

UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF NEW YORK

J.P., a minor, by and through her next friend, )  
G.P., ) Case No. \_\_\_\_\_  
)  
Plaintiff, )  
)  
v. ) VERIFIED COMPLAINT FOR  
) INJUNCTIVE AND DECLARATORY  
BOARD OF EDUCATION OF HALF HOLLOW ) RELIEF  
HILLS SCHOOL DISTRICT; and DR. SHELDON )  
KARNILOW, in his official capacity as ) Civil Rights Action (42 U.S.C. § 1983)  
Superintendent of Half Hollow Hills School )  
District, )  
)  
Defendants. )  
\_\_\_\_\_)

COMES NOW the Plaintiff, J.P. by and through her next friend, G.P<sup>1</sup>, pursuant to the Federal Rules of Civil Procedure, and for her causes of action against Defendants, avers the following:

**INTRODUCTION**

1. This is a civil rights action under 42 U.S.C. § 1983, the Equal Access Act, 20 U.S.C. § 4071, *et seq.*, and the First and Fourteenth Amendments to the United States Constitution, brought to remedy a violation of the constitutional and statutory rights of J.P., a student at Half Hollow Hills High School East (“HSE”), located in Dix Hills, Suffolk County, New York.

2. Plaintiff J.P. brings this suit because her religious student club, the Ichthus Club, after meeting for four years, was cancelled without any notice to the Club members.

3. The Defendant Board of Education has implemented policies and practices which

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<sup>1</sup> In accordance with Administrative Order 2004-09 and the attachments thereto, J.P. is identified by her initials, rather than her full name, in order to maintain the privacy of her identity. For this reason also, J.P.’s parent’s name is indicated only by her initials.

permit chartering of clubs, *i.e.*, official recognition, that are both curriculum related and non-curriculum related.

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

5. J.P.'s Ichthus Club, however, has had its official recognition revoked and has been denied the benefits and privileges given to other student clubs.

6. After the termination of its existence by the Defendants at the beginning of the 2009-2010 school year, J.P.'s Ichthus Club has repeatedly attempted to regain official club status and accompanying benefits, but the Defendants have denied the Club at every turn in violation of its First and Fourteenth Amendment rights.

7. Rather than providing J.P. and her Ichthus Club a classroom and allowing them to resume meeting like the many other HSE student clubs, the Defendants instead treat J.P. and her Club as outsiders by cancelling their club and attendant benefits.

8. The Defendants readily afford official recognition and accompanying benefits and privileges to a over sixty (60) different clubs at HSE, including, among others, a Gay/Straight Alliance, Key Club, Amnesty International, and Students Against Drunk Driving.

9. The Equal Access Act, along with the First and Fourteenth Amendments, prohibits governmental discrimination of this type and guarantees access and treatment of religious student clubs equal to that of other non-curriculum related student clubs.

10. J.P. brings this action seeking equal treatment, not special treatment, and respectfully asks the Court (i) to enjoin Defendants from violating her constitutional and statutory rights, as well as the rights of others interested in the Ichthus Club, and (ii) to order Defendants to immediately reinstate official club status to J.P.'s Ichthus Club, with all of the accompanying rights, benefits, and

privileges equal to other officially recognized student clubs at HSE.

#### **JURISDICTION AND VENUE**

11. This action arises under the United States Constitution, specifically the First and Fourteenth Amendments, and under federal law, particularly 28 U.S.C. § 2201, 2202, 42 U.S.C. §§ 1983 and 1988, and the Equal Access Act, 20 U.S.C. §§ 4071-4074.

12. This Court possesses jurisdiction over Plaintiff J.P.'s claims by operation of 28 U.S.C. §§ 1331 and 1343.

13. This Court is vested with authority to grant J.P.'s 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.

14. This Court is authorized to grant J.P.'s requested injunctive relief pursuant to 28 U.S.C. § 1343(4) and Rule 65 of the Federal Rules of Civil Procedure.

15. This Court is authorized to award nominal damages under 28 U.S.C. § 1343(4).

16. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.

17. Venue is proper under 28 U.S.C. § 1391 in the United States District Court for the Eastern District of New York because the events giving rise to the claim occurred within the District and because all parties are residents of the District.

