

**UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF NEW YORK**

A.Q., a minor, by and through his next friend,	)	
A.Q.,	)	Case No.
	)	
Plaintiff,	)	
	)	
v.	)	VERIFIED COMPLAINT FOR
	)	INJUNCTIVE AND DECLARATORY
BOARD OF EDUCATION OF LINDENHURST	)	RELIEF
UNION FREE SCHOOL DISTRICT; NEIL	)	
LEDERER, individually and in his official	)	Civil Rights Action (42 U.S.C. § 1983)
capacity as Superintendent of Lindenhurst Union	)	
Free School District; and DANIEL GIORDANO,	)	
individually and in his official capacity as	)	
Principal of Lindenhurst High School,	)	
	)	
Defendants.	)	
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COMES NOW the Plaintiff, A.Q., by and through his next friend, A.Q.<sup>1</sup>, pursuant to the Federal Rules of Civil Procedure, and for his causes of action against Defendants, avers the following:

**INTRODUCTION**

1. This is a civil rights action under 42 U.S.C. § 1983, the Equal Access Act, 20 U.S.C. § 4071, *et seq.*, and the First and Fourteenth Amendments to the United States Constitution, brought to remedy a violation of the constitutional and statutory rights of A.Q., a student at Lindenhurst High School (“LHS”), located in Lindenhurst, New York.

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<sup>1</sup>In accordance with Administrative Order 2004-09 and the attachments thereto, A.Q. is identified by his initials, rather than his full name, in order to maintain the privacy of his identity. For this reason also, A.Q.’s parent’s name is indicated only by her initials.

2. Plaintiff brings this suit for the reason that his Bible Club has been denied rights, privileges, and benefits equal to those received by other student clubs officially recognized at LHS.

3. The Defendant School Board has implemented policies and practices which permit chartering of clubs, *i.e.*, official recognition, that are both curriculum related and non-curriculum related.

4. Along with official recognition, the student clubs at LHS are granted certain benefits and privileges.

5. Plaintiff's Bible Club, however, is denied such official recognition based on the religious nature of the Club, and is accordingly denied equal access to all such benefits and privileges.

6. Indeed, over the course of the previous four months, Plaintiff's Bible Club has repeatedly attempted to gain official club status and accompanying benefits, but the Defendants have denied the Club at every turn because of its religious nature.

7. Rather than giving Plaintiff and his Bible Club a classroom right away and allowing them to begin meeting after school like other LHS student clubs, the Defendants instead treat Plaintiff and his Club as outsiders – denying them official recognition and attendant benefits and forcing them to apply for facility access as a community organization.

8. Due to Defendants' denial, Plaintiff has still been unable to begin his Bible Club meetings.

9. The Defendants do not require other student clubs to jump through the hoops it puts in front of Plaintiff and his Bible Club.

10. Rather, the Defendants readily afford official recognition and accompanying benefits and privileges to a variety of clubs at LHS, including, among others, a Gay-Straight Alliance, Key Club, Chess Club, Fishing Club, and Ski Club.

11. The Equal Access Act, along with the First and Fourteenth Amendments, prohibits governmental discrimination of this type and guarantees access and treatment of religious student clubs equal to that of other non-curriculum related student clubs.

12. Plaintiff brings this action seeking equal treatment, not special treatment, and respectfully asks the Court (i) to enjoin Defendants from violating his constitutional and statutory rights, as well as the rights of others interested in the Bible Club, and (ii) to order Defendants to grant official club status to Plaintiff's Bible Club, with all of the accompanying rights, benefits, and privileges equal to other officially recognized student clubs at LHS.

## **JURISDICTION AND VENUE**

13. This action arises under the United States Constitution, specifically the First and Fourteenth Amendments, and under federal law, particularly 28 U.S.C. § 2201, 42 U.S.C. §§ 1983 and 1988, and the Equal Access Act, 20 U.S.C. §§ 4071-4074.

14. This Court possesses jurisdiction over Plaintiff's claims by operation of 28 U.S.C. §§ 1331 and 1343.

15. This Court is vested with authority to grant Plaintiff's requested declaratory relief by operation of 28 U.S.C. §§ 2201 and 2202, and pursuant to Rule 57 of the Federal Rules of Civil Procedure.

