

2019 SENATE EDUCATION

SB 2299

2019 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

SB 2299
2/6/2019
Job #32268 (30:25)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Lynn Wolf/ Meghan Pegel
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Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 15.1-06 of the North Dakota Century Code, relating to patriotic society's access to students during school hours.

Minutes:

4 Attachments

Chairman Schaible opens the hearing on SB 2299.

Karen Krebsbach, District 40 Senator, testifies in favor (see attachment #1)

Senator Krebsbach: I introduce this for someone who requests allowance to promote Girl Scouts in public schools. Patriotic society means a youth group listed under title 36 United States code subtitle 2, part b. The request would be limited to any group listed in that U.S. code. I understand that there have been some problems in allowing requests in some of the schools. I feel very strongly that these organizations have in the past and can still be important in developing citizenship, skills and lifelong good characteristics for our youth.

(2:55) Brad Bekkedahl, District 1 Senator, testifies in favor

Senator Bekkedahl: I was happy to sign on and cosponsor this bill. Personally I was a cub scout in my local community which met in our local grade school at the time. I grew up in a system where interactions with the schools with these organizations was the norm. I think the opportunity should be there for the school districts to allow that. I was also in boy scouts and we again met in the school and did all of our activities including recruiting and the introduction to the programs. I think it was beneficial to not just to the organizations that we represented, but also to the kids and school districts. I'm totally in support of this bill.

Senator Oban: Do you know how an organization gets put into congressional code as a patriotic society?

Senator Bekkedahl: I don't know the exact mechanism, but I'm guessing by some resolution or bill introduced on their behalf. You can see the list is quite extensive.

Senator Oban: Do you share any concern with Congress making that determination?

Senator Bekkedahl: I think that concerns most people, but it is the process. I don't want to preclude the opportunities for those that are there now.

Senator Oban: Do you feel that that's the best tie to the groups that you're hoping have access to our schools?

Senator Bekkedahl: I think it's the tie that makes the most sense under the current circumstances that we have. I was involved with patriotic organizations, they're listed in code and they're the ones that are asking for the assistance to return to the school systems for this opportunity.

Chairman Schaible: Don't schools do this already?

Senator Bekkedahl: I'm not aware that all schools do it. I think the reason the bill is before you is that some schools have been denying the opportunity. Mr. Wefald can speak to that issue as well as the children here to speak.

Chairman Schaible: This says they "shall" provide access during regular school days. I imagine that we get a lot of request for time of teachers and students. They keep telling us they don't have time to educate because they're so busy doing these other things. Is that a concern by allowing this access?

Senator Bekkedahl: I would agree with that. I hear from my teachers in that respect as well for all the trainings that they have before them.

Senator Rust: I'm assuming they would take class time to do this?

Senator Bekkedahl: Again, I would defer to Mr. Wefald on that question. In my estimation, they're probably looking at other times of the day, maybe lunchtime or some other opportunity. I don't understand the grade schools anymore. When I went it was a full 8-hour day. I'm not sure what it is now.

(7:40) Bob Wefald, Girl Scouts Dakota Horizons representative, testifies in favor (see attachment #2)

Wefald: Using "shall" in the legislation gives plenty of room for the school officials to decide how they want to do this. The organization has to make a request to the school and work it out sometime during the day for them to come in. There's a broad range of times and it's up to the school officials to work it out.

Chairman Schaible: When we put things in law we sometimes have adverse consequences that we wish we would have foreseen. It's our job to pursue them. The word "shall" can put school officials in a difficult situation.

Wefald: I think the school officials are in charge of when that time is. They have to work for the school officials and can't demand certain times.

Chairman Schaible: This is an extensive list of groups. Say you have a good variety of these that came in and wanted to take time and the principal denies it because they're taking away too much class time. Is that going to be something that they cannot do?

Wefald: In North Dakota, we have boy scouts, girl scouts and a number of other organizations that are commonly known and have worked with the schools in the past. Has this happened? Yes it's happened all the time. This a perfectly good thing, and these kids need to have access to the information about this kind of experience. "Shall" gives them a little bit of cover.

Senator Davison: I denied being a sponsor for this bill. Number 4 on page 1 it says, "during non-instructional time". That's what the act says. In the back on page 2 when it talks about non-instructional time it's "time set aside by the school before actual classroom instruction begins or after actual instruction ends" and covers student meetings that take place before or after school as well during lunch. That gives me a little bit more comfort. Is that how you understand it? That it would be during non-instructional time? If this committee deems that we need to amend it to reflect that in the bill, is that okay with you?

Wefald: Yes, that's how I understand it, and if you feel better about putting it in, that's fine. I think the bill just gives the school officials cover. They want to do this.

Senator Davison: Yes, and we are provided some guidance by the U.S. Department of Education for these groups.

(13:50) Russ Ziegler, Assistant Director for NDCEL, testifies in opposition (see attachment #3)

Senator Davison: It looks like they provide guidance that schools that get dollars should allow during non-instructional time for these groups to meet in the schools. Do you agree with that as the guidance that they provider here?

Ziegler: That is the guidance I provided as part of our testimony. That's from the Department of Education for equal access. That's saying that you can do that, but be aware that if you allow one, you have to allow all. The equal access is for any group, not just patriotic societies.

Senator Davison: When you were superintendent, did you allow travelling basketball teams to come in and practice when basketball wasn't going on in your gym?

Ziegler: I wasn't superintendent, I was principal. We did allow outside of school; they weren't in during school hours- non-instructional time. Currently schools do allow boys and girls scouts. I taught hunter education. Schools currently do allow this; there isn't a rule that says you can't, but it's up to the school.

Chairman Schaible: The schools could set policy now to do this?

Ziegler: Correct.

Chairman Schaible: I assume that's how you feel is the best option- to let school policy dictate when they do this and when they do not.

Ziegler: Correct.

(20:25) Alexis Baxley, NDSBA, testifies in opposition (see attachment #4)

Senator Marcellais: I understand there are some activities in this. Who is liable for any injuries that may happen during these activities?

Baxley: That's a complicated question. Generally, if activities are regular and there is no negligence on the part of the school district, say for example a child is playing on a playground at school and that child gets hurt, it would be to the child's parents, the district is not liable. If you allowed a basketball team into your gym and it was found to be something faulty in your gym, you could be liable. There is always liability allowing people onto your property in the premises, but it's not totally clear; it's very situation-specific.

Senator Oban: I know that the school boards association often creates model policy and encourages school districts to adopt it. Has this been a discussion at the state level where model policy has been created and advised to school districts to adopt something similar?

Baxley: I believe we do have a model policy, but I'm not certain if this is on the list. It is likely not a required template. I could not tell you how many have adopted that template or version thereof.

