

What School Boards Should Know Before Attempting to Circumvent
the Rights of High School Students to Organize Gay-Straight
Alliances Under the Auspices of the Equal Access Act

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Abstract

School Boards desiring to avoid the requirements of the Equal Access Act (EAA) to prevent students from organizing Gay-Straight Alliance (GSA) clubs within their schools may have difficulty doing so. However, legal experts have recently purported ways to accomplish this task in order to avoid the problems that may arise when students attempt to establish such clubs. This article offers a brief understanding of the issue, and examines examples asserted by legal experts to evade the rights of high school students to organize GSA clubs under the EAA and the problems that may be encountered if applied. The information presented in this article is provided not to promote nor hinder school boards from accepting or rejecting GSA club applications, but to assist school boards in making informed choices when contemplating such decisions.

Introduction

Historically, many of the most difficult conflicts arising out of education have ensued between the individual rights of students and the governmental objectives of the educational institution (Imber & Van Geel, 2001). Due to the need for school leaders to carry out the governmental objectives in their charge, and a student's special status as a minor, the law generally bestows on them larger latitude over the child than society exercises over adults. Yet, in all functions relating to public education, the law demands that the constitutional rights of students to free speech be protected (*Tinker v. Des Moines Independent Community School District*, 1969). The landmark Supreme Court decision in *Tinker* (1969) ushered in a new epoch regarding the rights of school children. The 1969 *Tinker* decision altered the previous judicial landscape that attendance at public schools is a privilege and not a right (Alexander & Alexander, 2005). Presently, the Supreme Court continues to hold

that government officials must refrain from regulating speech when the motivating principle, opinion, or perspective of the speaker is the rationale for the restriction (Good News Club v. Milford Central School, 2001 & Rosenberger v. Rector and Visitors of University of Virginia, 1995).

Passed by Congress and signed into law by President Reagan in 1984, the Equal Access Act (EAA) was established out of concerns that federal courts were prohibiting public secondary schools from allowing religious clubs to meet on school property. Prior to the EAA, student clubs incorporating a religious message were generally denied access on the basis that their presence would violate the Establishment Clause within the First Amendment to the Constitution (Brandon v. Board of Education of Guilderland, 1980; Lubbock Civil Liberties Union v. Lubbock Independent School District, 1982). The EAA (U.S.C. Title 20, Chapter 52 Subchapter VIII, §4071 et seq. (2009)) stipulates, in part, that school boards: cannot deny equal access to their facilities based on religious, political, or philosophical reasons (§4071(a)); create a limited open forum when they permit one or more non-curriculum related student groups to meet during non-instructional time (§4071(b)); must provide a fair opportunity to students who wish to voluntarily establish a student-initiated club that does not significantly interfere with the educational activities within the school and is free from school sponsorship, so long as nonschool persons do not direct, conduct, control, or regularly attend club meetings (§4071(c)); and cannot influence club activities, compel school personnel to attend a club activities, sanction meetings that are otherwise unlawful, establish club size limitations, expend public funds beyond incidental costs, or abridging student rights of freedom of speech, association, and religion (§4071(d)). However, the EAA also stipulates that school boards cannot lose their federal financial assistance for non-compliance of the Act (§4071(e)) and may retain authority in order to maintain order and discipline so as to protect the well-being of students and faculty (§4071(f)).

In 1990, the EAA came before the Supreme Court to determine whether or not the law violated the Establishment Clause (Board of Education of the Westside Community Schools v. Mergens, 1990). The Court, in an 8-1 decision (J. Stevens dissenting),

concluded that the school district's denial of the club violated the EAA. Justice O'Connor asserted, in the Court's opinion that the EAA did not abridge the Establishment Clause (p. 253). While *Mergens* (1990) settled the question of whether or not religious clubs could meet on campus, school leaders were soon faced with students desiring to establish clubs they found objectionable on moral and ethical grounds. Commencing in 1998, students started to sue their school districts in federal court, claiming that school personnel were violating the EAA by denying them the right to establish Gay Straight Alliance (GSA) clubs (*East High Gay/Straight Alliance v. Board of Education*, 1998).

