

1 **CLUBS IN PUBLIC SCHOOLS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Stephen E. Sandstrom**

5 Senate Sponsor: John L. Valentine

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Student Clubs Act regarding a club's access to school facilities.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ defines the term "school facilities use" to include access to:

- 13 • a school building, premises, or playing field; or
- 14 • a limited public forum;

15 ▶ allows a school to set the number of hours per month noncurricular clubs may have
16 school facilities use, provided all noncurricular clubs are treated equally; and

17 ▶ makes technical amendments.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **53A-11-1202**, as enacted by Laws of Utah 2007, Chapter 114

25 **53A-11-1203**, as enacted by Laws of Utah 2007, Chapter 114

26 **53A-11-1206**, as enacted by Laws of Utah 2007, Chapter 114

27 **53A-11-1208**, as enacted by Laws of Utah 2007, Chapter 114



28 53A-11-1211, as enacted by Laws of Utah 2007, Chapter 114

29 53A-11-1212, as enacted by Laws of Utah 2007, Chapter 114



31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section 53A-11-1202 is amended to read:

33 **53A-11-1202. Definitions.**

34 As used in this part:

35 (1) "Bigotry" means action or advocacy of imminent action involving:

36 (a) the harassment or denigration of a person or entity; or

37 (b) any intent to cause a person not to freely enjoy or exercise any right secured by the
38 constitution or laws of the United States or the state, except that an evaluation or prohibition
39 may not be made of the truth or falsity of any religious belief or expression of conscience
40 unless the means of expression or conduct arising therefrom violates the standards of conduct
41 outlined in this section, Section 53A-13-101.3, or 20 U.S.C. Section 4071(f).

42 (2) "Club" means any student organization that meets during noninstructional time.

43 (3) "Conscience" means a standard based upon learned experiences, a personal
44 philosophy or system of belief, religious teachings or doctrine, an absolute or external sense of
45 right and wrong which is felt on an individual basis, a belief in an external absolute, or any
46 combination of the foregoing.

47 (4) "Curricular club" means a club that is school sponsored and that may receive
48 leadership, direction, and support from the school or school district beyond providing a
49 meeting place during noninstructional time. An elementary school curricular club means a club
50 that is organized and directed by school sponsors at the elementary school. A secondary school
51 curricular club means a club:

52 (a) whose subject matter is taught or will soon be taught in a regular course;

53 (b) whose subject matter concerns the body of courses as a whole;

54 (c) in which participation is required for a particular course; or

55 (d) in which participation results in academic credit.

56 (5) (a) "Discretionary time" means school-related time for students that is not
57 instructional time.

58 (b) "Discretionary time" includes free time before and after school, during lunch and

59 between classes or on buses, and private time before athletic and other events or activities.

60 (6) (a) "Encourage criminal or delinquent conduct" means action or advocacy of
61 imminent action that violates any law or administrative rule.

62 (b) "Encourage criminal or delinquent conduct" does not include discussions
63 concerning changing of laws or rules, or actions taken through lawfully established channels to
64 effectuate such change.

65 (7) (a) "Instructional time" means time during which a school is responsible for a
66 student and the student is required or expected to be actively engaged in a learning activity.

67 (b) "Instructional time" includes instructional activities in the classroom or study hall
68 during regularly scheduled hours, required activities outside the classroom, and counseling,
69 private conferences, or tutoring provided by school employees or volunteers acting in their
70 official capacities during or outside of regular school hours.

71 (8) "Involve human sexuality" means:

72 (a) presenting information in violation of laws governing sex education, including
73 Sections 53A-13-101 and 53A-13-302;

74 (b) advocating or engaging in sexual activity outside of legally recognized marriage or
75 forbidden by state law; or

76 (c) presenting or discussing information relating to the use of contraceptive devices or
77 substances, regardless of whether the use is for purposes of contraception or personal health.

78 (9) "Limited open forum" means a forum created by a school district or charter school
79 for student expression within the constraints of Subsection 53A-13-101.3(2)(b).

