

The Courier-Journal

TUESDAY, AUGUST 12, 2003

Boyd may let gay-rights club meet only after school hours

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The Courier-Journal

Seeking to end a controversy over a gay-rights student group, the Boyd County School Board is expected to give final approval next week to a new policy on student activities.

The board also will ask a federal judge to lift an injunction that allows the Boyd County High School Gay-Straight Alliance to meet at school before or after school hours or during the lunch period.

Under the new policy, the alliance could meet only after school hours. The board contends the policy treats the alliance the same as other noncurricular clubs.

But the American Civil Liber-

ties Union, which has sued the district on behalf of the gay-rights group, and other observers question whether the policy amounts to equal treatment as required by the federal Equal Access Act, and whether it complies with a Kentucky law giving school-based teacher-parent councils the authority over extracurricular matters.

The board, which gave preliminary approval to the policy last month, is scheduled to meet Monday. Even though classes for the new year started last week, the policy would not take effect until the injunction is lifted.

"On the face of it, the (policy's) terms seem consistent with the Equal Access Act," said Sam Marcosson, a civil-rights and constitu-

tional-law professor at the University of Louisville. "But the big question in all of this is not what their policy says on its face but what is actually happening in the schools. So the question is how will this be enforced, and I don't see how this (policy) really changes much."

Adopting a new activities policy and other policies governing attendance, excused absences, harassment and use of school facilities by community groups is the latest response by the school district to the alliance, which is seeking recognition as a school club and permission to meet at the school.

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"What we're trying to do is provide a fair forum for all noncurricular activities," said Winter Huff, a Somerset lawyer who helped draft the new policies.

Kaye King, an English teacher at the high school who is the alliance's adviser, said school district officials showed teachers new additions to the policy last week requiring parental permission to participate in a club and prohibiting the district's insurance policy from covering activities that take place after school.

THOSE ADDITIONS could be "roadblocks" to meetings of the alliance, she said.

Superintendent Bill Capehart and school board chairwoman Sheri Bryan didn't return calls seeking comment yesterday.

In October, the high school's teacher-parent council voted to let the alliance meet at school. But the action prompted a school boycott and opposition from local ministers and others.

The school board voted in December to ban all clubs from meeting at the high school and pledged to write a new policy on clubs. But a month later the ACLU sued the district on behalf of the alliance, saying the high school violated the Equal Access Act by letting some noncurricular clubs meet despite the ban while not allowing the alliance to meet.

The district denied the allegations, which included claims that it violated the students' rights to free speech and equal protection, and violated the Kentucky Education Reform Act by overturning the school council decision.

U.S. District Judge David L. Bunning issued a preliminary injunction in April saying the school had violated the Equal Access Act, and he ordered the school to let the alliance meet. He ruled that the student group had "a strong likelihood" of winning its case.

Bunning also ordered the two sides to mediate their differences, but the ACLU and the district couldn't come to an agreement. That set the stage for the new policy.

Huff said the district plans to take the new policy to Bunning and ask him to lift the injunction.

"It is the fulfillment of an issue that has existed since before this specific controversy, and that is to what extent are activities other than course work appropriate during the school day and to what extent does the school district need to be involved in that," Huff said. "What the district is saying is we want the school day to fulfill (academic) purposes, we want the school day to be spent on things that are instructional or curricular."

She said that noncurricular clubs such as the alliance, the Bible Club and the Key Club community service group would be allowed to meet at school on **the same terms**, and that she believes the policy is in compliance with the Equal Access Act.

The policy would allow noncurricular activities to take place at the school only after school hours, and would define the school day from 7:30 a.m. to the loading of school buses around 4 p.m.

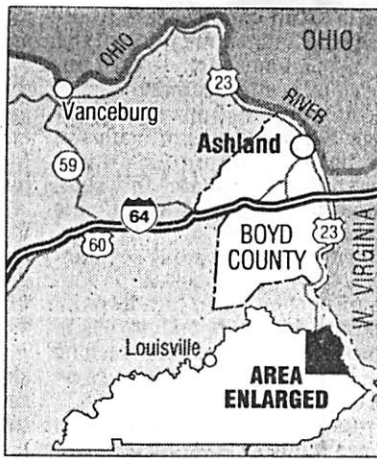
King, the alliance's adviser, said that after Bunning issued the injunction last spring, the group met Friday mornings before the 8 a.m. start of classes because it was the most convenient time.

She said that the alliance plans to hold its first meeting of the fall semester on Friday before school, and that she was assured by Capehart the group can meet at that time until Bunning lifts the injunction.

"I never would have dreamed it would have lasted this long to start with," King said. "The kids are not going to give up."

Huff said it's conceivable that noncurricular clubs could meet before 7:30, but that a practical question exists as to whether school officials would be available to open the building before then.

