

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

V.O., a minor by and through her next friend,)
M.O.,) Case No. _____
)
Plaintiff,)
)
v.) VERIFIED COMPLAINT FOR
) INJUNCTIVE AND DECLARATORY
UNION SCHOOL DISTRICT NO. 3;) RELIEF
)
WILLIAM LEE SEASE, in his individual capacity)
and in his official capacity as Superintendent of) Civil Rights Action (42 U.S.C. § 1983)
Union School District No. 3; and WILLIAM D.)
LAWSON, in his individual capacity and in his)
official capacity as Principal of Middlebury Union)
High School,)
)
Defendants.)

COMES NOW the Plaintiff, V.O., by and through her next friend, M.O.¹, pursuant to the Federal Rules of Civil Procedure and for her 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 V.O., a student at Middlebury Union High School ("MUHS"), located in Middlebury, Vermont.

¹Pursuant to Section (I)(1) of the Court's Administrative Procedures for Electronic Case Filing (addressing privacy concerns created by Internet access to Court documents), V.O. is identified by her initials, rather than her full name, in order to maintain private her identity. For this reason also, V.O.'s parent's name is herein indicated only by her initials.

2. Plaintiff brings this suit for the reason that her Youth Alive Club has been denied rights, privileges, and benefits equal to those received by other student clubs officially recognized at MUHS. (See Defendants' denial letter, attached hereto as Exhibit A.)

3. Defendant School District 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 MUHS are granted certain benefits and privileges.

5. Plaintiff's Youth Alive 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. Moreover, the District has officially recognized student clubs such as the Gay/Straight Organization ("GAIGHT"), the Arabic Club, the Outing Club, and the Student Coalition on Human Rights ("SCOHR").

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

8. Plaintiff brings this action (i) to enjoin Defendants from violating her constitutional and statutory rights, as well as the rights of others interested in the Youth Alive Club, and (ii) to order Defendants to grant official club status to Plaintiff's Youth Alive Club, with all of the accompanying rights, benefits, and privileges equal to other officially recognized student clubs at MUHS.

JURISDICTION AND VENUE

9. 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.

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

11. 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.

12. 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.

13. Venue is proper under 28 U.S.C. § 1391 in the United States District Court for the District of Vermont 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

14. Plaintiff V.O., a minor, is a resident of Shoreham, Vermont, and a student at MUHS.

15. V.O. is a professing Christian.

16. Pursuant to her sincerely held religious beliefs, V.O. desires to meet with other students through the Youth Alive Club at her school.

17. In accordance with her sincerely held religious beliefs, V.O., as an officer of the Club, desires to share her Christian faith with fellow students at MUHS through Youth Alive Club activities.

18. V.O. desires to worship, pray, study the Bible, and enjoy fellowship together with other students at Youth Alive Club meetings at MUHS.

19. At the Club meetings, V.O. desires to discuss issues facing students, including those related to faith and religion; service to others; premarital sex, including homosexuality; human rights issues, including the intrinsic value of human life; bullying and taunting; and promoting respect and dignity for all students at MUHS, just to name a few.

20. M.O., next friend, is V.O.'s parent and guardian, and at all times relevant to this Complaint, is a resident of Shoreham, Vermont.

IDENTIFICATION OF THE DEFENDANTS

21. Defendant Union School District No. 3 (the "District") is a body politic and corporate with the powers incident to a municipal corporation.

22. The District may sue and be sued in its corporate name.

23. The District is organized under the laws of the State of Vermont.

24. The District is charged with the administration and operation of MUHS.

25. The District is responsible for the enactment, enforcement, and existence of policies and practices related to the formation and organization of student clubs at MUHS.

26. The District 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 MUHS.

27. The District is responsible for denying official club status to Plaintiff's Youth Alive Club, as well as the rights, benefits, and privileges attendant to official club status, pursuant to its policy and practice, through implementation by its Legal Counsel and otherwise.

28. The District is likewise responsible for the implementation and application by the Superintendent and Principal of its policies and practices pertaining to student clubs.

29. The District is similarly responsible for delegating to the Superintendent and Principal final authority as to the official recognition of student clubs.

30. Defendant William Lee Sease is the Superintendent of the District's public schools, including MUHS.

31. Defendant Sease possesses responsibility, final authority, and discretion, as delegated by the District, as to administration of District policies as they relate to student activities on campus.

32. Defendant Sease possesses responsibility, final authority, and discretion, as delegated by the District, as to administration of District policies related to the establishment of student clubs and to the benefits said clubs receive.

33. In this capacity, Defendant Sease possesses final supervisory responsibility over the Principal of MUHS.

34. Defendant Sease is responsible for the Policies and practice leading to the denial of equal benefits to the Youth Alive Club.