Senator Oban: I'd be interested in seeing if you have model policy regarding this. I wonder if there is a situation where a group has been denied access and whether they took it to the local school board to have that conversation first. I'd be interested if you've heard that any school boards have been approached by a local organization who's been denied.

Baxley: Anecdotally I've heard a few things. I have not heard of any district within the state denying a group like the boy scouts that can use classroom space to meet. Incidentally I have heard a few times of districts opting not to allow the travelling basketball teams to meet just because the sheer number and lack of gym space, availability and inability to accommodate all, but that's it.

Senator Davison: If you let one patriotic group in, then as a school district are you suggesting then that you have to let everybody else in?

Baxley: Yes. Under the federal equal access act, a district is able to create what is called a limited public forum. That is at a time of the districts proposing outside of school hours. Once you allow one of those groups, you are mandated by law. Basically you cannot offer one organization conditions more or less favorable than you've offered any other organization whether they are patriotic or not.

Senator Davison: When we have FFA, then technically anybody that has an FFA organization has to let any organization in there?

Baxley: I'm less certain on that. FFA is included in that title 36, but it is often part of the curriculum in districts. Districts that offer a shop class, FFA is often part of that curriculum. That may retract that particular organization a little bit.

Senator Davison: Is there a guidance on that?

Baxley: I'm not sure, but I can look into it.

Senator Rust: Would you have an objection if it was changed to non-instructional time?

Baxley: I think our biggest hang-up is the "shall". Non-instructional time would be helpful, but removing the ability of a district to choose when, if or who without the instructional if and who they're allowing into their district and their facilities is the biggest issue for us. We believe it's a local control decision to set your policy on if you're going to allow anybody and if you're not going to allow anybody.

Senator Rust: I suppose if we change to "may allow" we'd be stating in law something that you can already do.

Baxley: Yes. There is already federal law that creates that code.

Chairman Schaible closes the hearing on SB 2299.

2019 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

SB 2299
2/11/2019
32533

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Lynn Wolf

Explanation or reason for introduction of bill/resolution:

A bill relating to patriotic society's access to students during school hours.

Minutes:

Att. #1-Schaible

Chairman Schaible: See **Att. #1**. I have passed out an amendment to SB 2299. This amendment would take out any reference to instructional time.

Senator Rust: I see principal shall allow. Subsection 2 says shall also.

Chairman Schaible: I would rather it say may.

Senator Rust: I thought we saw “during regular school hours” on lines 9 and 10 as being problematic. I don’t see that in the amendment.

Senator Davison: By taking “shall” and putting it to “may” they can do that already now. I guess we are putting in there, the principal shall respond promptly to the request. I would hope they would do that already.

Senator Oban: I have a number of problems with this. I have a problem with us having no say in what groups get added to that list. I also wonder is this a problem right now? If it is, did those groups go to the local school board? Did you follow the channel that you should properly follow, if there is a problem first?

Chairman Schaible: I don’t disagree with you. I think the amendment is trying to leave it up to the school discretion - which is already available. There is that pending purpose that if you allow something for one, then you are required to allow the other one.

Senator Davison: I don’t see a fix to this – to be honest with you. I move a Do Not Pass on SB 2299.

Chairman Schaible: If you put “may” in there, you are allowing them to do what they can do already. We certainly don’t need another law on the books. If there is the issue of special

circumstances for this patriotic society, you have to make allowances for the other side, what is different than what we have now? We have a motion and no second, what are your wishes?

Senator Oban: Second.

Senator Davison: Honestly, I received communication from Fargo Public Schools listing several reasons why it is a bad bill. That doesn't always necessarily mean that I just jump on their bandwagon, but, as I listened to the testimony and now our discussion, based on the federal laws – the equal access act or whatever it was, I think we are fighting an uphill battle in trying to soften it up enough to honor the request of sponsor and more importantly, the constituent, who has done many positive things in the state of ND. At some point in time, I have to be honest with him that this is just not going to work.

Chairman Schaible: Other discussion.

Senator Oban: I am sure we are all supportive of this scouts, of giving people access to share this information with kids, but I agree with Senator Davison that this is not the way to do it.

Chairman Schaible: I would agree that right now if a school wanted to provide access, they can in a way that is legal and still have local control. So I am not in favor of putting more laws on the books.

Senator Rust: And, I have a problem during regular school hours. Schools can do those kind of things right before school starts or right after, but during regular school hours, I have a problem. I am also aware of the equal access law and you can get yourself into a very uneasy situation really quickly with this if someone comes along wanting access for something that may not be in concert with most of what most of your community members think.

Roll Call Vote: 7 Yeas; 0 Nays; 0 Absent.

Do Not Pass motion carries.

Senator Davison will carry the bill.

Date: 2-11-19
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2299

Senate Education Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen Davison Seconded By Sen Oban

Senators	Yes	No	Senators	Yes	No
Chairman Schaible:	✓		Senator Marcellais:	✓	
Vice-Chairman Fors:	✓		Senator Oban:	✓	
Senator Davison	✓				
Senator Elkin:	✓				
Senator Rust:	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen Davison

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2299: Education Committee (Sen. Schaible, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2299 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

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Title 36 U.S. Code Patriotic Organizations

Chapter 201: Agricultural Hall of Fame
Chapter 202: Air Force Sergeants Association
Chapter 203: American Academy of Arts and Letters
Chapter 205: American Chemical Society
Chapter 207: American Council of Learned Societies
Chapter 209: American Ex-Prisoners of War
Chapter 210: American GI Forum of the United States
Chapter 211: American Gold Star Mothers, Incorporated
Chapter 213: American Historical Association
Chapter 215: American Hospital of Paris
Chapter 217: The American Legion
Chapter 219: The American National Theater and Academy
Chapter 221: The American Society of International Law
Chapter 223: American Symphony Orchestra League
Chapter 225: American War Mothers

Chapter 227: AMVETS (American Veterans of World War II, Korea, and Vietnam)
Chapter 229: Army and Navy Union of the United States of America
Chapter 231: Aviation Hall of Fame
Chapter 301: Big Brothers Big Sisters of America
Chapter 303: Blinded Veterans Association
Chapter 305: Blue Star Mothers of America, Inc.
Chapter 307: Board for Fundamental Education
Chapter 309: Boy Scouts of America
Chapter 311: Boys & Girls Clubs of America
Chapter 401: Catholic War Veterans of the United States of America, Incorporated
Chapter 403: Civil Air Patrol
Chapter 405: Congressional Medal of Honor Society of the United States of America
Chapter 407: Corporation for the Promotion of Rifle Practice and Firearms Safety
Chapter 501: Daughters of Union Veterans of the Civil War 1861-1865
Chapter 503: Disabled American Veterans
Chapter 601: 82nd Airborne Division Association, Incorporated (see 82nd Airborne Division (United States))

