

DEPARTMENT OF EDUCATION**34 CFR Parts 75, 76, and 108**

RIN 1870-AA12

Equal Access to Public School Facilities for the Boy Scouts of America and Other Designated Youth Groups**AGENCY:** Office for Civil Rights, Department of Education.**ACTION:** Final regulations.

SUMMARY: The Secretary adds a new part to title 34 of the Code of Federal Regulations and amends 34 CFR parts 75 and 76 to implement the provisions of the Boy Scouts of America Equal Access Act (Act). This Act directs the Secretary of Education, through the Office for Civil Rights (OCR), to ensure compliance with this new law. The regulations address equal access to public school facilities by the Boy Scouts of America and other designated youth groups.

DATES: These regulations are effective April 24, 2006.

FOR FURTHER INFORMATION CONTACT: Sandra G. Battle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6125, Potomac Center Plaza, Washington, DC 20202-1100. Telephone: (202) 245-6767.

If you use a telecommunications device for the deaf (TDD), you may call 1-877-521-2172.

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SUPPLEMENTARY INFORMATION: These regulations implement the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905. On January 8, 2002, the President signed into law the No Child Left Behind Act of 2001 (NCLB), Pub. L. 107-110, amending the Elementary and Secondary Education Act of 1965 (ESEA). The Act is included in these amendments to the ESEA and is found in section 9525 of the ESEA. The Act applies to any public elementary school, public secondary school, local educational agency (LEA), or State educational agency (SEA) that has a designated open forum or limited public forum and that receives funds made available through the Department of Education (Department). Under the Act, these entities may not deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts

of America (Boy Scouts) or any other youth group listed in title 36 of the United States Code (as a patriotic society) (Title 36 youth group) that wishes to conduct a meeting within the covered entity's designated open forum or limited public forum.

The Act authorizes the Secretary to implement this law by issuing and securing compliance with rules or orders with respect to the Act's requirements through OCR. The Act also directs the Secretary, through OCR, to enforce this law in a manner consistent with the procedure used under section 602 of the Civil Rights Act of 1964. If a covered public elementary school, public secondary school, LEA, or SEA does not comply with the Act or regulations issued by the Department, it would be subject to the Department's enforcement actions.

On October 19, 2004, the Secretary published a notice of proposed rulemaking (NPRM) for these regulations in the **Federal Register** (69 FR 61556). In the preamble to the NPRM, the Secretary discussed on pages 61557 through 61559 the significant regulations proposed to implement the Act. These included the following:

- Providing definitions for the following statutory terms: "designated open forum," "outside youth or community group," "to sponsor any group officially affiliated with the Boy Scouts of America," and "to sponsor any group officially affiliated with any other youth group listed in title 36 of the United States Code (as a patriotic society)."
- Explaining that neither State nor local law obviates or alleviates the obligation to comply with the Act and its implementing regulations.
- Providing that the obligation of public elementary schools, public secondary schools, LEAs, and SEAs to comply with the Act is not limited by the nature or extent of their authority to make decisions about the use of school facilities.
- Clarifying that equal access under the Act includes not only access to school facilities for meetings before, during, or after school, but also includes access to other activities related to an intention by any group officially affiliated with the Boy Scouts or any other Title 36 youth group to conduct a meeting within a covered entity's designated open forum or limited public forum. These other activities include, but are not necessarily limited to, means of communication and recruitment.
- Explaining that in order to be equal, the access provided to any group officially affiliated with the Boy Scouts or any other Title 36 youth group must

be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

- Clarifying that public schools, LEAs, and SEAs can charge fees for this access, but only on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.
 - Noting that the Act does not require any school, agency, or school served by an agency to which the Act applies to sponsor any group officially affiliated with the Boy Scouts or any other Title 36 youth group.
 - Incorporating the procedural provisions applicable to title VI of the Civil Rights Act of 1964 (Title VI).
 - Amending 34 CFR 75.500 and 76.500 to add the Act and the regulations in part 108 to the list of Federal statutes and regulations on nondiscrimination with which grantees, under 34 CFR 75.500, and States and subgrantees, under 34 CFR 75.600, that are covered entities must comply.
- The significant differences between the NPRM and these final regulations are as follows:

- We have added definitions of "group officially affiliated with any other Title 36 youth group," "group officially affiliated with the Boy Scouts," "premises or facilities," and "Title 36 youth group" to § 108.3.
- We have added language to § 108.5 that a covered entity may require that any group seeking equal access under the Act inform the covered entity whether the group is officially affiliated with the Boy Scouts or with any other Title 36 youth group. We have also added language that a covered entity's failure to request this information is not a defense to a covered entity's noncompliance with the Act or its implementing regulations.
- We have restructured and modified § 108.6 so that the section more clearly explains the circumstances and terms under which access is required by the Act and its implementing regulations.
- We have added language to § 108.6 regarding nondiscrimination under the Act and its implementing regulations.
- We have deleted some language in proposed § 108.8, renumbered this section as § 108.9, and added a new § 108.8 addressing assurances of compliance.
- We have added language to § 108.9 to address the scope of fund termination.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, over 3,000 parties submitted comments on the

proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We discuss major substantive issues under the sections of the regulations to which they pertain. Generally, we do not discuss comments that simply support the regulations, and we do not address technical and other minor changes—or suggested changes the law does not authorize the Secretary to make.

Section 108.3 Definitions

a. Designated Open Forum

Comments: One commenter expressed the concern that, under the definition, a public school would be required to allow the Boy Scouts, but not other youth or community groups, to meet on school premises during the school day if the school allowed a single outside youth or community group to meet on school premises or in school facilities during school hours, such as the Red Cross for a school blood drive. The commenter stated the definition would create a far greater right of access during the school day for the Boy Scouts and certain other groups, based on their viewpoint, than would be available to other youth or community groups.

Another commenter believed the definition would be a valuable tool in interpreting the Act because the definition made clear that if a school allows outside groups to use school facilities at any time, even during school hours, it may not prevent the Boy Scouts from using the facilities on the same terms.

