



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS  
ADMINISTRATIVE COMPLAINT

February 14, 2024

United States Department of Education  
Office for Civil Rights  
Lyndon Baines Johnson Department of Education Building  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Via Email: OCR@ed.gov

To Whom It May Concern:

This is a federal civil rights complaint pursuant to the U.S. Department of Education's (Department) Office for Civil Rights' (OCR) discrimination complaint resolution procedures.

Parents Defending Education (PDE) brings this complaint against Burnsville High School in Burnsville, Minnesota for discrimination on the basis of race and national origin in programs or activities that receive federal financial assistance in violation of both Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §2000d *et seq.*, and the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

PDE makes this complaint as an interested third-party organization with members who are parents of school children throughout the country. PDE and its members oppose discrimination on the basis of race, national origin, and political indoctrination in America's schools. Burnsville High School is offering programming to affinity groups that is not open to all students. Admittance is solely based on an individual's race and national origin. Attached to this complaint is supporting evidence in the form of two webpages on the District's website titled "Affinity Groups" (Exhibit A) and "Student-Led Groups" (Exhibit B).

Exhibit A specifies students are able to join "Indigenous Student Council (ISC)" based on their race and national origin. The affinity group's summary states, "Open to all eligible American Indian/Alaska Native (Indigenous) Students, grades 7-12" (Ex. A at 2). Unlike the other six affinity groups identified in the exhibits, the Indigenous Student Council (ISC) is the only group that explicitly states it is not open to the entire student body.

The definition of affinity groups at Burnsville High School is to create an "adult supported, safe space, around shared, lived experiences that empower voice and choice, counter to the previous practices formed and maintained by the dominant culture" (Ex. A at 1). Both exhibits clearly state this affinity group is open to some students. It excludes others – and that exclusion is solely based on an individual's race and national origin (Ex. A-B).

Exhibit B is website resource that lists all "student-run clubs" present at Burnsville High School. The list includes over twenty groups and clubs for students to "extend their learning, develop and demonstrate leadership, impact their school and community, expand their social network, and grow to be supported cognitively, emotionally and socially" (Ex. B at 1). But the Indigenous Student Council is the group listed that



is not open to all students. The club description states, “open to all eligible American Indian/Alaska Native (Indigenous) students” (Ex. B at 3).

As for additional resources allocated to the Indigenous Student Council, those too would confer a benefit on the basis of race and national origin that is not offered to all students.

As the Department of Education is no doubt aware, discrimination on the basis of race raises concerns that the Burnsville High School has received federal funds in violation of Title VI of the Civil Rights Act of 1964, which declares that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

In addition, Section 1 of the 14th Amendment to the U.S. Constitution asserts: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” On these grounds, the Supreme Court held in 1954 that racial segregation of students is unconstitutional. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

Recently, the Supreme Court reaffirmed that “racial discrimination is invidious in all contexts.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 214 (2023) (cleaned up). “Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” *Id.* at 208. Simply put, “[e]liminating racial discrimination means eliminating all of it.” *Id.* at 206.

A September 29, 2015 decision from the Department of Education Office for Civil Rights during the Obama Administration is directly on point: in 2015, following “the police actions involving African American victims in Ferguson and New York and subsequent events,” Oak Park & River Forest High School District 200 held a “Black Lives Matter” assembly during Black History Month. The assembly was convened “for African American students only” because the district wanted “to provide a comfortable forum for black students to express their frustrations.” Certain students “who self-identified as white were directed by District officials not to participate in the event as this assembly was designed for students who self-identify as black.” In the letter sent on September 29, 2015 (OCR Docket #05-15-1180), OCR found that the district violated the Equal Protection Clause and Title VI because the district’s actions could not withstand strict scrutiny. Specifically, the district failed to “assess fully whether there were workable race-neutral alternatives” and “did not conduct a flexible and individualized review of potential participants.” In a Resolution Agreement with OCR, the district agreed that its programs and activities would be “open to all students . . . regardless of their race” and to adopt policies and training to ensure the district’s compliance. OCR imposed these requirements even though the district had promised “not to hold such events in the future.”

Similarly, as the Department of Education Office for Civil Rights has recently explained: “A decision to restrict membership or participation in activities and spaces based on race ... would raise significant concerns and trigger strict scrutiny under Title VI.”<sup>1</sup> “In determining whether an opportunity to participate is open to all students, OCR may consider, for example, whether advertisements or other communications would lead a reasonable student, or a parent or guardian, to understand that all students are welcome to participate”

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<sup>1</sup> Race and School Programming, U.S. Department of Education Office for Civil Rights (Aug. 2023), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20230824.pdf> [hereinafter August 2023 Guidance].