16. This Court is authorized to grant Plaintiff's requested injunctive relief pursuant to 42 U.S.C. § 1983 and Rule 65 of the Federal Rules of Civil Procedure.

17. This Court is authorized to award nominal damages under 28 U.S.C § 1343.

18. This Court is authorized to award attorneys' fees in accordance with 42 U.S.C. § 1988.

19. Venue is proper under 28 U.S.C. § 1391 in the United States District Court for the Eastern District of New York because the events giving rise to the claim occurred within the District and because all parties are residents of the District.

### **IDENTIFICATION OF THE PLAINTIFF**

20. Plaintiff A.Q., a minor, is a resident of Lindenhurst, New York, and a student at LHS.

21. A.Q. is a professing Christian.

22. Pursuant to his sincerely held religious beliefs, A.Q. desires to meet with other students through the Bible Club at LHS.

23. In accordance with his sincerely held religious beliefs, A.Q. desires to share his Christian faith with fellow students at LHS through Bible Club activities.

24. A.Q. desires to worship, pray, study the Bible, and enjoy fellowship together with other students at Bible Club meetings at LHS.

25. At the Club meetings, A.Q. desires to discuss, from a Biblical perspective, a variety of issues facing students, including those related to serving others in the school and community; leadership; peer pressure; premarital sex, including homosexual behavior; and promoting respect and dignity for others, just to name a few.

26. A.Q., next friend, is A.Q.'s parent and guardian, and at all times relevant to this Complaint, is a resident of Lindenhurst, New York.

### **IDENTIFICATION OF THE DEFENDANTS**

27. Defendant Board of Education of the Lindenhurst Union Free School District ("Board") is a body politic and corporate and may sue and be sued in its corporate name.

28. The Board is organized under the laws of the State of New York.
29. The Board is charged with the administration and operation of LHS.
30. The Board is responsible for the enactment, enforcement, and existence of policies and practices related to the formation and organization of student clubs at LHS.
31. The Board is also responsible for the enactment, enforcement, and existence of policies and practices related to the rights, benefits, and privileges afforded to such student clubs at LHS.
32. The Board itself has denied official club status to Plaintiff's Bible Club, as well as the rights, benefits, and privileges attendant to official club status, pursuant to its policy and practice, and also through implementation through its Legal Counsel.
33. The Board is likewise responsible for the implementation and application by the Superintendent and Principal of its policies and practices pertaining to student clubs.
34. The Board is similarly responsible for delegating to the Superintendent and Principal final authority as to the official recognition of student clubs.
35. Defendant Neil Lederer is the Superintendent of the School District's public schools, including LHS.
36. Defendant Lederer possesses responsibility, final authority, and discretion, as delegated by the Board, as to administration of Board policies as they relate to student activities on campus.
37. Defendant Lederer possesses responsibility, final authority, and discretion, as delegated by the Board, as to the administration of Board policies related to the establishment of student clubs and to the benefits said clubs receive.

38. In this capacity, Defendant Lederer possesses final supervisory responsibility over the Principal of LHS.

39. Defendant Lederer is responsible for the Policies and practice leading to the denial of equal benefits to the Bible Club.

40. Defendant Lederer has denied equal benefits to the Bible Club.

41. Defendant Lederer is sued both in his individual capacity and in his official capacity as Superintendent of the District.

42. Defendant Daniel Giordano is the Principal of LHS.

43. Defendant Giordano is charged with the administration of LHS., including Board-delegated responsibility, authority, and discretion as to enforcement of Board policies relating to student clubs.

44. Defendant Giordano is responsible for the Policies and practice leading to the denial of equal benefits to the Bible Club.

45. Defendant Giordano has denied equal benefits to the Bible Club.

46. Defendant Giordano is sued both in his individual capacity and in his official capacity as Principal of LHS.

47. Defendant Giordano made the decision to deny official recognition to Plaintiff's Bible Club pursuant to the Policy and practice implementation and through the direction of the Board, and through its Legal Counsel.

