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Boy Scouts Letter

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY

March 25, 2002

Dear Colleague:

On January 8, 2002, President George W. Bush signed the No Child Left Behind Act of 2001. Part of this new law is the Boy Scouts of America Equal Access Act (Boy Scouts Act), which applies to public elementary and secondary schools, local educational agencies (LEAs), and State educational agencies (SEAs) that receive funds made available through the Department of Education. Under the Boy Scouts Act, which became effective on January 8, 2002, no such public school, LEA or SEA that provides an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities before or after school hours shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in title 36 of the United States Code as a patriotic society. The law does not require any public school or agency to sponsor such a group.

The Boy Scouts Act directs the Secretary of Education, through the Office for Civil Rights (OCR), to effectuate this law by issuing and enforcing rules or orders with respect to public elementary and secondary schools, LEAs, and SEAs that receive funds made available through the Department of Education. If a public school or agency does not comply with the requirements of the Boy Scouts Act, it would be subject to enforcement action by the Department.

The Department of Education will publish in the Federal Register a Notice of Intent to proceed with rulemaking, in which we will request comments from interested parties regarding the Boy Scouts Act. I invite you to participate in this process. Please note that OCR is currently accepting complaints alleging violations of the Boy Scouts Act, and will continue to accept and process these consistent with the Boy Scouts Act during the rulemaking period.

If you have questions about the enforcement of the Boy Scouts Act, please contact the OCR Enforcement Office for your State, as described in the enclosed list of OCR Enforcement Offices. If you have questions about the Notice of Intent, please direct your questions, in writing, to Ms. Jeanette J. Lim, Director of the Program Legal Group in OCR, at 400 Maryland Avenue, S.W., room 5036 MES, Washington, D.C. 20202.

For those of you who are school district superintendents, I would appreciate your sharing the information in this letter with each of your principals. For your convenience, enclosed please find a copy of the Boy Scouts Act, and a copy of that part of title 36 of the United States Code that lists patriotic and national organizations.

I look forward to working with you to ensure equal access to education and to promote educational excellence throughout the nation.

Cordially yours,

C. Todd Jones
Delegated the Authority of
Assistant Secretary
for Civil Rights



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Boy Scouts of America Equal Access Act

Overview of the Law

On January 8, 2002, President George W. Bush signed the No Child Left Behind Act of 2001. Part of No Child Left Behind is the [Boy Scouts of America Equal Access Act](#), Section 9525 of the Elementary and Secondary Education Act of 1965, as amended by Section 901 of the No Child Left Behind Act of 2001 (the Boy Scouts Act), which applies to public elementary and secondary schools, local educational agencies (LEAs), and State educational agencies (SEAs) that receive funds made available through the Department of Education. Under the Boy Scouts Act, which became effective on January 8, 2002, no such public school, LEA or SEA that provides an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities before or after school hours shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in [Title 36](#) of the United States Code as a patriotic society.

OCR is charged with enforcing the Boy Scouts of America Equal Access Act. Complaints alleging violations of this law may be filed using the [OCR online complaint form](#) or by contacting the [OCR office](#) with authority to handle complaints where the institution or entity you are complaining about is located.

- 10-13-04: [Notice of Proposed Rulemaking \(NPRM\)](#)
- 3-25-02: ["Dear Colleague" letter](#)
- 11-15-02: [Advance Notice of Proposed Rulemaking \(ANPRM\)](#)

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prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary schools and secondary schools.

SEC. 9525. EQUAL ACCESS TO PUBLIC SCHOOL FACILITIES.

(a) **SHORT TITLE-** This section may be cited as the Boy Scouts of America Equal Access Act'.

(b) **IN GENERAL-**

(1) **EQUAL ACCESS-** Notwithstanding any other provision of law, no public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or a limited public forum and that receives funds made available through the Department shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in title 36 of the United States Code (as a patriotic society), that wishes to conduct a meeting within that designated open forum or limited public forum, including denying such access or opportunity or discriminating for reasons based on the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth group listed in title 36 of the United States Code (as a patriotic society).

(2) **VOLUNTARY SPONSORSHIP-** Nothing in this section shall be construed to require any school, agency, or a school served by an agency to sponsor any group officially affiliated with the Boy Scouts of America, or any other youth group listed in title 36 of the United States Code (as a patriotic society).

(c) **TERMINATION OF ASSISTANCE AND OTHER ACTION-**

(1) **DEPARTMENTAL ACTION-** The Secretary is authorized and directed to effectuate subsection (b) by issuing and securing compliance with rules or orders with respect to a public elementary school, public secondary school, local educational agency, or State educational agency that receives funds made available through the Department and that denies equal access, or a fair opportunity to meet, or discriminates, as described in subsection (b).

