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November 18, 2015

VIA ELECTRONIC AND U.S. MAIL

Chris Callahan
Attorney,
Lake Lure Classical Academy Board of Directors
252 Charlotte Rd.
Rutherfordton, NC 28139

RE: LGBTQ+ Student Group at Lake Lure Classical Academy

Dear Mr. Callahan,

As I noted in our telephone conversation earlier today, the American Civil Liberties Union of North Carolina Legal Foundation (ACLU-NCLF) has received a request for assistance from a high school student attending Lake Lure Classical Academy (LLCA) and her parent. This student recently started an LGBTQ+ support group at the school to promote tolerance and equality as well as create a safer, more respectful learning environment for all students. At its November 12, 2015, meeting, the LLCA Board of Directors voted to suspend all student-run clubs while it investigated the law on point. We write to provide you with information regarding LLCA's legal obligations, most notably that it must treat all student clubs equally pursuant to the Equal Access Act.

The Equal Access Act was signed into law in 1984 to ensure schools respected the First Amendment rights of their students. Specifically, the Equal Access Act prohibits "any public secondary school" from "deny[ing] equal access or a fair opportunity to, or discriminat[ing] against, any students who wish to conduct a meeting within [a] limited forum open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings." 20 U.S.C. § 4071(a).¹ A school maintains a "limited open forum" if it provides "an opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time." 20 U.S.C. § 4071(b).

Time and again courts have held that the obligation of the Equal Access Act extend to Gay-Straight Alliances (GSAs) and other LGBTQ-welcoming student clubs. *Gay-Straight Alliance of Okeechobee High School v. School Bd. of Okeechobee County*, 483 F. Supp.2d 1224, 1227-28 (S.D. Fla. 2007) (granting summary judgment to student group pursuant to Equal Access Act); *White County High School Peers Rising in Diverse Education v. White County School District*, 2006 WL 1991990, at *12 (N.D. Ga. Jul. 14, 2006) (granting student GSA a

¹ The Equal Access Act applies to charter schools. North Carolina courts have made plain that charter schools are public schools. *Sugar Creek Charter School, Inc. v. State*, 712 S.E.2d 730, 741-42 (2011). Federal and state regulatory authorities have repeatedly noted that state and "Federal civil rights laws, regulations, and guidance that apply to charter schools are the same as those that apply to other public schools." U.S. Dept. of Education, Office of Civil Rights, Dear Colleague Letter, May 14, 2014, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf>; see also N.C. Dept. of Public Instruction, Office of Charter Schools, Frequently Asked Questions, available at <http://www.dpi.state.nc.us/charterschools/resources/faqs/>.

preliminary injunction on their Equal Access Act claim); *Straights & Gays for Equal. v. Osseo Area Sch. Dist. No. 279*, 2006 WL 983904 (D. Minn. Apr. 4, 2006) *aff'd* 471 F.3d 908 (8th Cir. 2006) (affirming grant of preliminary injunction on student group's Equal Access Act claim); *Boyd County High School Gay/Straight Alliance v. Board of Education*, 258 F. Supp.2d 667, 690 (E.D. Ky. 2003) (granting preliminary injunction on student group's Equal Access Act claim); *Franklin Central Gay/Straight Alliance v. Franklin Township Cmty. Sch. Corp.*, 2002 WL 32097530 (S.D. Ind. 2002) (granting student group summary judgment pursuant to Equal Access Act); *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp.2d 1135, 1148 (C.D. Cal. 2000) (granting preliminary injunction on student group's Equal Access claim and noting that "[t]he Board will not likely be able to show that groups of students discussing homophobia and acceptance of all students regardless of sexual orientation somehow serves as a major disruption of students"); *East High Gay/Straight Alliance v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 81 F. Supp.2d 1166, 1187 (D. Utah 1999) (granting student GSA summary judgment under the Equal Access Act). And courts have firmly held that a heckler's veto does not trump a school's obligations to treat all of its students equally:

The Board Members may be uncomfortable about students discussing sexual orientation and how all students need to accept each other, whether gay or straight . . . [But] Defendants cannot censor the students' speech to avoid discussions on campus that cause them discomfort or represent an unpopular viewpoint. In order to comply with the Equal Access Act, [the students] and the members of the Gay-Straight Alliance must be permitted access to the school campus in the same way that the District provides access to all clubs, including the Christian Club and the Red Cross/Key Club.