80 (10) "Noncurricular club" is a student initiated group that may be authorized and
81 allowed school ~~[building]~~ facilities use during noninstructional time in secondary schools by a
82 school and school governing board in accordance with the provisions of this part. A
83 noncurricular club's meetings, ideas, and activities are not sponsored or endorsed in any way by
84 a school governing board, the school, or by school or school district employees.

85 (11) "Noninstructional time" means time set aside by a school before instructional time
86 begins or after instructional time ends, including discretionary time.

87 (12) "Religious club" means a noncurricular club designated in its application as either
88 being religiously based or based on expression or conduct mandated by conscience.

89 (13) "School" means a public school, including a charter school.

90 (14) (a) "School [~~building~~] facilities use" means access to a school facility [~~or~~],
91 premises[~~, including~~], or playing field.

92 (b) "School facilities use" includes access to a limited open forum.

93 (15) "School governing board" means a local school board or charter school board.

94 Section 2. Section **53A-11-1203** is amended to read:

95 **53A-11-1203. Student clubs -- Limited open forum -- Authorization.**

96 (1) (a) A school may establish and maintain a limited open forum for student clubs
97 pursuant to the provisions of this part, State Board of Education rules, and school governing
98 board policies.

99 (b) Notwithstanding the provisions under Subsection (1)(a), a school retains the right to
100 create a closed forum at any time by allowing curricular clubs only.

101 (2) (a) A school shall review applications for authorization of clubs on a case-by-case
102 basis.

103 (b) Before granting an authorization, the school shall find:

104 (i) that the proposed club meets this part's respective requirements of a curricular club
105 or a noncurricular club; and

106 (ii) that the proposed club's purpose and activities comply with this part.

107 (c) Before granting an authorization, a school may request additional information from
108 the faculty sponsor, from students proposing the club, or from its school governing board, if
109 desired.

110 (3) A school shall grant authorization and school [~~building~~] facilities use to curricular
111 and noncurricular clubs whose applications are found to meet the requirements of this part,
112 rules of the State Board of Education, and policies of the school governing board and shall
113 limit or deny authorization or school [~~building~~] facilities use to proposed clubs that do not meet
114 the requirements of this part, rules of the State Board of Education, and policies of the school
115 governing board.

116 Section 3. Section **53A-11-1206** is amended to read:

117 **53A-11-1206. Clubs -- Limitations and denials.**

118 (1) A school shall limit or deny authorization or school [~~building~~] facilities use to a
119 club, or require changes prior to granting authorization or school [~~building~~] facilities use:

120 (a) as the school determines it to be necessary to:

121 (i) protect the physical, emotional, psychological, or moral well-being of students and
122 faculty;

123 (ii) maintain order and discipline on school premises;

124 (iii) prevent a material and substantial interference with the orderly conduct of a
125 school's educational activities;

126 (iv) protect the rights of parents or guardians and students;

127 (v) maintain the boundaries of socially appropriate behavior; or

128 (vi) ensure compliance with all applicable laws, rules, regulations, and policies; or

129 (b) [~~whose~~] if a club's proposed charter and proposed activities indicate students or
130 advisors in club related activities would as a substantial, material, or significant part of their
131 conduct or means of expression:

132 (i) encourage criminal or delinquent conduct;

133 (ii) promote bigotry;

134 (iii) involve human sexuality; or

135 (iv) involve any effort to engage in or conduct mental health therapy, counseling, or
136 psychological services for which a license would be required under state law.

137 (2) A school governing board has the authority to determine whether any club meets
138 the criteria of Subsection (1).

139 (3) If a school or school governing board limits or denies authorization to a club, the
140 school or school governing board shall provide, in writing, to the applicant the factual and legal
141 basis for the limitation or denial.

142 (4) A student's spontaneous expression of sentiments or opinions otherwise identified
143 in Subsection 53A-13-302(1) is not prohibited.

144 Section 4. Section **53A-11-1208** is amended to read:

145 **53A-11-1208. Use of school facilities by clubs.**

146 (1) A school shall determine and assign school [~~building~~] facilities use for curricular
147 and noncurricular clubs consistent with the needs of the school.

