

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
Asheville Division
CIVIL ACTION NO. 1:25-cv-37**

M.K., a minor, by and through her father and next friend, EARL KRATZER,

Plaintiff,

v.

STEPHEN FISHER, individually and in his official capacity as the Superintendent of the Cleveland County Schools; JOEL SHORES, AARON BRIDGES, DANNY BLANTON, GLORIA SHERMAN, RON HUMPHRIES, DAVID FISHER, RONNIE GRIGG, KENNETH LEDFORD, and WALTER SPURLING, in their official capacities as members of the Cleveland County Board of Education,

Defendants.

COMPLAINT

INTRODUCTION

1. This case concerns public school officials prohibiting high school students from discussing how LGBTQ+ people have contributed to American society.

2. Plaintiff M.K. is a junior at Shelby High School. She founded the Activism Club in her freshman year for students to discuss subjects that are not covered by the official curriculum. M.K. and her fellow Club members have held discussions on subjects including the Black Lives Matter movement, the war in Gaza, Women's History Month, suicide prevention, and breast cancer awareness. Participation in the Club is entirely voluntary, and members receive no grades or academic credit. Until recently, the defendant

school officials had never prohibited the Club’s activities, at most requiring parental permission for students to discuss certain topics.

3. But during the spring semester of 2024, M.K. proposed that the Club play a Jeopardy-style quiz game highlighting LGBTQ+ individuals who have made significant contributions to society (“the quiz game”). The quiz game is a text-only PowerPoint presentation entitled “LGBTQ+ Representation.” It asks students to identify people like Harvey Milk, Lady Gaga, and Ellen DeGeneres, as well as pieces of popular media that feature LGBTQ+ characters or actors. The game has no depiction of sex, violence, illegal drug use, or anything else that could possibly justify its censorship under the First Amendment.

4. Defendants, however, deemed the subject matter “indecent” and prohibited M.K. and the Activism Club from playing the game.

5. Upon information and belief, over the last three years, Defendants have not prohibited any other student club activity that involved discussing art, politics, current events, or any other matter of public interest.

6. As detailed below, Defendants’ conduct violates Plaintiff’s First Amendment rights to speech and associational activity by imposing a prior restraint on speech, content discrimination, and viewpoint discrimination. Defendants are also violating the Equal Access Act by imposing unequal treatment of student groups based on the nature of the subjects they wish to discuss. Plaintiff seeks declaratory and injunctive relief and nominal damages.

PARTIES

7. M.K. is a resident of Shelby, North Carolina. She is seventeen years old and brings this action by and through her father and legal guardian, Earl Kratzer.

8. Defendant Stephen Fisher is the Superintendent of the Cleveland County Schools. Defendant Fisher is responsible for implementing state and local policies in the Cleveland County Schools. Defendant Fisher is sued in his individual capacity for nominal damages under 42 U.S.C. § 1983 and in his official capacity for equitable relief under 42 U.S.C. § 1983 and the Equal Access Act. He is also sued in his official capacity for nominal damages under Article I, Section 14 of the North Carolina Constitution. During all relevant times alleged herein, Defendant Fisher was acting under color of state law.

9. Defendants Joel Shores, Aaron Bridges, Danny Blanton, Gloria Sherman, Ron Humphries, David Fisher, Ronnie Grigg, Kenneth Ledford, and Walter Spurling are members of the Cleveland County Board of Education and are responsible for ensuring that all Cleveland County Schools employees follow district policies and state and federal law. They are sued in their official capacities for equitable relief under 42 U.S.C. § 1983 and the Equal Access Act, and for nominal damages under the Article I, Section 14 of the North Carolina Constitution. During all relevant times alleged herein, these Defendants were acting under color of state law.

10. The Cleveland County Schools receive federal funds through the Title I program and are subject to the Equal Access Act, 20 U.S.C. § 4071.¹

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction under 29 U.S.C. § 1331 because Plaintiff raises federal claims pursuant to 42 U.S.C. § 1983, the First Amendment, and the Equal Access Act, 20 U.S.C. § 4071.

¹ Title I Program Compatibility of Services, Cleveland County Board of Education Policy Manual 8307, <https://go.boarddocs.com/nc/ccs/Board.nsf/goto?open&id=CJQ2HDo24026>.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because the events or omissions giving rise to Plaintiff's claims occurred in Shelby, North Carolina, located in this District.