48. This decision by Defendant Giordano to deny official recognition to Plaintiff's Club was made at the direction of the Superintendent and of the Board.

## **FACTUAL ALLEGATIONS**

49. LHS is a public high school located in Lindenhurst, New York.

50. LHS is under the direction of the Board.
51. LHS includes grades 9 through 12.
52. LHS constitutes a secondary school under New York law.
53. Upon information and belief, LHS and the school district receive federal financial assistance.
54. The Board itself, and acting through Defendants Lederer and Giordano, as Superintendent and Principal, respectively, grants official club status to non-curriculum related student clubs.
55. The Board itself, and acting through Defendants Lederer and Giordano, allows said clubs to meet on school premises at LHS during non-instructional time.
56. Non-curriculum related clubs currently recognized by the Board include, among others, a Gay-Straight Alliance, Key Club, Chess Club, Fishing Club, and Ski Club.
57. These clubs address issues involving, among others, promoting respect and dignity for students at LHS; premarital sex, including homosexual behavior; community service; and leadership.
58. Participation in such clubs is not required by school faculty in connection with curriculum course work.
59. Participation in such clubs is not directly encouraged by school faculty in connection with curriculum course work.
60. Defendants, pursuant to their Policies and practice, permit officially recognized non-curriculum related clubs to, among other things:
  - conduct meetings during non-instructional time on campus;
  - list the club in the LHS yearbook with an accompanying photo;

- list the club in the LHS Student Handbook along with other student clubs;
- participate in student club fairs to attract new members;
- have access to a faculty or staff advisor;
- take club field trips;
- utilize the LHS public address system and bulletin boards for announcements;
- and
- participate in fund raising activities and have access to District funding made available to student clubs.

61. In approximately October 2008, the Defendants, acting under their Policies and practice, denied a request by a student for official recognition and benefits for the Bible Club based on the belief that granting official recognition and benefits to the Club would violate the Establishment Clause of the First Amendment due to the Club's religious nature.

62. During the week of January 19, 2009, Plaintiff, pursuant to his sincerely held religious beliefs, submitted a request to the District asking that the Bible Club be granted official club status at LHS.

63. Defendants, acting pursuant to their Policies and practice, denied Plaintiff's request, again based on the belief that granting official recognition and benefits to the Bible Club would violate the Establishment Clause of the First Amendment due to the Club's religious nature.

64. Defendants have denied, and continue to deny, Plaintiff the right to official recognition of the Bible Club at LHS, as well as all of the attendant rights, privileges, and benefits equal to all other non-curriculum related clubs.

65. Defendants have not afforded Plaintiff and his Bible Club such equal recognition, rights, benefits, and privileges due to the religious nature and speech of the Club.



66. Instead of giving Plaintiff and his Bible Club a classroom immediately and allowing them to begin meeting after school like other LHS student clubs, the Defendants have instead denied official recognition to the Club and treated Plaintiff and his fellow members as outsiders, forcing them to apply for facility access as a community organization.

67. The Defendants gave Plaintiff a community group facility use application form when they denied his request for official recognition of the Bible Club during the week of January 19, 2009. A true and correct copy of the application form is attached as Exhibit 1.

68. The Defendants did not provide a copy of this form when it first denied the Bible Club official recognition in October, 2008.

69. Upon information and belief, other non-curriculum clubs are not required to request access pursuant to this community group facility use application.

### **ALLEGATIONS OF LAW**

70. All of the acts of Defendants, their officers, agents, employees, and servants were executed and are continuing to be executed by the Defendants under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of the State of New York.

71. Plaintiff is suffering irreparable harm from the conduct of Defendants by being prohibited from speaking on the same terms as other LHS student clubs and their members.

