

## Middle School Gay-Straight Alliance Allowed To Pursue Equal Access Claims

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*Carver Middle Sch. Gay-Straight Alliance v. Sch. Bd. of Lake Cnty. Fla.*, 842 F.3d 1324 (11 Cir., Dec. 6, 2016): A Federal Appellate Court held that a Florida middle school met the definition of a secondary school under the Equal Access Act, and therefore claims against the school by an extracurricular club, the Gay-Straight Alliance, could go forward.

### SUMMARY AND FACTUAL BACKGROUND

Students at Carver Middle School (“Carver”) applied for approval of the Carver Middle School Gay-Straight Alliance, an extracurricular student club. The application described the following purposes and goals of the club:

- (1) to create a safe, supportive environment at school for students to discuss experiences, challenges and successes of LGBT students and their allies
- (2) to create and execute strategies to confront and work to end bullying, discrimination, and harassment against all students, including LGBT students
- (3) to promote critical thinking by discussing how to address bullying and other issues confronting students at Carver Middle School.

School District administrators denied the application and in response the Alliance and a student, H.F., filed a complaint against the School Board of Lake County, Florida (“Board”) alleging, among other claims, that the Board violated the Federal Equal Access Act.

After a bench trial, the United States District Court for the Middle District of Florida dismissed the Equal Access Act Claim as not ripe, moot and, in the alternative, ruled that the Act did not apply to Carver Middle School because the middle school did not meet the definition of a “secondary school” under the Act. The District Court ruled that, in Florida, a secondary school means a high school. The Alliance and H.F. appealed this dismissal to the U.S. Court of Appeals for the 11th Circuit.

### DISCUSSION

The Equal Access Act requires “any public secondary school which receives federal financial assistance” to give extracurricular clubs equal access to school resources. The Act defines a secondary school as “a public school which provides **secondary education** as determined by state law.” (emphasis added). The appeals court explained that the Act applied to any school that provided “secondary education” and was not exclusive to high schools. Carver offered an Algebra I class through which students at the middle school received high school credit. Because it offered a high school-level course, the Court held that Carver Middle School provided secondary education under Florida law. Consequently, the middle school was subject to the Equal Access Act and the U.S. Court of Appeals for the 11th Circuit remanded the case back to the District Court to apply the Act.

### PRACTICAL ADVICE

Because the case depended on the analysis of Florida law, it is unclear whether a similar result would obtain in other states. It is also unclear whether a middle school can be considered a secondary school under the Equal Access Act,

regardless of whether it offers high school credit. However, school districts should be aware that the Equal Access Act potentially applies to middle schools as well as high schools, requiring equal access for clubs such as the Carver Middle School Gay-Straight Alliance.

For additional information contact David Mongillo.