35. Defendant Sease is also responsible for the denial of equal benefits to the Youth Alive Club.

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

37. Defendant William D. Lawson is the Principal of MUHS.

38. Defendant Lawson is charged with the administration of MUHS, including District-delegated responsibility, authority, and discretion as to enforcement of District policies relating to student clubs.

39. Defendant Lawson is responsible for the Policies and practice leading to the denial of equal benefits to the Youth Alive Club.

40. Defendant Lawson is also responsible for denying equal benefits to the Youth Alive Club.

41. Defendant Lawson is sued both in his individual capacity and in his official capacity as Principal of MUHS.

42. Defendant Lawson made the decision to deny official recognition to Plaintiff's Youth Alive Club pursuant to the Policy and practice implementation and direction of the District, and through its Legal Counsel.

43. This decision by Defendant Lawson to deny official recognition to Plaintiff's Club was made at the direction of the Superintendent and of the District.

ALLEGATIONS OF FACTS

44. MUHS is a public high school located in Middlebury, Vermont.

45. MUHS is under the direction of the District.

46. MUHS includes grades 9 through 12.

47. MUHS constitutes a secondary school under Vermont law.

48. Upon information and belief, MUHS and the District receive federal financial assistance.

49. The District, acting through Defendants Sease and Lawson, as Superintendent and Principal, respectively, grant official club status to non-curriculum related student clubs.

50. The District, acting through Defendants Sease and Lawson, allow said clubs to meet on school premises at MUHS during non-instructional time.

51. Non-curriculum related clubs currently recognized by the District include, among others, the Gay/Straight Organization ("GAIGHT"), the Outing Club, the Arabic Club, and the Student Coalition on Human Rights ("SCOHR").

52. These clubs address issues involving, among others, promoting respect and dignity for students at MUHS; community service; premarital sex, including homosexuality; raising awareness of human rights issues; and bullying and taunting.

53. Participation in such clubs is not required by school faculty in connection with curriculum course work.

54. Participation in such clubs is not directly encouraged by school faculty in connection with curriculum course work.

55. Defendants, pursuant to their Policies and practice, permit officially recognized non-curriculum related clubs to conduct meetings during non-instructional time on campus.

56. Defendants, pursuant to their Policies and practice, permit officially recognized non-curriculum related clubs to list their club in the MUHS yearbook with an accompanying photo.

57. Defendants, pursuant to their Policies and practice, permit officially recognized non-curriculum related clubs to have their club listed on the MUHS website and in the MUHS Student/Parent Handbook along with other clubs.

58. Defendants, pursuant to their Policies and practice, permit officially recognized non-curriculum clubs to have access to an advisor.

59. Defendants, pursuant to their Policies and practice, permit officially recognized non-curriculum related clubs to receive access to District resources, including, among others, equipment, supplies, and club funding.

60. In July of this year, Plaintiff, pursuant to her sincerely held religious beliefs, submitted a written request to the District asking that the Youth Alive Club be granted official club status at MUHS.

61. Defendants, acting pursuant to their Policies and practice, denied Plaintiff's request based on the belief that granting official club status to Plaintiff's Club would violate the Establishment Clause of the First Amendment due to the Club's religious nature. (See Exhibit A.)

62. Upon information and belief, Defendants have, in previous years, denied similar requests by the Youth Alive Club for official recognition due to the religious nature of the Club.

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

64. Defendants have not afforded Plaintiff and her Youth Alive Club such equal recognition, rights, benefits, and privileges due to the religious nature and speech of the Club.

ALLEGATIONS OF LAW

65. 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 Vermont.

66. Plaintiff is suffering irreparable harm from the conduct of Defendants.

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

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

FIRST CAUSE OF ACTION: VIOLATION OF THE EQUAL ACCESS ACT

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

70. MUHS is a public secondary school under Vermont law, located in Middlebury, Vermont.

71. The District and MUHS receive federal financial assistance.

72. Defendants have created a "limited open forum" at MUHS 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.

73. Such clubs include the Gay/Straight Organization ("GAIGHT"), the Arabic Club, the Outing Club, and the Student Coalition on Human Rights ("SCOHR").

74. These clubs address issues involving promoting respect and dignity for students at MUHS; community service; premarital sex, including homosexuality; raising awareness of human rights issues; and bullying and taunting, among others.

75. The Youth Alive Club has voluntary membership.

76. The Youth Alive Club is open to any student at MUHS.

77. The Youth Alive Club desires to assemble on the campus of MUHS 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.

78. Such issues include, among others, those related to faith and religion; service to others; premarital sex, including homosexuality; human rights issues, including the intrinsic value of human life; bullying and taunting; and promoting respect and dignity for all students at MUHS.

