



November 17, 2014

**VIA E-MAIL AND OVERNIGHT MAIL**

Mrs. Carolyn Breivogel, Principal  
Wantagh High School  
3297 Beltagh Avenue  
Wantagh, NY 11793  
breivogelc@wantaghschools.org

Mr. Anthony Greco, President  
Wantagh Union Free School District Board of Education  
3301 Beltagh Avenue  
Wantagh, NY 11793  
BOE@wantaghschools.org

Ms. Maureen Goldberg, Superintendent of Schools  
Wantagh Union Free School District  
3301 Beltagh Avenue  
Wantagh, NY 11793  
goldbergm@wantaghschools.org

**Re: Dare to Believe Club and Wantagh High School's Ongoing  
Violation of the Equal Access Act of 1984**

Dear Mrs. Breivogel, Mr. Greco, and Ms. Goldberg:

Bancroft PLLC and the Liberty Institute represent Wantagh High School sophomore Elizabeth Loverde, by and through her mother and legal guardian Chiarina Loverde. We write concerning the school's unlawful denial of equal access to Liz and other students who wish to hold meetings at school of their proposed "Dare to Believe" club. Dare to Believe is a Christian club, and the school is refusing to recognize the club on the basis of the religious content of the students' speech. That refusal is a clear violation of federal law and must stop immediately.

Federal law has been crystal clear on this issue for three decades. The Equal Access Act of 1984 provides that once a secondary school such as yours creates a "limited open forum"—*i.e.*, once the school "grants an offering to or opportunity for

one or more noncurriculum related student groups to meet on school premises during noninstructional time”—the school must *not* “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)-(b).

Wantagh High School is clearly violating the Equal Access Act. The school officially recognizes more than thirty student groups, including a wide variety of noncurriculum related student groups such as the Wantagh Animal Rights & Recycling Club, the Rube Goldberg Club, the Key Club, and Variation Club. These student organizations enjoy not only the use of space within the school for meetings but also other access that is only available to officially recognized student groups. This access includes being listed on the school website in the school’s “extracurricular directory,” having a designated club advisor, and being allowed to use the school’s public address system, daily announcements webpage, and bulletin boards to announce club activities and meetings.

As explained in the club proposal (a copy of which is enclosed as Exhibit A), Dare to Believe is intended to “provide a club setting for students to meet each week during scheduled club times to discuss Biblical views.” It is a club intended to provide support for students who have come to think that life is “something not worth having or living” and who seek an alternative to depression and self-harm. And it is a club intended to provide a way for students to serve their school and community. It is open to all students. None of this should be the least bit controversial. The fact that the students intend to speak at their meetings and approach their goals in a distinctly religious way does not give the school license to discriminate against these students or to deny them equal access to the limited open forum that the school itself has created.

And there can be no question about what the school is doing here: It is shutting Dare to Believe out of the forum specifically on the basis of the religious content of the students’ speech. The school’s officials have made this abundantly clear. When Liz first approached a school guidance counselor with her idea for the club, she was immediately told that a Christian club would not be allowed but that she should get advice on how to start one and present a formal proposal to the principal. When Liz did so, the reaction was even more severe: Principal Breivogel declared the Dare to Believe proposal a non-starter, both because the school cannot have a Christian club where only the Bible is studied and because the proposed club does not meet the school’s purported policy requiring clubs to have at least fifteen

members. Turning federal law on its head, Principal Breivogel insisted that the school is legally barred from recognizing a Christian club and could only recognize a religious club that studies all religions (*i.e.*, a club devoid of speech with the religious content Liz intends for Dare to Believe). Principal Breivogel refused even to present Liz's proposal to the Board of Education for its consideration. Instead, she told Liz that her group could only meet informally in an empty classroom, and without access to the benefits and privileges afforded other, officially recognized student groups.

This treatment of Liz and her group is flatly inconsistent with the Equal Access Act. Informal access to a classroom does not give Liz the *equal* access that the law requires. It relegates Liz and the religious content of her speech to second class status within the Wantagh High School community, sending the unmistakable message that Christian speech, unlike other speech, is not welcome. More than twenty years ago, the Supreme Court specifically rejected just this sort of attempt by school officials to sweep religious speech under the rug. As the Court explained, where official recognition "allows student clubs to be part of the student activities program" and carries with it to access to benefits and privileges such as use of the public address system and bulletin boards, the denial of students' request for official recognition of their Christian club denies those students "equal access" under the Equal Access Act. *See Board of Education of Westside Community Schools v. Mergens*, 496 U.S. 226, 247 (1990). The school cannot sidestep the equal access requirement by permitting a Christian group to meet informally. *See id.*

Nor can the school sidestep the equal access requirement by relying upon a purported policy that student groups must maintain a minimum size. Even if the school actually has such a policy—and we are not aware of a documented one—its application here would be unlawful. The Equal Access Act specifically provides that schools are *not* authorized to "limit the rights of groups of students which are not of a specified numerical size[.]" 20 U.S.C. § 4071(d)(6). That of course makes perfect sense: Congress did not pass a law to protect students from discrimination on the basis of the religious content of their speech only to leave the door wide open to school officials to use minimum membership requirements as a pretext for denying equal access. The religious, political, or other speech of students who comprise the numerical minority in a school community is often the very speech most in need of protection.