Although the Supreme Court has yet to hear a case involving whether or not GSA clubs are covered under the EAA, 9 out of 11 federal courts between 1998 and 2009 declared that GSA clubs were protected under the EAA. One of the 11 federal courts concluded that the GSA club was permitted to exist on school property under constitutional grounds (*East High School Prism Club v. Seidel*, 2000). Only one federal court, to date, (*Caudillo v. Lubbock Independent School District*, 2004) has ruled that the school board's denial of the respective GSA club did not violate the EAA (*Crossley*, 2010).

Recently, school boards have "...become increasingly clever in creating their ...policies in ways that avoid triggering the EAA" (*Woods*, 2008, pp. 282-283). However, such approaches are fraught with shortcomings. Recent research on the issue of barring GSA clubs from school property has revealed that several tactics have been proposed by legal experts in an attempt to evade the EAA (*Crossley*, 2010).

Incorporating the Tenets of GSA Clubs into the Curriculum

According to Berkley (2004), a school board can avoid the EAA altogether if they incorporate the tenets of the GSA club within the school district's curriculum. While Berkley has stated that "this approach may be the best option for schools faced with a tough decision" (p. 1851), the idea of incorporating discussions of acceptance toward homosexuality within the school curriculum may backfire, inciting community outrage to the point of litigation. In *Citizens for a Responsible Curriculum (CRC) v. Montgomery County Public Schools* (2005), the CRC filed suit in a Maryland federal court against

the school system for revising and distributing curriculum materials that included issues surrounding homosexuality. The CRC opposed Montgomery County Public School's revised curriculum based on the grounds that their viewpoint, that homosexuality is immoral, was ignored when revising the curriculum. The respective federal court determined that "...be it right, wrong, discriminatory, or just, is of no consequence" (p. 36). The court's opinion was that the rights of the CRC cannot be restricted because they "...voice an unpopular viewpoint" (p. 37). Although school boards may limit "student groups that can use school facilities to only those that are curriculum-related, ...the dividing line between what is curriculum-related and what is non-curriculum-related is difficult to discern" (Mawdsley, 2001, p. 33).

In addition to the possibility of facing community outrage, school boards that desire to incorporate GSA club topics into a school district's curriculum, for the sole purpose of evading the EAA must be able to "...prove more than just a broad connection between subject matter taught in class and a club" (Pratt, 2007, p.389). Consistent with Congressional intent when enacting the EAA, the Mergens (1990) case prescribed in detail what constitutes a curriculum-related club. Justice O'Connor, in providing the Court's opinion in Mergens, stated that:

a student group directly relates to a school's curriculum if the subject matter of the group is actually taught, or will soon be taught, in a regularly offered course; if the subject matter of the group concerns the body of courses as a whole; if participation in the group is required for a particular course; or if participation in the group results in academic credit (pp. 239-240).

Although Berkley (2004) has stated that "by teaching tolerance and acceptance, school boards will be able to argue that GSA clubs are curriculum-related, thereby evading EAA protection" (p. 1898), meeting the standard laid out in Mergens for curriculum-relatedness would compel the school board to revise their existing curriculum materials to directly include issues surrounding sexual orientation and gender identity. It would not appear plausible for a school curriculum to include discussions of teaching tolerance and acceptance without

addressing such issues directly. School boards addressing these topics would probably invite a lawsuit from opponents similar to the litigants in *Citizens for a Responsible Curriculum (CRC) v. Montgomery County Public Schools* (2005).

Finally it must also be mentioned that although Berkley's (2004) article: *Making Gay Straight Alliance Student Groups Curriculum-Related: A New Tactic for Schools Trying To Avoid the Equal Access Act* makes a good argument for school boards to avoid the EAA, it failed to discuss the *East High School Prism Club v. Seidel* (2000) case. In *Seidel*, students desiring to organize a GSA club on school property faced a school board that was so adamant in preventing the GSA in question from forming, the school board evaded the EAA by denying all non-curriculum clubs on school property.