One commenter stated the definition should include literature distribution by youth groups, such as the dissemination of recruitment materials, even if no meeting occurs with representatives of those groups, believing that this would be consistent with the requirement of proposed § 108.6(b) pertaining to equal access to means of communication.

Discussion: The definition of *designated open forum* is consistent with the Act's definition of limited public forum, which states that a limited public forum exists 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 school. The definition in § 108.3 of a designated open forum retains the statutory focus on access provided to one or more outside youth or community groups for meetings, and clarifies that, in the context of the Act, such a forum exists whenever the school involved 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 school day, for reasons other than to provide the school's educational program.

Under this definition, a school retains control over its educational program and does not create a designated open forum simply by inviting an outside group to the school to present information to the students. For instance, if a school, as part of its character education program, invites an outside group to speak to the student body on saying no to drugs, that does not mean that the school has created a designated open forum and must allow any group officially affiliated with the Boy Scouts or with any other Title 36 youth group to come to the school to conduct a presentation related to character education or to conduct meetings with students during school hours. Similarly, if the parent teacher association (PTA) of a particular school is an outside group not affiliated with the school, and the school, as part of its educational program, invites the PTA to speak to students about career opportunities, that does not mean that the school has created a designated open forum and must allow any group officially affiliated with the Boy Scouts or with any other Title 36 youth group to come to the school to conduct a presentation related to career opportunities or conduct meetings with students during school hours. In both of these examples, the schools have not created designated open forums, and therefore the Act does not apply.

The language pertaining to equal access, in section (b)(1) of the Act (section 9525(b)(1) of the ESEA, as amended by NCLB), makes clear that the protections of the Act are triggered by a request to hold a meeting within a covered entity's designated open forum or limited public forum by any group officially affiliated with the Boy Scouts or with any other Title 36 youth group. Therefore, a designated open forum or limited public forum must be a forum in which groups can meet. A forum consisting solely of literature distribution does not satisfy this requirement and, thus, cannot be a designated open forum.

The proposed definition for designated open forum included the phrase "the school's educational benefits or services," which is not as precise as the phrase "the school's educational program."

Changes: We have revised the language in the definition of designated open forum to incorporate the phrase "the school's educational program."

b. Group Officially Affiliated With Any Other Title 36 Youth Group; Group Officially Affiliated With the Boy Scouts

Comments: Two commenters stated that the regulations could be interpreted to mean that any groups officially affiliated with the Boy Scouts, including churches, synagogues, and nonprofit organizations, could use school facilities, and have access to other school-related means of communication and student information, for purposes that have nothing to do with the Boy Scouts or other Title 36 youth groups.

Discussion: The Act provides equal access to school premises or facilities for any group officially affiliated with the Boy Scouts or with any other Title 36 youth group. The focus is equal access for the Boy Scouts or other Title 36 youth groups, rather than equal access, for any reason, for any organization or group that has any official affiliation with the Boy Scouts or with a Title 36 youth group. Thus, the Act does not provide equal access to an organization that sponsors a Boy Scout troop, but rather provides equal access to the Boy Scout troop sponsored by that organization. The Act covers the youth groups that are formed as a result of the community organization chartering process for the Boy Scouts or similar chartering or other process for other Title 36 youth groups.

Changes: We have provided definitions for *group officially affiliated with any other Title 36 youth group* in § 108.3(g) and *group officially affiliated with the Boy Scouts* in § 108.3(h).

c. Limited Public Forum

Comments: A commenter stated that the definition of *limited public forum* should include literature distribution by youth groups, such as the dissemination of recruitment materials, even if no meeting occurs with representatives of those groups, believing that this addition would be consistent with the requirement in proposed § 108.6(b) pertaining to equal access to means of communication.

Discussion: The statute defines when a limited public forum exists, and the definition in § 108.3 for limited public forum simply incorporates that statutory definition.

Changes: None.

d. Outside Youth or Community Group

Comments: One commenter argued that the definition of *outside youth or community group* creates a loophole, in that an LEA could claim that particular youth groups are affiliated with the LEA and are, thus, entitled to access, such as recruiting access, denied to the Boy

Scouts. The commenter proposed a new definition that focuses on whether the youth or community group provides extracurricular activities for students outside of school hours. Another commenter requested clarification that, under the definition, groups whose members are only students or faculty of a particular school, but lack formal affiliation with the school, would not be considered outside youth or community groups.

Discussion: The determination of whether a youth or community group is an outside youth or community group should not be made based solely on whether the group provides extracurricular activities for students outside of school hours. Using the provision of extracurricular activities for students as the standard to determine “outside” status might narrow the circumstances under which a limited public forum or designated open forum exists, since the standard proposed by the commenter would not include community groups serving adults that meet at a school, such as adult sports leagues. Since these adult community groups might not provide extracurricular activities for students, these groups might not be considered “outside” groups. Applying the commenter’s suggested standard, a school could allow these adult community groups to meet at the school without creating a limited public forum or designated open forum. This result would not be consistent with the Act.

Furthermore, groups that consist only of students or faculty of a particular school might be considered “outside” groups, depending on the circumstances. For example, if a faculty member, on his or her own time, leads a Boy Scout troop whose membership is made up entirely of students from the faculty member’s school, the Boy Scout troop could still be considered an outside group.

If a school or LEA chooses to affiliate itself with a youth or community group, the youth or community group is not considered an outside group, even if it is a Title 36 youth group. For instance, if a school chooses to sponsor a Boy Scout troop, the Boy Scout troop is not considered an outside group.

The determination of whether any particular group, such as a school’s PTA, is an outside youth or community group must be made on a case-by-case basis, depending on the circumstances in each school or LEA and must be made in a manner that would not violate the nondiscrimination requirements of the Act, in section (b)(1), and the regulations in § 108.6(b)(5).

Changes: None.

e. Premises or Facilities

Comments: None.

Discussion: For clarification, we have provided a definition of the term *premises or facilities*. This definition makes clear that the term applies to more than just buildings and would, for instance, as applied to schools, cover school grounds.