#### **IDENTIFICATION OF THE PLAINTIFF**

18. Plaintiff J.P., a minor, is a resident of Melville, New York, and a student at HSE.

19. J.P. is a professing Christian.

20. Pursuant to her sincerely held religious beliefs, J.P. desires to meet with other students through the Ichthus Club at HSE. J.P. is an officer and a leader of the Club.

21. In accordance with her sincerely held religious beliefs, J.P. desires to share her

Christian faith with fellow students at HSE through Ichthus Club activities.

22. J.P. desires to worship, pray, study the Bible, and enjoy fellowship together with other students at Ichthus Club meetings at HSE.

23. At the Club meetings, J.P. desires to discuss, from a Biblical perspective, a variety of issues facing students, including those related to serving others in the school and community; leadership; peer pressure; drug and alcohol abuse; premarital sex, including homosexual behavior; and promoting respect and dignity for others, just to name a few.

24. G.P., next friend, is J.P.'s parent and guardian, and at all times relevant to this Complaint, is a resident of Melville, New York.

#### **IDENTIFICATION OF THE DEFENDANTS**

25. Defendant Board of Education of the Half Hollow Hills School District ("Board") is a body politic and corporate and may sue and be sued in its corporate name.

26. The Board is organized under the laws of the State of New York.

27. The Board is charged with the administration, operation, and supervision of HSE.

28. The Board is responsible for the formulation, adoption, implementation, and enforcement of District policies and practices related to HSE.

29. The Board is also responsible for formulation, adoption, implementation, and enforcement of the District policies and practices (collectively the "Policies") related to the formation and organization of student clubs and rights, benefits, and privileges afforded to such student clubs at HSE, including those challenged herein.

30. The Board itself has revoked official club status to Plaintiff J.P.'s Ichthus Club, as well as the rights, benefits, and privileges attendant to official club status, pursuant to its Policies.

31. The Board is likewise responsible for the implementation, application and

enforcement by the Superintendent of its Policies pertaining to student clubs.

32. The Board is similarly responsible for delegating to the Superintendent final authority as to the official recognition of student clubs.

33. Defendant Dr. Sheldon Karnilow is the Superintendent of the School District's public schools, including HSE.

34. Defendant Karnilow possesses responsibility, final authority, and discretion, as delegated by the Board, to administer the Policies as they relate to student activities on campus.

35. Defendant Karnilow possesses responsibility, final authority, and discretion, as delegated by the Board, to administer the Policies related to the establishment of student clubs and to the benefits said clubs receive.

36. In this capacity, Defendant Karnilow possesses final supervisory responsibility over the Ichthus Club.

37. Defendant Karnilow is responsible for the Policies leading to the revocation of equal benefits to the Ichthus Club.

38. Defendant Karnilow has denied the Ichthus Club the right to meet and attendant benefits.

39. Defendant Karnilow is sued in his official capacity as Superintendent of the District.

#### **FACTUAL ALLEGATIONS**

40. HSE is a public high school located in Dix Hills, New York.

41. HSE is under the direction of the Board.

42. HSE includes grades 9 through 12.

43. HSE constitutes a secondary school under New York law.

44. Upon information and belief, HSE and the school district receive federal financial

assistance.

45. The Board itself, and acting through Defendant Karnilow, as Superintendent, grants official club status to non-curriculum related student clubs.

46. The Board itself, and acting through Defendant Karnilow, allows said clubs to meet on school premises at HSE during non-instructional time.

47. There are over sixty (60) non-curriculum related clubs currently recognized by the Board including, among others, Gay/Straight Alliance, Key Club, Amnesty International, and Students Against Drunk Driving.

48. These clubs address issues involving, among others, promoting respect and dignity for students at HSE; premarital sex, including homosexual behavior; human rights issues; student drug and alcohol abuse; community service and leadership.

49. Participation in such clubs is not required by school faculty in connection with curriculum course work.

50. Participation in such clubs is not directly encouraged by school faculty in connection with curriculum course work.

51. Defendants, pursuant to their Policies, permit officially recognized non-curriculum related clubs to, among other things:

- conduct meetings during non-instructional time on campus;
  - list the club in the HSE Student Handbook along with other student clubs;
  - use school facilities;
  - have access to a faculty or staff advisor;
  - utilize the HSE public address system and bulletin boards for announcements;
- and

- participate in fund raising activities and have access to District funding made available to student clubs.

52. The Board is the official policy maker and as such has enacted the Policies challenged herein.

53. For many years, students and parents had attempted to start an Ichthus Club at HSE but were repeatedly denied by school officials.