Chapter 701: Fleet Reserve Association

Chapter 703: Former Members of Congress

Chapter 705: The Foundation of the Federal Bar Association (See Federal Bar Association)

Chapter 707: Frederick Douglass Memorial and Historical Association (See Frederick Douglass National Historic Site)

Chapter 709: National FFA Organization

Chapter 801: General Federation of Women's Clubs

Chapter 803: Girl Scouts of the United States of America

Chapter 805: Gold Star Wives of America

Chapter 901: Reserved

Chapter 1001: Italian American War Veterans of the United States

Chapter 1101: Jewish War Veterans of the United States of America, Incorporated

Chapter 1103: Jewish War Veterans, U.S.A., National Memorial, Incorporated

Chapter 1201: Reserved

Chapter 1301: Ladies of the Grand Army of the Republic (See Grand Army of the Republic)

Chapter 1303: Legion of Valor of the United States of America, Incorporated

Chapter 1305: Little League Baseball, Incorporated

Chapter 1401: Marine Corps League

Chapter 1403: The Military Chaplains Association of the United States of America

Chapter 1404: Military Officers Association of America

Chapter 1405: Military Order of the Purple Heart of the United States of America, Incorporated (See Purple Heart)

Chapter 1407: Military Order of the World Wars

Chapter 1501: National Academy of Public Administration

Chapter 1503: National Academy of Sciences

Chapter 1505: National Conference of State Societies, Washington, District of Columbia

Chapter 1507: National Conference On Citizenship

Chapter 1509: National Council On Radiation Protection and Measurements

Chapter 1511: National Education Association of the United States

Chapter 1513: National Fallen Firefighters Foundation (See National Fallen Firefighters Memorial))

Chapter 1515: National Federation of Music Clubs

Chapter 1517: National Film Preservation Foundation

Chapter 1519: National Fund for Medical Education

Chapter 1521: National Mining Hall of Fame and Museum

Chapter 1523: National Music Council
Chapter 1524: National Recording Preservation Foundation (See National Recording Preservation Board)
Chapter 1525: National Safety Council
Chapter 1527: National Ski Patrol System, Incorporated
Chapter 1529: National Society, Daughters of the American Colonists
Chapter 1531: The National Society of the Daughters of the American Revolution
Chapter 1533: National Society of the Sons of the American Revolution
Chapter 1535: National Tropical Botanical Garden
Chapter 1537: National Woman's Relief Corps, Auxiliary to the Grand Army of the Republic
Chapter 1539: The National Yeomen F (see Yeoman (F))
Chapter 1541: Naval Sea Cadet Corps
Chapter 1543: Navy Club of the United States of America
Chapter 1545: Navy Wives Clubs of America
Chapter 1547: Non Commissioned Officers Association of the United States of America, Incorporated
Chapter 1601: Reserved
Chapter 1701: Paralyzed Veterans of America
Chapter 1703: Pearl Harbor Survivors Association

Chapter 1705: Polish Legion of American Veterans, U.S.A.
Chapter 1801: Reserved
Chapter 1901: Reserve Officers Association of the United States
Chapter 1903: Retired Enlisted Association, Incorporated
Chapter 2001: Society of American Florists and Ornamental Horticulturists
Chapter 2003: Sons of Union Veterans of the Civil War
Chapter 2101: Theodore Roosevelt Association
Chapter 2103: 369th Veterans' Association
Chapter 2201: United Service Organizations, Incorporated
Chapter 2203: United States Capitol Historical Society
Chapter 2205: United States Olympic Committee
Chapter 2207: United States Submarine Veterans of World War II
Chapter 2301: Veterans of Foreign Wars of the United States
Chapter 2303: Veterans of World War I of the United States of America, Incorporated
Chapter 2305: Vietnam Veterans of America, Inc.
Chapter 2401: Women's Army Corps Veterans' Association
Chapter 2501: Reserved

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Chapter 2601: Reserved
Chapter 2701: Reserved



February 6, 2019

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Girl Scouts—Dakota Horizons
800.666.2141
help@gsdakotahorizons.org
www.gsdakotahorizons.org

Sioux Falls Service Center
1101 S Marion Road
Sioux Falls, SD 57106

Rapid City Service Center
1202 E St Francis Street
Rapid City, SD 57701

Fargo Service Center
1002 43rd Street S
Fargo, ND 58103

Grand Forks Service Center
2525 Demers Ave
Grand Forks, ND 58201

Bismarck Service Center
735 Airport Road
Bismarck, ND 58504

Minot Service Center
525 31st Ave SW
Minot, ND 58701

Senator Schaible and Members of the Senate Education Committee,

I am honored to support Senate Bill 2299 as a representative of Girl Scouts - Dakota Horizons. I have been a lifetime member of the Girl Scouts for about 40 years. This bill allows representatives of youth groups identified in the United States Code as a "patriotic society" to come into public schools to present information and recruit students to participate in the patriotic society. Girl Scouts and Boy Scouts are organizations that fit this definition.

As stated in Section two in Senate Bill 2299, before a representative of a patriotic society may speak with students at the public school, the representative must notify the principal of the date and time he or she plans to present information to students. The principal then coordinates the request with the representative, deciding on the best time and manner of doing this.

In February of 2018 the South Dakota Legislature passed a similar bill authorizing patriotic societies access to public schools. Understanding the importance of classroom time, representatives of Girl Scouts worked with Principals at 23 schools in Sioux Falls, SD. Girl Scout team members were given an opportunity to speak to the Kindergarten through 6th Grade students in September of 2018. Girl Scouts spoke to the students through five minute classroom chats, lunch talks, or school assemblies. The school principals determined the best approach for their school.

This collaborative effort was also repeated at three Kindergarten through 6th Grade schools in Huron, SD and nine schools in Rapid City, SD; plus additional communities throughout the state. These classroom chats provided the girls an opportunity to learn about the activities, camps, and community involvement opportunities with Girl Scouts. Girls also had an opportunity to ask questions and bring their parent back for the informational event, held in a location they're already familiar with.

The classroom chats had immediate impact. Girls connected that Girl Scouts is fun with purpose while also helping them with their future endeavors. The council saw an increase in 4th – 6th Grade girls who are interested in community involvement and refining skills that result in their leadership skills and impact.

I have attached a fact sheet to my testimony which indicates the proven benefits Girl Scouting offers girls.

I encourage you to vote yes on Senate Bill 2299. If you have any questions, I will be glad to try to answer them.