As a direct response to this decision, the students formed a curriculum-related club. The club's premise was to broaden and augment the school's American history and government classes currently being taught. The club, called PRISM, desired to cover the following topics: "democracy, civil rights, equality, discrimination and diversity" (*East High School Prism Club v. Seidel*, 2000, p. 1242). All the aforementioned topics were already being taught at East High School. The goal of the club was two-fold: to enable students to "gain hands-on experience in applying the concepts and skills taught in those courses" (p. 1243); and to "...serve as a prism through which historical and current events, institutions and culture can be viewed in terms of the impact, experience and contributions of gays and lesbians" (p. 1242).

Following the school board's denial of the club, the students filed suit in federal court claiming that their First Amendment rights were violated and that the school was partaking in the act of viewpoint discrimination by denying them the right to exist. While the district court recognized the school administrators' argument that their "...power is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults... the district court stated that their affirmation of this point does not abdicate students' rights within the schoolhouse" (p. 1244). The court found in favor of the students, thwarting the school boards

intent. While Berkley (2004) asserted that making the tenets of a GSA club curriculum-related in order to evade the EAA, he failed to consider the improbability of accomplishing this task and the possibility of students creating curriculum-related clubs that incorporate the tenets of GSA clubs and the right for them to exist under the Constitution.

Asserting that the Tenets of GSA Clubs are Offensive

According to Pratt (2007), the offensive speech tactic, as iterated in the Supreme Court case *Bethel School District No. 403 v. Fraser* (1986), may be "...the most potent defense a school board can use" to limit GSA club speech (p. 396). As set out in *Fraser* such limits can be imposed on certain speech found offensive within the parameters of the First Amendment. This maneuver, used several times by school boards in an attempt to evade the EAA is aligned with §4071(f) of the EAA. Section §4071(f), in part, affords school boards the right to restrict non-curriculum clubs in to maintain order, discipline, and to protect the well-being of students (U.S.C. Title 20, Chapter 52 Subchapter VIII, §4071 et seq., 2009). However, out of the 11 federal court cases litigated between 1998 and 2009, only the *Caudillo* (2004) case was successful in applying the offensive speech defense as iterated in §4071(f) of the EAA and validated by the *Fraser* decision (Crossley, 2010).

Following the success in *Caudillo*, school boards in *Gay-Straight Alliance of Okeechobee High School v. School Board of Okeechobee County* (2007), *Gonzalez v. School Board of Okeechobee County* (2008), and *Gay-Straight Alliance of Yulee High School v. School Board of Nassau County* (2009) attempted to do the same, but were unsuccessful. Unlike *Caudillo* (2004), the aforementioned court cases were unable to show a nexus between GSA club objectives and the need to maintain order, discipline, and to protect the well-being of students. It is important to note that *Caudillo* was the only case litigated that involved a GSA club that incorporated a website with links to sexually explicit material at a time when the district had an abstinence-only policy in force (Crossley, 2010).

Although Pratt (2007), has asserted that the "Supreme Court has held that [a] school must be able to set high standards for the student speech that is disseminated under its auspices

...and may refuse to disseminate student speech that does not meet those standards" (p. 393), the Supreme Court in *Tinker* (1969) asserted that absent a compelling reason to control student speech, "...students are entitled to freedom of expression of their views" (p. 511). In his dissenting opinion, in *Hazelwood v. Kuhlmeier* (1988), Supreme Court Justice Brennan stated that "...student speech in the non-curricular context is less likely to materially disrupt any legitimate pedagogical purpose" (p. 282). "Unlike school sponsored activities where schools have wide discretion to control speech, schools cannot regulate speech content in meetings that students attend voluntarily and while outside of instructional hours" (Riener, 2006, p. 625). As GSA clubs are non-curriculum related and operate outside of instructional hours, and their stated premise is to achieve a harmonious environment, promoting acceptance of individual differences (GLSEN, 2009), the success of preventing GSA clubs from organizing is unlikely.