54. In approximately 2005, G.P. and J.P.'s older brother requested permission to begin the Ichthus Club at HSE.

55. The Defendants initially denied the request to start the Ichthus Club.

56. Nonetheless, G.P. and J.P.'s older brother persisted in advocating on behalf of the Ichthus Club to the Defendants including contacting the Board and the Superintendent.

57. Eventually, G.P. and J.P.'s older brother threatened to bring legal action against the Defendants if they did not allow the formation of the Ichthus Club and grant it the same benefits and privileges as other clubs at HSE.

58. After months of pressuring the Defendants, the Ichthus Club at HSE was officially recognized by the Defendants and given all privileges and benefits relating thereto.

59. Similarly, at Half Hollow Hills High School West, individuals interested in starting an Ichthus Club were repeatedly denied the opportunity to form an Ichthus Club, and it was not until an attorney was hired to assist in their advocacy that the Defendants finally recognized the right of the students to form the Ichthus Club at Half Hollow Hills High School West.

60. The Ichthus Club thrived at HSE and over 55 students were on the Club's roster. Furthermore, not all of the students who attended the meetings signed the attendance sheet.

61. During the 2008-2009 school year, the Ichthus Club was constantly forced to

reschedule its normal weekly meeting times due to scheduling conflicts of the Club's faculty advisor.

62. As a direct result, attendance at Ichthus Club meetings fluctuated because students were not aware of the rescheduled meeting times, or were unable to attend due to the change in meeting times.

63. However, the Ichthus Club continued to have over 55 students on the Club's roster, and 10-20 students regularly attended the Club's weekly meetings.

64. At certain Ichthus Club student meetings, over 30 students attended.

65. J.P.'s brother graduated from HSE in the spring of 2009.

66. J.P. desired to continue the operation of the Ichthus Club at HSE.

67. On September 10, 2009, J.P. and another student attended a planning meeting with the Ichthus Club faculty advisor.

68. The advisor informed J.P. and the other student that the official club status of the Ichthus Club was revoked by the Defendants.

69. At that time, no explanation for the Defendants' revocation of the Ichthus Club was given to J.P. and the other student.

70. Shortly thereafter, J.P. and approximately 8-10 Ichthus Club officers and members who were interested in continuing the Ichthus Club met to discuss the revocation of the Club and what steps they could take to have the Club reinstated.

71. J.P. and another officer of the Ichthus Club obtained signatures from over 90 students at HSE who believe the Ichthus Club should be reinstated by the Defendants at HSE.

72. Plaintiff J.P. and G.P. contacted Defendant Karnilow and the Board to determine the reason for the unexpected revocation of the Ichthus Club.

73. On September 21, 2009, Plaintiff J.P. and G.P. attended a meeting of the Board.



74. At the meeting, G.P. asked the Board to reinstate the Ichthus Club.

75. The Board responded that the Ichthus Club would not be reinstated.

76. The Board further stated that the reason the Ichthus Club was revoked was allegedly due to the need for “fiscal management” of the district and because of “lack of participation” by the students.

77. On behalf of the Club, G.P. offered alternatives that would address the alleged budgetary concerns of the Defendants.

78. G.P. offered to find a volunteer faculty advisor to sponsor the Club so that the school district would not have to expend any funds in paying a faculty member to sponsor the Club and attend Club meetings.

79. The Defendants denied this offer.

80. G.P. then offered to reduce their meetings to bi-weekly so that the school district’s expenses would be reduced by 50%.

81. The Defendants denied this offer also.

82. The Board’s response was that students at HSE could be bussed to Half Hollow Hills High School West, another school in the district, and attend the weekly Ichthus Club meetings there.

83. First, this would not grant equal treatment to Plaintiff’s club as the 60 other clubs were not required to meet at another school.

84. Moreover, this would require the students to leave their last class of the day early, take a bus ride to Half Hollow Hills High School West (“HS West”), attend the meeting, re-board the bus for the return ride to HSE, and find transportation home.

85. This is unrealistic and unreasonable because it would significantly interfere with the class schedules of J.P. and the other members of the Ichthus Club and would create difficult

transportation problems including potential delays in arriving at the meetings on time and delays in getting home after the meetings.