Bob Wefald

*Girl Scouts builds girls of
courage, confidence and
character, who make the
world a better place.*



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Support Senate Bill 2299

Senate Bill 2299 will ensure more students in North Dakota to allow representatives from youth-serving patriotic societies like Girl Scouts to speak directly to students during the school day about how the group supports kids' educational interests and civic involvement. This opportunity is limited to groups Congress has recognized as patriotic societies in Title 36 of the U.S. Code.

Girl Scouts and other youth-serving patriotic societies specialize in providing youth experiences in ways that enhance their potential and complement their in-class experiences. At Girl Scouts, girls find a safe space where they are free to be themselves without the pressures and social anxiety that can come from a mixed-gender environment. They can develop and practice different skills, try new things, and take on leadership roles with support from caring adult mentors and strong female role models.

The Girl Scout Leadership Experience is a one-of-a-kind leadership development program for girls with proven results. New research shows that Girl Scouts are more likely than other girls to:¹

- Earn "excellent" grades (53 percent vs. 45 percent)
- Expect to graduate high school (88 percent vs. 83 percent)
- Expect to graduate college (70 percent vs. 60 percent)

Girl Scouts can buffer girls against negative outcomes at a crucial time in their lives:

- While it is common for a girl's sense of self to decline in middle school, Girl Scouts exhibit a slight lift in theirs during this time.
- During middle school, non-Girl Scouts experience a dramatic drop in interest and involvement in their communities, whereas Girl Scouts' desire to solve problems in their communities increases.
- Also during middle school, Girl Scouts remain confident about their futures, whereas non-Girl Scouts are more likely to question theirs.

Support Senate Bill 2299 so Girl Scouts and other patriotic societies can partner with schools to ensure all students have access to high-quality afterschool programs.

¹ Girl Scout Research Institute. (2017). [The Girl Scout Impact Study](#).



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NDCEL

Testimony in Opposition of SB 2299 – Patriotic Society’s access to students during school hours

Good morning Chairman Schaible, and members of the Senate Education Committee. I am here in opposition to SB 2299 on behalf of the North Dakota Council of Educational Leaders.

Educational Leaders believe that the decision of who can come to the school and speak to student should be up to the school and should be governed by local school board policy. SB 2299 takes that ability away from the principal, superintendent and school board. We feel that SB 2299 is well intended in that it would allow students to hear from Patriotic Societies, but we feel that the language of the bill could ultimately have a negative effect on the school, and students by potentially putting a school into a forced decision that would put them in direct violation of the Equal Access Act. We are consistently advised that if we let one organization in then we have to let any in. The **Equal Access** Act is a United States federal law passed in 1984 to compel federally funded secondary schools to provide **equal access** to extracurricular student clubs. I’ve attached a copy of the US Department of Education guidelines. In those guidelines it is very clear:

- All schools who receive any sort of federal funds – we fall under the provisions
- If a school allows at least one non-curriculum related student group to meet on school premises during non-instructional time, it must allow that same access to any other similarly situated group.
- Access refers not only to physical meeting spaces, but also recognition and privileges afforded to other groups including – the right to announce club meetings over the public-address system, in the school paper – or in the case of this bill *during regular school hours*.
- *Note: definition of non-instructional is “time set aside by the school before actual classroom instruction begins or after actual instruction ends” by this definition, the time allowed for patriotic societies becomes non-instructional time.*

A part of the role of a school is to protect instructional time. Schools have locally established policies about groups coming in outside of regular school hours and offer equal access rights to such groups on the basis of their local policy. Allowing this in-road into the regular school day and ultimately instructional time has the potential to erode the overall instructional obligation of the district.

This bill would require a school to allow an individual to come and present and recruit students during school hours. The bill specifically states “Patriotic Societies” but it is our concern that if you HAVE to allow for these organizations then the school would also HAVE to allow for other organizations, and some may not be what the community and parents want. I have attached a sheet from the Library of Congress that lists the organizations that are listed under title 36, United States Code, subtitle II, part b. There are 89 organizations that are under Patriotic Societies – everything from the Boy Scouts to the National Film Preservation Foundation. This



bill would require a school to let any of those organization present and recruit the students of the school.

This bill also does not state if a student **must attend** the presentation and recruitment. What about students whose religious or cultural believes do not coincide with these organizations? Are they forced to attend? According to the bill they would be. The bill also does not specify if parents need to be notified, which raises the question as to whether parents should have the ultimate say as to who could be recruiting their child and for what reasons.

Schools have a lot to do in the limited amount of time they are with the students. It is the belief of our school leaders that the school needs to have the ability to decide what is presented and how to the students.

Because of this we respectfully request a Do Not Pass on SB 2299.

U.S. DEPARTMENT OF EDUCATION

LEGAL GUIDELINES REGARDING THE EQUAL ACCESS ACT AND THE RECOGNITION OF STUDENT-LED NONCURRICULAR GROUPS

The Equal Access Act ensures that noncurricular student groups are afforded the same access to public secondary school facilities as other, similarly situated student groups. Based on decisions of the U.S. Supreme Court and other federal courts interpreting the Act, the U.S. Department of Education's Office of the General Counsel provides the following guidance.¹

1. General Scope

The Act applies to: (1) any public secondary school (2) that receives federal funds (3) and creates a limited open forum by allowing one or more noncurricular student groups to meet on its premises (4) during noninstructional time.² Schools meeting these criteria are forbidden to prevent access or deny fair opportunity to students who wish to hold meetings on school grounds.

The Act does not mention specific types of student groups to which equal-access rights apply. It instead broadly provides that schools allowing at least one "noncurriculum related student group" may not deny comparable access to any other student group because of the "religious, political, philosophical, or other content of the speech at [the group's] meetings."³ The Act therefore prohibits schools from banning student-led noncurricular groups because of the content of the speech at the groups' meetings.

The Act identifies narrow exceptions; however, schools may not ban or suppress the speech of student groups based on a "desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint."⁴

2. Legal Principles and Obligations

When framing policies regarding equal access, schools are advised to consider the following:

- If a federally funded public secondary school allows at least one noncurriculum-related student group to meet on school premises during noninstructional time, it has created a "limited open forum" that triggers the Act's protections. In that

¹ We intend for these guidelines to provide schools with the information and resources they need to help ensure that all students, including lesbian, gay, bisexual and transgender (LGBT) students and gender nonconforming students, have a safe place to learn, meet, share experiences, and discuss matters that are important to them. This guidance represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. If you are interested in commenting on this guidance, please email us your comment at equalaccessact@ed.gov.

² The Equal Access Act, 20 U.S.C. §§ 4071 – 4073 (2010).

³ 20 U.S.C. § 4071(a) (2010).

