

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION

NOBLE STREET  
GAY STRAIGHT ALLIANCE,  
HEATHER HALL, by and through  
her mother ROSA HALL, and  
JORGE MENA,

Plaintiffs,

vs.

NOBLE NETWORK  
OF CHARTER SCHOOLS,  
NOBLE STREET  
CHARTER HIGH SCHOOL, and  
WILLIAM OLSEN,  
MICHAEL MILKIE,  
DANIEL W. VITTUM, JR., and  
RON MANDERSCHIED,  
in their individual and official capacities,

Defendants.

No.

**06C 2145**

**JUDGE PALLMEYER**

**MAGISTRATE JUDGE MASON**

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Plaintiffs are high school students and an unincorporated association of high school students at a public charter high school in Chicago who have endeavored for nearly an entire academic year to establish a non-curricular student group designed "to promote awareness, safety, respect, and tolerance of all sexual orientations in a non-judgmental environment," and to have their group treated equally to other student groups, as required by federal law. Many similar student groups have been established in high schools nationwide. Defendants refuse to give the group equal access and unlawfully are

discriminating against Plaintiffs based on their actual or perceived sexual orientation and their advocacy and viewpoint. Immediate injunctive relief is necessary to stop the deprivation of Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution and the federal Equal Access Act, 20 U.S.C. §§ 4071 *et seq.*

### **JURISDICTION and VENUE**

2. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a) and 2201 because the action arises under the Constitution and laws of the United States, seeks to redress the deprivation of Plaintiffs' civil rights by Defendants, acting under color of state law, and seeks a declaration of Plaintiffs' civil rights.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because substantially all of the events or omissions that give rise to the claims in this action occurred within the Northern District of Illinois.

### **PARTIES**

4. Plaintiff Noble Street Gay Straight Alliance ("Noble GSA") is an unincorporated association of students enrolled at Noble Street Charter High School (the "High School") in Chicago, Illinois. Noble GSA sues on its own behalf and on behalf of its members, who are in 9th through 12th grade.

5. Plaintiff Heather Hall ("Hall"), age 17, sues by and through her mother and next friend Rosa Hall. Hall is in 12th grade at the High School and is a member and organizer of Noble GSA.

6. Plaintiff Jorge Mena ("Mena"), age 18, is in 12th grade at the High School and is a member and organizer of Noble GSA.

7. Plaintiffs Hall and Mena, as well as the other members of Noble GSA, reside in Illinois.

8. Defendant Noble Network of Charter Schools (the "Noble Network") is the recipient of a charter from the Illinois State Board of Education and the Chicago Board of Education that allows the Noble Network independently to govern and operate the High School through the Noble Network's board of directors and officers.

9. Defendant Noble Street Charter High School is a public high school in Chicago, Illinois, that operates pursuant to Illinois state law, 105 ILCS 5/27A-1 *et seq.*, and that receives state and federal funds.

10. Defendant William Olsen ("Principal Olsen") is principal of the High School and is sued in both his individual and official capacities.

11. Defendant Michael Milkie ("Superintendent Milkie") is founder, superintendent and chief operating officer of the Noble Network and is sued in both his individual and official capacities.

12. Defendant Daniel W. Vittum, Jr. ("Director Vittum") is chairman of the board of directors of the Noble Network and is sued in both his individual and official capacities.

13. Defendant Ron Manderscheid ("President Manderscheid") is President and chief executive officer of the Noble Network and is sued in both his individual and official capacities.

14. Defendants are state actors for purposes of this action. There is a joint activity and close nexus between the State of Illinois (the "State") and Defendants. The State has delegated a public function to Defendants. The State cloaks Defendants with

the same powers afforded to public school boards and public secondary school administrators.

### GENERAL ALLEGATIONS

15. The High School receives federal financial assistance.
16. Defendants permit both curricular and non-curricular student groups to meet on school premises during non-instructional time, including Noble GSA.
17. Defendants have recognized certain of these curricular and non-curricular student groups more formally and given these "recognized" curricular and non-curricular student groups access to various other resources at the High School. Recognized non-curricular student groups at the High School include:
  - a. Senior Council; which plans the High School prom and other social events;
  - b. Student Council, which organizes charitable events;
  - c. National Honor Society, a selective admission group which promotes scholarship, service, leadership and character;
  - d. Poetry Slam, which organizes student participation in competitive performance poetry across the city of Chicago;
  - e. One Voice, a prayer and Bible study group; and
  - f. Various athletic teams, which compete in sporting events across the state.
18. Recognized curricular and non-curricular student groups are permitted to use various communication media and amenities at the High School and have the ability, among other things, to:

- a. post announcements, meeting times and materials on bulletin boards at the High School;
- b. list activities on video scrolling messages at the High School;
- c. circulate written materials, such as flyers, at the High School;
- d. have announcements made in advisory sessions, which are akin to homeroom periods, at the High School;
- e. participate as a group in town hall assemblies at the High School;
- f. obtain transportation to events using High School-funded buses;
- g. be listed on the High School website; and
- h. be recognized in the High School yearbook.

