

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ **MAR 14 2008** ✕

YOUTH ALIVE, CANDACE ROJAS;  
DAVID DAVILA, by and through his next friends  
David Davila and Madeline DAVILA,

**LONG ISLAND OFFICE**

Plaintiffs,

CIVIL ACTION FILE

v.

NO. \_\_\_\_cv\_\_\_\_

HAUPPAUGE SCHOOL DISTRICT; BOARD OF  
EDUCATION OF THE DISTRICT; BOARD  
MEMBERS PATRICIA LESSER, ANN  
MACALUSO, STEVE BURTON, EILEEN MASS,  
GERI RICHTER, ROBERT SCHNEBEL AND  
GINGER TODARO; PATRICIA SULLIVAN-  
KRISS, Superintendent; CHRISTINE O'CONNOR,  
Principal; MICHAEL CAULIN, Assistant Principal,

**CV 08 1068**

**GARAUFIS, J.**

Defendants.

**MATSUMOTO, M.**

**COMPLAINT**

Plaintiffs, Youth Alive, Candace Rojas and David Davila, by and through his next friends, and for their complaint against Defendants, state as follows:

**INTRODUCTION**

This is a civil rights action under 42 U.S.C. § 1983, the First Amendment, the Equal Access Act, 20 U.S.C. § 4071, et seq., and the Fourteenth Amendment brought to remedy violations of the constitutional and statutory rights of Youth Alive and its members, Candace Rojas and David Davila, a graduate and a senior at Hauppauge High School, respectively.

Plaintiffs bring this suit because they have been denied rights, benefits, and privileges to meet as their bible club, Youth Alive, and receive benefits and privileges, equal to those received

by other similarly situated student clubs and extracurricular clubs<sup>1</sup> which are permitted to meet at Hauppauge High School.

Defendant School District, commonly called herein “Hauppauge School District,” has implemented policies and practices, which permit chartering of student clubs (that is to grant official recognition), that are both curriculum related and non-curriculum related.

Along with official recognition, the student clubs are granted certain benefits and privileges.

Youth Alive, however, is denied such official recognition based on the religious nature of the student club, and is therefore denied equal access to all such benefits and privileges.

Furthermore, the Hauppauge School District has officially recognized noncurriculum related student clubs, among others, such as Fantasy Sports Club, Fashion Club, Social Awareness Club, Step Team, and Video/Media Club.

By opening the forum, and denying Youth Alive, as well as its members, the right to meet, as well as benefits and privileges, on the same terms and conditions as other student clubs, Hauppauge School District has violated the constitutional and statutory rights of Plaintiffs and other members of Youth Alive by enjoining their rights and privileges.

Defendants’ actions have deprived and will continue to deprive Plaintiffs of rights protected by the United States Constitution and the Equal Access Act.

Each and every act of Defendants alleged herein was committed under color of state law and authority.

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<sup>1</sup> What the Hauppauge School District calls extracurricular clubs is the equivalent to what the Equal Access Act calls noncurriculum related student activities.

## **JURISDICTION AND VENUE**

This action arises under the United States Constitution, particularly the First and Fourteenth Amendments and under Federal law, particularly 28 U.S.C. § 2201, 42 U.S.C. §§ 1983 and 1988, and the Equal Access Act, 20 U.S.C. §§ 4071-74.

This Court is vested with jurisdiction over these claims by operation of 28 U.S.C. §§ 1331 and 1343.

This Court is vested with authority to grant the requested Declaratory relief by operation of 28 U.S.C. § 2201 and 2202 and pursuant to Rule 57 of the Federal Rules of Civil Procedure.

This Court is authorized to issue Plaintiffs' requested injunctive relief pursuant to 43 U.S.C. § 1983.

Venue is proper under 28 U.S.C. § 1391 in the Eastern District of New York because the claims alleged herein arose there and, on information and belief, all parties hereto reside in the District.

## **PLAINTIFFS**

Youth Alive is an unincorporated student organization comprised of students attending Hauppauge High School.

Plaintiff Candace Rojas is a resident of Hauppauge, New York, and was a student at HHS during the 2005-2006 and the 2006-2007 school years.

Miss Rojas was the President of Youth Alive for the 2006-2007 school year.

Miss Rojas is an adherent to the Christian faith.

Plaintiff David Davila, a minor, is a resident of Hauppauge, New York, and a student at HHS.