79. The Youth Alive Club's activities are voluntary, student-initiated, and student-directed.

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

81. Non-MUHS students do not direct, conduct, plan, control, or attend Youth Alive Club meetings during non-instructional time on school premises.

82. The Youth Alive Club's activities on campus do not materially and substantially interfere with the orderly conduct of educational activity within MUHS.

83. 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 Youth Alive Club meetings.

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

85. 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 prays that the Court grant the declaratory and injunctive relief set forth hereinafter in the prayer for relief.

SECOND CAUSE OF ACTION: VIOLATION OF THE FREE SPEECH CLAUSE

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

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

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

89. Defendants are prohibiting Plaintiff's speech despite the fact that she desires to address the same or similar issues currently being addressed by other student clubs, including issues related to faith and religion; service to others; premarital sex, including homosexuality; human rights issues, including the intrinsic value of human life; bullying and taunting; and promoting respect and dignity for all students at MUHS, just to name a few.

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

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

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

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

94. Plaintiff's Youth Alive Club is an expressive association that desires to advocate its Christian message and viewpoints at MUHS.

95. 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.

96. 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.

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

98. 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.

99. 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 and/or viewpoint of a student club's proposed speech.

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

101. 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.

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

103. 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 Youth Alive Club's speech.

104. 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.

105. 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 prays that the Court grant the declaratory and injunctive relief set forth hereinafter in the prayer for relief.

THIRD CAUSE OF ACTION: VIOLATION OF THE EQUAL PROTECTION CLAUSE

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

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

108. Defendants have opened the forum to Plaintiff's Youth Alive Club by permitting the formation of other student clubs.

109. Defendants, however, have denied Plaintiff's Youth Alive Club equal access to all school facilities, benefits, and privileges.

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

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

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

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

114. 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 prays that the Court grant the declaratory and injunctive relief set forth hereinafter in the prayer for relief.

FOURTH CAUSE OF ACTION: VIOLATION OF THE DUE PROCESS CLAUSE

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

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

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

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

119. 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.

120. Defendants' Policies are vague in that they fail to define "co-curricular" or otherwise indicate in what circumstances a student club is deemed sufficiently related to the curriculum so as to be eligible for official club status.

121. 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.

122. 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**

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

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

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

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

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

128. Defendants' Policies and practice substantially burden Plaintiff's free exercise of religion by denying her the ability to list the Club in the MUHS yearbook with an accompanying photo, to have the Club listed on the MUHS website and in the MUHS Student/Parent Handbook along with other student clubs, and to receive access to District resources, including, among others, equipment, supplies, and club funding.

129. Defendants' conduct constitutes the imposition of special disabilities on Plaintiff due to her religion and her intent to engage in religious expression through the Youth Alive Club.

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

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

132. 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.

133. 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 prays that the Court grant the declaratory and injunctive relief set forth hereinafter 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 Youth Alive Club from official recognition and from receiving equal access to all club benefits and privileges, thereby requiring Defendants to grant the Youth Alive Club official recognition and equal access;
- b. That this Court render a Declaratory Judgment declaring as unconstitutional facially and as-applied 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;
- 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's 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 of one dollar 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 11th day of October, 2007.

By: 

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* Application for admission *pro hac vice* submitted concurrently with this Complaint

EXHIBIT A



Middlebury Union High School

WILLIAM D. LAWSON
Principal

CATHERINE D. DIEMAN
Assistant Principal

SEAN M. FARRELL
Activities Director

August 21, 2007

[REDACTED]
Youth Alive [REDACTED]
Middlebury Union High School

Re: Youth Alive's Petition for Middlebury Union High School Co-Curricular Club Status

Dear [REDACTED]:

Please be assured that Middlebury Union High School has given full consideration to Youth Alive's petition for co-curricular club status. Regretfully, the School must respectfully deny the request.

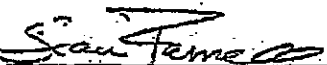
Even assuming, for present purposes, that Youth Alive could be deemed accurately as "co-curricular," such club status would mean that Youth Alive's activities would become school-sponsored with monetary support and an advisor assigned. Under the law, any such sponsorship by the School would violate the Establishment Clause of the First Amendment.

On the other hand, MUHS has for some years now acknowledged and complied with the Equal Access Act by providing Youth Alive with space, supervision, non-curricular time, space for appropriate posters, etc., and the School is still committed to continue this legally-appropriate forum for your club. We wish Youth Alive a successful 2007-2008 school year.

Thank you for your group's request, as well as the supporting materials provided. Please get back to one of us with any questions.

Sincerely,


William Lawson, Principal


Sean Farrell, Activities Director

Cc: Wm. Lee Sease, Superintendent
[REDACTED]