⁴ See *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 509 (1969).

case, the school may not deny the same access for similarly situated clubs on the basis of the content of the clubs' speech.⁵

- "Access" refers not only to physical meeting spaces on school premises, but also to recognition and privileges afforded to other groups at the school, including, for example, the right to announce club meetings in the school newspaper, on bulletin boards, or over the public-address system.⁶ Noninstructional time is "time set aside by the school before actual classroom instruction begins or after actual instruction ends,"⁷ and covers student meetings that take place before or after school as well as those occurring during lunch, "activity periods," and other noninstructional periods during the school day.⁸
- The Supreme Court defines a curriculum-related student group as one that "directly relates" to the body of courses offered at a school.⁹ A student group directly relates to a school's curriculum "if the subject matter of the group is actually taught, or will soon be taught, in a regularly offered course; if the subject matter of the group concerns the body of courses as a whole; if participation in the group is required for a particular course; or if participation in the group results in academic credit."¹⁰ According to the Supreme Court, for example, a "French club would directly relate to the curriculum if a school taught French in a regularly offered course or planned to teach the subject in the near future."¹¹
- Schools retain the right to exclude groups that are directed, conducted, controlled, or regularly attended by nonschool persons.¹²
- Noncurricular student groups may have faculty sponsors without compromising the requirement that they are student-initiated.¹³ "The assignment of a teacher,

⁵ See, e.g., *Bd. of Educ. v. Mergens*, 496 U.S. 226, 236 (1990) ("Thus, even if a public secondary school allows only one 'noncurriculum related student group' to meet, the Act's obligations are triggered and the school may not deny other clubs, on the basis of the content of their speech, equal access to meet on school premises during noninstructional time.").

⁶ *Id.* at 247 (holding that to deny the school's Bible club official recognition, which included access to the school newspaper, bulletin boards, and public address system, was to deny it "equal access"); *Straights & Gays for Equality v. Osseo Area Schools - District No. 279*, 540 F.3d 911, 914 (8th Cir. 2008) (holding that the school district violated the Act by providing noncurricular groups with greater access to communication avenues than it provided to SAGE); *Boyd County High Sch. Gay Straight Alliance v. Bd. of Educ.*, 258 F. Supp. 2d 667, 683 (E.D. Ky. 2003).

⁷ 20 U.S.C. § 4072(4) (2010).

⁸ See *Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211, 222 (3d Cir. 2003) ("Simply because the period may fall within the more general parameters of the school day does not indicate that all time within those parameters necessarily constitutes actual classroom instruction."); *Ceniceros ex rel. Risser v. Bd. of Trustees*, 106 F.3d 878, 880 (9th Cir. 1997) (holding that the plain meaning of the term "noninstructional time" under the Act includes meetings held during lunch time).

⁹ *Mergens*, 496 U.S. at 238-40.

¹⁰ *Id.* at 239-40.

¹¹ *Id.* at 240.

¹² 20 U.S.C. § 4071(c)(5) (2010).

¹³ 20 U.S.C. § 4071(c)(1) (2010) (providing that a school shall be deemed to offer a fair opportunity to students who wish to conduct a meeting if the school uniformly provides that "the meeting is voluntary and student-initiated").

administrator, or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting.”¹⁴

- Schools retain authority to ban unlawful groups, maintain discipline and order on school premises, protect the well-being of students and faculty, assure that students’ attendance at meetings is voluntary, and restrict groups that materially and substantially interfere with the orderly conduct of educational activities.¹⁵ But the Act does not permit schools to ban groups or suppress student speech based on unpopularity of the message or on unfounded fears that the group may incite violence or disruption. Where the material and substantial interference is caused not by the group itself but by those who oppose the group’s formation or message, the disruption will not justify suppressing the group.¹⁶

3. Issues to Consider When Applying the Act

- **Viewing Access as an Endorsement of a Student Group or its Message:** A school may not discriminate against a student group on the basis that allowing access would constitute an endorsement of the group. The U.S. Supreme Court has specifically recognized that public “schools do not endorse everything they fail to censor,” because secondary school students are generally capable of understanding that schools do not endorse or support speech that an institution merely permits on a nondiscriminatory basis.¹⁷ Thus, granting access on a nondiscriminatory basis does not constitute a school’s endorsement of a group’s activities, and avoiding the appearance of endorsement does not, therefore, justify denying the group equal access.
- **Defining the Meaning of “Curriculum Related” Too Broadly:** If a school has not created a limited open forum (*i.e.*, the only student groups are curricular), the Act does not require the school to grant a request to allow a noncurricular group to meet. The meaning of “curriculum related” cannot, however, be broadened in ways that would render the Act meaningless. For example, a school cannot evade the Act by declaring that all existing student clubs are curricular, and invoking some broad, vague educational goals that they all serve, while labeling as noncurricular any student groups that it wishes to exclude.¹⁸ What matters are the groups’ actual relationships to the curriculum and the school’s actual practices in granting access.¹⁹
- **Banning All Noncurricular Groups:** A school could close a limited open forum by banning all noncurricular groups, thereby avoiding any obligations under the

¹⁴ *Id.* at § 4072(2) (2010).

¹⁵ 20 U.S.C. § 4071(d)(5), (c)(4), (f) (2010).

¹⁶ *See, e.g., Boyd County High Sch. Gay Straight Alliance*, 258 F. Supp. 2d at 690 (“the Equal Access Act permits [a school] to prohibit Plaintiffs from meeting on equal terms with the noncurriculum-related student groups that have been permitted to meet... only upon a showing that Plaintiffs’ *own* disruptive activities have interfered with [the school’s] ability to maintain order and discipline.”).

¹⁷ *See Mergens*, 496 U.S. at 250.

¹⁸ *Id.* at 244-245 (quoting *Mergens v. Bd. of Educ.*, 867 F.2d 1076, 1078 (8th Cir. 1989)).

¹⁹ *Id.* at 246.

Act. But successfully closing a previously open forum will often prove difficult: In an Equal Access Act challenge, a written policy banning noncurricular clubs is insufficient and a court will scrutinize a school's actual practices to ensure each remaining club is genuinely curricular.²⁰

- **Invoking Moral Reasons or Censorship of Explicit Content:** The Act guarantees schools' right "to protect the well-being of students and faculty."²¹ And the U.S. Supreme Court has recognized that public schools may restrict students' access to and expression of obscene or sexually explicit material to protect students.²² But the Act does not permit schools to ban a group based on school officials' general moral disapproval or on assumptions about the content of speech at group meetings. A school would, for example, violate the Act by excluding a group based on the fact that it addresses issues of interest to members of a minority faith or to lesbian, gay, bisexual and transgender (LGBT) students.²³
- **Viewing Student Groups as Controlled or Directed by Nonschool Persons:** Schools may uniformly deny access to groups that are controlled, directed, or regularly attended by nonschool persons.²⁴ But schools may not exclude certain student groups merely because of national affiliations, while providing access to other groups with similar affiliations.²⁵ For instance, if a school recognizes a service club or honor society such as Beta Club or Key Club that shares its name with a national organization, the school cannot deny access to a gay-straight alliance merely because it shares a name with a national organization.²⁶
- **Imposing Special Requirements on Some Student Groups:** The Act requires the school to treat each group like other, similarly situated groups, and prohibits imposing additional requirements on some student-run groups that are not

²⁰ *Id.* at 244 ("To define 'curriculum related' in a way that results in almost no schools having limited open fora, or in a way that permits schools to evade the Act by strategically describing existing student groups, would render the Act merely hortatory. See 130 Cong. Rec. 19222 (1984) (statement of Sen. Leahy) ('[A] limited open forum should be triggered by what a school does, not by what it says').").