Limiting Student Expression that May be Perceived to Bear the School Board's Imprimatur

Brownstein (2009) asserts that:

Waldmen (2008) is of the opinion that "when the student speech changes the permanent physical appearance of the school ...the student expression comes relatively close to functioning as the school's own speech..." (p. 113). Taken into consideration the aforementioned statements by Brownstein and Waldmen, one could conclude that it is their belief that school boards ought to be given extensive autonomy to restrict GSA club speech, even if such restriction is based on the school board's viewpoint.

A school board banning a GSA club by justifying that the allowance of the club, to make use of school equipment and facilities, such as the public address system, copiers, and classrooms, would be perceived as endorsing the club is inconsistent with judicial rulings (Pratt, 2007). This presumption was asserted in *Colin v. Orange Unified School District* (2000). The school board claimed that by allowing the use of its facilities by GSA club members, the board would be perceived as providing its imprimatur to the club. However, the federal court in this case rejected the school board's argument

in the same fashion as the Supreme Court iterated in *Mergens* (1990). Had the Supreme Court found in *Mergens* that the school board was sponsoring the religious club in question, the EAA would have been determined unconstitutional, as the Act would have been construed as violating the Establishment Clause. A "school that permits a student-initiated and student-led religious club to meet after school, just as it permits any other student group to do, does not convey a message of state approval or endorsement" (*Board of Education of the Westside Community Schools v. Mergens*, 1990, p. 252). Ingber (1995), interpreting *Mergens* (1990), has asserted that when student speech is extracurricular and outside the normal school day, the presumption of the school as imprimatur of a non-curriculum club, due to the allowance of school facilities, "...appears to have a significantly narrower meaning than it had in *Hazelwood*" (p. 471). Although in *Hazelwood v. Kuhlmeier* (1988), the Supreme Court stated that "educators do not offend the First Amendment by exercising control over student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns" (p. 273), GSA clubs like the club in *Mergens* do not convey a message of state endorsement because the clubs are not school sponsored. As of 2009, no school board since *Colin* (2000) has made such an argument to prevent a GSA club from organizing. As stipulated by Orman (2006), if the court in *Colin* "were to allow the School Board to deny recognition to the Gay-Straight Alliance, it would be guilty of the current evil of 'judicial activism,' ... it would be complicit in the discrimination against students who want to raise awareness about homophobia and discuss how to deal with harassment directed towards gay youth" (p. 234).

Imposing Parental Consent Policies

School boards, and in some circumstances state legislative bodies, have recently attempted to curtail the formation of GSA clubs within their jurisdiction by requiring parental consent prior to permitting a student to join all non-curriculum student-related clubs. Evans (2006) has asserted that a "...tactic in the fight against GSAs is enacting parental consent regulations" (p. 3). According to Evans such a requirement may provide parents "...the ability to prevent their children from becoming involved with dangerous or harmful organizations like

GSA's" (p.3). Haynes (2006) has asserted that when it comes to the legality of parental notification, "it's not illegal to put a chilling effect on kids..." when desiring to participate in GSA clubs (p.6B).

"Despite the morass of jurisprudence on the subject of parental authority, courts are generally skeptical of states using parental authority as a means of enacting speech restrictions" (Whittaker, 2009, p. 61). Vandewalker (2009) and Whittaker (2009) have noted that in the past few years the discourse regarding GSA clubs and their proliferation in public schools has not only caught the attention of school boards, but has reached many state legislative bodies. The State of Utah in 2007 enacted a law requiring parental consent for student participation in all curriculum and non-curriculum clubs (Utah Code Ann. § 53A-11-1210 (2009)). According to Whittaker (2009), this law was a direct attempt to curtail the activities of GSA clubs in the Utah public schools. Parental consent laws regarding student clubs on school grounds currently exist in Utah, Georgia, and, as of May 2010, Arizona. Such laws "...have been or are being considered in Virginia, Florida, Massachusetts, and Idaho" (Whittaker, 2009, p. 50). No doubt some supporters of parental consent policies would support such a measure; arguing that gay-positive student groups are harmful to children, homosexuality is immoral, and that GSA clubs may indoctrinate school children into a homosexual lifestyle. However Vandewalker (2009), relying on Constitutional principles, purports that mere suspicions regarding the aforementioned consequences cannot infringe upon students' expressive rights.