Colin, 83 F. Supp.2d at 1148. In short, if a public secondary school allows student noncurricular clubs to meet, then it must treat each of these clubs exactly the same.

Furthermore, schools and their students prosper from LGBTQ+ and GSA clubs. For example, our state has long recognized challenges related to bullying in our public school system. These concerns led to the 2009 adoption of the School Violence Prevention Act, requiring each local school administrative unit to adopt a policy prohibiting bullying. N.C.G.S. § 115C-407.6(a). The Act includes sexual orientation and gender identity in its definition of bullying. N.C.G.S. § 115C-407.5(a). Studies have shown that LGBTQ+ and GSA clubs can play a role in combating bullying: LGBTQ+ students attending a school with such an organization feel safer at school, more supported by their school community, and miss fewer school days. Far from disrupting a school's pedagogical mission, organizations such as LGBTQ+ clubs play an important role in ensuring each student can thrive.

With this goal in mind, LLCA students recently founded an LGBTQ+ club. Promotional material utilized by the students for their club embraced the goal of creating "a safe and welcoming school environment." The first meeting was attended by approximately ten LLCA students. This turnout speaks to the truth of their faculty advisor's recent comment to the LLCA Board that "[i]f there was no need for this club to exist in this school, it would not exist."

The students who founded this club were simply building upon the rich tradition of noncurricular student organizations at LLCA. For example, LLCA students have run a campus Christian organization, Raptors for Christ, for five years. The LGBTQ+ club does not seek special treatment; they simply seek to be treated the same as other student groups on campus, a right guaranteed to them by the Equal Access Act.

A small number of community members, some with children attending LLCA, many without a direct connection to the school, have challenged the students' right to form an LGBTQ+ group. For example, Pastor Anton Roos of Lake Lure Baptist Church labelled the founding of the student club "an act of Satan." Pastor Roos further warned the students founding the club that "God will not allow this act to go unpunished." Many objections proceeded along similar theological grounds. One potential legal objection, that the LGBTQ+ had received special treatment in the placement of its posters, was quickly dispelled as the faculty advisor for Raptors for Christ made plain their group had been robustly supported by the LLCA administration, including being allowed to advertise its meetings via posters, during its five years of existence. Unfortunately, and despite the equal treatment afforded all student groups, the LLCA Board voted to temporarily ban all student groups on November 12.²

We urge the LLCA Board to promptly rescind this ban and permit student-led noncurricular groups, including the LGBTQ+ club, to meet again. The Equal Access Act forbids permitting some student groups while barring others. Disparate treatment in response to homophobic comments such as those from Pastor Roos risks the school's reputation. Even tacitly supporting such views communicates to LGBTQ+ students at the school that they are not welcome, a fact duly noted by Board Chair Chris Braund. In addition, as eloquently stated by the faculty advisor for the Raptors for Christ, a ban on student groups impoverishes the LLCA community and its students. Not only does a blanket ban complicate the efforts of students to accrue experiences that make them attractive applicants to colleges and universities, but also it prevents them from pursuing their interests, whether they be religious groups like Raptors for Christ or social justice groups like the LGBTQ+ club.

Thank you for your attention to this matter. If you have any questions, would like to discuss this matter in more detail, or believe that any of the above is incorrect, please feel free to call us at 919-834-3466. We look forward to hearing back from you by December 11, 2015, regarding how LLCA will safeguard its students' rights.³

Sincerely,



Christopher A. Brook
Legal Director, ACLU-NCLF

² The Board also adopted new rules for student club posters on November 12. Per the Equal Access Act, those rules must be applied equally to all noncurricular clubs.

³ Additionally, pursuant to N.C. Gen. § 132-1, we also ask that you provide our office with all documents pertaining to LLCA's consideration of the LGBTQ+ club as well as documents that contain a record of federal funds received in the 2014-2015 school year and those anticipated to be received in the 2015-2016 school year by LLCA. For purposes of this request, the term "documents" in all instances includes, but is not limited to, any memoranda, letters, forms, logs, electronic mail or "e-mail," or handwritten, typed, or electronic notes. Please send the requested documents by December 11, 2015, in electronic format, if possible, to cbrook@aclufonc.org. Should you withhold any portions of the requested documents on the grounds that they are exempt from disclosure, please specify which exemptions and release any portions of the records for which you do not claim an exemption. Should you choose instead to re-authorize the LGBTQ+ and all other student clubs by December 11, 2015, then we will withdraw the records request.