72. Plaintiff has no adequate or speedy remedy at law to correct or redress the deprivation of her rights by Defendants.

73. Unless the conduct of Defendants is enjoined, Plaintiff will continue to suffer irreparable injury.

## **FIRST CAUSE OF ACTION: VIOLATION OF THE EQUAL ACCESS ACT**

74. Plaintiff re-alleges and incorporates herein, as though fully set forth, all previous paragraphs of this Complaint.

75. LHS is a public secondary school under New York law, located in Lindenhurst, New York.

76. The school district and LHS receive federal financial assistance.

77. Defendants have created a “limited open forum” at LHS within the meaning of the Equal Access Act, Title 20 U.S.C. § 4071, *et seq.*, by permitting one or more non-curriculum related student groups to meet on school premises during non-instructional time.

78. Such clubs include a Gay-Straight Alliance, Key Club, Chess Club, Fishing Club, and Ski Club, among others.

79. These other clubs address issues such as promoting respect and dignity for students at LHS; premarital sex, including homosexuality; community service; and leadership, just to name a few.

80. The Bible Club has voluntary membership.

81. The Bible Club is open to any student at LHS.

82. The Bible Club desires to assemble on the campus of LHS during non-instructional time for the purpose of Club meetings, exchange of ideas and information, and discussion of issues, from a religious perspective, that are significant to them.

83. Such issues include, among others, those related to serving others in the school and community; leadership; peer pressure; premarital sex, including homosexual behavior; and respecting others.

84. The Bible Club’s activities are voluntary, student-initiated, and student-directed.

85. Plaintiff does not desire school officials to lead, direct, plan, sponsor, or otherwise control the content or direction of the Bible Club's meetings.

86. Non-LHS students will not direct, conduct, plan, control, or attend Bible Club meetings during non-instructional time on school premises.

87. The Bible Club's activities on campus will not materially and substantially interfere with the orderly conduct of educational activity within LHS.

88. Defendants have denied a fair opportunity, have discriminated against, and have denied Plaintiff equal access to all school facilities, benefits, and privileges, because of the religious content of the speech and association at Bible Club meetings.

89. Defendants' conduct cannot be justified by a compelling governmental interest, nor is it narrowly tailored to advance any such interest.

90. Defendants have accordingly abridged and continue to violate the rights of Plaintiff under the Equal Access Act, 20 U.S.C. §§ 4071-4074.

WHEREFORE, Plaintiff respectfully asks that the Court grant the declaratory and injunctive relief set forth in the prayer for relief.

### **SECOND CAUSE OF ACTION: VIOLATION OF THE FREE SPEECH CLAUSE**

91. Plaintiff re-alleges and incorporates herein, as though fully set forth, paragraphs 1-73 of this Complaint.

92. Defendants have, by Policy and practice, created an open forum by permitting the formation of student clubs at LHS.

93. Defendants' Policies and practice prohibit the equal treatment of Plaintiff's Club sponsored by religious students and containing religious speech in this forum.

94. Defendants are prohibiting Plaintiff's religious speech despite the fact that he desires to address the same or similar issues currently being addressed by other student clubs, including issues related to serving others in the school and community; leadership; peer pressure; premarital sex, including homosexual behavior; and respecting others, just to name a few.

95. The unequal treatment of Plaintiff's Club containing religious speech or activities is a content-based restriction in an otherwise open forum.

96. Defendants' denial of Plaintiff's religious speech while permitting other secular speech also constitutes viewpoint discrimination.

97. Such viewpoint discrimination is unconstitutional in any type of forum.

98. The Free Speech Clause also recognizes and protects the right to association.

99. Plaintiff's Bible Club is an expressive association that desires to advocate its Christian message and viewpoints at LHS.

100. Defendants violate Plaintiff's Club's right to association by denying them status as an officially recognized student club, and all the rights, privileges, and benefits attendant thereto, based solely on the Club's intended religious speech, ideologies, philosophies, and beliefs.

101. Defendants' Policies and practice impose an unconstitutional prior restraint because they vest District officials with the unbridled discretion to permit or refuse protected speech equal access to the forum.

102. If Defendants claim they have no written policies relating to official recognition of student clubs, their practices amount to a Policy.

103. Moreover, if Defendants possess no specific written policies to guide their actions as to official recognition of student clubs, this too amounts to an unconstitutional prior restraint.