²¹ 20 U.S.C. § 4071(f) (2010) (stating that "nothing in [the Act] shall be construed to limit the authority of the school, its agents, or employees, to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary").

²² See *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 685 (1986) (holding that it is appropriate for educators to protect students from sexually explicit, indecent, or lewd speech).

²³ See *Gay-Straight Alliance of Okeechobee High Sch. v. Sch. Bd.*, 483 F. Supp. 2d 1224, 1229 (S.D. Fl. 2007) (rejecting school district's assumption that a gay-straight alliance is a "sex-based" club, after examining club's stated purposes of promoting tolerance and providing a safe environment for students, and concluding that school district failed to establish that it would be involved in "accessing or sharing with other students obscene or explicit sexual material; rather, this appears to be an assumption or conclusion derived from the name of the club").

²⁴ 20 U.S.C. § 4071(c)(5) (2010).

²⁵ See *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d at 1146 (C.D. Cal. 2000) (holding that sharing a name suggested by national organization and shared with other student clubs elsewhere does not approach level of control necessary to exempt group from Act's protections, and therefore holding that school board violated Act when it excluded gay-straight alliance on basis of supposed association with "nonschool persons" but failed to apply restriction uniformly to groups such as Red Cross and Key Club, whose names similarly suggested affiliations with national organizations).

²⁶ *Id.*

imposed on all others.²⁷ A school would violate the Act by, for example, requiring a gay-straight alliance to change its name, requiring it to have a faculty adviser when faculty advisers are not generally required for all other groups, or imposing different requirements for the group's posters, leaflets, and announcements than the school places on other groups' promotional materials.

²⁷ See, e.g., *Colin*, 83 F. Supp. 2d at 1147-48.

TITLE 36—PATRIOTIC SOCIETIES AND OBSERVANCES

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19.	Corregidor Bataan Memorial Commission [Omitted]	426	56.	American Gold Star Mothers, Inc. ..	2401
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21.	National Safety Council	461	58.	Catholic War Veterans of the United States of America, Inc.	2601
22.	Pershing Hall Memorial Fund	491	59.	Jewish War Veterans of the United States of America, Inc.	2701
23.	Board for Fundamental Education	501	60.	Navy Wives Clubs of America	2801
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63.	Women's Army Corps Veterans' Association	3101	13. Permanent building at headquarters in Washington, D.C.
64.	American Chemical Society	3201	14. Omitted.
65.	The American National Theater and Academy	3301	15. Memorial building to Women of World War I; expenditures; supervision.
66.	American Symphony Orchestra League	3401	16. Exchange of Government-owned cotton for articles containing wool.
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68.	Pearl Harbor Survivors Association	3601	
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70.	Vietnam Veterans of America, Inc.	3801	
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80.	82nd Airborne Division Association, Inc.	4801	
81.	American Hospital of Paris	4901	
82.	Military Order of the World Wars ...	5001	
83.	Retired Enlisted Association, Incorporated	5101	
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CHAPTER 1—AMERICAN NATIONAL RED CROSS

Sec.	
1.	Corporation created.
1a.	Continuation of corporation.
2.	Name and powers of corporation.
3.	Purposes of corporation.
4.	Repealed.
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CROSS REFERENCES

Operation of American Red Cross vessels under Neutrality Act of 1939, see section 444 of Title 22, Foreign Relations and Intercourse.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 5143.

§ 1. Corporation created

Clara Barton, Hilary A. Herbert, Thomas F. Walsh, Charles C. Glover, Charles J. Bell, Mabel T. Boardman, George Dewey, William R. Day, Nelson A. Miles, James Tanner, William K. Van Reppen, John M. Wilson, Simon Wolf, James R. Garfield, Gifford Pinchot, S. W. Woodward, Mary A. Logan, Walter Wyman, of Washington, District of Columbia; George H. Shields, of Missouri; William H. Taft, F. B. Loomis, Samuel Mather, of Ohio; Spencer Trask, Robert C. Ogden, Cleveland H. Dodge, George C. Boldt, William T. Wardwell, John G. Carlisle, George B. McClellan, Elizabeth Mills Reid, Margaret Carnegie, of New York; John H. Converse, Alexander Mackay-Smith, J. Wilkes O'Neill, H. Kirke Porter, of Pennsylvania; Richard Olney, W. Murray Crane, Henry L. Higginson, William Draper, Frederick H. Gillett, of Massachusetts; Marshall Field, Robert T. Lincoln, Lambert Tree, of Illinois; A. G. Kaufman, of South Carolina; Alexander W. Terrell, of Texas; George Gray, of Delaware; Redfield Proctor, of Vermont; John W. Foster, Noble C. Butler, Robert W. Miers, of Indiana; John Sharp Williams, of Mississippi; William Alden Smith, of Michigan; Horace Davis, W. W. Morrow, of California; Daniel C. Gilman, Eugene Lovering, of Maryland; J. Taylor Ellyson, of Virginia; Daniel R. Noyes, of Minnesota; Emanuel Fiske, Marshall Fiske, of Connecticut, together with five other persons to be named by the President of the United States, one to be chosen from each of the Departments of State, War, Navy, Treasury, and Justice, their associates and successors, are created a body corporate and politic in the District of Columbia.

(Jan. 5, 1905, ch. 23, § 1, 33 Stat. 599; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501.)

PREAMBLE

Act Jan. 5, 1905, as amended by act May 8, 1947, ch. 50, §§ 1, 2, 61 Stat. 80, provided:

"Whereas on the twenty-second of August, eighteen hundred and sixty-four, at Geneva, Switzerland, plenipotentiaries respectively representing Italy, Baden, Belgium, Denmark, Spain, Portugal, France, Prussia, Saxony, and Wurttemberg and the Federal Council of Switzerland agreed upon ten articles of a treaty or convention for the purpose of mitigating the evils inseparable from war; of ameliorating the condition of soldiers wounded on the field of battle, and particularly providing, among other things, in effect, that persons employed in hospitals and in according relief to the



NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

P.O. Box 7128
Bismarck ND 58507-7128
1-800-932-8791 • (701)255-4127
www.ndsba.org

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SB 2299
Testimony of Alexis Baxley
Senate Education
February 6, 2019

Chairman Schaible and members of the Senate Education Committee, my name is Alexis Baxley. I am the executive director of the North Dakota School Boards Association. NDSBA represents all 178 North Dakota public school districts and their boards. I am here today in opposition to SB 2299.