86. This would further place an unfair burden on J.P. and the other members by segregating them from the rest of the HSE students in order for J.P. and the other members to express and practice their religious beliefs.

87. Defendants have not required the other 60 clubs at HSE to meet at another school in order to continue operating the club.

88. In fact, when G.P. contacted HS West to inquire about the HS West Ichthus Club meeting, G.P. was told that students from HSE were prohibited from participating in student clubs at HS West with the exception of participating on sports teams.

89. As a result of the revocation of the Ichthus Club, J.P.'s Counsel sent a letter to the Defendants requesting a written explanation for the revocation and requesting copies of all policies upon which the Defendants based their decision to revoke the Club.

90. In a response letter from the Defendants' attorney the official reason given for the termination of the Ichthus Club was that the club did not meet the Board's unwritten and arbitrary "enrollment standards." The letter stated that the Ichthus Club was one of three student clubs that were cancelled due to low enrollment as a cost-saving measure by the Defendants.

91. The letter further stated that "The Superintendent has indicated that if enough interest in recreating the Ichthus Club is expressed by HS East students, the Board will give it serious consideration for next year."

92. The Defendants' Policies give the Defendants unbridled discretion to determine whether they believe there is "enough interest" in the Ichthus Club to give it "serious consideration" and do not provide any guidance on the amount of student interest that is necessary to warrant

“serious consideration” by the Board.

93. However, J.P. is unable to determine what is necessary to establish “enough interest” in the Ichthus Club. Does J.P. have enough signatures from the over 90 students who believe the Club should be reinstated? Does she need a signed letter of commitment from each student interested in the Ichthus Club? How many students need to be interested in the Ichthus Club? 10, 20, 50, 100, 200?

94. Furthermore, even if there is enough student interest, under the Policies, the Board retains the sole discretion to decide whether or not it will grant recognition to the Ichthus Club.

95. Defendants’ Policy as to whether J.P. can show enough interest to meet the “enrollment standard” is vague and gives the Defendants unbridled discretion to grant or deny official status to clubs at HSE.

96. J.P.’s Counsel then sent a public records request under the New York public records laws, NY Pub Off § 85, *et seq.*, requesting copies of the District’s policies on the formation of student clubs, on the alleged “enrollment standards,” on student speech and expression, and copies of the documents relating to the cancellation of the Ichthus Club and the District’s 2009-2010 budget, and other records related to the revocation of the Club..

97. However, the Defendants again violated the law by not responding to the public records request.

98. The law, and neutrality, demand a proportionate reduction in any expenditure made on behalf of each of the other 60+ clubs that are official recognized at HSE, not cancellation of the Ichthus Club.

#### **ALLEGATIONS OF LAW**

99. Students do not shed their constitutional rights at the schoolhouse gate.

100. Religious speech is fully protected by the First Amendment.

101. 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 policies, statutes, ordinances, regulations, customs, and usages of the State of New York.

102. Plaintiff J.P. is suffering irreparable harm from the Policies and conduct of Defendants by being prohibited from speaking on the same terms as and exercising the same rights as other HSE student clubs and their members.

103. J.P. has no adequate or speedy remedy at law to correct or redress the deprivation of her rights by Defendants.

104. Unless the conduct of Defendants is enjoined, J.P. will continue to suffer irreparable injury.

**FIRST CAUSE OF ACTION: VIOLATION OF THE EQUAL ACCESS ACT**

105. Plaintiff J.P. re-alleges and incorporates herein, as though fully set forth, all previous paragraphs of this Complaint.

106. HSE is a public secondary school under New York law, located in Dix Hills, Suffolk County, New York.

107. On information and belief, the school district and HSE receive federal financial assistance.

108. Defendants have created a "limited open forum" at HSE 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.

109. Such clubs include a Gay/Straight Alliance, Key Club, Amnesty International, and Students Against Drunk Driving, among others.

110. These other clubs address issues such as promoting respect and dignity for students at HSE; premarital sex, including homosexual behavior; human rights issues; student drug and alcohol abuse; community service and leadership just to name a few.

111. The Ichthus Club has voluntary membership.

112. The Ichthus Club is open to any student at HSE.

113. The Ichthus Club desires to assemble on the campus of HSE during non-instructional time for the purpose of Club meetings, exchange of ideas and information, and discussion of issues, from a religious perspective, that are significant to them.

114. Such issues include, among others, those related to serving others in the school and community; leadership; peer pressure; premarital sex, including homosexual behavior; and respecting others.