In recent years, other schools on Long Island have similarly denied equal access to student-initiated Christian clubs. But those schools ultimately recognized

that their positions were not tenable under long-settled federal law and they have now granted the clubs official recognition. At times that recognition came after costly litigation had commenced and pursuant to settlement agreements requiring specific changes to school and district-wide policies and practices.<sup>1</sup> But it should not take a lawsuit for the school to comply with federal law, and we remain hopeful that one is not necessary here.

We want to be clear, however, that this really is not a close call. Once a secondary school such as yours creates a limited open forum, it cannot deny equal access to student groups on the basis of the religious content of the students' speech. That is what the Equal Access Act has required since 1984. We therefore demand that the school reconsider its position, approve Liz's club proposal, and grant official recognition to Dare to Believe. To the extent approval by the Board of Education is necessary, the Board should immediately review Liz's proposal, approve it at its next meeting on this Wednesday, November 20, and permit Dare to Believe to begin meeting as a recognized student club no later than Monday, December 1. In all events, please give us your response to this letter in writing no later than **Monday, November 24, 2014**. Should we receive no response (or an inadequate one) by that date, we are prepared to enforce Liz's rights in court, where we believe we will

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<sup>1</sup> See *Youth Alive v. Hauppauge School District*, Civ. No. 08-1068, Doc. 73 (E.D.N.Y. Feb. 19, 2013) (stipulation of dismissal after nearly five years of litigation reflecting defendants' agreement that regardless of the treatment of other clubs, the Christian club "shall not be required to disband or otherwise not be allowed to exist or to meet as a result of low student attendance or membership" and that defendants "will provide the same treatment as is afforded other non-curricular groups as is permitted by law," including access to the school public address system, e-mails, webpages, and bulletin boards and the right to raise funds, distribute flyers, and participate in club fairs); *Frontline Club v. Board of Education of the Hicksville Union Free School District*, Civ. No. 11-2126, Doc. 6 (E.D.N.Y. Dec. 16, 2011) (stipulation of dismissal reflecting defendants' resolution to comply with the Equal Access Act and agreement to grant official recognition to the Christian club and "equal access to all rights, benefits, and privileges given to other non-curriculum student clubs"); *J.P. v. Board of Education of Half Hollow Hills Central School District*, Civ. No. 10-670, Doc. 36 (E.D.N.Y. May 31, 2011) (stipulation of dismissal reflecting defendants' agreement to institute certain procedures for club approval; to reinstate plaintiff's Christian club and "grant it all of the benefits and privileges given to other non-curriculum clubs at" the school; and to pay plaintiffs' costs and attorneys fees); *A.Q. v. Board of Education of Lindenhurst Union Free School District*, Civ. No. 09-436, Doc. 13 (E.D.N.Y. Aug. 27, 2009) (stipulation of dismissal reflecting defendants' agreement to give Bible club official recognition as a student club "along with the accompanying benefits and privileges" and "to continue this equal treatment of the Club in the future"; to adopt a school board resolution to comply with the Equal Access Act; and to pay plaintiff's attorneys fees).

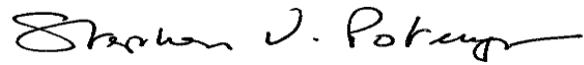
prevail under the Equal Access Act and U.S. Constitution and which will, in turn, trigger a right to recover legal fees and costs from you under 42 U.S.C. § 1988.

Thank you for your attention to this matter.

Very truly yours,



H. Christopher Bartolomucci



Stephen V. Potenza

Encl.

Copy to:

Hiram Sasser (Liberty Institute)  
Jeremy Dys (Liberty Institute)  
Mrs. Chiarina Loverde

# **Exhibit A**

To: Wantagh High School

From: Members of "Dare to Believe"

Elizabeth Loverde, Taylor Costello, Sam Grecker, Kyle Loney, and Julie Loney

Date: September 13, 2014

Objective: To provide a club setting for students to meet each week during scheduled club times to discuss Biblical views.

Situation: Nowadays, students who have problems in their lives turn to drugs, alcohol, depression, suicide, and other forms of self-harm. They don't know how to make the right choices and how to turn from their immoral ways.

Solution: JESUS CHRIST

Life appeared to me as something not worth having or living. Maybe, right now, teenagers are feeling the same way I did, and saying that life has nothing for them and that no one would care if they lived or died. Through "Dare to Believe" Christian Club I want students to know that while they're going through these tough times, (depression, parents divorce, self-harm, suicide, anxiety, bullying, etc.) Jesus Christ offers them another view of life; a view that is truly beautiful.