104. Defendants' lack of specific written policies permit District officials to exercise unbridled discretion in permitting or refusing protected speech on the basis of the religious content or viewpoint of a student club's proposed speech.

105. Defendants' Policies and practice are overbroad because they sweep within their ambit protected First Amendment rights in the form of religious speech.

106. The overbreadth of Defendants' Policies and practice chills protected speech by discouraging individuals and groups from applying for recognition in the forum for purposes of engaging in certain protected speech.

107. Defendants' Policies and practice chill, deter, and restrict Plaintiff from using District facilities on an equal basis with others and from discussing issues from a religious perspective.

108. Defendants have interpreted and applied the Policies to disqualify Plaintiff from accessing equally all facilities under their control and otherwise open to student groups, solely because of the religious nature of Plaintiff's activities and the religious content and viewpoint of the Bible Club's speech.

109. Defendant's Policies, as interpreted and applied by them to prohibit equal use as requested by Plaintiff, are not the least restrictive means necessary to serve any compelling interest which Defendants seek thereby to secure.

110. Defendants' Policies and practice accordingly violate Plaintiff's right to Free Speech as guaranteed by the First Amendment to the United States Constitution as incorporated and applied to state action under the Fourteenth Amendment.

WHEREFORE, Plaintiff respectfully asks that the Court grant the declaratory and injunctive relief set forth in the prayer for relief.

### **THIRD CAUSE OF ACTION: VIOLATION OF THE EQUAL PROTECTION CLAUSE**

111. Plaintiff re-alleges and incorporates herein, as though fully set forth, paragraphs 1-73 of this Complaint.

112. The Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly situated persons equally.

113. Defendants have opened the forum by permitting the formation of other student clubs and must allow Plaintiff's Bible Club equal access to this forum.

114. Defendants, however, have denied Plaintiff's Bible Club equal access to all school facilities, benefits, and privileges.

115. By discriminating against the content and viewpoint of Plaintiff's speech, Defendants are treating Plaintiff and Plaintiff's Club differently from other similar situated public school students and student clubs on the basis of the religious content and viewpoint of Plaintiff's speech.

116. Defendants' Policies and practice violate various fundamental rights of Plaintiff, such as rights of free speech, equal protection, and free exercise.

117. Defendants lack a rational or compelling state interest for such disparate treatment of Plaintiff.

118. Defendants' denial of access to Plaintiff is not narrowly tailored.

119. The conduct of Defendants accordingly violates Plaintiff's right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully asks that the Court grant the declaratory and injunctive relief set forth in the prayer for relief.

#### **FOURTH CAUSE OF ACTION: VIOLATION OF THE DUE PROCESS CLAUSE**

120. Plaintiff re-alleges and incorporates herein, as though fully set forth, paragraphs 1-73 of this Complaint.

121. Plaintiff sought, and continues to seek, equal access to all benefits and privileges provided to other clubs.

122. Further, Plaintiff's Club satisfies the Policies' criteria for club recognition, whether labeled by Defendants as a non-curriculum or co-curriculum student club.

123. Despite satisfying Plaintiff's Policies, Defendants' Policies and practice have been written and applied to prohibit equal recognition of the Bible Club based on its religious speech.

124. Defendants' Policies and practice are vague and allow for unbridled discretion in determining which student clubs do and do not satisfy club criteria and thus qualify for official club status.

125. Defendants' Policies grant unbridled discretion in that they lack any definitions or guidelines as to how to determine whether a student club satisfies club criteria and thereby qualifies for official club status.

126. Defendants' Policies and practice accordingly violate Plaintiff's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays that the Court grant the declaratory and injunctive relief set forth hereinafter in the prayer for relief.

#### **FIFTH CAUSE OF ACTION: VIOLATION OF THE FREE EXERCISE OF RELIGION CLAUSE**

127. Plaintiff re-alleges and incorporates herein, as though fully set forth, paragraphs 1-73 of this Complaint.

128. Plaintiff desires to engage in expressive activities on the basis of sincerely held religious beliefs and to share his beliefs with others.

129. Defendants' Policies and practice substantially burden Plaintiff's free exercise of religion by conditioning receipt of government benefits on foregoing his free exercise rights.