(2) **PROCEDURE-** The Secretary shall issue and secure compliance with the rules or orders, under paragraph (1), through the Office for Civil Rights and in a manner consistent with the procedure used by a Federal department or agency under section 602 of the Civil Rights Act of 1964. If the public school or agency does not comply with the rules or orders, then notwithstanding any other provision of law, no funds made available through the Department shall be provided to a school that fails to comply with such rules or orders or to any agency or school served by an agency that fails to comply with such rules or orders.

(3) **JUDICIAL REVIEW-** Any action taken by the Secretary under paragraph (1) shall be subject to the judicial review described in section 603 of the Civil Rights Act of 1964. Any person aggrieved by the action may obtain that judicial review in the manner, and to the extent, provided in section 603 of such Act.

(d) **DEFINITION AND RULE-**

(1) **DEFINITION-** In this section, the term youth group' means any group or organization intended to serve young people under the age of 21.

(2) **RULE-** For the purpose of this section, an elementary school or secondary school has a limited public forum whenever the school involved grants an offering to, or opportunity for, one or more outside youth or community groups to meet on school premises or in school facilities before or after the hours during which attendance at the school is compulsory.

SEC. 9526. GENERAL PROHIBITIONS.

(a) **PROHIBITION-** None of the funds authorized under this Act shall be used —

(1) to develop or distribute materials, or operate programs or courses of instruction directed at youth, that are designed to promote or encourage sexual activity, whether homosexual or heterosexual;

(2) to distribute or to aid in the distribution by any organization of legally obscene materials to minors on school grounds;

(3) to provide sex education or HIV-prevention education in schools unless that instruction is age appropriate and includes the health benefits of abstinence; or

(4) to operate a program of contraceptive distribution in schools.

(b) **LOCAL CONTROL-** Nothing in this section shall be construed to —

or by revising and reprinting the materials and publications.

Neither the Title VI regulation, the *Boy Scouts Act* regulation, the *Age Discrimination Act* regulation, nor the Title II regulation specifies the methods to be used by recipients in publishing notices of non-discrimination.

Combined Requirements

OCR recognizes the variations among the regulations governing notice requirements and understands that schools and colleges may wish to use one statement to comply with all requirements of the regulations implementing Title VI, Title IX, Section 504, the *Age Discrimination Act*, and, if applicable, the *Boy Scouts Act*. Public institutions also may wish to include Title II of the *Americans with Disabilities Act* in their statement.

OCR encourages one combined notice for all regulations.

A combined non-discrimination notice should contain two basic elements: (1) a statement of non-discrimination that specifies the basis for non-discrimination; and (2) identification by name or title, address, and telephone number of the employee or employees responsible for coordinating the compliance efforts.

The regulations do not require that a recipient identify the pertinent regulations by title. Please see the sample notice at the end of this pamphlet.

The Title IX regulation requires a recipient to provide the name of the person responsible for its compliance effort in addition to the address and telephone number where that person may be contacted. However, because OCR recognizes that the inclusion of a person's name

in a non-discrimination notice may result in an overly burdensome requirement to republish the notice if a person leaves the coordinator position, it is acceptable for a recipient to identify its coordinator only through a position title.

The Section 504 regulation does not require a recipient to include the address or telephone number of the responsible employee assigned to coordinate its compliance efforts. However, OCR considers that identifying the responsible employee without information on how to contact that person does not constitute an effective notice. An acceptable non-discrimination notice should provide information on how to contact the responsible employee.

Compliance with the notification requirements of Section 504 will also generally satisfy the notification requirements of Title II for state and local governments.

Although the Section 504 and Title IX regulations state that schools and colleges, where appropriate, shall specify non-discrimination in the areas of admission and employment, a general statement indicating non-discrimination in all programs is acceptable.

The Title IX regulation indicates that inquiries concerning the application of the Title IX regulation may be referred to the coordinator or to the assistant secretary for civil rights. An acceptable notice may include the names and titles of either one or both individuals.

However, since the Section 504 regulation requires identification of a coordinator, a combined non-discrimination notice should

include the name and/or title of the responsible employee. If a recipient designates two different people to coordinate compliance with Section 504 and Title IX, both names or titles should be included in the notice.

Sample Notice of Non-discrimination

The following sample notice of non-discrimination meets the minimum requirements of the regulations enforced by OCR:

The (Name of Recipient) does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups.¹ The following person has been designated to handle inquiries regarding the non-discrimination policies:

Name and/or Title
Address
Telephone No.

Name and/or Title²
Address
Telephone No.

For further information on notice of non-discrimination, visit <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm> for the address and phone number of the office that serves your area, or call 1-800-421-3481.

¹ Only public elementary or secondary schools or local or state educational agencies that receive funds made available through the Department of Education should include the words "and provides equal access to the Boy Scouts and other designated youth groups."

² For use when more than one official has been designated to coordinate civil rights compliance.



