its activities on school grounds, or associate with North Putnam High School (“NPHS”) in any way. This violates the First Amendment rights of both the GSA and the student-plaintiffs, C.H., D.E. and E.E., who wish to be members of the club as a formal club and activity at the High School as well as the rights of the plaintiffs under the Equal Access Act, 20 U.S.C. § 4071, *et seq.* The plaintiffs seek declaratory and injunctive relief.

Jurisdiction, cause of action, venue

2. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

4. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rule 57 of the Federal Rules of Civil Procedure.

5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution and laws of the United States.

Parties

6. The Gay-Straight Alliance at North Putnam High School is an unincorporated voluntary association of students who attend the High School. This action is brought on behalf of the GSA and its members.

7. C.H. is a minor resident of Roachdale, Indiana, who attends North Putnam High School and remains subject to the policies, practices, and customs of defendant. C.H. is represented in this action by mother and next friend, Suzanne Hudson.

8. D.E. and E.E. are minor sisters who reside in Bainbridge, Indiana, and who attend North Putnam High School and remain subject to the policies, practices, and customs of defendant. They are represented by mother and next friend, Kimberly Mitchell.

9. The North Putnam Community School Corporation is a public school corporation, established pursuant to Indiana law, operating schools in the northern portion of Putnam County, including North Putnam High School.

Factual allegations

10. C.H. is currently a senior at NPHS.

11. D.E. is currently a junior at NPHS.

12. E.E. is currently a freshman at NPHS.

13. Students attending NPHS may participate in a number of clubs that are not related to the curriculum at the school.

14. These non-curricular clubs meet at the school during non-instructional time.

15. These non-curricular clubs include, among others: FCA (“Fellowship of Christian Athletes”), Key club (to promote student volunteerism), chess club, Best Buddies (to allow “buddies” to be assigned to other students), bowling club, dance club, fishing club, student council, Thespians (a drama club); Youth Philanthropy (where juniors and seniors work with a local foundation), and C-Kom (where upperclassmen mentor in-coming freshman).

16. In order for a new club to be approved the proposed club must comply with the following requirements as set out in the NPHS Student Handbook:

Non-school-sponsored student groups organized for religious, political, or philosophical reasons may meet during non-instructional hours. The application for permission can be obtained from the Principal. The application must verify that the activity is being initiated by students, attendance is voluntary, that no school staff person is actively involved in the event, that the event will not interfere with school activities and that non-school persons do not play a regular

role in the event. School rules will still apply regarding behavior and equal opportunity to participate.

Membership in any fraternity, sorority, or any other secret society is not permitted. All groups must comply with School rules and must provide equal opportunity to participate.

No non-corporation-sponsored organization may use the name of the School or School mascot.

The non-school-sponsored clubs and activities described in the section must have school personnel in attendance for supervision.

(Emphasis in original).

17. During the instructional day NPHS sets aside non-instructional time, called SRT (“student resource time”), when student clubs and activities may meet.

18. During the 2013-2014 school year a number of students began to meet, with faculty, during SRT, to develop a proposal for the GSA–NPHS.

19. Students who are GLBT, or are perceived as such, have frequently been harassed and bullied at NPHS. The students seeking to gain approval for the GSA at NPHS believed that having a formal club that would meet during school non-instructional time would be extremely beneficial to these students as well as to the student body as a whole.

20. The students, with the assistance of supportive faculty members, prepared a formal presentation to gain approval for the GSA at NPHS.

21. The then-principal of NPHS and the School Superintendent of the North Putnam Community School Corporation informed members of the GSA and the faculty person who had agreed to supervise the club that the club would have to be approved by the Board of Trustees of the North Putnam Community School Corporation (“the Board), the governance body of the school corporation.

22. Prior to the start of the current school year the students submitted to the Superintendent, to be forwarded to the Board, their proposal for the GSA and information concerning the proposed club.

23. After months of delay the formal proposal to allow the GSA was placed on the agenda of the Board and, on November 20, 2014, the Board voted on the proposal and split evenly on whether to approve the GSA, with one member abstaining. The effect of this tie vote was to not approve the club.

24. Although not formally approved, a number of students at NPHS have continued to meet and communicate with each other concerning the GSA and they consider it to be an existing organization.

25. However, because the GSA is not a recognized non-school sponsored club or activity, it is not allowed to meet during SRT and it is not allowed to advertise itself at school as other clubs and activities are able to do.

26. Not being able to meet at school is particularly hard for GLBT students without supportive parents who may be unwilling to assist in their children meeting with other. Moreover, NPHS draws from a large rural district and if a group is forced to meet outside of the school it may be difficult for students to meet.

27. The ability of the GSA to attract student-members and to fulfill its beneficial function to be a place of shelter, support, and education not just for GLBT students, but for all NPHS students, is greatly diminished because the club is not able to meet during SRT or advertise at school.

28. The GSA continues to have a faculty person who remains willing to supervise the GSA if it is recognized as a non-school-sponsored club or activity.

29. Plaintiff D.E. is the president of GSA at NPHS and E.E. and C.H. are members of the organization.

30. D.E., E.E., and C.H. have been harmed by the failure of the school to allow the GSA at NPHS to be recognized as a school club and will continue to be harmed by the deprivation of the opportunity to educate the school community about discrimination and bullying and to create a safe forum for GLBT students and their allies to discuss issues affecting GLBT students.

31. North Putnam High School is a public secondary school that receives federal financial assistance.

32. Plaintiffs D.E., E.E. and C.H and the GSA at NPHS are being caused irreparable harm for which there is no adequate remedy at law as a result of defendant's denial to plaintiffs of access to the forum at NPHS for non-curricular student clubs and the denial of the ability to operate the GSA at the school.

33. At all times defendant has acted, and has refused to act, under color of state law.

Legal claims

34. Because North Putnam High School allows at least one non-curricular student group to meet on school premises during non-instructional time, it is a "limited open forum" pursuant to the Equal Access Act, 20 U.S.C. § 4071, and its failure to allow the GSA-NPHS to meet on North Putnam High School property on the same terms as it allows recognized student groups to meet violates the Equal Access Act.

35. Defendant's failure to recognize the GSA at NPHS as a student club and its failure to allow it to meet at school violates rights secured to plaintiffs by the First Amendment to the United States Constitution.

Request for relief

WHEREFORE, plaintiffs request that this Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
2. Declare that defendant has violated federal law and the United States Constitution for the reasons noted above.
3. Enter a preliminary injunction, later to be made permanent, requiring defendant to approve the application of the GSA to be an extracurricular club at North Putnam High School and allow it all rights similar to those of other extracurricular clubs.
4. Award plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
5. Award all other proper relief.

s/ Kenneth J. Falk

Kenneth J. Falk
No. 6777-49

s/ Kelly R. Eskew

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