

Bridging the Rainbow Divide

A little-known law places a chilling effect on students and teachers attempting to form extracurricular Gay-Straight Alliances.

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Our formidable teenage years are a time when awkwardness and self-discovery collide. Tack on a round-the-clock popularity meter in the shape of social media likes and ever-competitive college acceptance rates, and the modern high school experience just veered from John Hughes to Wes Craven territory.

Add to that a sexual identity variable, and the task of Utah teens successfully walking the daunting social tightrope of middle and high school just got considerably harder.

Enter the Gay-Straight Alliance (or the less binary Gender–Sexuality Alliance)—safe-space groups by design, wherein students can share experiences and offer each other resources and support.

"Research and data are conclusively supporting the importance of having a Gender and Sexuality Alliance or Gay-Straight Alliance (GSAs) in school spaces," Utah Pride Center Executive Director Rob Moolman said in a summer news release. "These are vital programs in our fight against LGBTQ youth suicide and to the visible mental health support initiatives that schools can provide for their students and queer staff members."

Wanting to create a "safer and kinder Utah school system for our LGBTQ youth and families," the Center hosted its first GSA & Educators' Conference in September. Featuring workshops and panels offered by community members and education professionals, the day-long event sought to create supportive and open school environments for LGBTQ students.

Data backs up the Center's efforts. In its Suicide Prevention Plan for Utah, the national Suicide Prevention Resource Center lists "research-supported initiatives" like GSAs as a protective factor in preventing LGBTQ suicide.

But a 12-year-old law is creating a chilling effect on students, teachers and administrators trying to form extracurricular GSAs, according to legal experts, educators and LGBTQ community advocates.

Passed by the Legislature in 2007, the Student Clubs Act (SCA) imposes an intricate web of regulations on extracurricular clubs in public schools. The 17-page law governs how clubs—everything from Model U.N. to the Frisbee team—are formed, categorized and maintained.

Sarah Jones, an English teacher at Centerville Junior High School, is the faculty advisor for the school's GSA. The group was formed two years ago when a student sought support after coming out as transgender. Since then, Jones has seen the group's importance swell among some of its at-risk members.

"Our principal and vice principal ... deal with suicidal ideation all the time," she says. "We have suicidal kids all the time—we have kids attempt suicide, it's not a joke. This isn't something we're doing to promote for people to be gay, we're doing this so that kids don't want to kill themselves."

The daunting sentiment is echoed by Jacob Dunford, chief operating officer at Encircle, a statewide resource center for LGBTQ kids and families. "When you talk to our therapists ... suicide isn't a question. It's almost like a 'when,' not an 'if,'" he says.

Throw in Utah's historically oppressive views around sexuality and gender-identity, and it's clear to see why. Although there are no formal statistics, a 2016 paper by Benjamin Knoll, associate professor of politics at Centre College, a liberal arts school in Kentucky, says there's a link between Latter-day Saints culture and elevated suicide rates among LGBTQ youth. Between 2011 and 2016, the teen suicide rate in Utah doubled—becoming the leading cause of death for that age group. The national rate did not show a similar increase.

However, Knoll also compiled evidence suggesting that suicide attempts are drastically reduced when LGBTQ youth live in welcoming environments compared to those who do not.

Acting Up

After-school GSAs are a place where teenagers can discuss their identities, spread awareness and push back against homophobic bullying and intolerance.

One particular clause in the SCA requires that students looking to join an after-school club first notify and receive consent from their parents, meaning that a parent could single handedly prevent their child from joining a club of their choice by refusing to sign a form.

According to the law, parents must be aware of the club's "purpose, goals and activities" in order to give proper consent. And with the LDS faith being omnipresent in a vast majority of Utah households, some LGBTQ students are prohibited from accessing GSA resources for fear of revealing their identity to unaccepting parents.

Knoll's paper finds that family rejection of an LGBTQ teen's identity leads to an eight-fold risk of a suicide attempt.

Megan Marchant was a junior at Viewmont High School in 2018 when she came out to her family and friends. Recognizing that her parents' acceptance was rare in the highly religious community of Bountiful, Marchant believed it was her responsibility to foster a welcoming community for other gay students who didn't receive the same support at home.

After receiving support from a faculty advisor, Marchant decided in March to form a GSA at Viewmont, the first in the school's history. Although the deadline to form a new club had already passed, Marchant says her advisor, Jill Jones, emailed the school's principal indicating student support for the formation of a GSA in the fall.

Principal Jason Smith responded the next day explaining that Viewmont only hosts "curricular" after-school clubs—and he'd be unable to approve a GSA. According to the Student Clubs Act, a school has the right to create a "closed forum" for students by allowing curricular clubs only. A curricular club, as defined by the law, is one whose focus is directly related to a subject taught in class.

"We already have non-curricular clubs—we have gaming clubs, we have card-game clubs—so I kind of knew it was an excuse," Marchant says. "So I got my mom involved and we set up an appointment with the principal and he kind of talked himself into a corner ... by the end he had given us a club form."

Smith did not respond to *City Weekly's* request for comment.

But it didn't stop there. According to the ACLU of Utah, Viewmont students also sought advice from the organization as well as the Federation of Parents, Families and Friends of Lesbians and Gays (PFLAG).

In fall 2018, 73 Viewmont students signed up for the newly approved GSA during the school's club rush event. Weekly attendance dropped to around 15 to 20 students per week, but Marchant was excited about even having a space at school.

"Most of the time, we were just hanging out. We had discussions about things in the news, we talked about Pride, we talked about how to come out to your parents, [and] when you should come out," Marchant says.

However, the parental consent requirement under the SCA dissuaded many students from attending GSA meetings.

