

least August of 2016 and has done nothing. Recently, the District publicly trumpeted its commitment to LGBTQ rights, with one official stating that “Buffalo should be proud that every student in our District is protected from discrimination in all its forms.” The students at McKinley know better.

3. In the face of these obstacles and hypocrisies, the students being targeted for discrimination continue to speak up and advocate for fair treatment. In past years, they have circulated petitions, gathered support, and secured multiple faculty advisors ready to supervise the GSA in their attempts to establish a club that would be allowed to meet at the school. In March of 2017, the plaintiff, McKinley junior Byshop Elliott, collected 136 signatures from classmates and staff in support of the GSA’s formation. The club remains unapproved, however, and the latest application, submitted at the beginning of the school year, has been ignored.

4. Byshop and his classmates remain ready and eager to form the GSA. They are a large and diverse group of McKinley students looking for a place to meet and provide social, emotional, and educational support to one another. The GSA is of particular importance to LGBTQ students who experience rejection, harassment, or bullying at home or at school and who currently do not have a safe place at school to discuss these experiences with their peers. Over the course of the 2016-2017 school year, at least 20 students have asked McKinley staff members why there is still no GSA at the school, with one stating “we really need that here.”

5. The actions of Principal Boling-Barton and the District violate Byshop’s rights under the Equal Access Act, 20 U.S.C. § 4071, *et seq.*, and the First Amendment to the United States Constitution. Byshop brings this suit on behalf of himself, as well as for the benefit of similarly situated students, to remedy these past and continuing willful acts of discrimination. He seeks declaratory and injunctive relief, along with compensatory damages of one dollar (\$1) and

punitive damages to deter the defendants and others from engaging in similar conduct in the future.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a) because the matters in controversy arise under the Constitution and laws of the United States. Jurisdiction is also proper over the plaintiff's claim for declaratory relief pursuant to 28 U.S.C. §§ 2201-02 and Rule 57 of the Federal Rules of Civil Procedure.

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

8. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of law, of rights secured by the Constitution and laws of the United States, and also pursuant to the Equal Access Act, 20 U.S.C. § 4071, *et seq.*

PARTIES

9. Plaintiff BYSHOP ELLIOTT is a junior at McKinley High School in Buffalo, New York, who is currently leading efforts at his school to form a Gay-Straight Alliance. He is eighteen years old and is a resident of Buffalo. Byshop is gay. He remains subject to the policies, practices, and customs of the Buffalo City School District and McKinley High School Principal Crystal Boling-Barton.

10. Defendant CRYSTAL BOLING-BARTON ("Principal Boling-Barton"), sued in both her individual and official capacities, is the principal at McKinley High School, a position she has held since 1987. During the entire time that Byshop Elliott has been a student at McKinley, Principal Boling-Barton's approval has been required for official recognition of a student club or organization, and she has had the policymaking authority to deny recognition to a

proposed club. Principal Boling-Barton is a natural person and, upon information and belief, resides in Buffalo, New York.

11. Defendant BUFFALO CITY SCHOOL DISTRICT (“the District”) is the public school district for the city of Buffalo. It is the institution that employs the administrators who run each of the city’s schools, including Principal Crystal Boling-Barton at McKinley High School, and it holds final policymaking authority regarding the approval of student clubs and organizations in the District. The District is a “person” within the meaning of 42 U.S.C. § 1983. Upon information and belief, the District and each of its component schools are recipients of federal financial assistance.

FACTS

Student Life at McKinley High School

12. McKinley High School, with approximately 1,000 students in grades 9-12, is a vocational high school in the Black Rock neighborhood of Buffalo. Students from all across Buffalo attend, based on an application process that takes place in their eighth grade year. McKinley offers specialized training in seven career-oriented “shop areas,” as well as accelerated classes and Advanced Placement opportunities. Approximately 87% of those enrolled are students of color like Byshop.

13. Beyond the classes offered there, student life at McKinley High School is greatly shaped and colored by extracurricular opportunities, including student clubs.

14. Students attending McKinley participate in a number of clubs that are not related to the curriculum at the school. According to the McKinley High School website, there are over two dozen such clubs, and they currently include the Bible Club, the Gospel Chorus, the Praise Team, the Latin Dance Club, the National Society of Black Engineers, the African Dance Club,

and the Future Farmers of America, among others. These non-curricular clubs meet at the school during non-instructional time.

15. Belonging to a club affords students the opportunity to meet and connect with classmates over shared interests, experiences, talents, and career goals. In addition, it grants club members access to various other school resources and benefits. They are permitted to post signs and posters around the school advertising meetings and special events. They are permitted to fundraise and make use of an “extraclassroom activities fund.” They are permitted to use McKinley High School equipment and resources. They are listed on McKinley’s official website. And they are invited to be photographed for a club photo in the annual school yearbook.

A History of School-Sponsored LGBTQ Exclusion at McKinley

16. The opportunities that student club members are afforded—both to connect with like-minded classmates and to be recognized publicly as a part of the McKinley High School community—would be important to any student. To LGBTQ students at McKinley, they are especially vital.