19. During the Spring of 2005, students at the High School, including Plaintiff Mena, decided to organize a gay-straight alliance student group at the High School.

20. In or about the beginning of September 2005, students organized an informal initial meeting of the Noble GSA that was held in the classroom of a High School teacher after school. The Noble GSA adopted the following mission statement: "To promote awareness, safety, respect, and tolerance of all sexual orientations in a non-judgmental environment."

21. On or about September 20, 2005, the same teacher notified Principal Olsen of the Noble GSA's desire to become an officially recognized student group and asked whether there were any particular requirements for accomplishing this. In

subsequent meetings, Principal Olsen expressed discomfort with the idea of allowing the Noble GSA to exist.

22. In or about October 2005, Principal Olsen informed Plaintiffs Hall and Mena that the Noble GSA could meet but only “unofficially.” Principal Olsen directed that Noble GSA could only communicate its existence or its meetings through word of mouth and that no written flyers or postings relating to the Noble GSA would be permitted at the High School.

23. Shortly thereafter, Superintendent Milkie stated that he did not want student groups talking about sex. In fact, students did not talk about sex at Noble GSA meetings. In his statements, Superintendent Milkie equated the Noble GSA with a wine tasting club for people under age 21.

24. On or about November 7, 2005, Principal Olsen was asked by the High School social worker to reconsider his decision and to remove the restrictions he had placed upon the Noble GSA, but Principal Olsen made no changes in those restrictions.

25. On or about December 22, 2005, the Noble GSA members, including Plaintiffs Hall and Mena, submitted a letter to Principal Olsen asking again that the group be officially recognized so that it could spread knowledge “the Noble Street way,” known as *Eruditio* (Latin for “teaching, instruction, knowledge, learning”). Superintendent Milkie was copied on the letter.

26. After the students received no response to the letter, at the end of December, the teacher whose room was used for GSA meetings emailed Principal Olsen on behalf of the Noble GSA regarding the letter.

27. On or about January 12, 2006, Principal Olsen reiterated in writing his refusal to allow the GSA to meet with their existing mission.

28. On or about March 16, 2006, pursuant to the Student Handbook provided by the High School, the Noble GSA and its organizers made a written request for a hearing with Noble Network President Manderscheid. Along with their request, the Noble GSA submitted a letter from Lambda Legal to President Manderscheid explaining the High School's legal obligations to recognize the group.

29. The very next day, on March 17, 2006, Principal Olsen informed the High School social worker that her contract would not be renewed the following year.

30. After receiving no response to the Noble GSA's written request for a hearing, on March 31, 2006, Plaintiffs Hall and Mena went to President Manderscheid on behalf of the Noble GSA and asked for a response.

31. That same day, President Manderscheid spoke briefly with Plaintiffs Hall and Mena and advised them that no formal hearing was necessary and that none would be provided. He did, however, agree to meet with them on April 3, 2006.

32. Plaintiffs Hall and Mena met with President Manderscheid on April 3, 2006. President Manderscheid told the students that the process of developing policies for student groups would be a long one, and specifically stated that the process was going to take even longer now that the students had gotten lawyers involved.

33. President Manderscheid stated that he had been in ongoing discussion with Noble Network Director Vittum and the other directors, as well as the principals of the two new high schools that Noble Network plans to open in the Fall of 2006, regarding the Noble GSA's request.

34. Defendant Vittum and other Noble Network board members who have final authority over policy at the High School had knowledge of the Noble GSA's requests and the other Defendants' actions alleged herein and remained deliberately indifferent to violations of federal law. Noble Network condoned and ratified the other Defendants' actions, adopting them as Noble Network's policy.

35. On or about April 3, 2006, President Manderscheid again specifically denied the Noble GSA permission to:

- a. post Noble GSA materials on bulletin boards at the High School;
- b. list Noble GSA activities on video scrolling messages at the High School;
- c. circulate Noble GSA written materials, such as flyers, at the High School;
- d. have Noble GSA announcements made in the advisory sessions, which are akin to homeroom periods, at the High School;
- e. participate, as a student group, in town hall sessions at the High School;
- f. be listed as a student group on the High School website; and
- g. be recognized as a student group in the High School yearbook.