Notice of NON-DISCRIMINATION

August 2010

U.S. Department of Education
Office for Civil Rights
Washington, DC 20202-1100

Introduction

The Department of Education's (ED) Office for Civil Rights (OCR) enforces several statutes that protect the rights of beneficiaries in programs or activities that receive financial assistance from ED. These laws prohibit discrimination on the basis of race, color, and national origin (Title VI of the *Civil Rights Act of 1964*), sex (Title IX of the *Education Amendments of 1972*), disability (Section 504 of the *Rehabilitation Act of 1973*), and age (*Age Discrimination Act of 1975*). OCR also has enforcement responsibilities under Title II of the *Americans with Disabilities Act*, which prohibits state and local governments from discriminating on the basis of disability. In addition, OCR enforces the *Boy Scouts of America Equal Access Act*, which addresses access to meet on school premises or in facilities for the Boy Scouts of America and other designated youth groups.

This fact sheet explains the requirements for schools, colleges, and state and local governments that receive federal funds to issue notices of non-discrimination, clarifies the information that they should include in their non-discrimination notices, and provides a sample notice of non-discrimination. This fact sheet is designed to assist education institutions in establishing a notice of non-discrimination that meets the requirements of the applicable regulations.

Notice of Non-discrimination Requirements

The regulations implementing Title VI, Title IX, Section 504, the *Age Discrimination Act*, and the *Boy Scouts Act* contain requirements

for recipients to issue notices of non-discrimination. (See 34 C.F.R. Sections 100.6(d), 106.9, 104.8, 110.25, and 108.9, respectively.) The Title II regulation also contains a notice requirement that applies to all entities of state or local government, whether or not they receive federal financial assistance. (See 28 C.F.R. Section 35.106.)

These regulations require that recipients notify students, parents and others that they do not discriminate on the basis of race, color, national origin, sex, disability, and age, and, if applicable, that they provide equal access to the Boy Scouts of America and other designated youth groups. However, these regulations contain minor differences relating to the required content of recipient notices of non-discrimination and the methods used to publish them.

The Title VI regulation requires schools and colleges to notify students and others of the regulatory provisions in a manner that a responsible ED official would find necessary to tell students of their protections against discrimination under the statute and regulation.

The Boy Scouts Act regulation incorporates the Title VI regulatory provision concerning notice of non-discrimination. Public elementary and secondary schools and local and state educational agencies that receive funds made available through ED must make available information regarding the provisions of the Boy Scouts Act. This information must be made available in a manner that a responsible ED official would find necessary to inform people of the protections provided under the Boy Scouts Act and its regulation. Entities other than public elementary and secondary schools

and local and state educational agencies that receive funds made available through ED need not provide this notice, as the Boy Scouts Act does not apply to them.

The Title IX and the Section 504 regulations both contain more detailed requirements that specify the information that must be included in a notice of non-discrimination. These regulations also require recipients to designate at least one employee to coordinate efforts to comply with and carry out responsibilities.

The Title IX regulation requires schools and colleges to implement specific and continuing steps to inform students and others of the protections against discrimination on the basis of sex. The notification must state that the requirement of non-discrimination in educational programs and activities extends to employment and admission. It also must say that questions about Title IX may be referred to the employee designated to coordinate Title IX compliance or to the assistant secretary for civil rights. Schools are required to include the name, address, and telephone number of the designated coordinator in their notifications.

The Section 504 regulation requires that schools and colleges employing 15 or more persons implement appropriate, continuing steps to notify students and others that the school does not discriminate on the basis of disability in violation of the statute and regulation. The notification must state, where appropriate, that the school or college does not discriminate in admission, treatment, or access to its programs or activities. The notification also must state that the school or college does not discriminate in employment in its programs or activities. The employee designated to

coordinate compliance with the Section 504 regulation must be identified in the notification.

The Title II regulation requires that a public entity generally make information regarding the provisions of Title II available to applicants, participants and other interested persons in such a manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination under the Americans with Disabilities Act. The regulation implementing the Age Discrimination Act requires a school or college to notify its students and applicants, in a continuing manner, of information regarding the provisions of the act and these regulations. The notice must identify the compliance coordinator by name or title, address, and telephone number.

Methods of Notification

In accordance with the Title IX and Section 504 regulations, notification may include posting information notices, publishing in local newspapers, publishing in newspapers and magazines operated by the school or its students, publishing in alumnae or alumni newspapers or magazines, or distributing memoranda or other written communications to students and employees. In addition, recipients are required to include a statement of nondiscriminatory policy in any bulletins, announcements, publications, catalogs, application forms, or other recruitment materials that are made available to participants, students, applicants, or employees. As noted in the pertinent Section 504 regulatory provision, schools may meet this requirement either by including appropriate inserts in existing materials and publications