FACTUAL ALLEGATIONS

13. M.K. is a 17-year-old high school junior at Shelby High School, a public school in Cleveland County, North Carolina.

14. Shelby High School is a public secondary school in Shelby, North Carolina, under the purview of the Cleveland County Board of Education.

15. M.K. founded the Activism Club ("the Club") during her freshman year at Shelby High School.

16. M.K.'s purpose in founding the Activism Club was to provide a space for students to discuss issues of public interest that are not covered in the official curriculum. Such topics have included the Black Lives Matter movement, Women's History Month, breast cancer awareness, suicide prevention, and the war in Gaza.

17. Under Board policy, the Activism Club is a "Student Initiated, Noncurriculum-Related Student Group." This policy provides that a "principal shall grant approval to student-initiated groups for meetings during noninstructional time when other non-curriculum groups are permitted to meet" Participation must be voluntary and limited to enrolled students. "A school employee may be assigned to be present at the meeting," but they "shall not, in any manner, seek to control, direct, or influence the conduct

of voluntary, student-initiated meetings, except if necessary to assure the health and safety of the participants or to protect school property.”²

18. The Activism Club meets during the regular school day, during what is known as the “flex period” at Shelby High School.

19. Shelby High School’s flex period is a school-created period that occurs during the regular school day from 10:45 am to 11:15 am.

20. Students may use the flex period as they wish. Participation in the Activism Club or any other student club is not required.

21. The Activism Club is only open to high school students enrolled at Shelby High School.

22. Other groups that meet during this period include Bible Club, Dungeons and Dragons Club, Spanish Club, Board Game Club, and more.

23. The Activism Club meets monthly.

24. The Activism Club receives no funding from the school, and participants receive no grades or academic credit for their participation in the Club.

25. Haley Pond is a counselor at Shelby High School. She is the Activism Club’s staff advisor.

26. During meetings of the Activism Club, Ms. Pond takes attendance and helps to maintain order, but does not provide instruction or participate in Club activities. Ms. Pond spends most of her time during Club meetings attending to her own work.

² Student-Initiated, Noncurriculum-Related Student Groups Regulation, Cleveland County Board of Education Policy Manual 3620-R, <https://go.boarddocs.com/nc/ccs/Board.nsf/goto?open&id=CGG45Y09F4Co>.

27. The discussion and activities that occur during meetings of the Activism Club constitute private speech, expression, and associational activity that happen to occur on school grounds.

28. On or around April 10, 2024, M.K. proposed a Jeopardy-style quiz game (the “quiz game”) to Ms. Pond.

29. The quiz game is entitled “LGBTQ+ Representation.” It is a text-only PowerPoint presentation with fact-based questions asking students to identify LGBTQ+ individuals including Harvey Milk and Ellen DeGeneres, and popular media featuring LGBTQ+ people such as *Queer Eye* and *Heartstopper*. (Exhibit A at 16, 24, 26, and 44.)

30. M.K. used a free, online template for the quiz game, but wrote the questions and answers herself.

31. M.K. hoped that the game would help fight stigma against LGBTQ+ individuals by highlighting the meaningful contributions they have made in all walks of American life, including public service, sports, and the arts.

32. The quiz game contains no images and no content that could reasonably be viewed as lewd, obscene, defamatory, or depicting criminal activity.

33. To the best of M.K.’s knowledge, all content in the PowerPoint presentation is factually accurate.

34. M.K. proposed that the Club play the quiz game during its April 17, 2024 meeting.

35. Ms. Pond agreed that the game was a good idea. She then checked with the Shelby High School Principal, Eli Wortman, about whether the Activism Club could play the game.

36. On or about April 15, 2024, Ms. Pond informed M.K. that Mr. Wortman did not think it was a good idea to play the game without parental permission slips, and stated they may have to postpone the game for the time being.

37. On or about July 15, 2024, M.K. sent Ms. Pond a schedule for the Activism Club meetings in the coming semester.

38. M.K. again proposed the Jeopardy-style game for the club's October meeting.

39. On August 7, 2024, Ms. Pond informed M.K. she had forwarded the proposed schedule to Mr. Wortman and that some of the "sensitive subjects" may require permission slips.

40. The Activism Club had previously used parental permission slips for discussions of topics deemed "sensitive," such as the war in Gaza.

41. M.K. is not aware of any other student clubs being required to use parental permission slips or seek approval of meeting topics by the principal.