While the principal required the alliance to hand out permission slips for a parent's signature, the club had difficulty keeping track of them, Marchant admits. The same oversight was common among all other extracurricular clubs at the school, she says.

Nonetheless, the permission-slip requirement still made many LGBTQ students uncomfortable.

"I think that did make quite a few people nervous ... some of them stopped coming and some didn't come at all," Marchant says. "I got a message from a girl who had signed up for the club and said, 'I would really love to come by but if my parents found out I was here, they would kick me out of the house. I don't graduate for another two years, so I can't do that yet.'"



A Restrictions Labyrinth

Assistant vice principal at Northwest Middle School, Allison Martin, who wrote her master's thesis about the SCA, says the parental consent forms pose an administrative burden for schools. "On the practical level, it's just really hard to enforce," she says. "If I'm the principal of a high school with 3,000 kids, how am I keeping track of who attends what meeting and whether they have permission?"

In addition to the parental consent requirement, the law also forbids any club whose subject matter "involves human sexuality," a description that Martin argues is ambiguous.

"That's one of those really vague sentences that has a chilling effect on adults because we're so scared of getting in trouble," she says. "[Club advisors] read that law, they're like, 'Oh my gosh, we can't talk about anything related to sexuality,' and they might shut down conversations that are probably really legal under the most strict interpretation."

However, Kris Glad, the school programs coordinator at the Utah Pride Center, says the SCA's "human sexuality" clause has never been a burden for Utah students attempting to form a GSA. According to Glad, students have always successfully argued that discussions that occur in GSAs are never explicitly about "engaging in sexual activity," which is the law's standard.

Martin also notes that the SCA prevents the formation of GSAs in middle schools because it only allows curricular clubs for students who have not yet entered high school. This part of the law isn't always enforced.

Jones, the faculty advisor for the GSA at Centerville Junior High, says the clause preventing non-curricular clubs in middle school has never been enforced there, and wasn't a barrier to forming the club. Centerville Junior High had many other extracurriculars which did not relate to school courses, such as the manga club or *Dungeons & Dragons* club.

Jones says there was significant pushback from parents and students, but the administration was highly supportive and helped field angry phone calls. Some posters advertising the GSA were even torn down, according to Jones.

Juliet Reynolds is the mother of an LGBTQ student at Hillcrest Junior High School who created a club similar to a GSA which met during school hours. Despite a lack of administrative clarity over whether the school could support the non-curricular club, Reynolds' son argued the school's chess club was not curricular either. Reynolds says she met with the principal and received support, but felt he wasn't fully versed on GSAs.

"I could tell that the principal ... felt awkward, he just didn't feel comfortable knowing what to say or what to do, but he really supported having diversity," Reynolds says. "He was for it but I think he was really nervous because of the history that Utah has had with GSAs and being a middle school where I know there are specific restrictions."

Legal Questions

Congress passed the federal Equal Access Act in 1984 in response to two court rulings that upheld bans on the formation of religious clubs at public schools. The act says that if a public school permits at least one non-curricular club, it cannot deny the formation of any other on the basis of "religious, political, philosophical, or other content of the speech at such meetings."

While the drafters originally intended for the law to protect Christian groups, it has, ironically, also been used to protect GSAs. In the 1999 federal case, *East High Gay/Straight Alliance v. Board of Education*, students attempted to form a GSA, but East High School administrators refused to let the group meet. In order to comply with EAA regulations, the Salt Lake City School District decided to implement an unprecedented ban on all non-curricular high school clubs. However, the plaintiffs argued that the district was still allowing some non-curricular clubs while explicitly banning the GSAs. U.S. District Judge Bruce Jenkins ruled in favor of the student group, arguing the district violated the EAA by not equally applying the same terms and conditions for all clubs. In a full circle moment, East High played host to September's GSA & Educators' Conference.

Despite the legal win for GSAs, the practical effects of the parental consent requirements under the 2007 SCA has many legal experts questioning whether the Utah law still violates the EAA and the First Amendment right to freedom of association.

In a 2009 law review in the *Berkeley Journal of Gender, Law and Justice*, attorney Keola Whittaker cites legal precedent and case law to argue the SCA, along with a similar law in Georgia, violates the First Amendment based on its "restriction on the freedom to associate."

Chris Buttars, the late Republican state senator from West Jordan who was the Senate sponsor of the SCA, told *Deseret News* in 2005 his goal was to "ban gay student associations from meeting on public school property." Buttars died in 2018.

Drawing a parallel, Whittaker examines the 1958 Supreme Court case *NAACP v. Alabama*, wherein the state of Alabama, seeking to shut down action by the NAACP, forced the organization to publicly disclose its membership list. This move had the practical effect of discouraging members from continuing to associate with the organization, as many black members feared backlash. The court established a "strict scrutiny" test, wherein the state must provide a "compelling interest" in order to force organizations to disclose membership lists, which they did not.

Citing other case law about free speech questions in schools, Whittaker argues that the strict scrutiny test should also be applied to parental consent laws, which are functionally the same as the compelled membership disclosure law in *NAACP v. Alabama*. He concludes that Utah lawmakers provided no compelling state interest in justifying the parent consent requirement other than "overt animus towards gay-friendly student groups."

Whittaker concludes his article with a hint of optimism: "Indirect restrictions, such as those now in force in Utah and Georgia, will soon face similar legal challenges." Still, in the 10 years since Whittaker wrote those words, it seems little has been done to fulfill his prophecy.

Leah Farrell, senior staff attorney at ACLU of Utah, predicts a tide of change. She sees parental consent requirements as a sword that cuts both ways.

"Maybe a kid wants to join the Young Republicans and they have parents that really don't like that ... they could forbid that student from joining that club," Farrell says. "This law doesn't seem to match the goal of why student clubs are around—to create learning and support."