Lacking any known judicial challenge to parental consent laws or policies impeding the ability of students to organize GSA clubs, a parental consent requirement may afford parents the right to deny their child's desire to join a GSA club within their school, possibly resulting in schools avoiding the issue entirely. However, this maneuver is analogous to requiring club membership lists commencing in the 1950s (Vandewalker, 2009 & Whittaker, 2009). According to Whittaker (2009), parental consent laws like the laws in Utah and Georgia, compelling "...students to get their parent's consent to join a GSA is akin to [judicial cases] involving revealing a membership list" (p.

66). Whittaker, maintains that such membership lists, as in the cases of NAACP v. Alabama (1958); Buckley v. Valeo (1976); and Brown v. Socialist Workers '74 Campaign Committee (1982) "...will likely have a chilling effect on GSA clubs and as a result such action may violate the First Amendment" (p.60).

In addition to cases that have involved the creation and possibly the disclosing of membership lists, Doe v. Irwin (1980) may also inhibit school boards from establishing parental consent or notification policies. In Doe, a clinic was distributing contraceptive devices to minors without parental notice or consent. The federal appeals court concluded that by providing contraception information and services to minors without parental notice or consent did not violate the constitutional rights of the respective parents. As the activity of contraceptive distribution in Doe "imposed no compulsory requirements or prohibitions" to receive or refuse the services offered, the court concluded that the clinic did not violate parental right to consent or to be notified (p. 1168). Similar to the judicial decision in Doe, GSA clubs are not compulsory.

Although federal courts have espoused for over 80 years that parents possess liberty interest in the parenting of their children (Meyer v. Nebraska, 1923; Pierce v. Society of Sisters, 1925), the state's broad interest in a child's well being, at times, warrants the restriction of parental control. In Prince v. Massachusetts (1944) the Supreme Court acknowledged that a state's "authority is not nullified merely because the parent grounds his claim to control the child's course of conduct" (p. 166). Prince "...established that the state could limit the parents' ability to rear their child without violating the parents' constitutional rights" by compelling a school system to require parental consent prior to exposing students to certain material included in the school's curriculum (Levi, 2008, p. 767). In Brown v. Hot, Sexy & Safer Prods. (1995), the U.S. Court of Appeals for the First Circuit did not find that parents First Amendment protections were violated when the school sponsored a sex education program without seeking prior parent consent or offering an opt-out procedure. The appellate court determined that the program was not "conscience shocking" (p. 531) nor did it constitute "a significant governmental intrusion into ...parents' personal decisions as to rearing their

children" (p. 531). In 2008, *Parker v. Hurley*, an appellate court case equivalent to *Brown v. Hot, Sexy & Safer Prods.*, stated "that the constitutional right of parents to raise their children did not include the right to restrict what a public school could teach their children and that teachings which contradicted a parent's religious beliefs did not violate their First Amendment right[s]..." (p. 263).

Parental notification restrictions by school boards or legislative bodies, enacted due to animosity towards discussions of homosexual issues in public schools, may fail to overcome judicial analysis (Whittaker, 2009). Whittaker has stated that "the burden should be placed on state governments to prove that the law is required to pursue a compelling state interest..." as more states, localities, and school systems, put in place such restrictive requirements (p. 66). Whittaker has gone on to assert that although "...lawmakers provided little support for the Utah and Georgia parental consent laws beyond extreme and overt animus towards gay-friendly student groups, states will be hard pressed to provide justifications for the restrictions to overcome exacting scrutiny" (pp. 66-67).