NDSBA has a number of concerns regarding SB 2299, which requires all public schools to allow a patriotic society to have access to students during school hours and on school premises for purposes of recruitment and providing information. By way of background, there is a federal law, the Equal Access Act, that applies in this context, but is not nearly as broad or burdensome as the proposed bill.

The Equal Access Act prohibits any public school that has a designated open forum or a limited public forum and that receives federal funds from denying 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 meet at the school within that designated open forum or limited public forum. **Title 36 youth group** means a group or organization listed in title 36 of the United States Code (as a patriotic society) that is intended to serve young people under the age of 21. I have attached a list of the groups included under title 36 to my testimony.

In short, the Act gives the Boy Scouts and other covered groups equal access or a fair opportunity to meet if a public school designates a place for any outside youth or community groups to meet on campus for reasons other than to provide the school's educational program. Any access under the Act must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

For the purpose of the Act, an elementary school or secondary school has a **limited public forum** whenever the school involved grants an 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. **Designated open forum** means that a school designates a time and place for one

or more outside youth or community groups to meet on school premises or in school facilities, including during the hours in which attendance at the school is compulsory, for reasons other than to provide the school's educational program.

It's important to consider SB 2299 in light of the Act. SB 2299 essentially requires a public school to create a designated open forum (which is broader than a limited public forum) as defined above. This in turn may require the school to provide the same access to this designated open forum to all other community groups. This may also include the same access to students as the patriotic society groups would get under the bill. SB 2299 removes the individual district's choice of whether to create a designated open forum or limited public forum. This will allow for unfettered access to students and cause disruption during educational time. Some of our districts have run into this issue already, and have spent significant time researching and adopting policies with extensive legal guidance. One such example is Fargo, and I have attached a copy of their current policy to my testimony as well.

Additionally, SB 2299 is unnecessary as the Boy Scouts of America Equal Access Act already includes a requirement to allow access under certain circumstances, but still allows the school to choose whether to create a designated open forum or limited public forum in the first place. We believe this ability to choose is absolutely essential. While many of the organizations that would be included in this legislation have noble causes, the idea that a district would be unable to control access to students during school hours is ludicrous.

For these reasons, NDSBA stands in opposition to SB 2299, and we urge a DO NOT PASS recommendation. Thank you for your time and I would be happy to stand for any questions.



LAWS & GUIDANCE (/POLICY/LANDING.JHTML?SRC=LN) / ELEMENTARY & SECONDARY EDUCATION

Subpart 2 — Other Provisions

SEC. 9521 | SEC. 9522 | SEC. 9523 | SEC. 9524
SEC. 9525 | SEC. 9526 | SEC. 9527 | SEC. 9528
SEC. 9529 | SEC. 9530 | SEC. 9531 | SEC. 9532
SEC. 9533 | SEC. 9534 | SEC. 9535 | SEC. 9536

SEC. 9521. MAINTENANCE OF EFFORT.

(a) **IN GENERAL**- A local educational agency may receive funds under a covered program for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of the agency and the State with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(b) **REDUCTION IN CASE OF FAILURE TO MEET**-

(1) **IN GENERAL**- The State educational agency shall reduce the amount of the allocation of funds under a covered program in any fiscal year in the exact proportion by which a local educational agency fails to meet the requirement of subsection (a) of this section by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the local agency).

(2) **SPECIAL RULE**- No such lesser amount shall be used for computing the effort required under subsection (a) of this section for subsequent years.

(c) **WAIVER**- The Secretary may waive the requirements of this section if the Secretary determines that a waiver would be equitable due to —

- (1) exceptional or uncontrollable circumstances, such as a natural disaster; or
- (2) a precipitous decline in the financial resources of the local educational agency.

SEC. 9522. PROHIBITION REGARDING STATE AID.

A State shall not take into consideration payments under this Act (other than under title VIII) in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children.

SEC. 9523. PRIVACY OF ASSESSMENT RESULTS.

Any results from an individual assessment referred to in this Act of a student that become part of the education records of the student shall have the protections provided in section 444 of the General Education Provisions Act.

SEC. 9524. SCHOOL PRAYER.

(a) **GUIDANCE**- The Secretary shall provide and revise guidance, not later than September 1, 2002, and of every second year thereafter, to State educational agencies, local educational agencies, and the public on constitutionally protected prayer in public elementary schools and secondary schools, including making the guidance available on the Internet. The guidance shall be reviewed, prior to distribution, by the Office of Legal Counsel of the Department of Justice for verification that the guidance represents the current state of the law concerning constitutionally protected prayer in public elementary schools and secondary schools.

(b) **CERTIFICATION**- As a condition of receiving funds under this Act, a local educational agency shall certify in writing to the State educational agency involved that no policy of the local educational agency prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary schools and secondary schools, as detailed in the guidance required under subsection (a). The certification shall be provided by October 1 of each year. The State educational agency shall report to the Secretary by November 1 of each year a list of those local educational agencies that have not filed the certification or against which complaints have been made to the State educational agency that the local educational agencies are not in compliance with this section.

(c) **ENFORCEMENT**- The Secretary is authorized and directed to effectuate subsection (b) by issuing, and securing compliance with, rules or orders with respect to a local educational agency that fails to certify, or is found to have certified in bad faith, that no policy of the local educational agency 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 Act¹.

(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 —

- (1) authorize an officer or employee of the Federal Government to mandate, direct, review, or control a State, local educational agency, or school's instructional content, curriculum, and related activities;
- (2) limit the application of the General Education Provisions Act;
- (3) require the distribution of scientifically or medically false or inaccurate materials or to prohibit the distribution of scientifically or medically true or accurate materials; or
- (4) create any legally enforceable right.

SEC. 9527. PROHIBITIONS ON FEDERAL GOVERNMENT AND USE OF FEDERAL FUNDS.

(a) GENERAL PROHIBITION- Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.

(b) PROHIBITION ON ENDORSEMENT OF CURRICULUM- Notwithstanding any other prohibition of Federal law, no funds provided to the Department under this Act may be used by the Department to endorse, approve, or sanction any curriculum designed to be used in an elementary school or secondary school.

