

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

PENDLETON HEIGHTS GAY-STRAIGHT	)	
ALLIANCE, an unincorporated association,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:21-cv-2480
	)	
	)	
SOUTH MADISON COMMUNITY SCHOOL	)	
CORPORATION;	)	
PRINCIPAL, PENDLETON HEIGHTS	)	
HIGH SCHOOL, in her official capacity,	)	
	)	
Defendant.	)	

**Complaint for Injunctive and Declaratory Relief**

**Introduction**

1. The Pendleton Heights Gay-Straight Alliance (PHGSA) recently has resumed meeting, with a faculty sponsor, after school hours at Pendleton Heights High School, the public high school serving the South Madison Community School Corporation. PHGSA is a place for gay, lesbian, bisexual, transgender, non-binary and allied students to meet and provide social, emotional, and educational support to one another. The South Madison Community School Corporation School Board has delegated to the Principal of Pendleton Heights High School the responsibility of determining which student groups are allowed to meet at the school and are deemed to be “official.” Although the Principal has given permission for PHGSA to meet, she has indicated that inasmuch as it is not an

“official” club it cannot publicize its existence on school bulletin boards or on the school’s radio station, like other curricular and a number of non-curricular clubs at the school. Also, unlike those other groups, it is not allowed to fundraise on school property.

2. The differential treatment meted out to PHGSA violates the First Amendment rights of PHGSA and its members as well as the rights of PHGSA and its members under the Equal Access Act, 20 U.S.C. § 4071, *et seq.* The unequal treatment of PHGSA, as opposed to a number of other non-curricular clubs, also violates the equal protection rights of PHGSA and its members. Declaratory and injunctive relief should issue so that PHGSA is treated the same as all other curricular and non-curricular clubs.

#### **Jurisdiction, cause of action, and venue**

3. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1331.

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

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

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

#### **Parties**

7. The Pendleton Heights Gay-Straight Alliance is an unincorporated voluntary association of students who attend Pendleton Heights High School.

8. The South Madison Community School Corporation is a public-school corporation located in Madison County, Indiana.

9. The Principal of Pendleton Heights High School is the duly appointed principal of the South Madison Community School Corporation's high school.

**Factual allegations**

10. Pendleton Heights High School is a public high school, located in Pendleton, Indiana, with approximately 1,400 students in grades 9 through 12.

11. It is the high school that serves students in the South Madison Community School Corporation.

12. Students attending Pendleton Heights High School may participate in a number of curricular and non-curricular clubs that meet at the school during non-instructional time.

13. The United States Supreme Court has instructed that a noncurricular student group is:

any student group that does not *directly* relate to the body of courses offered by the school. In our view, 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.

*Bd. of Educ. of Westside Community Schools v. Mergens*, 496 U.S. 226, 230-40 (1990) (emphasis by the Court).

14. Clubs that do not directly relate to the school's curriculum include, among others, SADD (Students Against Destructive Decisions), E-gaming, Robotics, Best Buddies (students working with special needs students), Mat Maids (supporters of the wrestling team), and Outdoor Adventure Club.

15. The South Madison Community School Corporation has delegated to the Principal of Pendleton Heights High School the responsibility of determining what non-curricular clubs may meet at the school after instructional time.

16. In the past there has been a Gay-Straight Alliance at the High School, although it has been moribund for some time.

17. The purpose of a high school Gay-Straight Alliance is to provide a place within the school for gay, lesbian, bisexual, transgender, non-binary and allied student-community members to meet and provide social, emotional, and educational support to one another.

18. During the current school year, the Principal of the High School authorized the PHGSA to resume meeting at the school during non-instructional time.

19. It has met one time so far this school year.

20. The PHGSA has a faculty sponsor in whose classroom the group meets.

21. Although the Principal has recognized PHGSA as a non-curricular club, she has indicated that inasmuch as it is not, in her estimation, an "official" club, it is not allowed to advertise on the school's bulletin boards, on the school's radio station, or anywhere on school property.

22. Additionally, inasmuch as the Principal has determined that PHGSA is not an “official” club, it is not allowed to raise funds on school property.
23. Clubs that are deemed to be “official” clubs, whether curricular or not, are allowed to post information on school bulletin boards and advertise on the school’s radio station and elsewhere on school property. These clubs are also allowed to fund-raise.
24. As an “unofficial” club, PHGSA is not listed as a club or organization in the Pendleton Heights High School Student Handbook where “official” clubs are listed.
25. There are other unofficial clubs allowed to meet at the school including Fellowship of Christian Athletes.
26. Due to the inability to advertise and expose students to its existence and purpose, PHGSA’s membership is less than it would be if it was treated as an “official” club.
27. Due to the inability of the PHGSA to advertise and attract student members it is severely hindered in its beneficial function to be a place of shelter, support, and education, not just for gay, lesbian, transgender, and non-binary students, but for all Pendleton Heights High School students.
28. The fact that the Principal allows PHGSA and other noncurricular student groups to meet on school premises during noninstructional time creates a “limited open forum” as that term is defined in the Equal Access Act, 20 U.S.C. § 4071.
29. Pendleton Heights High School is a public secondary school that receives federal financial assistance.

30. PHGSA is being caused irreparable harm for which there is no adequate remedy at law.

31. At all times defendants have acted, and have refused to act, under color of state law.

### **Legal claims**

32. Because defendants allow at least one non-curricular student group to meet on school premises during non-instructional time, Pendleton Heights High School is a limited open forum pursuant the Equal Access Act, 20 U.S.C. § 4701, and defendants' failure to allow PHGSA the same access to school facilities and avenues of communications provided to other student groups violates the Act.

33. Defendants' failure to allow PHGSA the same access to school facilities and avenues of communications provided to other student groups violates rights secured to PHGSA and its members by the First Amendment to the United States Constitution.

34. The distinction made by defendants between official and unofficial clubs violates the equal protection rights of PHGSA and its members.

### **Request for relief**

WHEREFORE, plaintiff requests that this Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest possible opportunity.
2. Declare the defendants have violated federal law and the United States Constitution for the reasons noted above.

3. Enter a preliminary injunction, later to be made permanent, requiring defendants to allow the Pendleton Heights Gay-Straight Alliance to have the same access to school facilities and avenues of communication, including fundraising opportunities, provided to curricular and official clubs.
4. Award plaintiff its costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
5. Award all other proper relief.

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