17. Under the leadership of Principal Crystal Boling-Barton, McKinley High School has imposed ongoing policies and practices that openly discriminate against LGBTQ members of the school community. LGBTQ students feel alienated and targeted.

18. Over at least the 2014-2015 and 2015-2016 school years, Principal Boling-Barton made multiple announcements over the school-wide intercom system before several school dances stating that same-sex couples would not be permitted to attend as dates. Principal Boling-Barton enforced this policy by ensuring that, when students attempted to purchase “couples” tickets, they were asked who their intended date would be; students who named a same-sex partner would not be permitted to purchase a pair of tickets.

19. Students who were denied tickets felt humiliated and excluded from some of the most prominent and popular school-wide social events of the year.

20. Buying tickets separately was no solution. During that same period, Principal Boling-Barton made it her practice while chaperoning dances to prevent same-sex couples from dancing together. If same-sex couples were observed dancing together closely in the same manner as opposite-sex couples, it was Principal Boling-Barton's well-known practice to single out the same-sex couples and instruct them to separate or face discipline.

21. For this reason, many LGBTQ students attending McKinley High School choose not to attend official McKinley dances and instead attend an alternative LGBTQ-friendly dance, the "Diversity Prom," sponsored by Gay & Lesbian Youth Services of Western New York ("GLYS"). In 2016, GLYS reported that there were more students at the Diversity Prom from McKinley High School than from any other high school.

22. Byshop and other LGBTQ students remain concerned that they will not be welcome at school-sponsored events, including at McKinley's upcoming prom on May 19, 2017.

Repeated Failed Attempts to Form a GSA at McKinley

23. Despite this history of exclusion and discrimination, there is a large and diverse population of LGBTQ students and allies at McKinley High School. They represent all grade levels, and for years they have wanted to form a GSA.

24. These students view the GSA as an opportunity to bring together their classmates, create an affirming space for students who regularly face discrimination and harassment on the basis of their sexual orientation or gender identity or expression, and improve the school climate for all students. They also view it as particularly necessary in light of the school-sponsored discrimination faced by LGBTQ students at McKinley.

25. In order to further these goals and advocate for fairer treatment, students have applied or attempted to apply to form a GSA since at least the 2014-2015 school year, and, upon information and belief, for several years prior. Each year, the proposal has either been denied or ignored.

26. While there are indications that the District had, at some point in the past, drafted a District-wide procedure for students seeking approval to form a new club, Principal Boling-Barton has created an application procedure for new student clubs that is specific to McKinley High School. At McKinley, Principal Boling-Barton requires a faculty advisor for a proposed new club to send her a description of the proposed club, at which point she either approves or denies it. It is the policy and practice of the District to allow new student clubs to form at McKinley according to the procedure established by Principal Boling-Barton.

27. During the 2014-2015 school year, students interested in forming a GSA secured a faculty advisor and submitted their application to Principal Boling-Barton for approval. Principal Boling-Barton never responded to their application in writing. Having received no response, the students and their faculty advisor posted signs around the school advertising an initial meeting for students interested in joining the GSA. At that point, Principal Boling-Barton informed the faculty advisor that the group would not be permitted to meet without first being approved and that the application had in fact been denied.

28. The following school year, in the spring of 2016, Byshop Elliott gathered approximately thirty students' signatures in support of the formation of a GSA. He also secured a faculty sponsor. When he asked an assistant principal, Ms. Cotto, how to submit an application for the group, she informed him that it was too late in the school year for his application and that Principal Boling-Barton would deny it. As a result of Ms. Cotto's statement that Principal

Boling-Barton would deny the application, Byshop did not submit it at that time and decided instead to prepare one for the fall of 2016.

29. However, he subsequently became aware that another new student group, focused on international cultures and cuisines, had submitted an application for approval around the time of his conversation with Ms. Cotto, and that group was approved to begin meeting during the spring of 2016.

Notice to the Buffalo City School District and the Current Constructive Denial

30. During the summer of 2016, Byshop sought assistance from the New York Civil Liberties Union (“NYCLU”) regarding Principal Boling-Barton’s ongoing refusal to approve a GSA at McKinley High School.

31. In an attempt to ensure that the District was aware of the repeated unlawful denials of students’ attempts to form a GSA at McKinley High School, on August 23, 2016, counsel from the NYCLU contacted counsel for the District. Over the phone and then again in an email, counsel from the NYCLU described the repeated GSA applications, Principal Boling-Barton’s history of GSA denials, and her enforcement of policies that prevented LGBTQ students from attending school dances. NYCLU counsel’s email clearly demanded assurance from the District that students would be permitted to form a GSA beginning in the fall of 2016.

32. Counsel for the District confirmed that the District received and had a clear understanding of this demand for GSA approval, including by confirming that the Superintendent had considered the students’ request on multiple occasions.

33. When the 2016-2017 school year began, Byshop Elliott again secured a faculty sponsor for the proposed GSA at McKinley High School.