Changes: We have provided a new definition of the term *premises or facilities* in § 108.3(l).

f. Title 36 of the United States Code (as a Patriotic Society); Title 36 Youth Group

Comments: Several commenters sought clarification regarding the other youth groups covered by the Act. Some commenters asked about the meaning of the phrase “other patriotic youth groups.” Other commenters asked about the process by which a group becomes recognized as a patriotic group and asked whether any group could receive this designation.

Discussion: The statute uses the phrase “any group officially affiliated with the Boy Scouts, or any other youth group listed in title 36 of the United States Code (as a patriotic society).” We read this phrase to mean any group officially affiliated with the Boy Scouts or any group officially affiliated with any other youth group listed in title 36 of the United States Code (as a patriotic society). The regulations define “title 36 of the United States Code (as a patriotic society)” to mean Subtitle II (Patriotic and National Organizations) of title 36 (Subtitle II). Congress charters the groups that are listed in Subtitle II.

Subtitle II does not indicate which of the listed organizations are youth groups. Thus, it is necessary to apply the Act’s definition of *youth group*—“any group or organization intended to serve young people under the age of 21”—to determine which of the organizations listed under Subtitle II are youth groups covered by the Act. Relevant factors to analyze in making this determination include, but are not necessarily limited to, the purpose or purposes of the organization as defined in the applicable chapter of Title 36 of the United States Code, Subtitle II, Part B, and the functional purpose or purposes of the organization as defined by its mission statement or other principles of operation.

Given that Congress can change which groups are listed in Title 36 and given that the stated purposes of any group may change over time, it is not possible to identify and provide a comprehensive list of every Title 36

youth group. However, several examples of current Title 36 youth groups are the Big Brothers—Big Sisters of America (36 U.S.C. 30101), the Boys & Girls Clubs of America (36 U.S.C. 31101), the Girl Scouts of the U.S.A. (36 U.S.C. 80301), and Little League Baseball, Inc. (36 U.S.C. 130501).

Changes: We have added a definition of the term *Title 36 youth group* in § 108.3(p).

g. To Sponsor Any Group Officially Affiliated With the Boy Scouts or With Any Other Title 36 Youth Group

Comments: The Boy Scouts stated that the definitions of sponsorship are sufficient to implement the requirements of the Act and that no changes are necessary to these definitions.

Discussion: In the NPRM we specifically requested comment on these definitions. The Boy Scouts found the definition of sponsorship of any group officially affiliated with the Boy Scouts to be sufficient to implement the requirements of the Act, and no commenters proposed other definitions. Similarly, no commenters objected to, or proposed other definitions for, sponsorship of any group officially affiliated with any other Title 36 youth group.

Changes: None.

Section 108.4 Effect of State or Local Law

Comments: Conflict with State or local laws. Several commenters expressed concern that the Act creates a conflict with State or local anti-discrimination laws. The commenters believed that school officials at the local level should not be compelled to violate these State or local laws in order to provide the Boy Scouts with access to public schools. These commenters believed that, in jurisdictions with these anti-discrimination laws, school officials should have the autonomy to make decisions about the use of public school facilities without interference from the Federal Government.

Two of these commenters expressed concern that, because of this conflict between the Act and State or local laws, many schools, to the detriment of school children, would decide to ban all extracurricular groups, either to avoid litigation or to avoid violating the Act and risking the loss of Federal funds. One of these commenters questioned—(1) how school districts could structure their access plans and legally comply with the Act, Federal laws against religious discrimination, and State or local laws banning sexual orientation discrimination; (2) whether the Act

would protect a school system from being sued for discrimination under local or State law if a gay student seeking to join a Boy Scout troop at his school was refused entry; and (3) how school districts could avoid being sued by groups that exclude students of a particular race, religion, etc., but seek access to the public schools, since the Boy Scouts and other title 36 patriotic groups are allowed (in the commenter's opinion) to avoid compliance with civil rights laws mandating equal access by individuals to publicly supported groups. The other commenter expressed concern that compelling schools to violate anti-discrimination laws in order to give the Boy Scouts access to school facilities does not set a good example for American schoolchildren.

One commenter, in reference to the Boy Scouts' ineligibility to participate in a State's charitable campaign due to the Boy Scouts' inability to sign off on the campaign's nondiscrimination policy, questioned whether there would be coordination between Federal and State statutes on this issue.

One commenter stated that school buildings are maintained primarily by local, city, and State taxes, and thus local communities should not be forced to give unequal and preferential treatment to discriminatory organizations like the Boy Scouts. Another commenter expressed concern that the Act's requirements add to an already overwhelming bureaucracy, explaining that an equal access requirement that public schools treat all groups equally already exists in the commenter's State.

Discussion: Section 108.4 reflects the statutory mandate in section (c)(2) of the Act that covered entities must comply with the equal access and nondiscrimination requirements notwithstanding any other provision of law. This includes State or local law. Therefore, covered entities must comply with the Act even if State or local law conflicts with the Act.

The Act exercises a proper Federal role by ensuring that public schools receiving funds made available through the Department do not exclude the Boy Scouts for exercising their freedom of association to set their own leadership criteria, as found by the Supreme Court in *Boy Scouts of America v. Dale*, 530 U.S. 640, 120 S. Ct. 2446 (2000). Congress passed the Act to address the situation that the Boy Scouts, because of their membership or leadership criteria, had been barred from access to some public schools while other youth or community groups were granted access.

It is beyond the scope of the authority of the Department to determine whether

the Act would protect public school districts from being sued for discrimination under State or local law, or how public school districts could protect themselves from lawsuits from groups not covered by the Act. School districts should consult their attorneys if these situations arise.

Changes: None.

Comments: Laws protecting rights of gay student groups. More than half of the commenters stated that gay-straight alliances and other support groups for gay, lesbian, bisexual, and transgender students and students questioning their sexual orientation have a legal right to meet in public schools. Most of these commenters noted that gay students suffer harassment and discrimination at school and asked that the final regulations include gay student groups.

