

DEPARTMENT OF EDUCATION

34 CFR Chapter I

RIN 1870-AA12

Boy Scouts of America Equal Access Act

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are soliciting comments from interested parties on the Boy Scouts of America Equal Access Act. This Act directs the Secretary of Education, through the Office for Civil Rights, to ensure compliance with this new law. We will consider comments received from interested parties in developing proposed regulations.

DATES: We must receive your comments on or before December 16, 2002.

ADDRESSES: Address all comments about the Boy Scouts of America Equal Access Act to Gerald A. Reynolds, Assistant Secretary for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., room 5000 MES, Washington, DC 20202-1100. If you prefer to send your comments through the Internet, use the following address: boyscoutscomments@ed.gov. You must include the term "Boy Scouts" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Doreen Dennis, Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., room 5038 MES, Washington, DC 20202-1100. Telephone: (202) 205-8635 or 1-800-421-3481.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (877) 521-2172.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 2002, the President signed into law the "No Child Left Behind Act of 2001" (NCLB), Public Law 107-110, amending the Elementary and Secondary Education Act of 1965 (ESEA). Included in the amendments to the ESEA is the "Boy Scouts of America Equal Access Act" (Boy Scouts Act). The Boy Scouts Act applies to public elementary and secondary schools, local educational agencies (LEAs), and State educational agencies (SEAs) that are

recipients of funds made available through the Department of Education (the Department). Under this law, no covered elementary or secondary school 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 Boy Scouts Act directs the Secretary of Education, through the Office for Civil Rights, to enforce this law in a manner consistent with the procedure used under section 602 of the Civil Rights Act of 1964, with respect to public elementary and secondary schools, LEAs, and SEAs that receive funds made available through the Department. If a public school or agency does not comply with the Boy Scouts Act, it would be subject to the Department's enforcement actions.

Invitation To Comment

We invite you to submit comments concerning issues for which you believe regulations would be necessary or helpful. Your questions and concerns will provide valuable information in developing any proposed regulations.

In particular, we are seeking comments and information on the following questions:

1. Which entities make the decisions about the use of school facilities for non-school purposes? If the entities making the decisions are not schools, LEAs, or SEAs, what is the relationship between these entities and the schools, LEAs, or SEAs?

2. Are fees charged for the use of school facilities? If so, how are the fees determined? Are all groups that want to use the school facilities charged the same fee? Do the entities that have control over use of school facilities have the authority to waive fees? Do schools, LEAs, or SEAs (or other entities that have control over use of school facilities) consider an organization's membership or leadership criteria when determining whether to grant access, charge a fee, or waive a fee?

3. Do schools, LEAs, or SEAs (or other entities that have control over use of school facilities) have formal procedures that explicitly discuss the criteria used to determine whether a request for use or a fee waiver will be granted?

4. Are distinctions drawn between "outside" groups and school groups, with respect to the use of school facilities? If so, what criteria are used to

determine whether an entity is considered an "outside" group? Are associations such as parent teacher associations (PTAs) considered "outside" groups?

5. If "outside" groups have access to school facilities for meetings, do those groups have access to any other school benefits or services as well, such as school bulletin boards, school newsletters, school public address systems, or other means of distributing information on school premises?

6. What does it mean for schools, LEAs, or SEAs to sponsor any group? How does a school sponsor a group? Are school-sponsored groups considered "outside" groups?

While we have suggested these issues for your consideration, we welcome comments on any issues relating to the Boy Scouts Act.

During and after the comment period, you may inspect all public comments submitted in response to this notice in room 5036, 330 C Street, SW., Washington, DC, between the hours of 10 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Comments

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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Authority: Public Law 107–110.

Dated: October 30, 2002.

Rod Paige,

Secretary of Education.

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