

Legal Primer: GSAs in Maine Schools

What is a GSA?

A “Gender & Sexuality Alliance.” A GSTA would be a “Gay, Straight, Trans Alliance.” These are non-curricular school clubs for students, typically at the middle and high school levels.

Do I have a right to establish a GSA at my school?

Any secondary school that allows “non-curriculum related student [clubs or] groups” must provide equal access for all students to form GSAs or GSTAs. (Federal [Equal Access Act \(EAA\) of 1984](#) (20 U.S.C. §§ 4071-74)).

Is my school required to follow the Equal Access Act?

The Equal Access Act applies to (1) any public secondary school that (2) receives federal financial assistance (all public schools), and (3) has a “limited open forum.” See [20 U.S.C. § 4071\(a\)](#).

The Equal Access Act states that a school has a “limited open forum” if the school “grants an offering to or opportunity for one or more non-curriculum related student groups to meet on school premises during non-instructional time.” See [20 U.S.C. § 4071\(b\)](#).

If you attend a public secondary school that accepts federal funding and has at least one non-curriculum related student group that meets during non-instructional time, the Equal Access Act prohibits the school from blocking GSAs that want to meet during non-instructional time.

Of course, a school may eliminate its “limited open forum” at any time, as long as the school eliminates the forum for all non-curriculum related student groups. See, for example, *Pope v. East Brunswick Bd. of Educ.*, 12 F.3d 1244 (3d Cir. 1993). Similarly, a school may eliminate access to particular resources or facilities, as long as such access is eliminated for all non-curriculum related student groups.

What is a non-curriculum related student club or group?

Though the Equal Access Act did not define “non-curriculum related student groups” (20 U.S.C. § 4071(b)), the U.S. Supreme Court interpreted the term in *Board of Education of Westside Community Schools v. Mergens*, 496 U.S. 226 (1990).

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Can GSA's affect school climate?

Yes, research shows that a GSA can foster a school culture in which students are less likely to hear homophobic slurs. See A. Orr, J. Baum et al., [*Schools in Transition: Supporting Transgender Students in K-12 Schools*](#), 11.

Students in schools with GSA report perceptions of greater school safety and less homophobic bullying. See [*Salvatore Ioverno et al., The Protective Role of Gay-Straight Alliances for Lesbian, Gay, Bisexual, and Questioning Students: A Prospect Analysis, 3 Psychology of Sexual Orientation & Gender Diversity 397, 397 \(2016\)*](#). Researchers have also found an association between the presence of a high school GSA and better young adult well-being, more college-level educational attainment, and fewer problems related to substance abuse. See [*Russell B. Toomey et al., High School Gay-Straight Alliances \(GSAs\) and Young Adult Well-Being: An Examination of GSA Presence, Participation, and Perceived Effectiveness, 15 Applied Developmental Science 175, 182-83 \(2011\)*](#).

How are GSAs protected by the Equal Access Act?

The Equal Access Act protects non-curriculum related student groups, including GSAs:

A GSA must be treated the same as other non-curriculum related student groups.

A GSA must be afforded all the same rights and privileges as other non-curriculum related student groups to use the facilities at the school for meetings and communications. See, for example, *Straights and Gays for Equality v. Osseo Area Schools*, 540 F.3d 911 (8th Cir. 2008).

School officials may place time, manner, and place restrictions on GSAs, but such restrictions must be applied to all student groups. See, for example, *Gonzalez v. Sch. Bd. of Okeechobee Cnty.*, 571 F. Supp. 2d 1257 (S.D. Fla. 2008).

Schools may not deny students the right to form GSAs on the pretext that GSAs will disrupt the educational activities of the school or harm student well-being.

According to the Equal Access Act, school officials may monitor non-curriculum related student group meetings, including GSA meetings, to (1) maintain order and discipline; (2) protect student and faculty well-being; and (3) assure that student participation is voluntary and not coerced. See [*20 U.S.C. § 4071\(f\)*](#). School officials may prohibit clubs that “materially and substantially interfere with the orderly conduct of educational activities within the school.” See [*20 U.S.C. § 4071\(c\)\(4\)*](#). Though many school districts have tried to use this “safe harbor” language in court to defend their refusal to recognize GSAs, school districts have lost virtually all such cases.

Members of a GSA may choose their own leaders.

Members of non-curriculum related student groups, including GSAs, may choose their own leaders. However, GSAs likely cannot limit their general membership based on sexual orientation or gender identity. Cf. *Truth v. Kent Sch. Dist.*, 542 F.3d 634 (9th Cir. 2008), *rehearing en banc denied*, 551 F.3d 850, *cert denied*, 129 S. Ct. 2866 (2009).

Schools generally may not deny a GSA based on the number of members.

According to the Equal Access Act, a school may not “limit the rights of groups of students which are not of a specified numerical size.” See [20 U.S.C. § 4071\(d\)\(6\)](#). In other words, a school may not require a minimum number of students to form a GSA if doing so “limit[s] the rights of a group of” students, including LGBTQI+ students.

Schools cannot force a GSA to have a different name or purpose.