In 1996, the Supreme Court in *Romer v. Evans* (1996) struck down a 1992 Colorado constitutional amendment prohibiting municipalities from enacting local ordinances protecting individuals from discrimination due to sexual orientation. The Court specifically stated, that "animus toward homosexuals lacks a rational relationship to legitimate state interests" (p. 632). In 2003, the Supreme Court in *Lawrence v. Texas* once again found no compelling state interest with a Texas law which restricted the rights of homosexuals to engage in sexual activity due, in part, to issues of morality. In light of *Romer v. Evans* and *Lawrence v. Texas*, the utilization of parental consent requirements due to animosity towards discussions of homosexual issues in public schools may prove to be futile.

Despite emerging parental consent or notification requirements to participate in GSA club activities, GSA clubs have been a mechanism that has helped in curtailing the harassment of students who are or perceived to be homosexual in American high schools (Whittaker, 2009). Such use of parental notification or consent requirements to inhibit the ability of

GSA clubs to exist in the public schools of the United States will most likely continue to be a topic for discourse among school boards, legislators, lawyers, and parents in the years to come. As stated by Ross (2000), "the appropriate relationship between government and parents in the education of children is an issue that has created recorded controversy since Plato advocated the communal rearing of children" (p. 177).

Closing Comments

Whether school boards are well-intended, ill-informed, or overtly homophobic, when considering circumventing the EAA, a review of existing judicial decisions and scholarly law reviews indicate that such actions may run afoul to the legal protections afforded students under the law (Crossley, 2010; DeMitchell & Fossey, 2008). DeMitchell and Fossey (2008), assert that "school authorities will best serve the basic aims of public education by granting gay and lesbian student groups the right of equal access to school premises in compliance with the EAA and the basic constitutional principal of the right of free speech" (p. 124). Although the rights of homosexual students can be viewed from a purely legal perspective, school boards should also consider the social needs of these students in order to promote "a system of public schools free and open to all" (Phi Delta Kappan, 2006, p. 54).

This article presented important implications for school boards when establishing school policies regarding GSA clubs. Since the first GSA was established over two decades ago, an increasing number of students are coming to terms with their homosexuality during their high school years (Savin-Williams, 2005). As a result, a proliferation of requests by students to establish GSA clubs has occurred, and is expected to continue (Kosciw & Diaz, 2006). In addition to the necessity of school boards to understand the potential legal ramifications of denying students the right to organize GSA clubs, the need for exploration regarding the benefits of GSA clubs cannot be understated. Educational research has shown that when GSA clubs are present in schools, homosexual students appear to have a better sense of belonging (Lee, 2002; Micelli 2005; & Russell, Muraco, Subramaniam & Laub, 2009). Goodenow, Szalacha and Westheimer (2006) assert that students and school faculty where

GSA clubs exist have reported that homosexual students not only flourish, but that there are lower rates of victimization and suicide attempts among the population. Until school boards fully understand all that is at stake when confronted with the decision to accept or deny GSA clubs, they will continue to struggle with establishing and implementing policies that uphold the values and convictions of the many without violating the legal rights of the few.

References

Alexander, K., & Alexander, M. D. (2005). American public school law (6th ed.). St. Paul MN: West Publishing Company.

Berkley, B. (2004). Making gay straight alliance student groups curriculum-related: A new tactic for schools trying to avoid the Equal Access Act. *Washington & Lee Law Review* 61, 1487-1901. Retrieved January 6, 2010 from LexisNexis Academic database.

Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986).

Board of Education of the Westside Community Schools v. Mergens, 496 U.S. 226 (1990).

Brandon v. Board of Education of Guilderland, 635 F. 2d 971 (2nd Cir. 1980).

Brown v. Hot, Sexy & Safer Prods., 68 F. 3d 525 (1st Cir. 1995).

Brown v. Socialist Workers '74 Campaign Committee, 459 U.S. 87 (1982).