Mr. Davila is the President of Youth Alive.

Mr. Davila and Madeline Davila, next friends, are Mr. Davila's parents and guardians, and at all times relevant to this Complaint, residents of Hauppauge, New York.

The Davilas are adherents of the Christian faith.

## **DEFENDANTS**

Defendant Hauppauge School District, ("the District"), is a body corporate; and may sue and be sued in its corporate name.

The District is charged, *inter alia*, with the administration and operation of Hauppauge High School, ("HHS"), a public secondary school.

The District acts through the Board of Education, ("Board"), in administering and operating the District's public schools.

The members of the Board are Pat Lesser, Ann Macaluso, Steve Burton, Eileen Mass, Geri Richter, Robert Schnebel, and Ginger Todaro. They are sued in their official capacities, and upon information and belief, are residents of the State of New York.

The Board, through its members, is charged with overseeing, on behalf of the District, the enactment and enforcement of District Policies, including those relating to the formation, organization and benefits of student clubs.

The Board and its members are responsible for the policies and practices as-applied discriminating against and denying equal benefits to Youth Alive and its members, as well as for the denial itself of recognition as a non-curriculum club.

The Board and its members are likewise responsible for the implementation and application of the policies by the Superintendent, Principal, and Assistant Principal.

Defendant Patricia Sullivan-Kriss is the Superintendent of the District's public schools who is charged with the responsibility for administering the District's policies as they relate to

student activities on campus, including the establishment of student clubs, and the benefits received. Additionally, in this capacity, she has supervisory responsibility over the Principal and Assistant Principal of HHS and is responsible for the policies discriminating against and denying equal benefits to Youth Alive, as well as its members, as well as for the denial itself of recognition as an extracurricular club. Defendant Sullivan-Kriss is sued in her official capacity.

Defendant Christine O'Connor is the Principal of HHS who is charged with the responsibility of the administration of HHS, including the enforcement of District policies as they relate to student clubs and is responsible for the policies discriminating against and denying equal benefits to Youth Alive, as well as its members, as well as for the denial itself of recognition as an extracurricular club. Defendant O'Connor is sued in her official capacity.

Defendant Michael Caulin is the Assistant Principal of HHS who is charged with the responsibility of the administration of HHS, including the enforcement of District policies as they relate to student clubs and is responsible for the policies discriminating against and denying equal benefits to Youth Alive, as well as its members, as well as for the denial itself of recognition as an extracurricular. Defendant Caulin is sued in his official capacity.

### **FACTUAL BACKGROUND**

HHS is a public school located in Hauppauge, New York, is part of the District, and includes grades 9 through 12, inclusive.

HHS is a secondary school under New York law.

On information and belief, HHS and the District receive federal financial assistance.

Before attending HHS, Miss Rojas felt strongly that she should start a student bible club at HHS once she enrolled there. She shared this conviction with a friend and HHS student, Taylor Gries.

On information and belief, Mr. Gries relayed Miss Rojas's idea of starting a bible club to Defendant Caulin.

On information and belief, Defendant Caulin said that Mr. Gries and Miss Rojas could not start a bible club at HHS.

On or about November, 2004, Miss Rojas began attending HHS as a full-time student.

On or about January 1, 2005 Miss Rojas again felt that God told her to start a bible club at HHS by directing her to a Bible verse. (Luke 21:13-19).

At around the end of January 2005, Miss Rojas asked Defendant O'Connor if she could start a Bible club. Defendant O'Connor told Miss Rojas she could not start a bible club because "Hauppauge High School is too secular" and "because of the budget."

Miss Rojas asked Defendant O'Connor at least twice more between January 2005 and June 2005 if she could start a bible club.

Defendant O'Connor told Miss Rojas that because of the budget, she would not be able to start a bible club at HHS.

In September 2005, then Principal Dean Schlanger posted a letter to the school community announcing that student club offerings would be expanding and that the school would be recognizing a new club, Community Service Club.

Around the end of September 2005, realizing the expanded student club offerings and that additional student clubs were being recognized, Miss Rojas once again began to pursue recognition of a student Bible Club. However, HHS resisted and delayed Miss Rojas's efforts again, mentioning, among other things, the lack of funds for an advisor's position. Thus, Miss Rojas eventually secured a teacher who offered to serve as advisor without pay.