Teresa Cornette, a Boyd County school board member, said last month



BY STEVE DURBIN, THE C-J

BOYD POLICY

Under the proposed Boyd County student activity policy:

- School-sponsored activities include those related to the curriculum, either an individual course or school courses generally; activities required for curricular credit; or extracurricular academic or athletic programs that could result in college scholarships.

- Career and technical student organizations and cheerleading are defined as school-sponsored.

- All other activities, including the Gay-Straight Alliance and the Bible Club, are considered noncurricular and will not be school-sponsored.

- The school board prohibits school groups from meeting at school between 7:30 a.m. and the end of the school day unless an activity results in academic credit or meets other exceptions.

- Other exceptions include representing Boyd County in a school-sponsored activity; participating in an activity that could result in a college scholarship; activities and field trips approved by the principal.

- Fees for noncurricular groups to use school facilities can be waived by the principal.

that school employees wouldn't be able to serve as advisers to noncurricular clubs. But the policy "does not prohibit teachers from being involved in noncurricular activities," according to a statement from the school board.

Unlike curriculum-related clubs and other activities that the district considers academic or athletic, however, teachers won't be paid by the district for their service, Huff said.

PREVIOUSLY, TEACHERS were paid a small stipend for advising most clubs, King said. As adviser to the Human Rights Club, King received \$200 a year, she said. The pay for each teacher varied depending upon how long a teacher advised a club, she said.

The policy also seeks to make a distinction between school-sponsored activities and those that are not sanctioned by the school. Sponsored activities include those that relate to the curriculum, athletics and cheerleading, and other activities related to "academic enrichment."

Such activities could meet during the school day — or allow students to be excused from school for a field trip or sporting event. Students also could be excused to attend noncurricular activities if participation could be "of direct assistance" in getting a college scholarship or is approved by the principal.

"When you are looking at the policy

on excused absences, you're really focusing on the nature of the activity and not the nature of the club or organization," Huff said.

But the ACLU and others said the policy makes it unclear whether the alliance is being treated equally.

"We don't feel like the policy is in line with what the judge has to say," said Chris Hampton, public education associate for the ACLU's Lesbian and Gay Rights Project.

Hampton added that despite the breakdown in talks between the district and the ACLU, the two sides are still discussing their differences.

Marcosson said the school board is "trying to do the minimum" to comply with the Equal Access Act.

"They're doing as little as they can and being as restrictive as they can to all clubs ... for the sake of doing as little as possible to make space available to and accommodate the Gay-Straight Alliance," he said.

Carolyn Bratt, a University of Kentucky law professor who works on gender issues, said she doubts the policy would prompt Bunning to lift the injunction because it grew out of a desire to stop the alliance from meeting.

"NO MATTER HOW they try to dress this up, it is motivated by and an attempt to exclude the Gay-Straight Alliance," Bratt said. "I don't think the court is going to forget where this all started. It started from an impermissible intention."

Tom Hutton, a lawyer with the National School Boards Association, said the policy appears to treat the alliance the same as other noncurricular clubs. But he said that by also trying to define school-sponsored activities, the district needs to be wary of sponsoring noncurricular organizations — such as a chess club, for example — and treating them differently from other noncurricular clubs like the alliance.

The key would be in how the policy is implemented, he said.

"The only question that I would have — and we won't know the answer until it plays out — is: Is the definition of school-sponsored activities broader than noncurricular activities so that there's some sort of school groups that would be treated differently than the Gay-Straight Alliance or the Bible Club?" Hutton said.

Huff acknowledged that implementation of the policy would be key to its success. "I realize we're always going to be second-guessed, and there's not much I can do about it except to reiterate these are not new issues," she said.

Meanwhile, Susan Weston, executive director of the Kentucky Association of School Councils, said the board is setting policy on issues — such as school space — that are supposed to be governed by school councils under the Kentucky Education Reform Act.

"I think the board is jumping in and making policy on extracurricular programs, which is not going to fly," Weston said. "They're making policy on extracurricular programs when the law gives that power to school councils."

She said the Boyd County High School teacher-parent council could disregard the school board's activity policy and adopt one of its own.

"What's in council policy simply trumps board policy," Weston said.

But Huff said the law about the authority of school councils "concerns school-sponsored extracurricular activities. We maintain that is not the same as noncurricular activities."

Brad Hughes, a spokesman for the Kentucky School Board Association, said the group's policy and legal experts were reviewing the policy.

Kevin Noland, general counsel for the Kentucky Department of Education, said state law is unclear on whether school boards or school councils have final responsibility for noncurricular activities.

"It's one of those where both sides have an argument to make and it's not adequately addressed in the statute," Noland said.