42. On October 31, 2024, Ms. Pond informed M.K. that she and Activism Club would be not be allowed to play the proposed game.

43. Ms. Pond stated that she spoke with Sandy Hamrick, the Cleveland County School Board liaison, who had spoken directly with Defendant Fisher.

44. Ms. Pond further stated that Defendant Fisher was concerned around the club activities taking place during the school day and how that relates to the new Parents Bill of Rights law.

45. The Parents Bill of Rights is a North Carolina statute that prohibits instruction on sexuality, sexual activity, and gender identity in public schools, but only in kindergarten through fourth grade. N.C. Gen. Stat. § 115C-76.55.

46. On that same day, Earl Kratzer, M.K.'s father, emailed Defendants asking them to explain the basis for their decision.

47. On November 7, 2024, Defendant Fisher sent a letter in response to Mr. Kratzer's inquiry. (Exhibit B.)

48. Defendant Fisher stated Activism Club is a function of the school day and includes teacher-led activities.

49. Defendant Fisher stated he and the Board had not relied on the Parents Bill of Rights to justify their prohibition of the quiz game, but that they had instead relied on two Board policies — "Selection of Instructional Materials,"³ and "Distribution and Display of Non-School Materials."⁴

50. These policies are contradictory in this context, as instructional materials cannot also qualify as non-school materials, and non-school materials cannot qualify as instructional materials.

51. Defendant Fisher's response did not state how either policy was applied.

52. Defendant Fisher did not allege any pedagogical concerns with the game, such as age appropriateness.

53. Defendant Fisher did not allege any fear of disruption of school activity that might be caused by the game.

³ Selection of Instructional Materials, Cleveland County Board of Education Policy Manual 3200,
<https://go.boarddocs.com/nc/ccs/Board.nsf/goto?open&id=CGFRFR6DD303>.

⁴ Distribution and Display of Non-School Material, Cleveland County Board of Education Policy Manual 5210,
<https://go.boarddocs.com/nc/ccs/Board.nsf/goto?open&id=CHPKA650E0Bo>.

54. Indeed, Defendant Fisher's letter to Mr. Kratzer did not specify any concerns with the quiz game whatsoever.

55. On December 4, 2024, Plaintiff's counsel sent Defendants a demand letter explaining why their actions violated M.K.'s rights under the First Amendment and the Equal Access Act and requesting she be allowed to present the quiz game to the Activism Club.

56. On January 20, 2025, Defendants' counsel responded to Plaintiff's letter and stated they would not allow M.K. and Activism Club to play the game.

57. The letter stated:

In this instance, it was determined that the suggested game was indecent based on community standards, inappropriate for display considering the age of students, and encouraged the violation of school regulations. Specifically, the game includes questions about an individual "expressing her bisexuality" and quoting song lyrics such as "long nights, daydreams sugar and smoke rights, I've been a fool but strawberries and cigarettes".

(Exhibit C at 2.)

58. Upon information and belief, since the Activism Club was founded, no other student club has been completely prohibited from holding a discussion or activity that addressed art, politics, current events, or other matters of public interest.

CLAIMS FOR RELIEF

COUNT I

Prior Restraint in violation of the First Amendment to the U.S. Constitution, via 42 U.S.C. § 1983, against all Defendants in their official capacities and Defendant Fisher in his individual capacity

59. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

60. Plaintiff has First Amendment rights to speech, expression, and association in school; students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gates.” *Tinker v. Des Moines Indep. Cmty Sch. Dist.*, 393 U.S. 503, 506 (1969). And “[t]he First Amendment does not permit schools to prohibit students from engaging in [] factual, nonthreatening speech.” *Starbuck v. Williamsburg James City Cnty Sch. Bd.*, 28 F.4th 529, 536-37 (4th Cir. 2022).

61. A prior restraint forbids certain speech before the time that the communication is to occur. *Alexander v. U.S.*, 509 U.S. 544, 550 (1993).

62. Any system of prior restraint “bears a heavy presumption against its constitutional validity.” *Bantam Books, Inc. v. Sullivan*, 373 U.S. 58, 70 (1963).

63. Prior restraint in schools only pass constitutional muster “where [the school] can reasonably forecast substantial disruption of or material interference with school activities[.]” *Quarterman v. Byrd*, 453 F.2d 54, 58 (4th Cir. 1971).

64. Plaintiff wishes to share the quiz game with her peers and discuss its subject matter. This is speech, expression, and associational activity protected by the First Amendment.