115. The Ichthus Club's activities are voluntary, student-initiated, and student-directed.

116. J.P. does not desire school officials to lead, direct, plan, sponsor, or otherwise control the content or direction of the Ichthus Club's meetings.

117. The Ichthus Club's activities on campus will not materially and substantially interfere with the orderly conduct of educational activity within HSE.

118. Defendants have denied a fair opportunity, have discriminated against, and have denied J.P. and the Club equal access to all school facilities, benefits, and privileges.

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

120. Defendants have accordingly abridged and continue to violate the rights of J.P. under the Equal Access Act, 20 U.S.C. §§ 4071-4074.

WHEREFORE, Plaintiff J.P. respectfully asks that the Court grant the declaratory and

injunctive relief set forth in the prayer for relief.

**SECOND CAUSE OF ACTION: VIOLATION OF THE FREE SPEECH CLAUSE**

121. Plaintiff J.P. re-alleges and incorporates herein, as though fully set forth, paragraphs 1-104 of this Complaint.

122. The First Amendment's Freedom of Speech Clause prohibits censorship of religious expression.

123. Defendants have, by its Policies, created an open forum by permitting the formation of student clubs at HSE.

124. Defendants' Policies prohibit the equal treatment of J.P.'s Ichthus Club sponsored by religious students and containing religious speech in this forum.

125. Defendants' Policies prohibit J.P.'s religious speech despite the fact that she desires to address the same or similar issues currently being addressed by other student clubs, including issues related to serving others in the school and community; leadership; peer pressure; premarital sex, including homosexual behavior; and respecting others, just to name a few.

126. The unequal treatment of J.P.'s and her Ichthus Club' religious speech or activities is a content-based restriction in an otherwise open forum.

127. Defendants' Policies which deny J.P.'s religious speech while permitting other secular speech also constitutes viewpoint discrimination.

128. Policies which cause such viewpoint discrimination are unconstitutional in any type of forum.

129. The Free Speech Clause also recognizes and protects the right to association.

130. J.P.'s Ichthus Club is an expressive association that desires to advocate its Christian

message and viewpoints at HSE.

131. Defendants, by and through the Policies, violate J.P.'s Club's right to association by revoking its status as an officially recognized student club, and all the rights, privileges, and benefits attendant thereto, which have the effect of discrimination against the Club's religious speech, ideologies, philosophies, and beliefs.

132. Defendants' post hoc excuses for denying J.P.'s Ichthus Club do not cure the legal violation and its discrimination against J.P.'s protected speech remains.

133. Defendants' "enrollment standard" is vague because it does not provide guidance regarding what constitutes "enough interest" to warrant consideration of reinstatement by the Defendants.

134. Defendants' Policies 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 based upon whether the Defendants think there is "enough interest."

135. Even if J.P. could somehow show there is "enough interest" in the Ichthus Club, the Defendants do not agree to reinstate the Ichthus; rather, they will only give "serious consideration" to whether the Club will be reinstated thus continuing to give unbridled discretion to the Defendants no matter how much student interest there is in the Ichthus Club.

136. If Defendants claim they have no written policies relating to official recognition or enrollment standards of student clubs, their practices amount to a Policy.

137. Moreover, if Defendants possess no specific written Policies to guide their actions as to official recognition or enrollment standards of student clubs, this too amounts to an unconstitutional prior restraint.

138. Defendants' lack of specific written Policies permit District officials to exercise

unbridled discretion in permitting or refusing protected speech which has the effect of discriminating against J.P.'s and the Ichthus Club's religious speech.

139. Defendants' Policies are overbroad because they sweep within their ambit protected First Amendment rights in the form of religious speech.

140. The overbreadth of Defendants' Policies chills protected speech by discouraging individuals and groups from applying for recognition in the forum for purposes of engaging in certain protected speech.

141. Defendants' Policies chill, deter, and restrict J.P. from using District facilities on an equal basis with others and from discussing issues from a religious perspective.

142. Defendants have interpreted and applied the Policies to disqualify J.P. from accessing equally all facilities under the Defendants' control and otherwise open to student groups, thereby discriminating against religious nature of J.P.'s speech and activities and the religious content and viewpoint of the Ichthus Club's speech and activities.