Discussion: The Department does not condone harassment of students on any basis in the public schools. However, the Act specifically covers any group officially affiliated with the Boy Scouts or with any other Title 36 youth group. It would exceed the scope of the statutory language if the regulations implementing the statute afforded coverage to groups not identified in the statute.

Of course, the Act does not prohibit schools, LEAs, and SEAs from providing equal access to all groups, including those not covered by the Act. The Act simply requires that these schools and agencies provide equal access to any group officially affiliated with the Boy Scouts or with any other Title 36 youth group.

Changes: None.

Comments: Interaction with school rules. One commenter questioned whether student members of the Boy Scouts would be exempt from bullying and nondiscrimination rules within the school.

Discussion: Neither the Act nor the implementing regulations affect the obligation of student members of the Boy Scouts to comply with a public school's code of student conduct. Further, neither the Act nor the implementing regulations affect the obligation of members of the Boy Scouts to comply with a public school's rules pertaining to the conduct of members of groups using school premises or facilities. For example, if a school's rules of conduct prohibit group members from possessing weapons, such as knives, on or in school premises or facilities, the school would not be required by the Act to permit members of a Boy Scout troop to bring knives to troop meetings held on or in school premises or facilities. Thus, student members of the Boy Scouts must

comply with a public school's code of student conduct in the same manner as all other students subject to those policies, and members of groups using school premises or facilities must comply with a public school's rules pertaining to the conduct of members of groups using school premises or facilities in the same manner as all others subject to the school's policies. Of course, compliance with these student conduct codes or other rules of conduct would not be required if they conflict with the Act.

Changes: None.

Section 108.5 Compliance Obligations

Comments: Three commenters expressed concerns about holding local school districts responsible for complying with the Act in situations in which school districts have no authority over decisions concerning public use of school facilities. One of these commenters explained that the authority of local school districts over the use of facilities varies among States, and among local communities, spanning the spectrum from local school boards that have sole authority to local school boards that have no authority. This commenter believed the regulations could result in costly litigation for LEAs, in addition to the potential loss of Federal funds, because the regulations create an unworkable situation for public schools that have no authority over the public use of school facilities. This commenter recommended that the regulations be revised to specify that if local school districts do not have authority over the public use of school facilities, the responsibility for complying with the Act shifts to the responsible agency, with the responsible agency assuming any liability associated with the failure to comply with the Act.

The second commenter recommended that, if the intent of the regulations is to prevent schools from transferring the authority to determine use of school facilities to an outside entity not regulated by the Act, then the regulations should include language preventing schools from doing so. This commenter also believed these regulations raised questions about the confusion that would occur if an outside organization had the authority to grant access to school premises or facilities while the school itself had the authority to grant access to student information or means of communication.

The third commenter recommended that the regulations be revised to state that the obligation of public schools to comply with the Act is limited by the nature or extent of their authority to

make decisions about use of school facilities.

Discussion: The Secretary recognizes that public schools, LEAs, or SEAs may not always have the independent authority to make decisions concerning the use of school premises or facilities, and that other entities may be responsible for making those decisions. The statute, however, holds public schools, LEAs, and SEAs responsible for compliance with the Act and does not condition their compliance obligation on whether they have the authority to make decisions about the use of their school premises or facilities. Section 108.5(a) clarifies that the statute applies to covered public elementary schools, public secondary schools, LEAs, and SEAs regardless of their authority to make decisions about the use of school premises or facilities.

We recognize that the Act imposes new obligations on covered entities. To satisfy these obligations, covered entities must know if a group seeking access is a group that is officially affiliated with the Boy Scouts or with any other Title 36 youth group. While it might not be difficult to ascertain that a particular Boy Scout troop seeking access is a group that is officially affiliated with the Boy Scouts, it might be more difficult to ascertain that another group seeking access is officially affiliated with a Title 36 youth group.

Accordingly, covered entities may require that any group seeking equal access inform the covered entity whether the group is officially affiliated with the Boy Scouts or is officially affiliated with any other Title 36 youth group. A covered entity would take this action at the time of the group's request for access. Of course, there would be no need for a covered entity to take this action if that covered entity already knew that a group seeking equal access is officially affiliated with the Boy Scouts or is officially affiliated with any other Title 36 youth group. Additionally, a covered entity's failure to request this information is not a defense to a covered entity's noncompliance with the Act or the regulations.

Changes: We have revised § 108.5 by adding language that a covered entity may require that any group seeking equal access under the Act inform the covered entity whether the group is officially affiliated with the Boy Scouts or with any other Title 36 youth group and by adding language that a covered entity's failure to request this information is not a defense to a covered entity's noncompliance with the Act or the regulations.

Section 108.6 Equal Access

Comments: Conflict with Title VI. One commenter stated that the regulations should be modified to clarify that the regulations do not limit, in any way, the applicability of section 601 of Title VI, which prohibits discrimination on the basis of race, color, or national origin. The commenter believed that, because the leadership or membership criteria of a group covered by the Act could be discriminatory on the basis of race, color, or national origin, and because the regulations do not explicitly contain such a limitation, it appears the regulations are attempting to trump Title VI.

Discussion: Section 601 of Title VI has not been amended or superseded in any way by the Act or these regulations.

Changes: None.

Comments: Circumstances under which access is required. A few commenters questioned when groups covered by the Act must be permitted to have access, asking under what circumstances a covered entity could deny access to these groups. Two commenters questioned what types of groups a school district could permit to have access to its facilities without also having to permit the Boy Scouts to have the same access.

Discussion: Section 108.6(a) restates the statutory requirement that no covered entity shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts or with any other Title 36 youth group that requests to conduct a meeting within the covered entity's designated open forum or limited public forum. Thus, if a covered entity has a designated open forum or limited public forum, then it must allow any group officially affiliated with the Boy Scouts or with any other Title 36 youth group to meet in that designated open forum or limited public forum. As further discussed under the heading *§ 108.6(b)(4) Equal Access: Terms*, this access must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups. Of course, if a school district does not have a designated open forum or limited public forum, the Act would not apply.