148 (2) The following rules apply to curricular clubs:

149 (a) in assigning school [~~building~~] facilities use, the administrator may give priority to
150 curricular clubs over noncurricular clubs; and

151 (b) the school may provide financial or other support to curricular clubs.

- 152 (3) The following rules apply to noncurricular clubs:
- 153 (a) a preference or priority may not be given among noncurricular clubs;
- 154 (b) (i) a school shall only provide the space for noncurricular club meetings; and
- 155 (ii) a school may not spend public funds for noncurricular clubs, except as required to
- 156 implement the provisions of this part, including providing space and faculty oversight for
- 157 noncurricular clubs;
- 158 (c) a school shall establish the noninstructional times during which noncurricular clubs
- 159 may meet;
- 160 (d) a school may establish the places that noncurricular clubs may meet;
- 161 (e) a school may set the number of hours noncurricular clubs may [~~meet~~] use the
- 162 school's facilities per month, provided that all noncurricular clubs shall be treated equally; and
- 163 (f) a school shall determine what access noncurricular clubs shall be given to the
- 164 school newspaper, yearbook, bulletin boards, or public address system, provided that all
- 165 noncurricular clubs shall be treated equally.

166 Section 5. Section **53A-11-1211** is amended to read:

167 **53A-11-1211. Violations -- Investigations -- School responses.**

- 168 (1) A school shall investigate any report or allegation that an authorized curricular or
- 169 noncurricular club is:
- 170 (a) participating in activities beyond the scope of its purpose; or
- 171 (b) in violation of a provision of this part or another applicable law, rule, regulation, or
- 172 policy.
- 173 (2) After meeting with the faculty sponsor, faculty supervisor, or faculty monitor, the
- 174 students involved, and the person making the report or allegation, if a violation is substantiated,
- 175 the school may do any of the following:
- 176 (a) allow the club's original statement of its purpose, goals, and activities to be
- 177 modified to include the activities if they are in compliance with the provisions of this part and
- 178 other applicable laws, rules, regulations, or policies;
- 179 (b) instruct the faculty sponsor, supervisor, or monitor not to allow similar violations in
- 180 the future;
- 181 (c) limit or suspend the club's authorization or school [~~building~~] facilities use pending
- 182 further corrective action as determined by the school; or

183 (d) terminate the club's authorization and dissolve the club.

184 (3) Any limitation on expression, practice, or conduct of any student, advisor, or guest
185 in a meeting of a curricular or noncurricular club, or limitation on school [~~building~~] facilities
186 use, shall be by the least restrictive means necessary to satisfy the school's interests as
187 identified in this part.

188 (4) A club that has been terminated in accordance with Subsection (2)(d) may not
189 reapply for authorization until the following school year.

190 (5) A student who makes a false allegation or report under this section shall be subject
191 to school discipline.

192 Section 6. Section **53A-11-1212** is amended to read:

193 **53A-11-1212. Appeals -- Procedures.**

194 (1) (a) [~~Each~~] A completed application or complaint shall be approved, denied, or
195 investigated by the school within a reasonable amount of time.

196 (b) If an application or complaint is denied, written reasons for the denial or results of
197 the investigation shall be stated and, if appropriate, suggested corrections shall be made to
198 remedy the deficiency.

199 (c) [~~Each~~] A club that is denied school [~~building~~] facilities use shall be informed at the
200 time of the denial of the factual and legal basis for the denial, and, if appropriate, how the basis
201 for the denial could be corrected.

202 (2) (a) If denied, suspended, or terminated, a club, student desirous of participating or
203 speaking, or a complaining parent or guardian, has 10 school days from the date of the denial,
204 suspension, or termination to file a written appeal from the denial, suspension, or termination
205 to a designee authorized by the school governing board.

206 (b) The designee shall issue a determination within a reasonable amount of time from
207 receipt of the appeal, which decision is final and constitutes satisfaction of all administrative
208 remedies unless the time for evaluation is extended by agreement of all parties.

209 (3) A person directly affected by a decision made in accordance with the provisions of
210 this part may appeal the decision by writing to a person designated by the school governing
211 board.

Legislative Review Note
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Office of Legislative Research and General Counsel