(August 2023 Guidance at 11). As explained above, a reasonable student would understand that all students are not welcome to participate.

Accordingly, we ask that the Department promptly investigate the allegations in this complaint, act swiftly to remedy unlawful policies and practices, and order appropriate relief.

Thank you for your prompt assistance with this request for investigation and resolution.  
Please contact me for further information.

Sincerely,

Caroline Moore  
Vice President  
Parents Defending Education

Enc. Exhibit A-B



## EXHIBIT A

HOME > ACTIVITIES > AFFINITY GROUPS

## Affinity Groups

An Affinity Group is a group of faculty and staff linked by a common purpose, ideology, or interest. Affinity Groups play a vital role in ensuring an inclusive environment where all are valued, included, and empowered to succeed.

**Definition of Affinity Space:** an adult supported, safe space around shared, lived experiences that empower voice and choice, counter to the previous practices formed and maintained by the dominant culture.

### How do Affinity Groups continue to build on the Mission of ISD191

- As stated in the Core Values of ISD 191, " Our culture will actively encourage and embrace each member of the community, creating a sense of support that fosters their individual growth and pursuit of learning."
- Affinity groups can be an important step toward inclusion in the ISD191 community. They allow students who might feel marginalized and as if their voices are not heard within the community to feel proud, confident, and supported.
- Provides a platform for students to confidently be themselves and feel heard without judgment. Affinity groups are places where students are allowed to develop a better understanding of how their own identity shapes their experiences.
- Building authentic and caring relationships with people from all backgrounds is core to the values of ISD191.
- Being apart of BHS Affinity groups can help many students feel more connected, visible, and members of the larger ISD191 community.
- Students need to be able to be themselves at school
- They allow students who share an identity - usually a marginalized identity to gather, talk in a safe space about issues related to that identity and transfer that discussion into action that makes for a more equitable experience at school.

### Making Spaces for All Voices

- Building authentic and caring relationships with people from all backgrounds is core to the values of ISD191.
- Being apart of BHS Affinity groups can help many students feel more connected, visible, and members of the larger ISD191 community.
- Students need to be able to be themselves at school
- They allow students who share an identity - usually a marginalized identity to gather, talk in a safe space about issues related to that identity and transfer that discussion into action that makes for a more equitable experience at school



### Asian Student Association (ASA)

Open to all students, GSA unites LGBTQ+ and allied youth to build community and organize around issues impacting them in their schools and communities. GSAs have evolved beyond their traditional role to serve as safe spaces for LGBTQ+ youth in middle schools and high schools, and have emerged as vehicles for deep social change related to racial, gender, and educational justice.

**Social Media:**

- Instagram: @bvilleasa
- <https://linktr.ee/burnsville>
- burnsvilleasa@gmail.com

**Contact:**

[Landen Parkin](#)

### Black Student Union (BSU)

The Black Student Union is a student-driven club that strives to promote cultural unity and creates a safe place for African-American students, as well as spreading unity among students of other cultures at Burnsville High School.

**Social Media:**

- Instagram: @bsuofbhs
- Tick Tock: @bvillebsu
- email: bsuofbhs@gmail.com

**Contact:**

[Tommie Gaston](#)

### Gender Sexuality Alliance (GSA)

Burnsville's Gender-Sexuality Alliance, or GSA for short, is a student-run organization that unites LGBTQ+ and allied youth to build community and organize around issues impacting our school and community. GSA serves as a vehicle for social change related to racial, gender, and educational justice. GSAs in schools have been proven to provide a positive and lasting effect on student health, wellness, and academic performance. All students, no matter your gender or sexuality are welcome.

**Social Media:**

- Instagram: @burnsville\_GSA

**Contact:**

[Allison Millea](#)

### Indigenous Student Council (ISC)

Open to all eligible American Indian/Alaska Native (Indigenous) Students, grades 7-12

**Contact:**

[Rebecca Mousseau](#)

### Latino Student Association (LSA)

LSA students meet regularly to create community among our students. Group is divided into an Latino and Latina student group.

**Contact:**

TBA

### Muslim Student Association (MSU)

This is a student organization devoted to strengthening the Muslim community through service and activism. The goal of this group is to educate both Muslims and people of other faiths about the religion of Islam and facilitate a better environment for students on campus.

**Contact:**

TBA



RESOURCES

Careers

CONNECT WITH US



English



## EXHIBIT B



HOME > ACTIVITIES > STUDENT-RUN CLUBS

## Student-Run Clubs

At our schools, we want all students to feel connected to our school community and find ways to be involved. We provide co-curricular and extra-curricular activities in academics, arts and athletics, and we also allow the use of School District facilities and resources for student-interest clubs and activities which are not School District sponsored, pursuant to Policy 801 - Equal Access to School Facilities.