36. During the same meeting on or about April 3, 2006, President Manderscheid asked Plaintiffs Hall and Mena if High School staff members had been involved in their group. Plaintiffs Hall and Mena did not name anyone specifically, but



indicated that a female teacher allowed the Noble GSA to meet informally in her room at the High School.

37. The next day, on April 4, 2006, Superintendent Milkie walked into the classroom of the teacher whose classroom was used for GSA meetings and castigated her for her work with the Noble GSA and for questioning his decision. During that conversation, Superintendent Milkie compared the Noble GSA to a group formed to discuss masturbation.

### **FIRST CLAIM FOR RELIEF**

#### **Violation of the Equal Access Act, 20 U.S.C. § 4071 *et seq.*, and 42 U.S.C. § 1983**

38. Plaintiffs incorporate the allegations in Paragraphs 1 through 37 above as if fully set forth herein

39. The High School has created and operates a limited open forum in that it permits non-curriculum related student groups to meet on school premises during non-instructional time and provides these groups with certain privileges and resources.

40. Defendants have denied and are continuing to deny Plaintiffs equal access to the High School's limited open forum.

41. Defendants have discriminated and are continuing to discriminate against Plaintiffs on the basis of the content and viewpoint of Plaintiffs' speech.

42. Defendants subjected and are continuing to subject Plaintiffs to the deprivation of rights, privileges and immunities secured by the Equal Access Act.

43. Plaintiffs have been and are continuing to be injured as a result of Defendants' actions.

44. Plaintiffs are reasonably likely to succeed on the merits of their Equal Access Act claim.

45. Plaintiffs have no adequate remedy at law.

46. Plaintiffs have suffered and, in the absence of injunctive relief, will continue to suffer irreparable harm as a result of Defendants' actions. This harm far exceeds any harm Defendants would suffer from being required to comply with the Equal Access Act.

47. The public interest will be vindicated by protecting student expression and association in accordance with Congress' mandate in the Equal Access Act.

48. Defendants violated and are continuing to violate clearly established statutory rights under the Equal Access Act, of which Defendants knew or reasonably should have known.

49. Defendants acted and are acting consciously of, or were and are callous and reckless toward the risk of, the illegality of their actions and the infringement of Plaintiffs' federal statutory rights.

### **SECOND CLAIM FOR RELIEF**

#### **Violation of the First Amendment Freedoms of Expression and Association and 28 U.S.C. § 1983**

50. Plaintiffs incorporate the allegations in Paragraphs 1 through 37 above as if fully set forth herein.

51. Defendants have violated and continue to violate Plaintiffs' rights under the First Amendment to the United States Constitution, made applicable to Defendants by the Fourteenth Amendment, in that:

- a. Defendants have abridged and are continuing to abridge Plaintiffs' freedom of speech and freedom of association;
- b. Defendants have discriminated and are continuing to discriminate against Plaintiffs based upon both the content and the viewpoint of Plaintiffs' expression and expressive association; and
- c. Defendants have created and maintain a limited public forum for student expression and association, from which they have excluded and continue to exclude Plaintiffs in a manner that constitutes viewpoint discrimination and that was and is unreasonable in light of the purposes served by the forum.

52. Defendants have subjected and are continuing to subject Plaintiffs to the deprivation of rights, privileges and immunities secured by the First Amendment.

53. Plaintiffs have been injured as a result of Defendants' actions.

54. Plaintiffs are reasonably likely to succeed on the merits of their First Amendment claim.

55. Plaintiffs have no adequate remedy at law.

56. Plaintiffs have suffered and, in the absence of injunctive relief, will continue to suffer irreparable harm as a result of Defendants' actions. This harm far exceeds any harm Defendants would suffer from being required to comply with the First Amendment.

57. The public interest will be vindicated by protecting student expression and association in accordance with the First Amendment.

58. Defendants violated and are continuing to violate clearly established constitutional rights under the First Amendment, of which Defendants knew or reasonably should have known.

59. Defendants acted and are continuing to act consciously of, or were and are callous and reckless toward the risk of, the illegality of their actions and the infringement of Plaintiffs' federal constitutional rights.

### **THIRD CLAIM FOR RELIEF**

#### **Violation of the Equal Protection Clause of the Fourteenth Amendment and 28 U.S.C. § 1983**

60. Plaintiffs incorporate the allegations in Paragraphs 1 through 37 above as if fully set forth herein

61. Defendants have violated and are continuing to violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, in that:

- a. Defendants intentionally discriminated and are continuing to discriminate against Plaintiffs based upon their actual or perceived sexual orientation and/or because of Plaintiffs' membership in a class of people defined as gay, lesbian and bisexual persons;
- b. Without a compelling, substantial or rational basis, and based upon invidious animus, Defendants intentionally treated and are continuing to treat the Noble GSA differently than other student groups and treated and are continuing to treat the members of Noble GSA, including Plaintiffs Hall and Mena,

differently than other students who were and are similarly situated; and

c. Defendants' discrimination was and is intentional and arbitrary.