34. On October 3, 2016, the faculty sponsor submitted a new application seeking approval to form the GSA. This application was emailed directly to Principal Boling-Barton and conformed to the principal's requirements for new club proposals. Principal Boling-Barton did not respond to this email.

35. On November 2, 2016, the faculty sponsor followed up with another email sent directly to Principal Boling-Barton requesting a decision on the October 3 application. Upon information and belief, Principal Boling-Barton also ignored this follow-up email.

36. The effect of Principal Boling-Barton's refusal to consider the GSA's application has been to prevent the GSA from forming, commencing meetings, or enjoying any of the privileges afforded to other school-approved student clubs. Her actions are in willful disregard of her students' well-established rights under federal statute and the United States Constitution.

37. During the same period described above, while the GSA advisor was reaching out to Principal Boling-Barton, counsel from the NYCLU sent five emails and left several voicemails for the District's counsel confirming that Principal Boling-Barton had not yet approved the GSA and reiterating the request that the District act to ensure its prompt approval. District counsel confirmed receipt of all five emails.

38. Despite the fact that it has final policymaking authority to ensure that the GSA be allowed to form, the District failed, and continues to fail, to take any action. Over the course of the 2016-2017 school year, the District has demonstrated deliberate indifference to the ongoing discriminatory denial of the GSA's application such that the District clearly intends for this discrimination to continue occurring.

39. Publicly, the District has adopted laudable policies stating that discrimination or harassment on the basis of LGBTQ status is not permitted, and in 2016 it adopted a district-wide

policy regarding access to facilities intended to safeguard the rights of transgender students. At the time of that policy's passage, in October 2016, a representative of the District stated that "Buffalo should be proud that every student in our District is protected from discrimination in all its forms."

40. As that statement was being uttered, LGBTQ students at McKinley continued to suffer overt discrimination with the District's full knowledge. The effect of the District's complicity in perpetuating this discrimination at McKinley High School has been to prevent the GSA from forming, commencing meetings, or enjoying any of the privileges afforded to other school-approved student clubs.

Students Continue to Want and Need a GSA at McKinley

41. McKinley High School is a hostile place for LGBTQ students and allies, based both on the ongoing absence of a GSA and on Principal Boling-Barton's perceived antipathy towards LGBTQ students and LGBTQ issues. Principal Boling-Barton's and the District's actions, as described in the paragraphs above, have created this hostile environment.

42. Not being able to meet at school is particularly hard for LGBTQ students without supportive parents who may have no other opportunity to gather with peers and faculty members in an affirming environment. A GSA can be a lifeline for students who face rejection, harassment, or violence based on their LGBTQ status, and a 2015 *National School Climate Survey*¹ conducted by the organization GLSEN confirms that students in schools with a GSA are significantly less likely to feel unsafe, victimized, or harassed based on their sexual orientation or gender identity.

¹ <http://bit.ly/2j3lQ43>.

43. Students at McKinley recognize how important a GSA would be at their school. Over the course of the 2016-2017 school year, approximately 20 students have asked staff members why there is still no GSA at McKinley, with one stating that “we really need that here.”

44. During March of 2017, Byshop Elliott gathered 136 signatures from McKinley students and staff on a petition in support of the GSA’s formation.

45. Byshop and the GSA’s other prospective members remain ready and eager to begin meeting as soon as approval for the club is granted, and the GSA continues to have a faculty sponsor who is willing to supervise the club if it is approved.

CAUSES OF ACTION

First Cause of Action: The Equal Access Act (brought pursuant to 20 U.S.C. § 4071, *et seq.*, and 42 U.S.C. § 1983 against the District and Crystal Boling-Barton in her official and individual capacity)

46. The defendants’ actions, as described in this complaint, violate the Equal Access Act, 20 U.S.C. § 4071, *et seq.*

Second Cause of Action: The First Amendment (brought pursuant to 42 U.S.C. § 1983 against the District and Crystal Boling-Barton in her official and individual capacities)

47. The defendants’ actions, as described in this complaint, violate rights secured to plaintiff Byshop Elliott by the First Amendment to the United States Constitution.

REQUESTS FOR RELIEF

WHEREFORE, the plaintiff respectfully requests that this Court:

- a. Declare that the defendants have violated federal law and the United States Constitution for the reasons described above;

- b. Enter an injunction requiring the defendants to approve the application of the GSA to be a student club at McKinley High School and requiring them to grant the GSA the same rights and benefits enjoyed by other non-curricular clubs;
- c. Award the plaintiff compensatory damages of one dollar (\$1) against the defendants for their violations of the Equal Access Act and the First Amendment;
- d. Award the plaintiff punitive damages against defendant Crystal Boling-Barton, sued in her individual capacity, for violations of the Equal Access Act and the First Amendment;
- e. Award the plaintiff reasonable attorneys' fees and costs under 42 U.S.C. § 1988 and all other applicable laws; and
- f. Grant any other relief that the Court deems necessary and proper.

Respectfully submitted,



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