On or about October 21, 2005, over a month after Miss Rojas sought club status, the school board merely recommended appointment of two advisors for the Bible Club, which is now named, Youth Alive.

Just after the recommended appointment, and before Youth Alive's first meeting, Youth Alive's Advisor was forced to step down due to scheduling conflicts.

Miss Rojas immediately secured another Advisor who would serve without pay. However, Defendant O'Connor told Miss Rojas that Youth Alive could not meet unless the Board specifically approved the new advisor.

On or about October 27, 2005, HHS changed its position and would allow Youth Alive to meet without requiring new approval of the new advisor.

However, HHS did not provide a permanent room for Youth Alive to meet in until November 11, 2005. On that day, Miss Rojas held her first official brainstorming meeting for Youth Alive. Miss Rojas spent the next two weeks planning Youth Alive's events and meeting with students interested in attending Youth Alive.

On or around the beginning of January 2006, Miss Rojas asked Defendant O'Connor to post information about the Bible Club on HHS's club website. This information should have been posted in October 2005 when the club was formed.

From November 2005 until February 2006, Defendant O'Connor did not post the information.

At the beginning of the 2006-2007 school year, Miss Rojas again wanted Youth Alive to meet. Miss Rojas met with Mr. Davila at this time and they planned the curriculum and events for Youth Alive for the 2006-2007 School Year.

However, Defendant O'Connor told Miss Rojas and Mr. Davila that Youth Alive could not meet until it received Board approval again even though Youth Alive had been formed, advisors recommended, and had already been meeting to some degree during the last academic year.

On September 6, 2006, the first day of school, Defendant Board of Education had already approved all pre-existing clubs at HHS except for Youth Alive. Some of the approved clubs did not even have an advisor. Thus, all pre-existing clubs were eligible to meet except for Youth Alive.

Defendant O'Connor, without the Board's approval, changed course and allowed Youth Alive to meet on or about October 12, 2006. Therefore, Youth Alive missed five weeks of meetings due to defendants' actions and inactions.

During this time Defendant O'Connor promised occasionally to serve as an ad hoc Advisor to Youth Alive, however, on at least one instance she did not show up. Miss Rojas held the meeting in the hallway until a security guard came, opened the classroom, and monitored the rest of the meeting.

Finally, Miss Rojas and Mr. Davila went to the Board of Education meeting on November 1, 2006 to demand that Youth Alive be officially approved and recognized.

At the meeting, Defendant Superintendent informed Miss Rojas and Mr. Davila that Youth Alive would not receive official approval because it is a "community club" and not a "school club." Youth Alive was prohibited from meeting until mid November 2006 due to inaction by Defendant Board. Previously, all other clubs had received Board approval.

The Defendants have continued to refuse to recognize Youth Alive as an official extracurricular club through the 2007-2008 school year as well as denied benefits and privileges



that are given to extracurricular clubs. The Defendants constant excuse for denying official approval and recognition to Youth Alive has been that the school district did not have adequate funds for newly formed clubs. This denial for Youth Alive and its members' right to official extracurricular club approval and recognition and the associated benefits and privileges that flow from such still continues to be starkly evident because in 2007 the school redesigned their website, at which time Youth Alive was removed from the page which listed the school clubs.

Because Youth Alive has never received official approval and recognition as an extracurricular club, its members have been deprived of the following benefits:

- Denied Formation,
- Club meetings,
- Consistent meeting space,
- Approval of Advisor,
- Website listing,
- Paid Advisor
- Bank Account to hold its own funds.

Presently due to Youth Alive never having received official approval and recognition, its members are continuing to be deprived of the following benefits:

- Website listing,
- A paid Advisor,
- A school bank account to hold its own funds.

Youth Alive, as well as its members has not received any of these benefits, even though, such benefits have been provided to other extracurricular school clubs. This denial of benefits has adversely impacted the club and its members, such as, among other adverse impacts, the denial of a paid advisor has required the replacement of their advisor at the beginning of the Fall 2007 semester and the Spring 2008 semester and the denial of a school bank account has infringed upon their ability to plan and participate in the activities that they wish to engage in, but are otherwise unable to.

## ALLEGATIONS OF LAW

All of the acts of Defendants, their officers, agents, employees and servants, were executed and are continuing to be executed by the Defendants under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York and the Hauppauge School District.