Jesus said, "I came that they may have life, and have it more abundantly" (John 10:10). He is saying that life is more than something physical, but that it is eternal. The Bible tells us that we were created in the very image of God, and then our lives must have amazing meaning, destiny, and purpose.

I want to show teenagers that when life isn't going great that they don't have to punish themselves. They don't have to change because they're different and are being bullied. They don't have to blame themselves for their parents divorce. They don't need to fill themselves with worldly things to be happy (money, alcohol, sex, drugs, popularity.) They don't need to do these things because Jesus Christ already paid for it on the cross. Jesus Christ offers us a mature heart that can endure pain and suffering. In the Bible, Paul says that this mature love "bears all things, believes all things, hopes all things, endures all things. Love never fails..."(1 Corinthians 13: 7-8)

I want teens to understand that God truly cares and loves them. In John 3:16, we read, “For God so loved the world, that He gave His only begotten Son, that whoever believes in Him should not perish, but have eternal life.” I want them to experience and enjoy the abundant life in Christ. His love never fails. 1 John 4:18, “There is no fear in love; but perfect love casts out fear...” I want to show them that they can have the love of Christ and can enjoy a meaningful and purposeful life. I want to show them that they can overcome the world.

Love is louder than depression, self-harm, pressure, bullying, school, home-life, addiction, etc. I want to tell them through “Dare to Believe” Christian Club that Jesus Christ is love. He saved me from depression, self-harm and suicide. He can save them. He can give them the victory over their difficulty.

I want to dare them to believe.

Purpose: It is the mission of the “Dare To Believe” Christian club to help students find an alternative to these self-harmful practices as well as to inform students about the freedom and salvation that they can find in Jesus Christ.

What we will do:

1. “Dare to Believe” Christian Club will study and make Biblical applications of loyalty to God, our families, our friends, and to our school and fellow classmates.
2. “Dare to Believe” Christian Club will maintain high standards of cooperation with the administration and respect for authority.
3. “Dare to Believe” Christian Club will open to anyone who wants to attend.
4. “Dare to Believe” Christian Club will treat each participant with respect.

We believe:

- We believe that there is one God, eternally existent in three persons: Father, Son and Holy Spirit
- God loves us and wants a personal relationship with us.
- Sin keeps us from having a personal relationship with God.



- God sent his One and Only son, Jesus Christ, to die on the cross in our place so that our sin could be forgiven. Three days later he was raised from the grave demonstrating His power over sin and the death as God the Son.
- We must personally trust in Jesus Christ alone to be our Savior and Lord.
- The Holy Spirit lives in every believer giving them strength and guidance in doing God's will.
- The Bible is Gods trustworthy Holy Word to us and should be applied in pour daily lives.

The Purpose:

- To **strengthen** one another as believers in Christ.
- To **study** God's Word, the Bible and apply it in your life.
- To **serve** the school and community as the hands and feet of Jesus.

Meeting Plans"

### **30 Minute Meeting**

- 5 minutes: Greeting and opening prayer
- 10 minutes: Bible study - devotion / discussion
- 10 minutes: Optional time
- 5 minutes: Closing Prayer

### **45 Minute Meeting**

- 5 minutes: Greeting and opening prayer
- 5 minutes: Crowd breaker
- 15 minutes: Bible study - devotion / discussion
- 15 minutes: Optional time
- 5 minutes: Closing prayer

### **60 Minute Meeting**

- 5 minutes: Greeting and opening prayer
- 10 minutes: Crowd breaker
- 20 minutes: Bible study - devotion / discussion
- 20 minutes: Optional time

5 minutes: Closing prayer

**\* *Optional Time List***

- **Testimonies:** Testimonies should consist of students sharing opportunities they had to witness to a non-believing friend and also, their personal testimony on how they came to Christ. It may be beneficial to the leader to know who will share ahead of time in order to plan accordingly.
- **Games:** Playing games seems like a waste of time but games can promote unity within a group and make group members feel more comfortable with one another.
- **Skits:** Have some members perform drama skits.
- **Music:** Have members share different types of Christian music with the group.
- **Plan future meetings:** Plan topics and member roles of future meetings.
- **Plan future outreaches:** Plan how you can be witnesses in your school.
- **Plan future service projects:** Plan how you will serve your school as a club.

Additional:

1. Anyone can come and join the club
2. Study the bible
3. Help students find their way
4. Share advice
5. Help each other and make friends
6. Open to people who are struggling with family and life itself
7. We have snacks and were friendly
8. Talk about current events in the world
9. Hear testimonies
10. Help people with personal problems
11. Learn about the life of Jesus Christ
12. Learn about salvation
13. Apologetics
14. Serve the community and school
15. Share Christian movies and song