Brownstein, A. (2009). The nonforum as a first amendment category: Bringing order out of the chaos of free speech cases involving school - sponsored activities. *UC Davis Law Review* 42, 717-824. Retrieved October 1, 2010 from LexisNexis Academic database.

Buckley v. Valeo, 424 U.S. 1 (1976).

Caudillo v. Lubbock Independent School District, 311 F. Supp. 2d 550 (2004).

Citizens for a Responsible Curriculum v. Montgomery County Public Schools, 2005 U.S. Dist. LEXIS 8130 (D. Md. 2005).

Colin v. Orange Unified School District, 83 F. Supp. 2d 1135 (C.D. Cal. 2000).

Crossley, D. S. (2010). The Equal Access Act: "Not the Access for All Students Except Gay Students Act": Federal Judicial Decisions and Their Implications for School Systems' Policies and Practices Regarding Student Requests to Establish Gay Straight Alliance Clubs in Public Schools (Doctoral dissertation), Virginia Polytechnic Institute and State University, 2010.

DeMitchell, T. A. & Fossey, R. (2008). Student speech: school boards, gay/straight alliances, and the Equal Access Act. Brigham Young University Education and Law Journal, 89-124. Retrieved August 5, 2009 from LexisNexis Academic database.

Doe v. Irwin 449 U.S. 829 (1980).

East High Gay/Straight Alliance v. Board of Education, 30 F. Supp. 2d 1356 (D. Utah 1998).

East High School Prism Club v. Seidel, 95 F. Supp. 2d 1239 (2000).

Evans, S. (2006, December). Gay-Straight Alliance clubs: How homosexual student organizations harm our schools. North Carolina Family Policy Council, p. 3. Retrieved September, 15, 2010, from http://www.ncfpc.org/PolicyPapers/Findings_0611-GSA.pdf.

Gay-Straight Alliance of Okeechobee High School v. School Board of Okeechobee County, 242 F.R.D. 644 (S.D. Fla. 2007).

Gay-Straight Alliance of Yulee High School v. School Board of Nassau County, 602 F. Supp. 2d 1233 (N.D. Fla.2009).

GLSEN. (2009). The 2007 national school climate survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools. Retrieved September 15, 2009, from <http://www.glsen.org>

Good News Club v. Milford Central School, 533 U.S. 98 (2001).

Goodenow, C., Szalacha, L., & Westheimer, K. (2006). School support groups, other school factors, and the safety of sexual

minority adolescents. *Psychology in the Schools*, 43, 573-589. Retrieved September 23, 2009, from Academic Search Premier database.

Gonzalez v. School Board, 571 F. Supp. 2d 1257 (S.D. Fla. 2008).

Haynes, C. in Stein, L. (2006, August, 10). Hillsborough will debate parental consent policy. *St. Petersburg Times*. Retrieved October 1, 2010, from LexisNexis Academic.

Hazelwood School District v. Kuhlmeier, 484 U.S. 273 (1988).

Imber, M. & Van Geel, T. (2001). *A teacher's guide to education law* (2nd ed.). New Jersey: Lawrence Erlbaum Associates.

Ingber, S. (1995). Twenty-five years after Tinker: Balancing students' rights: liberty and authority: Two facets of the inculcation of virtue. *St. John's Law Review* 69, 421-479. Retrieved October 20, 2009 from LexisNexis Academic database.

Kosciw, J. G. & Diaz, E. M. (2006). The GLSEN 2005 national school climate survey: the experiences of lesbian, gay, bisexual and transgender youth in our nation's schools. Retrieved August 15, 2006, from <http://www.glsen.org>.

Lawrence v. Texas, 539 U.S. 558 (2003).

Levi, Y. S. (2008). Amending the Massachusetts parental notification statute. *Cardozo Journal of Law & Gender* 14, 759-792. Retrieved April 15, 2010 from LexisNexis Academic database.

Lee, C. (2002). The impact of belonging to a high school gay/straight alliance. *High School Journal*, 85, 13-26. Retrieved September 17, 2009, from Academic Search Premier database.