We recognize that the proposed regulations might not have made clear that in order to obtain access under the Act, a group must first request to conduct a meeting in the covered entity's designated open forum or limited public forum. If that group does not request to meet in the covered entity's forum, then that group is not

entitled under the Act to access to any other benefits and services, such as a school's bulletin board.

Changes: We have restructured § 108.6 so that the section more clearly explains the circumstances under which access is required under the Act.

Section 108.6(b)(2) Equal Access: Benefits and Services

Comments: Benefits and services covered. Some commenters questioned what activities are covered by the Act. One commenter requested that the term "school activities" be stricken from the regulations because the commenter found the term confusing and not defined.

Discussion: The range of benefits and services covered by the Act is determined by what a covered entity provides to one or more outside youth or community groups that have access to meet in the covered entity's designated open forum or limited public forum. Whatever those benefits and services are, the covered entity must provide access to all of those benefits and services to any group officially affiliated with the Boy Scouts or with any other Title 36 youth group that requests to conduct a meeting in that same forum. As further discussed under the heading *§ 108.6(b)(4) Equal Access: Terms*, this access must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups. Thus, if another outside youth or community group that is allowed to meet in the covered entity's designated open forum is permitted to send home with students informational materials, then the covered entity must allow groups officially affiliated with the Boy Scouts or with any other Title 36 youth group that request to meet in that same designated open forum to send home informational materials. If, however, the covered entity does not permit any outside youth or community groups that are allowed to meet in the covered entity's designated open forum to send home informational literature, then the covered entity does not have to permit groups officially affiliated with the Boy Scouts or with any other Title 36 youth group that request to meet in that designated open forum to send home informational literature.

The NPRM preamble used the term "school activities" in reference to § 108.6, and the proposed regulations used the term "activities." We agree that we need to avoid confusion.

Changes: We have added language to clarify the circumstances under which equal access to benefits and services is required, and we have replaced the term

“activities” with the term “benefits and services.”

Comments: Classroom instruction and school assemblies. A few commenters questioned whether the Act covers classroom instruction. One of these commenters was opposed to allowing the Boy Scouts the opportunity to meet during classroom instructional time. Another commenter stated that the regulations should specify the Boy Scouts’ right to go into classrooms and participate in school assemblies so that they can speak to students about scouting.

Discussion: The Act does not require access, but rather equal access. Thus, if one or more outside youth or community groups that are allowed to meet in a covered entity’s designated open forum or limited public forum are given access to a benefit or service, then any group covered by the Act that requests to meet in that same forum must be given access to that benefit or service. As further discussed under the heading *§ 108.6(b)(4) Equal Access: Terms*, this access must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups. However, if a covered entity decides to deny access to a particular benefit or service to all outside youth or community groups that have access to meet in that designated open forum or limited public forum, that decision would not violate the Act. For instance, if a school decides that no outside youth or community groups that have access to meet in the covered entity’s designated open forum or limited public forum may hold recruitment assemblies during school hours so that school hours can be devoted to instruction, the Act does not require that school to make an exception for any group covered by the Act.

Changes: None.

Comments: Literature distribution and other means of communication. One commenter stated that the regulations should specify the Boy Scouts’ right to distribute informational fliers about scouting. Another commenter objected to the fact that the regulations failed to define access as including the right of the Boy Scouts and similar organizations to distribute literature, including recruitment material, to students at schools.

Another commenter believed a school district could lawfully limit access to a forum based on subject matter or speaker identity and questioned whether, under the regulations, a school district could lawfully exclude the Boy Scouts from a school district’s literature distribution forum if they were not

among the class of speakers to which the literature distribution forum was (in the commenter’s opinion) lawfully limited. This commenter further questioned whether, if a school district could not lawfully exclude the Boy Scouts from such a forum, the school district would then be required to permit access to other community groups speaking on the same subject matter as the Boy Scouts even if those other groups were not among the class of speakers to which the literature distribution forum was (in the commenter’s opinion) lawfully limited.

Another commenter stated that the final regulations should clarify that access to means of communication is limited to communicating information about the meetings themselves.

Discussion: If a school decides that no outside youth or community groups that are allowed to meet in the school’s designated open forum or limited public forum may distribute literature, such as informational packets and recruitment materials, the Act does not require that the school make an exception for any group covered by the Act. If, however, a school permits one or more outside youth or community groups that are allowed to meet in the school’s designated open forum or limited public forum to distribute literature, such as informational packets and recruitment materials, then the school must provide groups covered by the Act that request to hold meetings in the same forum with the opportunity to distribute literature, such as informational packets and recruitment materials. As further discussed under the heading *§ 108.6(b)(4) Equal Access: Terms*, this access must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

Whether the covered entity must permit groups not covered by the Act to have access in order to distribute literature is beyond the scope of the Act and these regulations.

Any group officially affiliated with the Boy Scouts or with any other Title 36 youth group must request to meet in the school’s limited public forum or designated open forum in order to have access to means of communication. However, this access to means of communication is not necessarily limited to communicating information about the meetings themselves. It depends on what the covered entity provides to one or more outside youth or community groups that are allowed to meet in that same forum. If the covered entity allows only notices about meetings to be sent home with students, then groups officially affiliated with the

Boy Scouts or with any other Title 36 youth group can only send home with students notices about the meetings. However, if the covered entity allows one or more outside youth or community groups that are allowed to meet in the same forum to send home other types of literature, such as informational packets and recruitment materials, then the school must allow groups officially affiliated with the Boy Scouts or with any other Title 36 youth group to send home these other types of literature.

Changes: None.

Comments: Recruitment issues related to access to student information. One commenter recommended that the access required by the regulations incorporate the provisions from NCLB pertaining to access for armed forces recruitment and for recruitment purposes by institutions of higher education.

Discussion: Access for recruitment under the Act is not the same as NCLB’s access for armed services recruitment and recruitment by institutions of higher education, provided under section 9528 of the ESEA, as amended by NCLB.

Changes: None.