Defendants have created a “limited open forum” by allowing non-curriculum related clubs access to and use of school facilities, and the receipt of benefits, such as a paid advisor and school bank account to hold funds, for expressive activities.

Defendants have denied Plaintiffs equal access and a fair opportunity to this forum based upon the religious content of the speech at their meetings.

Defendants have discriminated against Plaintiffs based upon the religious content of the speech at their meetings.

Defendants have engaged in content and viewpoint based discrimination of expression in refusing to allow Plaintiffs and Youth Alive and its members to meet on the same terms as other non-curriculum related clubs and to give them benefits provided to other non-curriculum related clubs, such as a paid advisor and a school bank account to hold funds.

Defendants’ content and viewpoint based discrimination of expression is not supported by a compelling governmental interest, nor is it narrowly tailored.

Plaintiffs are suffering irreparable injury from the conduct of Defendants.

Plaintiffs have no adequate remedy at law to redress the deprivation of their rights by Defendants.

Unless the conduct of Defendants is enjoined, Plaintiffs will continue to suffer irreparable injury.

## **FIRST CAUSE OF ACTION**

### **Violation of Plaintiffs' First Amendment Right to Free Exercise of Religion**

Plaintiffs repeat and reallege each of the foregoing allegations in this complaint.

Plaintiffs desire to engage in expressive activities on the basis of their sincerely held religious beliefs and to share these beliefs with others.

Defendants, through their policies and practices as-applied, have denied Plaintiffs of their right to free exercise of religion by conditioning receipt of government benefits on foregoing their free exercise rights.

Defendants' policies and practices as-applied have forced Plaintiffs to choose between engaging in religious speech and foregoing the governmental benefit of equal access and benefits to Youth Alive or foregoing the free exercise of religion to receive the access and benefits.

Defendants' policies and practice as-applied deny Plaintiffs' free exercise of religion by denying Youth Alive official recognition and approval by the District and HHS and the associated benefits that flow from such recognition.

Defendants' policies and practice as-applied deny Plaintiffs' free exercise of religion by denying Youth Alive a paid Advisor.

Defendants' policies and practice as-applied deny Plaintiffs' free exercise of religion by denying Youth Alive a bank account for its funds.

Defendants' conduct imposes special disabilities on Plaintiffs because of religion and the intent to engage in religious expression as Youth Alive members.

These special disabilities placed on Plaintiffs are not neutral and of general applicability.

The Defendants' conduct cannot be justified by a compelling governmental interest, nor is it narrowly tailored to advance any such interest.

The Defendants' policies and practices as-applied chill Plaintiffs' freedom of religious discussion and exercise, which are fundamental rights guaranteed Plaintiffs by the First Amendment.

The Defendants' conduct constitutes an excessive burden on Plaintiffs' rights to freedom in the exercise of religion and has violated the Free Exercise Clause of the First Amendment to the United States Constitution.

Wherefore, Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief, as well as the other relief set forth hereinafter in the prayer for relief.

## **SECOND CAUSE OF ACTION**

### **Violation of Plaintiffs' First Amendment Right to Free Speech**

Plaintiffs repeat and reallege each of the foregoing allegations in this complaint.

Defendants have by policy and practice permitted the formation of a variety of student clubs at HHS.

By doing so, Defendants have created a limited open forum.

Defendants' policies and practice as-applied discriminate against and prohibit the equal treatment of clubs sponsored by religious students and containing religious speech in this forum.

The discrimination and unequal treatment of Plaintiffs' club containing religious speech or activities is a content-based restriction in an open forum.

Defendants' denial of Plaintiffs' religious speech while permitting secular speech also constitutes viewpoint discrimination.

Such viewpoint discrimination is unconstitutional in any type of forum.

Defendants' policies and practice as-applied impose an unconstitutional prior restraint because they vest District officials with the unbridled discretion to permit or refuse protected speech equal access to the forum.

Defendants' policies and practice as-applied are overbroad because they sweep within their ambit protected First Amendment rights in the form of religious speech.

The overbreadth of Defendants' policies and practice as-applied chills protected speech by discouraging individuals and groups from applying for recognition in the forum for the purpose of engaging in certain protected speech.

Defendants' policies and practice as-applied chill, deter, and restrict Plaintiffs from using district facilities on an equal basis with others and receive benefits to discuss issues from a religious perspective.