62. Defendants subjected and are continuing to subject Plaintiffs to the deprivation of the equal protection of law secured by the Fourteenth Amendment.

63. Plaintiffs have been and are continuing to be injured as a result of Defendants' actions.

64. Plaintiffs are reasonably likely to succeed on the merits of their equal protection claim under the Fourteenth Amendment.

65. Plaintiffs have no adequate remedy at law.

66. Plaintiffs have suffered and, in the absence of injunctive relief, will continue to suffer irreparable harm as a result of Defendants' actions. This harm far exceeds any harm Defendants would suffer from being required to comply with the Fourteenth Amendment.

67. The public interest will be vindicated by protecting students from invidious and arbitrary discrimination.

68. Defendants violated and are continuing to violate clearly established constitutional rights under the Fourteenth Amendment, of which Defendants knew or reasonably should have known.

69. Defendants acted and are continuing to act consciously of, or were and are callous and reckless toward the risk of, the illegality of their actions and the infringement of Plaintiffs' federal constitutional rights.

#### FOURTH CLAIM FOR RELIEF

##### **Violation of the Due Process Clause of the Fourteenth Amendment and 28 U.S.C. § 1983**

70. Plaintiffs incorporate the allegations in Paragraphs 1 through 37 above as if fully set forth herein

71. Defendants have violated and are continuing to violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution, in that:

- a. Defendants deprived and are continuing to deprive Plaintiffs of protected expressive and associative liberty interests;
- b. Defendants have failed to establish or apply clear and consistent, content-neutral criteria for determining which students and which student groups may use the limited public forum Defendants created. Defendants instead afforded and are continuing to afford themselves unlimited discretion; applied and are continuing to apply vague standards; and acted and are continuing to act in an arbitrary and biased manner toward Plaintiffs; and
- c. Defendants refused and are continuing to refuse to provide Plaintiffs with a hearing in accord with Defendants' student handbook.

72. Defendants subjected and are continuing to subject Plaintiffs to the deprivation of rights, privileges and immunities secured by the due process clause of the Fourteenth Amendment.

73. Plaintiffs have been injured as a result of Defendants' actions.

74. Plaintiffs are reasonably likely to succeed on the merits of their due process claim.

75. Plaintiffs have no adequate remedy at law.

76. Plaintiffs have suffered and, in the absence of injunctive relief, will continue to suffer irreparable harm as a result of Defendants' actions. This harm far exceeds any harm Defendants would suffer from being required to comply with the due process clause of the Fourteenth Amendment.

77. The public interest will be vindicated by protecting students' rights under the due process clause of the Fourteenth Amendment.

78. Defendants violated and are continuing to violate clearly established constitutional rights under the Fourteenth Amendment, of which Defendants knew or reasonably should have known.

79. Defendants acted and are continuing to act consciously of, or were and are callous and reckless toward the risk of, the illegality of their actions and the infringement of Plaintiffs' federal constitutional rights.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor against Defendants, jointly and severally, and:


(i) declare the rights, obligations and other legal relations among the parties, pursuant to 28 U.S.C. §§ 2201-02, namely that Defendants have violated the Equal Access Act, the First and Fourteenth Amendments to the United States Constitution, and the Civil Rights Act, 28 U.S.C. § 1983;

(ii) enter a preliminary and permanent injunction restraining and enjoining Defendants and their directors, officers, agents, affiliates, subsidiaries, servants, employees, and all other persons in active concert or privity or participation with them, from directly or indirectly:

- a. denying Plaintiffs access to or use of High School facilities on a basis equal to that accorded other student groups;
- b. denying Plaintiffs the official recognition and amenities accorded to other student groups;
- c. prohibiting or interfering with Plaintiffs' ability to engage in oral and written communication in the manner permitted for other student groups; and/or
- d. altering or censoring the subject matter or viewpoint of Plaintiffs' speech, group name, mission statement, and other expressive activities, except only as may be necessary to avoid material and substantial interference with the orderly conduct of the High School.



- amount;
- (iii) award Plaintiffs compensatory damages, in at least a nominal
  - (iv) award Plaintiffs punitive damages;
  - (v) award Plaintiffs their costs, including attorneys' fees; and
  - (vi) grant such further and different relief as this Court deems just and
- proper.



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**NOBLE STREET GAY  
STRAIGHT ALLIANCE,  
HEATHER HALL, and JORGE MENA**

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