Comments: Fundraising. Another commenter believed the regulations overlooked fundraising, stating that it was not clear from the regulations whether the Boy Scouts would be allowed to fundraise on school premises on terms no less favorable than the most favorable terms afforded to other community groups, such as the Girl Scouts. The commenter believed that, if the Girl Scouts are permitted to fundraise by posting fliers about cookie sales and by conducting sales on campus, then the Boy Scouts should be accorded the same rights.

Discussion: Although fundraising is not listed as a specific benefit or service, if a covered entity allows one or more outside youth or community groups to meet in the covered entity’s designated open forum or limited public forum to engage in fundraising, such as by posting notices on school bulletin boards and selling items on campus, then the school must provide groups covered by the Act that request to hold meetings in the same forum with an equal opportunity to engage in fundraising, such as by posting notices on school bulletin boards and selling items on campus. As further discussed under the heading *§ 108.6(b)(4) Equal Access: Terms*, this access must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

Changes: None.

Section 108.6(b)(3) Equal Access: Fees

Comments: One commenter expressed concern about the costs public schools incur due to property damage and theft that results if they are forced to allow groups to use their buildings. The commenter questioned whether schools could require these groups to pay a rental fee. Another commenter believed groups covered by the Act should not only have equal access to schools, but should be able to use the facilities free of charge. Another commenter was concerned that many Boy Scout troops cannot afford to pay the fees charged to access public school facilities and thus are denied access to the facilities because of their inability to pay these fees.

Discussion: Whether any group covered by the Act can be charged fees in connection with access, including, but not necessarily limited to, conducting meetings on or in school premises or facilities, using school-related means of communication, or conducting recruitment activities, depends on whether fees are charged to other outside youth or community groups that are allowed to meet in the same designated open forum or limited public forum. If a covered entity charges fees to other outside youth or community groups, then it may charge fees to any group covered by the Act. However, as more fully explained under the heading § 108.6(b)(4) *Equal Access: Terms*, these fees must be charged on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

Changes: None.

Section 108.6(b)(4) Equal Access: Terms

Comments: None.

Discussion: Any determinations of which youth or community groups are outside youth or community groups must be made on a case-by-case basis, depending on the circumstances in each school or LEA and must be made in a manner that would not violate the nondiscrimination requirements of the Act, in section (b)(1), and the regulations, in § 108.6(b)(5).

Proposed § 108.6 repeated the equal access standard four times. This repetitive format is somewhat cumbersome. We have decided to state the standard for equal access one time and to clarify that this standard applies to any access provided under these regulations and to any fees charged for this access. Thus, the standard applies to all forms of access, including, but not

necessarily limited to, meetings (§ 108.6(b)(1)), benefits and services (§ 108.6(b)(2)), and any fees charged for this access (§ 108.6(b)(3)).

Changes: We have added a new paragraph § 108.6(b)(4), regarding the terms under which access must be provided under the Act and these regulations.

Section 108.6(b)(5) Equal Access: Nondiscrimination

Comments: None.

Discussion: The proposed regulations may not have made clear that, consistent with the requirements in section (b)(1) of the Act, decisions relevant to the provision of equal access must be made on a nondiscriminatory basis. Any determinations of which youth or community groups are outside groups must be made using objective, nondiscriminatory criteria, and these criteria must be used in a consistent, equal, and nondiscriminatory manner.

Change: We have added a new paragraph § 108.6(b)(5), regarding nondiscrimination under the Act and these regulations.

Section 108.7 Voluntary Sponsorship

Comments: Two commenters noted the distinction between a public school sponsoring a Boy Scout troop and a public school providing equal access to a privately sponsored Boy Scout troop. Two commenters suggested that public schools cannot lawfully sponsor Boy Scout troops, given the Boy Scouts' leadership and membership policies.

Discussion: The Act does not address the legality of school sponsorship of Boy Scout troops. The Act simply provides that nothing in the law should be construed to require any school, agency, or school served by an agency to sponsor any group officially affiliated with the Boy Scouts or with any other Title 36 youth group.

Changes: None.

Section 108.8 Assurances

Comments: None.

Discussion: The Act directs the Secretary, through OCR, to enforce the law in a manner consistent with the procedure used under section 602 of the Civil Rights Act of 1964. That enforcement process includes obtaining assurances from applicants for Federal financial assistance that they will comply with Title VI. This requirement is in the Title VI regulations in 34 CFR 100.4. In the proposed regulations in § 108.8, we proposed to incorporate by reference this Title VI assurances provision.

We recognize that proposed § 108.8 might not have made clear that covered

entities have an obligation to provide assurances of compliance with the Act. We also recognize that some requirements of the Title VI assurances provision in 34 CFR 100.4 are not applicable to the Act. A separate regulatory section on assurances would more effectively put schools, LEAs, and SEAs on notice of their obligation to provide these assurances of compliance.

Changes: We renumbered proposed § 108.8 as § 108.9 and added a new § 108.8 that specifically addresses assurances of compliance with the Act. We also revised renumbered § 108.9 by removing the reference to 34 CFR 100.4, which is the Title VI assurances provision.

Section 108.9 Procedures

Comments: One commenter suggested that the regulations contain an informal complaint process that would not require immediate recourse to the courts. This commenter also suggested that the burden of showing compliance should be on the school, rather than placing the burden of showing noncompliance on the individual Cubmaster or den leader, given the mismatch in resources between a school (or school district) and an individual Scouter (or Pack). Another commenter suggested that the regulations provide that local school districts have the option to provide their own administrative process for review and appeal of access decisions and that this process must be exhausted prior to filing complaints with OCR. This same commenter suggested that the regulations clarify that the law does not provide a private cause of action. Another commenter asked, if an atheist student is barred from access to a school's Boy Scout troop and sues under Federal law, how would OCR simultaneously defend this student's legal rights and those of the Boy Scout troop and/or the school?

Discussion: The Act directs the Secretary, through OCR, to enforce the law in a manner consistent with the procedure used under section 602 of the Civil Rights Act of 1964. That enforcement process, which in its entirety includes fund termination, is described in the procedural provisions applicable to Title VI in 34 CFR parts 100 and 101. We indicated in proposed § 108.8 that these procedural provisions in part 100 and part 101 also would apply to compliance under the Act.

