

APPENDIX A TO PART 106—GUIDELINES
FOR ELIMINATING DISCRIMINATION
AND DENIAL OF SERVICES ON THE
BASIS OF RACE, COLOR, NATIONAL
ORIGIN, SEX, AND HANDICAP IN VO-
CATIONAL EDUCATION PROGRAMS

EDITORIAL NOTE: For the text of these guidelines, see 34 CFR part 100, appendix B. [44 FR 17168, Mar. 21, 1979]

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

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

SOURCE: 71 FR 15002, Mar. 24, 2006, 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

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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