

Principal Janna Davis  
McLouth High School  
217 Summit Street  
McLouth, KS 66054  
Via email: [davisj@mcclouth.org](mailto:davisj@mcclouth.org)

February 4, 2022

**Re: Gay-Straight Alliance (“GSA”) clubs**

Dear Principal Davis,

We write concerning complaints we have received from your students and teachers regarding your refusal to allow them to create a Gay-Straight Alliance (“GSA”) club or student group at McLouth High School. GSAs are extracurricular clubs that bring together lesbian, gay, bisexual, transgender, and questioning students and straight allies to support each other, promote tolerance, and provide community. GSAs are common in school districts across Kansas and across the country. We understand that at least one student, Kaya Schupp, a senior at McLouth High School, requested to start this club, and you denied her request and ordered her not to discuss the request with anyone else. There may be other students who have attempted to raise this issue with you before as well.

For the reasons set forth below, we believe your decision to deny students the opportunity to create a GSA, despite the availability and willingness of staff sponsors, is a violation of federal law. We request that you take immediate steps to allow this group to form.

**Background**

We understand that in the late fall of 2021, ██████████ requested to start a GSA at McLouth High School. ██████████ had secured the necessary staff sponsor for the club and had begun filling out the required paperwork. When ██████████ spoke with you about ██████████ intentions to start this group, you told ██████████ that the school does not need a GSA, took away the paperwork ██████████ had begun, and instructed ██████████ not to discuss the issue with anyone else.

We understand that in recent weeks other students have come forward to support the idea of a GSA, but you have shut down those conversations. We have also heard concerns that you may be retaliating against students and staff who have vocalized their support for a GSA.

**Legal Analysis**

Your refusal to allow students and staff to start a GSA at McLouth High School violates clearly established law. Under the federal Equal Access Act



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(EAA) and the First Amendment of the United States Constitution, if a public high school allows any student group whose purpose is not directly related to the school’s curriculum to form and meet on school ground during or before/after school, it has created a limited public forum or limited open forum. The school therefore cannot deny other student groups the same access merely because of the content of their proposed discussions. *See* 20 U.S.C. § 4071(b); *Gay-Straight Alliance of Yulee High Sch. V. School Board of Nassau Cty.*, 602 F. Supp. 2d 1233 (M.D. Fla. 2009) (granting preliminary injunction requiring school district to permit a GSA so long as it maintained a limited forum under the EAA and the First Amendment).

Because there are other non-curricular clubs that meet at McLouth High School, it is required by law to permit a GSA club to form and meet at the school. According to the McLouth High School website, other non-curricular clubs currently exist, including FFA, Art Club, Yearbook, Future Business Leaders of America, and more.<sup>1</sup> The Student Handbook describes other clubs.<sup>2</sup>

The law on this issue is abundantly clear. Since the late 1990s, there have been several lawsuits filed by GSAs and student supporters against school districts and/or administrators. In at least 17 of those lawsuits, 14 of which involved attorneys from the American Civil Liberties Union, GSAs and their student supporters have prevailed.<sup>3</sup> The U.S. Department of Education has also recognized that schools must allow GSAs to form, and that schools have an obligation under federal law to ensure that they are inclusive and safe for all students, including those that are LGBTQ and gender nonconforming.<sup>4</sup> Put simply, there is no legal basis for refusing to allow the GSA to form and meet on campus.

To the extent that your decision to deny ██████ application is based on objections from other parents, you have an obligation to protect—not censor—█████ expression as a student in your school. As noted by one federal court, even extensive objection from the community (including rallies and a boycott of school) is not enough to justify shutting down a GSA, where the members of the GSA themselves are not causing a disruption. *Boyd Cnty High Sch. Gay Straight Alliance v. Bd. Of Educ. of Boyd Cnty*, 258 F. Supp. 2d 667, 679 (E.D. Ky. 2003) (“To rule otherwise would completely subvert free speech in the school by granting other students a ‘heckler’s veto,’

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<sup>1</sup> McLouth High School, Clubs and Organizations, <https://www.mclouth.org/vnews/display.v/SEC/Secondary%7CCLubs/Organizations> (last accessed Feb. 3, 2022).

<sup>2</sup> McLouth High School, Student Handbook, <https://www.mclouth.org/vimages/shared/vnews/stories/5b579417aa955/MS%20HS%20Handbook%202021-22.pdf> (last accessed Feb. 3, 2022).

<sup>3</sup> *See GSA Court Victories, A quick guide for Gay-Straight Alliances*, ACLU, July 1, 2015, [https://www.aclu.org/sites/default/files/assets/gsa\\_victories\\_handout\\_11.24.14.pdf](https://www.aclu.org/sites/default/files/assets/gsa_victories_handout_11.24.14.pdf).

<sup>4</sup> Letter from Education Secretary Arnie Duncan, June 14, 2011, <https://www2.ed.gov/policy/elsec/guid/secletter/110607.html>.



allowing them to decide through prohibited and violent methods what speech will be heard.”).

It is also worth noting that you cannot impose conditions on a GSA that are not generally applicable to other student groups at McLouth High School. *Straights and Gays for Equality v. Osseo Area Schools Dist. No. 279*, 540 F.3d 911 (8th Cir. 2008). Nor may you censor the name of the club because you do not approve of a club having the word “Gay” in the title. *See Colin v. Orange Unified Sch. Dist.* 83 F. Supp. 2d 1135, 1147-48 (C.D. Cal. 2000); *Gay-Straight Alliance of Yulee High Sch.*, 602 F. Supp. 2d at 1236.

### **Requested Relief**

Based on the above, we request that you accept [REDACTED] application to form a GSA at McLouth High School. Moreover, we request that you refrain from taking any adverse action against any student or staff member who requests to be involved with the GSA, as such actions may themselves be illegal under federal civil rights laws.

If you would like to discuss this matter further, please do not hesitate to contact either the ACLU of Kansas or GLSEN Kansas. Correspondence should be directed to Sharon Brett, ACLU of Kansas Legal Director, at [sbrett@aclukansas.org](mailto:sbrett@aclukansas.org), and Will Rapp, GLSEN Kansas Statewide Organizer, at [will.rapp@glsen.org](mailto:will.rapp@glsen.org).

Thank you for your prompt attention to this matter.

Kind regards,

A handwritten signature in black ink that reads "Sharon Brett".

Sharon Brett  
Legal Director  
ACLU of Kansas

A handwritten signature in black ink that reads "Will Rapp".

Will Rapp  
Statewide Organizer  
GLSEN Kansas

Cc: Steve Lilly  
USD 342 Superintendent  
[lillys@mcclouth.org](mailto:lillys@mcclouth.org)