Under the Title VI enforcement process, any person may file a complaint with OCR alleging a violation of the relevant law. In an OCR complaint investigation OCR does not represent either the individual who

filed the complaint or the entity against which the complaint was filed.

We decline to create another informal complaint process and do not think it appropriate to restrict OCR's enforcement of the Act by requiring exhaustion of a process at the school district level before OCR accepts complaints alleging violations of the Act. Furthermore, it is beyond the Secretary's authority to determine whether or not there is a private cause of action under the Act.

We recognize that the proposed regulations did not clearly address the scope of fund termination. One of the Title VI regulatory procedural provisions referenced in proposed § 108.8 was 34 CFR 100.8(c), which addresses termination of or refusal to grant or to continue Federal financial assistance. Among other things, § 100.8(c) limits the termination or refusal to grant or continue Federal financial assistance "to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found." This limitation, however, is inconsistent with language in the Act which states that, notwithstanding any other provision of law, no funds made available through the Department shall be provided to any school, agency, or school served by an agency that fails to comply with the Act. The language in 34 CFR 100.8(c) regarding limitations on the termination of Federal financial assistance does not apply to enforcement of the Act.

As discussed previously, we also recognize that the language in proposed § 108.8 referencing the Title VI assurances provision in 34 CFR 100.4 might not have made clear that covered entities have an obligation to provide assurances of compliance with the Act, and we recognize that some requirements of the Title VI assurances provision in 34 CFR 100.4 are not applicable to the Act.

Changes: We have renumbered proposed § 108.8 as § 108.9. We have added language to § 108.9 to clarify that, notwithstanding any other provision of law, including § 100.8(c), no funds made available through the Department shall be provided to any school, agency, or school served by an agency that fails to comply with the Act or this part. We have also added a new § 108.8 that specifically addresses assurances of compliance with the Act, and we have revised § 108.9 by removing the reference to 34 CFR 100.4.

Executive Order 12250

Pursuant to Executive Order 12250, which provides for the coordination of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, the Assistant Attorney General for Civil Rights has reviewed and approved these final regulations.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. We have determined this to be a "significant" regulatory action within the meaning of Executive Order 12866 and thus the Office of Management and Budget (OMB) has reviewed these final regulations. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. The final regulations do not impose any specified costs. If recipients have to change their practices in order to meet the equal access and nondiscrimination requirements of the statute, they may incur some costs. Any costs, including costs to comply with information collection requirements, likely would be minimal. The potential benefits of these final regulations are that stakeholders have easily accessible, codified, published regulations that clarify both the substantive obligations of the law and how the Department will enforce the law. By engaging in rulemaking, we were able to obtain input from stakeholders and other interested parties that helped us develop clear and accessible regulations. By developing final regulations for use in enforcing the Act, we complied with the directive in the Act to enforce the law in a manner consistent with the procedures used to enforce Title VI. The final regulations incorporate existing procedural sections of the Title VI regulations, and clarify

the substantive obligations of covered entities.

Executive Order 13132

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We reviewed and considered comments that addressed federalism issues.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected section of the regulations (§ 108.8).

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(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects

34 CFR Part 75

Accounting, Administrative practice and procedure, Education, Grant programs—education, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 76

Administrative practice and procedure, Compliance, Eligibility, Grant administration, Reporting and recordkeeping requirements.

34 CFR Part 108

Boy Scouts of America, Education, Equal access, Reporting and recordkeeping requirements.

Dated: March 21, 2006.

Margaret Spellings,
Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 75 and 76 of, and adds a new part 108 to, title 34 of the Code of Federal Regulations to read as follows:

PART 75—DIRECT GRANT PROGRAMS

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

■ 2. Section 75.500 is amended by:

■ A. Designating the existing text as paragraph (a).

■ B. In the chart in newly designated paragraph (a), removing “45 CFR part 90.” and inserting, in its place, “34 CFR part 110.”

■ C. Adding a new paragraph (b) to read as follows:

§ 75.500 Federal statutes and regulations on nondiscrimination.

* * * * *

(b) A grantee that is a covered entity as defined in § 108.3 of this title shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

PART 76—STATE-ADMINISTERED PROGRAMS

■ 3. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e-3, 3474, 6511(a), and 8065a, unless otherwise noted.

■ 4. Section 76.500 is amended by:

■ A. Designating the existing text as paragraph (a).

■ B. In the chart in newly designated paragraph (a), removing “45 CFR part 90.” and inserting, in its place, “34 CFR part 110.”

■ C. Adding a new paragraph (b) to read as follows:

§ 76.500 Federal statutes and regulations on nondiscrimination.

* * * * *

(b) A State or subgrantee that is a covered entity as defined in § 108.3 of this title shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

■ 5. Add part 108 to read as follows:

PART 108—EQUAL ACCESS TO PUBLIC SCHOOL FACILITIES FOR THE BOY SCOUTS OF AMERICA AND OTHER DESIGNATED YOUTH GROUPS

Sec.

- 108.1 Purpose.
- 108.2 Applicability.
- 108.3 Definitions.
- 108.4 Effect of State or local law.
- 108.5 Compliance obligations.
- 108.6 Equal access.
- 108.7 Voluntary sponsorship.
- 108.8 Assurances.
- 108.9 Procedures.

Authority: 20 U.S.C. 7905, unless otherwise noted.

§ 108.1 Purpose.

The purpose of this part is to implement the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905.

(Authority: 20 U.S.C. 7905)

§ 108.2 Applicability.

This part applies to any public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or limited public forum and that receives funds made available through the Department.

(Authority: 20 U.S.C. 7905)

§ 108.3 Definitions.

The following definitions apply to this part:

(a) *Act* means the Boy Scouts of America Equal Access Act, section 9525 of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Pub. L. 107-110, 115 Stat. 1425, 1981-82 (20 U.S.C. 7905).