These clubs and activities provide students with additional opportunities to extend their learning, develop and demonstrate leadership, impact their school and community, expand their social network, and grow to be supported cognitively, emotionally and socially.

The guidelines are as follows: \*A student-interest club or activity may have access to school facilities for meetings during non-instructional time, subject to available space and the availability of staff supervision. \*A student-interest club or activity must complete an application for use of school district facilities and comply with other requirements under the Equal Access to School Facilities Policy. \*The student-interest club or activity will be listed in the handbook and on the website as a student-initiated club, which is not sponsored by the School District. Announcements and Postings: \*The student club will be allowed to announce their meeting dates, time and location using the student announcements, with prior approval of the school administration. \*The student clubs will be able to put a maximum of 10 posters/flyers no larger than 8 1/2 X 14 in the hallways, foyers and cafeteria areas of the school, with prior approval of the school principal. The School District will reserve the right to change the designated location for posters/flyers.

Clubs that are also considered an Affinity Group at BHS are designated as such with an asterisk (\*).

- + Asian Student Association (ASA)\*
- + Black Student Union (BSU)\*
- + Book Club
- + Boxing Club
- + Burnsville Strong

### Contact



**BILL HEIM**



### Starting and Chartering

- A student-interest club or activity may have access to school facilities for meetings during non-instructional time, subject to available space and the availability of staff supervision.
- A student-interest club or



- + | Burnsville Strong
- + | Culinary Club
- + | Dungeons Dragons
- + | Drug Free Club
- + | Fellowship of Christian Athletes and Friends (FCAF)
- + | Film Club
- + | Futsal
- + | Gender Sexuality Alliance (GSA)\*
- + | Giving Garden Club
- + | HOSA - Future Health Professionals Club
- + | Indigenous Student Council\*
- + | Job Shadowing Club
- + | Knitting Club
- + | Latino Student Association\*
- + | Link Crew
- + | Muslim Student Association (MSA)\*
- + | Philosophy Club
- + | Women in STEM
- + | Young Life

supervision.

- A student-interest club or activity must complete an application for use of school district facilities and comply with other requirements under the Equal Access to School Facilities Policy.
- The student-interest club or activity will be listed in the handbook and on the website as a student-initiated club, which is not sponsored by the School District.

**Announcements and Postings**

- The club will be able to announce their meeting date, time and location using the student Schoology announcements, with prior approval of the sponsor and school administration.
- The club will be able to put a maximum of 10 posters/flyers no larger than 8½ X 14 in the hallways, foyers and cafeteria areas of the school with prior approval of the sponsor and stamped by the school administration. The School District will reserve the right to change the designated location for posters/flyers.

- + Fellowship of Christian Athletes and Friends (FCAF)
- + Film Club
- + Futsal
- + Gender Sexuality Alliance (GSA)\*
- + Giving Garden Club
- + HOSA - Future Health Professionals Club

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- Indigenous Student Council\*

Open to all eligible American Indian/Alaska Native (Indigenous) Students, grades 7-12

Instagram: @bhs\_isc

### Contact

**REBECCA MOUSSEAU**



- + Job Shadowing Club
- + Knitting Club
- + Latino Student Association\*
- + Link Crew
- + Muslim Student Association (MSA)\*
- + Philosophy Club

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- + Knitting Club
- + Latino Student Association\*
- + Link Crew
- + Muslim Student Association (MSA)\*
- + Philosophy Club
- + Women in STEM
- + Young Life

approval of the sponsor and school administration.

- The club will be able to put a maximum of 10 posters/flyers no larger than 8 1/2 X 14 in the hallways, foyers and cafeteria areas of the school with prior approval of the sponsor and stamped by the school administration. The School District will reserve the right to change the designated location for posters/flyers.

**Enrichment Opportunities:**

Outside Clubs and Organizations that are partners with BHS

The following clubs and organizations are not sponsored by ISD 191 but have worked closely to form partnerships with the Burnsville High School Activities Department. A Burnsville High School varsity letter can be earned through some of these clubs and activities.

Please see Mr. Paek, Athletic Director, or Mrs. Riggs, Athletic and Activity Secretary, if interested in joining any of these clubs or organizations.

- Blackdog Swim Club
- Bowling Team
- Burnsville Athletic Club
- Burnsville Bruisers Rugby Team
- BV United Soccer Club
- Burnsville Hockey Club
- Burnsville Trapshooting Team
- Minnesota Valley Figure Skating Club
- Mountain Biking Club
- Sparks Wrestling Club
- Various gymnastics gyms throughout the district



English >