130. Defendants' Policies and practice force Plaintiff to choose between engaging in religious speech and foregoing the governmental benefit of equal access to the Bible Club, or foregoing the free exercise of religion to receive the access.

131. Defendants Policies and practice substantially burden Plaintiff's free exercise of religion by denying him permission to access all facilities equally in order to meet with like-minded individuals to discuss religious topics and to spread his message.

132. Defendants' Policies and practice substantially burden Plaintiff's free exercise of religion by denying him the ability to, *inter alia*: (i) list his Club in the LHS Student Handbook; (ii) list his Club in the LHS yearbook; (iii) participate in student club fairs; (iv) take club field trips; (v) participate in fund raising activities and have access to District funding made available to clubs; (vi) have an advisor; and (vii) utilize the LHS public address system and bulletin boards for announcements.

133. Defendants' conduct constitutes the imposition of special disabilities on Plaintiff due to his religion and his intent to engage in religious expression through the Bible Club.

134. These special disabilities placed on Plaintiff are neither neutral nor of general applicability.

135. Defendants' conduct cannot be justified by a compelling governmental interest and is not narrowly tailored to advance any such interest.



136. Defendants' interpretation and application of their Policies chill Plaintiff's freedom of religious discussion and exercise, both of which are fundamental rights guaranteed Plaintiff by the First Amendment.

137. Defendants' conduct constitutes an excessive burden on Plaintiff's rights to freedom in the exercise of religion and has violated the Free Exercise Clause of the First Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully asks that the Court grant the declaratory and injunctive relief set forth in the prayer for relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays for judgement as follows:

- a. That this Court issue a Preliminary and Permanent Injunction, restraining Defendants, their officers, agents, employees, and all other persons acting in active concert with them from enforcing the Policies that prohibit the Bible Club from official recognition and from receiving equal access to all club benefits and privileges, thereby requiring Defendants to grant the Bible Club official recognition and equal access;
- b. That this Court render a Declaratory Judgment declaring the District's Policies and practices that prohibit Plaintiff and other Club members from official recognition, and receiving equal access to all club rights, benefits, and privileges, to be unconstitutional on their face and as-applied;
- c. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment;

- d. That this Court retain jurisdiction of this matter for the purpose of enforcing any orders;
- e. That the Court award Plaintiff the costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 42 U.S.C. §§ 1988 and the Equal Access Act;
- f. That this Court award nominal damages for the violation of Plaintiff's constitutional rights;
- g. That this Court issue the requested injunctive relief without a condition of bond or other security being required of Plaintiff; and
- h. That the Court grant such other and further relief as the Court deems equitable and just in the circumstances.

Respectfully submitted this 30<sup>th</sup> day of January, 2009.

By: 

DAVID A. CORTMAN\*  
*Lead Counsel*  
GA Bar No. 188810  
JOSHUA B. BOLINGER\*  
GA Bar No. 316403  
ALLIANCE DEFENSE FUND  
1000 Hurricane Shoals Road, NE  
Building D, Suite 600  
Lawrenceville, GA 30043  
Telephone: (770) 339-0774  
Facsimile: (770) 339-6744  
dcortman@telladf.org  
jbolinger@telladf.org

CHARLES E. HOLSTER III  
*Local Counsel*  
CH-0790  
100 East Old Country Road  
Mineola, New York 11501  
Telephone: (516) 747-2330  
Facsimile: (516) 877-0476  
ceh3rd@optonline.net

BENJAMIN W. BULL\*  
AZ Bar No.009940  
ALLIANCE DEFENSE FUND  
15100 N. 90<sup>th</sup> St.  
Scottsdale, AZ 85260  
Telephone: (480) 444-0020  
Facsimile: (480) 444-0028

*Attorneys for Plaintiff A.Q.*

\* Application for admission *pro hac vice* forthcoming

**VERIFICATION**

I, A.Q., a citizen of the United States and a resident of the State of New York, have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 29<sup>th</sup> day of January, 2009 in Lindenhurst, New York.

AQ

A.Q.