(b) *Boy Scouts* means the organization named “Boy Scouts of America,” which has a Federal charter and which is listed as an organization in title 36 of the United States Code (Patriotic and National Observances, Ceremonies, and Organizations) in Subtitle II (Patriotic and National Organizations), Part B (Organizations), Chapter 309 (Boy Scouts of America).

(c) *Covered entity* means any public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or limited public forum and that receives funds made available through the Department.

(d) *Department* means the Department of Education.

(e) *Designated open forum* means that an elementary school or secondary 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.

(f) *Elementary school* means an elementary school as defined by section 9101(18) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Pub. L. 107-110, 115 Stat. 1425, 1958 (20 U.S.C. 7801).

(g) *Group officially affiliated with any other Title 36 youth group* means a youth group resulting from the chartering process or other process used by that Title 36 youth group to establish official affiliation with youth groups.

(h) *Group officially affiliated with the Boy Scouts* means a youth group formed as a result of a community organization charter issued by the Boy Scouts.

(i) *Limited public forum* means that an elementary school or secondary school 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.

(j) *Local educational agency* means a local educational agency as defined by section 9101(26) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Pub. L. 107-110, 115 Stat. 1425, 1961 (20 U.S.C. 7801).

(k) *Outside youth or community group* means a youth or community group that is not affiliated with the school.

(l) *Premises or facilities* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in that property.

(m) *Secondary school* means a secondary school as defined by section 9101(38) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Pub. L. 107-110, 115 Stat. 1425, 1965 (20 U.S.C. 7801).

(n) *State educational agency* means a State educational agency as defined by section 9101(41) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Pub. L. 107-110, 115 Stat. 1425, 1965 (20 U.S.C. 7801).

(o) *Title 36 of the United States Code (as a patriotic society)* means title 36 (Patriotic and National Observances, Ceremonies, and Organizations), Subtitle II (Patriotic and National

Organizations) of the United States Code.

(p) *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.

(q) *To sponsor any group officially affiliated with the Boy Scouts or with any other Title 36 youth group* means to obtain a community organization charter issued by the Boy Scouts or to take actions required by any other Title 36 youth group to become a sponsor of that group.

(r) *Youth group* means any group or organization intended to serve young people under the age of 21.

(Authority: 20 U.S.C. 7905)

§ 108.4 Effect of State or local law.

The obligation of a covered entity to comply with the Act and this part is not obviated or alleviated by any State or local law or other requirement.

(Authority: 20 U.S.C. 7905)

§ 108.5 Compliance obligations.

(a) The obligation of covered entities to comply with the Act and this part is not limited by the nature or extent of their authority to make decisions about the use of school premises or facilities.

(b) Consistent with the requirements of § 108.6, a covered entity must provide equal access to any group that is officially affiliated with the Boy Scouts or is officially affiliated with any other Title 36 youth group. A covered entity may require that any group seeking equal access inform the covered entity whether the group is officially affiliated with the Boy Scouts or is officially affiliated with any other Title 36 youth group. A covered entity's failure to request this information is not a defense to a covered entity's noncompliance with the Act or this part.

(Authority: 20 U.S.C. 7905)

§ 108.6 Equal access.

(a) *General.* Consistent with the requirements of paragraph (b) of this section, no covered entity shall deny equal access or a fair opportunity to meet to, or discriminate against, any

group officially affiliated with the Boy Scouts or officially affiliated with any other Title 36 youth group that requests to conduct a meeting within that covered entity's designated open forum or limited public forum. No covered entity shall deny that access or opportunity or discriminate for reasons including the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts or of the Title 36 youth group.

(b) *Specific requirements.* (1) *Meetings.* Any group officially affiliated with the Boy Scouts or officially affiliated with any other Title 36 youth group that requests to conduct a meeting in the covered entity's designated open forum or limited public forum must be given equal access to school premises or facilities to conduct meetings.

(2) *Benefits and services.* Any group officially affiliated with the Boy Scouts or officially affiliated with any other Title 36 youth group that requests to conduct a meeting as described in paragraph (b)(1) of this section must be given equal access to any other benefits and services provided to one or more outside youth or community groups that are allowed to meet in that same forum. These benefits and services may include, but are not necessarily limited to, school-related means of communication, such as bulletin board notices and literature distribution, and recruitment.

(3) *Fees.* Fees may be charged in connection with the access provided under the Act and this part.

(4) *Terms.* Any access provided under the Act and this part to any group officially affiliated with the Boy Scouts or officially affiliated with any other Title 36 youth group, as well as any fees charged for this access, must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

(5) *Nondiscrimination.* Any decisions relevant to the provision of equal access must be made on a nondiscriminatory basis. Any determinations of which youth or community groups are outside groups must be made using objective, nondiscriminatory criteria, and these

criteria must be used in a consistent, equal, and nondiscriminatory manner.

(Authority: 20 U.S.C. 7905)

§ 108.7 Voluntary sponsorship.

Nothing in the Act or this part shall be construed to require any school, agency, or school served by an agency to sponsor any group officially affiliated with the Boy Scouts or with any other Title 36 youth group.

(Authority: 20 U.S.C. 7905)

§ 108.8 Assurances.

An applicant for funds made available through the Department to which this part applies must submit an assurance that the applicant will comply with the Act and this part. The assurance shall be in effect for the period during which funds made available through the Department are extended. The Department specifies the form of the assurance, including the extent to which assurances will be required concerning the compliance obligations of subgrantees, contractors and subcontractors, and other participants, and provisions that give the United States a right to seek its judicial enforcement. An applicant may incorporate this assurance by reference in subsequent applications to the Department.

(Approved by the Office of Management and Budget under control number 1870-0503.)

(Authority: 20 U.S.C. 7905)

§ 108.9 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964, which are found in 34 CFR 100.6 through 100.11 and 34 CFR part 101, apply to this part, except that, notwithstanding these provisions and any other provision of law, no funds made available through the Department shall be provided to any school, agency, or school served by an agency that fails to comply with the Act or this part.

(Authority: 20 U.S.C. 7905)

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