143. Defendants' Policies, as interpreted and applied by them to prohibit equal use as requested by J.P., are not the least restrictive means necessary to serve any compelling interest which Defendants seek thereby to secure.

144. Defendants' Policies are not reasonably related to any legitimate pedagogical concerns.

145. Censoring students' religious speech *per se* is not and cannot be a legitimate pedagogical concern.

146. Defendants' Policies accordingly violate J.P.'s right to 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, Plaintiff J.P. respectfully asks that the Court grant the declaratory and injunctive relief set forth in the prayer for relief.

**THIRD CAUSE OF ACTION: VIOLATION OF THE EQUAL PROTECTION CLAUSE**

147. Plaintiff J.P. re-alleges and incorporates herein, as though fully set forth, paragraphs 1-104 of this Complaint.

148. The Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly situated persons equally.

149. Defendants have opened the forum by permitting the formation of other student clubs and must allow J.P.'s Ichthus Club equal access to this forum regardless of the size of the club or the content of the viewpoint expressed by its members.

150. Defendants, however, through their Policies, have denied J.P.'s Ichthus Club equal access to all school facilities, benefits, and privileges.

151. Defendants' Policies have the effect of treating J.P. and J.P.'s Club differently from other similar situated public school students and student clubs and of discriminating against the religious content and viewpoint of J.P.'s speech.

152. Defendants' Policies violate various fundamental rights of J.P., such as rights of free speech, equal protection, and free exercise.

153. Defendants' Policies have in fact, and in practice, discriminated against J.P.'s rights of free speech, equal protection, and free exercise of religion.

154. Defendants' statement that it revoked J.P.'s Ichthus Club as a cost-saving measure or due to low attendance at Club meetings is merely pretext for the fact that the Defendants' Policies result in discrimination against J.P.'s religious speech and activities.

155. When government regulations, like the Defendants' Policies challenged herein, infringe on fundamental rights, discriminatory intent is presumed.

156. Defendants lack a rational or compelling state interest for its Policies which are causing the disparate treatment of J.P..

157. The denial of access to J.P. caused by the Defendants' Policies is not narrowly tailored as applied because J.P.'s speech does not implicate any of the interests Defendants might have.

158. Defendants' Policies are over inclusive because they prohibit J.P.'s religious expression even though it is not disruptive.

159. The Defendants' Policies, both facially and as applied, accordingly violate J.P.'s right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff J.P. respectfully asks that the Court grant the declaratory and injunctive relief set forth in the prayer for relief.

**FOURTH CAUSE OF ACTION: VIOLATION OF THE DUE PROCESS CLAUSE**

160. Plaintiff J.P. re-alleges and incorporates herein, as though fully set forth, paragraphs 1-104 of this Complaint.

161. For years, the Ichthus Club was officially recognized by the Defendants and received access to all benefits and privileges provided to other student clubs at HSE.

162. However, as soon as J.P.'s brother graduated from HSE, the Defendants immediately revoked the official recognition of the Ichthus Club that he had worked for years to establish and grow at HSE.

163. The Defendants allegedly based their decision to revoke the official status of the

Ichthus Club budget cuts and on the Club not meeting the Defendants vague and unwritten “enrollment standards.”

164. The Defendants did not reference any written rules or policies to justify its revocation of the Ichthus Club.

165. When J.P.’s Counsel issued a formal public records request for any policies, communications or other materials related to the Defendants’ decision to revoke the Ichthus Club, the Defendants illegally refused to respond to the public records request.

166. The only guidance given to J.P. by the Defendants on how to have the Ichthus Club reinstated gives the Defendants unbridled discretion to decide if there is “enough interest” by the students of HSE in the Ichthus Club.

167. However, even if there is “enough interest,” the Defendants stated that they would only give “serious consideration” to reinstating the Ichthus Club and therefore, the Defendants retain the unbridled discretion to decide whether they want to reinstate the Ichthus Club.

168. J.P. continues to seek equal access to all benefits and privileges provided to other clubs and that the Ichthus Club previously received before it’s official recognition was revoked by the Defendants.

169. However, Defendants’ Policies have been written and applied to revoke equal recognition of the Ichthus Club.

170. Defendants’ Policies are vague and allow for unbridled discretion in determining which student clubs do and do not satisfy club criteria and thus qualify to continue receiving official club status.