A school cannot require a GSA to adopt another name such as the “Diversity Club” or the “Tolerance Club” or Civil Rights Team. Nor can a school force a GSA to broaden its scope beyond the reach of LGBTQI+ issues. These mandates would violate the Equal Access Act. See, for example, *Gay-Straight All. of Yulee High Sch. V. Sch. Bd. of Nassau Cnty.*, 602 F. Supp. 2d 1233 (M.D. Fla. 2009); *Colin ex rel. Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135 (C.D. Cal. 2000).

Can outside guests participate in GSA meetings?

Outside guests—such as LGBTQI+ guest speakers or community members not employed by or enrolled in the school—“may not direct, conduct, control, or regularly attend activities of student groups.” See [20 U.S.C. § 4071\(c\)\(5\)](#). Outside guests may attend a GSA’s meetings occasionally if they are invited by the students. However, a school may forbid an outside guest from a GSA meeting if the school forbids outside guests from other student clubs or groups. Cf. *Student Coal. for Peace v. Lower Merion Sch. Dist.*, 776 F.2d 431 (3d Cir. 1985).

How can I form a GSA?

Schools generally have rules for club formation that should be followed in creating a GSA. To be legitimate, the rules must be “content-neutral” — should not be aimed at a club's subject matter but focused instead on procedures for forming and maintaining a club. For example, if a school has a policy that every group must fill out an application form and identify a faculty advisor, then a GSA must fill out the application form and identify a faculty advisor for the GSA. Once a proposed GSA has satisfied all of the club formation rules, a school must allow the GSA to move forward as a student group.

What should I do if I get pushback from my school as I start to build a GSA?

The great news is that students and advocates have strong arguments against schools that try to deny their right to form a GSA. The prevailing law favors the students wishing to form the GSA, not the schools trying to shut them down or keep them from getting established.

A school presented with this information should quickly understand that it must allow a GSA to form and exist on the same terms as other non-curriculum related clubs. However, should legal action become necessary, cases challenging a school's refusal to allow a GSA have been overwhelmingly successful.

Here is a list of some of those successful GSA cases:

- *Carver Middle Sch. Gay-Straight All. v. Sch. Bd. of Lake Cnty.*, 842 F.3d 1324 (11th Cir. 2016)
- *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135 (N.D.N.Y. 2011)

- *Straights and Gays for Equality v. Osseo Area Schools Dist. No. 279*, 471 F.3d 908 (8th Cir. 2006)
- *Gay-Straight All. of Yulee High Sch. v. Sch. Bd. of Nassau Cnty.*, 602 F. Supp. 2d 1233 (M.D. Fla. 2009)
- *Gonzalez v. Sch. Bd. of Okeechobee Cnty.*, 571 F. Supp. 2d 1257 (S.D. Fla. 2008)
- *Gay-Straight All. v. Sch. Bd. of Okeechobee*, 483 F. Supp. 2d 1224 (S.D. Fla. 2007)
- *White Cnty. High Sch. Peers in Diverse Educ. v. White Cnty. Sch. Dist.*, 2006 WL 1991990 (N.D. Ga. 2006)
- *Boyd Cnty. High Sch. Gay Straight All. v. Bd. of Educ. of Boyd Cnty.*, 258 F. Supp. 2d 667 (E.D. Ky. 2003)
- *Franklin Cent. Gay/Straight All. v. Franklin Twp. Cmty. Sch. Corp.*, 2002 WL 32097530 (S.D. Ind. 2002)
- *East High Sch. PRISM Club v. Seidel*, 95 F. Supp. 2d 1239 (D. Utah 2000)
- *Colin ex rel. Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135 (C.D. Cal. 2000)
- *East High Gay/Straight All. v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 81 F. Supp. 2d 1166 (D. Utah 1999)

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What is a non-curriculum related student club or group?

In *Mergens*, the Court clarified that “non-curriculum related student group” is best interpreted broadly to mean any student group that does not *directly* relate to the body of courses offered by the school.” The Court explained that a student club or group relates to a school’s curriculum if: (1) the subject matter of the club or group is or will soon be taught in a regularly offered course; (2) the group’s subject matter “concerns the body of courses as a whole”; (3) a course requires a student to participate in the club or group; or (4) students receive academic credit for participating in the club or group.

Examples of curricular and non-curriculum related student clubs or groups:

A Math Club or French Club is directly related to the curriculum if the school offers a French or math course. These clubs center on a core subject in school.

A group or club is not related to the curriculum just because a course teaches about the group or club’s activity or subject matter. For example, though students might learn to play soccer in their physical education course, the Soccer Club is a non-curricular student club or group. Similarly, a GSA, Chess Club, Service Club, Scuba Club, Skating Club, Black Student Union, or Asian Club are non-curriculum related clubs.

A school that permits non-curriculum related student clubs or groups must provide equal access to student-initiated, student-led religious groups. Such groups might include

a Christian Fellowship Club or a Muslim Students Association. For more information about the Equal Access Act and religious student groups, including the applicability of nondiscrimination policies to such groups, see [this pamphlet](#) prepared by the Religious Freedom Center and [this resource](#) created by the ADL.

In the same way, GSAs are non-curriculum related student groups.



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