65. By requiring Plaintiff to seek approval for her proposed quiz game and then denying approval where the game posed no threat of disruption to school activities, Defendants have imposed an unconstitutional prior restraint.

66. Moreover, the quiz game is not school-sponsored speech, it is not obscene, lewd, vulgar, or indecent, and it does not encourage illegal drug use.

67. As a result of Defendants’ actions, Plaintiff suffered and continues to suffer irreparable harm.

COUNT II

Content Discrimination in violation of the First Amendment to the U.S. Constitution, via 42 U.S.C. § 1983, against all Defendants in their official capacities and Defendant Fisher in his individual capacity

68. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

69. Defendants are engaging in content-based discrimination against Plaintiff's speech by singling it out for adverse treatment "because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015).

70. Defendants have not tried to stop the Activism Club from discussing virtually any topic its members wished — including topics dealing with violence, political controversy, and drug use — but prohibited Plaintiff from sharing the quiz game because it concerns LGBTQ+ people.

71. As a result of Defendants' actions, Plaintiff suffered and continues to suffer irreparable harm.

COUNT III

Viewpoint Discrimination in Violation of the First Amendment to the U.S. Constitution, via 42 U.S.C. § 1983, against all Defendants in their official capacities and Defendant Fisher in his individual capacity

72. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

73. Defendants' censorship of the quiz game is unconstitutional viewpoint discrimination under the First Amendment.

74. The Activism Club's meetings during Shelby High School's flex period constitute a limited public forum.

75. School districts may not arbitrarily censor student speech based on viewpoint in a limited public forum. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106–07 (2001).

76. Defendants here discriminated against Plaintiff’s speech on the basis of viewpoint when they prohibited her and Activism Club from playing a fact-based, Jeopardy-style quiz game that expresses a positive opinion about LGBTQ+ people who have made significant contributions to American society and culture.

COUNT IV

Unequal Treatment of Student Groups in a Limited Open Forum in violation of the Equal Access Act, 20 U.S.C. § 4071, against all Defendants in their official capacities

77. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

78. The Equal Access Act makes it “unlawful for any public secondary school which receives federal financial assistance and which [maintains] a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited 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).

79. Schools create a limited open forum when they “grant[] an offering or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time.” 20 U.S.C. 4071(b).

80. Defendants have created a limited open forum by allowing Bible Club, Dungeons and Dragons Club, and Board Game Club, among others, to meet on school premises during the flex period and discuss virtually any topic they wish.

81. Defendants discriminated against Plaintiff by not permitting her and the Activism Club from conducting a meeting based on the political, philosophical, or other content to be discussed at the meeting: LGBTQ+ people who have made significant contributions to American society and culture.

COUNT V

Violation of Article I, Section 14 of the North Carolina State Constitution against all Defendants in their official capacities

82. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

83. Article I, Section 14 of the North Carolina constitution provides: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.”

84. Article I, Section 14 of the North Carolina Constitution provides at least the same level of protection of speech as the First Amendment to the U.S. Constitution. *See State v. Jackson* 348 N.C. 644, 648 (1998).

85. The North Carolina Constitution authorizes a cause of action for damages against state officials in their official capacities when they violate the rights found in Article I, including the right to free speech. *Corum v. Univ. of N. Carolina through Bd. of Governors*, 330 N.C. 761, 782 (1992) (“A direct action against the State for its violations of free speech is essential to the preservation of free speech.”).

86. Plaintiff lacks an adequate state law remedy to recover for a violation of her state constitutional right to free speech.

87. For the reasons articulated in Counts I, II and III, Defendants’ actions violate also violate Article I, Section 14 of the North Carolina Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter the following relief:

1. Declare that Defendants' actions violated Plaintiff's rights under the First Amendment, the Equal Access Act, and Article I, Section 14 of the North Carolina Constitution.
2. Enter preliminary and permanent injunctions requiring Defendants to cease their unlawful conduct and allow Plaintiff to present the quiz game to her fellow Club members.
3. Maintain jurisdiction over this case until Defendants' unlawful conduct has ceased and is not likely to recur.
4. Award nominal damages to Plaintiff.
5. Award attorneys' fees and costs pursuant to 42 U.S.C. §§ 1920 and 1988, or as authorized by law.
6. Award any additional relief as the Court may deem just and proper.

Respectfully submitted this, the 5th day of February, 2025.

**ACLU OF NORTH CAROLINA
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