171. Defendants’ Polices grant unbridled discretion in that they lack any definitions or guidelines as to how to determine whether a student club satisfies “enrollment standards” and other

club criteria and thereby qualifies to continue receiving official club status.

172. These vague terms utilized in the Defendants' Policies leave censorship of student speech and recognition of official club status to the whims of the Defendants.

173. Defendants' Policies, both facially and as applied, accordingly violate J.P.'s rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff J.P. respectfully prays that the Court grant the declaratory and injunctive relief set forth hereinafter in the prayer for relief.

**FIFTH CAUSE OF ACTION: VIOLATION OF THE  
FREE EXERCISE OF RELIGION CLAUSE**

174. Plaintiff J.P. re-alleges and incorporates herein, as though fully set forth, paragraphs 1-104 of this Complaint.

175. J.P. desires to engage in expressive activities on the basis of sincerely held religious beliefs and to share her beliefs with others.

176. Defendants Policies substantially burden J.P.'s free exercise of religion by revoking her permission to access all facilities equally in order to meet with like-minded individuals to discuss religious topics and to spread her message.

177. Defendants' Policies substantially burden J.P.'s free exercise of religion by denying her the ability to, *inter alia*: (i) list the Club in the HSE Student Handbook; (ii) use school facilities; (iii) take club field trips; (iv) participate in fund raising activities and have access to District funding made available to clubs; (v) have an advisor; and (vi) utilize the HSE public address system and bulletin boards for announcements.

178. Defendants' conduct constitutes the imposition of special disabilities on J.P. due to her religion and her intent to continue to engage in religious expression through the Ichthus Club.

179. These special disabilities placed on J.P. are neither neutral nor of general

applicability.

180. Defendants' Policies which lead to the revocation of the Ichthus Club selectively impose a burden on religious expression by singling out J.P.'s expression for discriminatory treatment.

181. Defendants' conduct cannot be justified by a compelling governmental interest and is not narrowly tailored to advance any such interest.

182. Defendants' interpretation and application of their Policies chill J.P.'s freedom of religious discussion and exercise, both of which are fundamental rights guaranteed J.P. by the First Amendment.

183. Defendants' Policies, both facially and as applied, constitutes an excessive burden on J.P.'s 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, Plaintiff J.P. respectfully asks that the Court grant the declaratory and injunctive relief set forth in the prayer for relief.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff J.P. respectfully prays for judgement as follows:

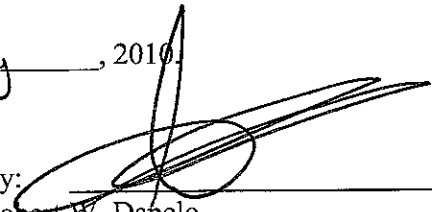
- a. That this Court issue a Preliminary and Permanent Injunction, restraining Defendants, their officers, agents, employees, and all other persons acting in active concert with them from enforcing the Policies that prohibit the Ichthus Club from continuing to receive official recognition and equal access to all club benefits and privileges, thereby requiring Defendants to immediately reinstate the Ichthus Club official recognition and equal access;
- b. That this Court render a Declaratory Judgment declaring the District's Policies that

prohibit J.P. and other Club members from continuing to receive official recognition and equal access to all club rights, benefits, and privileges, to be unconstitutional on their face and as-applied;

- c. 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;
- d. That this Court retain jurisdiction of this matter for the purpose of enforcing any orders;
- e. That the Court award J.P. the costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 42 U.S.C. §§ 1988 and the Equal Access Act;
- f. That this Court award nominal damages for the violation of J.P.'s constitutional rights;
- g. That this Court issue the requested injunctive relief without a condition of bond or other security being required of J.P.; and
- h. That the Court grant such other and further relief as the Court deems equitable and just in the circumstances.

Respectfully submitted this 12<sup>th</sup> day of February, 2010.

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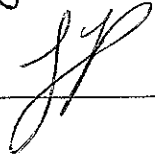
*Attorneys for Plaintiff J.P.*

\* Application for admission *pro hac vice* filed herewith

**VERIFICATION**

I, J. P., a citizen of the United States and a resident of the State of New York, have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 10<sup>th</sup> day of February, 2010, in Melville, New York.

J. P. 



**VERIFICATION**

I, G. P., a citizen of the United States and a resident of the State of New York, have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 10<sup>th</sup> day of February, 2010, in Melville, New York.

G. P.  \_\_\_\_\_