Lubbock Civil Liberties Union v. Lubbock Independent School District, 669 F. 2d 1038 (5th Cir. 1982).

Mawdsley, R. D. (2001). The Equal Access Act and public schools: What are the legal issues related to recognizing gay student groups?. Brigham Young University Education and Law Journal, 1-33. Retrieved January 7, 2010 from LexisNexis Academic database.

Micelli, M. (2005). Standing out, standing together. New York: Roulledge.

Meyer v. Nebraska, 262 U.S. 390 (1923).

NAACP v. Alabama, 357 U.S. 49 (1958).

Orman, S. (2006). Being gay in Lubbock: The Equal Access Act in Caudillo. Hastings Women's Law Journal 17, 227-246. Retrieved January 8, 2010 from LexisNexis Academic database.

Parker v. Hurley, 514 F. 3d 87 (1st Cir. 2008).

Phi Delta Kappan. (2006, September). Policy Implications of the 38th Annual Phi Delta Kappa/Gallup Poll. (88), 54-56. Retrieved November 24, 2007, from Academic Search Premier database.

Pierce v. Society of Sisters, 268 U.S. 510 (1925).

Pratt, C. (2007). Protecting the marketplace of ideas in the classroom: Why the Equal Access Act and the First Amendment require the recognition of gay/straight alliances in America's public schools. First Amendment Law Review 5, 370-399. Retrieved March 8, 2010 from LexisNexis Academic database.

Prince v. Massachusetts, 321 U.S. 804 (1944).

Reiner, A. (2006). Pride and prejudice: The First Amendment, the Equal Access Act, and the legal fight for gay student groups in high schools. American University Journal of Gender, Social Policy & the Law 14, 613-643. Retrieved January 8, 2010 from LexisNexis Academic database.

Romer v. Evans, 517 U.S. 620 (1996).

Rosenberger v. Rector and Visitors of University of Virginia, 515 U.S. 819 (1995).

Ross, W. G. (2000). Education and the constitution: Shaping each other and the next century: The contemporary significance of Meyer and Pierce for parental rights issues involving education. *Akron Law Review* 34, 177-207. Retrieved April 2, 2010, from LexisNexis Academic database.

Russell, S. T., Muraco, A., Subramaniam, A. & Laub, C. (2009). Youth empowerment and high school gay-straight alliances. *Journal of Youth & Adolescence* 38, 891-903. Retrieved October 1, 2009, from Academic Search Premier database.

Savin-Williams, R. C. (2005). *The New Gay Teenager*. Cambridge, MA: Harvard University Press.

Tinker v. Des Moines Independent School District, 393 U.S. 503 (1969).

U.S.C. Title 20, Chapter 52 Subchapter VIII, §4071 et seq. (2009). Retrieved August 3, 2009 from <http://www.4law.cornell.edu/uscode/html>.

Utah Code Annotated. (2009). Retrieved January 26, 2010 from LexisNexis Academic database.

Vandewalker, I. (2009). Of permission slips and homophobia: Parental consent policies for school club participation aimed at gay-positive student groups. *The Boston University Public Interest Law Journal* 19, 23-63. Retrieved April 2, 2010, from LexisNexis Academic database.

Waldman, E. G. (2008). Returning to Hazelwood's core: A new approach to restrictions on school-sponsored speech. *Florida Law Review* 60, 63-123. Retrieved October 1, 2010 from LexisNexis Academic database.

Whittaker, K. R. (2009). Gay-straight alliances and free speech: Are parental consent laws constitutional? *Berkeley Journal of Gender, Law & Justice* 24, 48-67. Retrieved April 1, 2010, from LexisNexis Academic database.

Woods, J. B. (2008). Morse v. Frederick's new perspective on schools' basic educational missions and the implications for gay-straight alliance first amendment jurisprudence. *Columbia Journal of Gender and Law* 18, 281-312. Retrieved March 14, 2010, from LexisNexis Academic database.

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