Defendants have interpreted and applied the policies to disqualify Plaintiffs from accessing equally all facilities and receiving benefits under their control and otherwise open to other student groups, solely because of the religious nature of Plaintiffs' activities and the religious content and viewpoint of the Club's speech.

The policies, as interpreted and applied by the Defendants to prohibit equal use requested and benefits by the Plaintiffs, are not the least restrictive means necessary to serve any compelling interest which Defendants seek thereby to secure.

Defendants' policies and practice as-applied violate Plaintiffs' right of Free Speech as guaranteed by the First Amendment to the United States Constitution as incorporated and applied to state action under the Fourteenth Amendment.

Wherefore, Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief set forth hereinafter, as well as the other relief requested in the prayer for relief.

### **THIRD CAUSE OF ACTION**

#### **Violation of the Equal Access Act**

Plaintiffs repeat and reallege each of the foregoing allegations in this complaint.

HHS is a public secondary school under New York law, located in Hauppauge.

The District and HHS receive federal financial assistance.

Defendants have created a “limited open forum” in HHS within the meaning of the Equal Access Act, Title 20 U.S.C. § 4071, et seq. by permitting one or more non-curriculum related student groups to meet on school premises during non-instructional time.

Plaintiffs’ club, Youth Alive, has voluntary membership and is open to any student.

Youth Alive assembles on the campus of HHS for the purpose of meetings, exchange of ideas, service to the school and community, and discussion of issues from a religious perspective of importance to them.

Youth Alive’s activities are voluntary, student-initiated, and student-directed.

Youth Alive’s activities on campus do not materially and substantially interfere with the orderly conduct of educational activity within HHS.

Defendants have discriminated against Plaintiffs and denied them permission to equal access of all school benefits and privileges that are provided to other non-curriculum related clubs because of the religious nature of Youth Alive.

Defendants have thereby abridged and continue to violate the rights of Plaintiff under the Equal Access Act, Title 20 U.S.C. § 4071, *et seq.*

Wherefore, Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief set forth hereinafter, as well as the other relief requested in the prayer for relief.

## **FOURTH CAUSE OF ACTION**

### **Violation of the Equal Protection Clause**

Plaintiffs repeat and reallege each of the foregoing allegations in this complaint.

Defendants have opened the forum of HHS to Plaintiffs' Bible Club by permitting the formation of other non-curriculum related clubs.

Defendants, however, have discriminated against the Plaintiffs' club, and have not given the Club equal access to all school facilities, benefits, and privileges.

By discriminating against the content and viewpoint of Plaintiffs' speech, Defendants are treating Plaintiffs and their Club differently from other similarly situated public school students and clubs within the District on the basis of the religious content and viewpoint of the Plaintiffs' speech.

Defendants have no rational, important, or compelling state interest for such disparate treatment of Plaintiffs, nor is the denial of access narrowly tailored.

The conduct of Defendants violated Plaintiffs' right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

Wherefore, Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief set forth hereinafter, as well as the other relief requested in the prayer for relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray for judgment as follows:

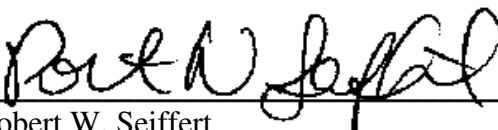
1. That this Court issue a permanent injunction, restraining Defendants, their officers, agents, employees, and all other persons acting in active concert with them from enforcing the policies that prohibit Youth Alive, as well as its members, from receiving equal access to all extracurricular club benefits and privileges, specifically enjoining the

continued denial of extracurricular club status, website listing, a paid advisor, and access to a bank account;

2. That this Court render a declaratory judgment declaring as unconstitutional as-applied the District's policies that have prohibited Youth Alive, as well as its members, from receiving official approval and recognition and equal access to all official club benefits and privileges;
3. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment;
4. That this Court retain jurisdiction of this matter for the purpose of enforcing any Orders;
5. That the Court award Plaintiffs' costs and expenses of this action, including a reasonable attorneys' fee award, in accordance with 42 U.S.C. § 1988 and the Equal Access Act;
6. That this Court award nominal damages for the violation of Plaintiffs' constitutional rights;
7. That the Court grant such other and further relief as the Court deems equitable and just in the circumstances.



Respectfully submitted, this 4 day of March, 2008

  
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\*Motion for admission *Pro Hac Vice*  
pending