(c) PROHIBITION ON REQUIRING FEDERAL APPROVAL OR CERTIFICATION OF STANDARDS-

- (1) IN GENERAL- Notwithstanding any other provision of Federal law, no State shall be required to have academic content or student academic achievement standards approved or certified by the Federal Government, in order to receive assistance under this Act.
- (2) RULE OF CONSTRUCTION- Nothing in this subsection shall be construed to affect requirements under title I or part A of title VI.

(d) RULE OF CONSTRUCTION ON BUILDING STANDARDS- Nothing in this Act shall be construed to mandate national school building standards for a State, local educational agency, or school.

SEC. 9528. ARMED FORCES RECRUITER ACCESS TO STUDENTS AND STUDENT RECRUITING INFORMATION.

(a) POLICY-

- (1) ACCESS TO STUDENT RECRUITING INFORMATION- Notwithstanding section 444(a)(5)(B) of the General Education Provisions Act and except as provided in paragraph (2), each local educational agency receiving assistance under this Act shall provide, on a request made by military recruiters or an institution of higher education, access to secondary school students names, addresses, and telephone listings.
- (2) CONSENT- A secondary school student or the parent of the student may request that the student's name, address, and telephone listing described in paragraph (1) not be released without prior written parental consent, and the local educational agency or private school shall notify parents of the option to make a request and shall comply with any request.
- (3) SAME ACCESS TO STUDENTS- Each local educational agency receiving assistance under this Act shall provide military recruiters the same access to secondary school students as is provided generally to post secondary educational institutions or to prospective employers of those students.

Non-Curriculum Clubs

Principal Determination

Each school will provide an application form for club approval. The school principal will review each request to establish a club. After review, the principal shall designate the club as either “curricular” or “non-curricular.”

Activities regulated by NDHSAA together with intramural activities are not subject to this policy.

Club Application

Club applications shall include the following information.

- Name, email address and phone number of individual completing the application.
- Name of the proposed club.
- Name of the individual(s) who will coordinate and run the proposed club.
- General description/activities of the proposed club.
- Goals of the proposed club.
- A description of area(s) students need to meet in (classroom, gym, etc.).
- A description of when and how often the club intends to meet.
- A description of any fundraising activities planned for the proposed club (see AP 7105 Fundraising).

Non-curricular Club Criteria

- The proposed club is initiated by students;
- Attendance at meetings is voluntary;
- No agent or employee of the District will attend meetings (except those assigned to attend in a custodial capacity), or participate in club meetings or activities during their normal working hours, or during the hours s/he is functioning as a staff member.
 - The school principal may assign a staff member to attend and supervise a non-curriculum student club in a custodial capacity as necessary.
 - District employees or agents of the District may participate in non-curriculum student clubs, but may only do so before or after their normal working hours. At no time shall District employees or agents represent, either expressly or impliedly, that the non-curricular club is sponsored by the Fargo Public Schools. If a district employee or agent attends a non-curriculum club meeting during non-working hours, the employee or agent may not act as the custodial supervisor for the club. In such cases the Principal shall assign another staff member to act as the custodial supervisor during meeting or activities on campus.

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Operating Guidelines for Non-Curricular Clubs

- Meetings may not materially or substantially interfere with the orderly conduct of instructional activities in the school.
- Activities or conduct that are illegal or pose a risk of harm to persons or property are expressly prohibited and will result in a denial of access to school district facilities.
- The principal may take such actions as may be necessary to maintain order and discipline on school premises and to protect the safety and well-being of students and staff members.
- Schools retain the right to exclude groups that are directed, conducted, controlled, or regularly attended by non-school persons.
- Non-curricular clubs may advertise meetings and activities in the following ways:
 - Posters: Non-curriculum student clubs will be allowed post meeting notifications on the building's non-curriculum club area that may include the name of the club and the time, date, and location of club meetings on a poster no larger than 8 1/2" x 11" (text only, no pictures or illustrations). Posters shall be given to the building principal or designee for posting.
 - Daily Announcements: Non-curriculum student clubs will be allowed to announce dates and times of club meetings three (3) times within the week before the next meeting.
 - Distribution of Materials: Non-curriculum student clubs will be allowed to distribute materials only at their meetings to students who are in attendance.
 - School Sponsored Social Media: Each school shall maintain and post on the building's website a list of curriculum and non-curriculum clubs.

Non-curricular Club Rules

An approved non-curriculum club meeting on school premises shall be provided the same rights and access and shall be subject to the same administrative procedures that govern the meetings of student organizations sponsored by the Fargo Public Schools, except as provided by this policy.

Participation in a student-initiated non-curriculum club must be available to all students who wish to attend and cannot be denied on the basis of a student's race, color, religion, sex, sexual orientation, national origin, age, mental or physical disability, gender expression/identity, genetic information, or status with respect to marriage or public assistance, or status in any group protected by federal, state or local law.

The Fargo Public Schools will not permit the use of school facilities by non-curriculum student clubs during instructional hours. During non-instructional time, however, no group of students, regardless of the size of the group, will be denied an opportunity to meet on the basis of the religious, political, philosophical, or other content of the activity.

Non-curriculum club fiscal accounts are not controlled or accounted for by the District.

Staff members acting in a custodial supervisory role shall not participate in the activity, but may be compensated for their time. No instructional staff member shall be assigned to supervise a non-curriculum club if such assignment is contrary to his/her beliefs. For the purposes of this policy, "custodial capacity" means the assigned staff member is present to protect District property; during student-initiated non-curriculum club meetings. Custodial supervision shall only be provided for

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meetings on District-owned property. The District is not responsible for custodial supervision when the activities of a non-curriculum club takes place off school property.

Legal References:

F.S. 1006.14

20 U.S.C. 4071 et seq., Equal Access Act of 1984

42 U.S.C. 12101, et seq., Americans with Disabilities Act of 1990

42 U.S.C. 2000e, Civil Rights Act of 1964

Adopted 7/2015

Reviewed 7/2018

CLUB APPLICATION

1. Information about the individual completing the application.

Name: _____

Email Address: _____ Phone Number: _____

2. Name of the proposed club: _____

3. Name of the individual(s) who will coordinate and run the proposed club.

Name: _____

Name: _____

4. General description/activities of the proposed club.

5. Goals of the proposed club.

6. Description of area(s) students need to meet in (classroom, gym, etc.).

7. Description of when and how often the club intends to meet.

8. Description of any fundraising activities planned for the proposed club (see AP 7105 Fundraising).

19.0590.01001
Title

Prepared by the Legislative Council staff for
Senator Schaible

February 11, 2019

SB 2299
2-11-19
Att. #1
p. 1 of 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2299

Page 1, line 18, after "hours" insert "or during any instructional time"

Renumber accordingly