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## Frequently Asked Questions About the Equal Access Act

### Introduction

The Equal Access Act (“Act”) provides that “[i]t shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.”<sup>1</sup>

U.S. courts have interpreted this to mean that if a school allows even one extracurricular student group to use school facilities, it must give equal access to *all* student groups, regardless of the focus or viewpoint of the group. Thus, schools that are covered under the Act have a choice to either permit access to benefits of school facilities for all extracurricular student groups or none of the extracurricular student groups.

The Act ensures the rights of students to form a wide range of groups, including Gay-Straight Alliances, Bible study programs or other religiously focused clubs, political groups, and specific interest groups. These clubs are important because they enrich a student’s educational experience by acting as a support group, fostering knowledge in a particular area, promoting civic engagement, and improving social interaction skills. Furthermore, a student’s involvement in a particular group can provide colleges and prospective employers with insight into the student’s background, values, and goals. The following questions and answers present the current law guaranteeing that access to these benefits is equal and consistent among all student groups.

### Common Legal Questions and Answers

#### Which schools are covered by the Act?

In order for a student group to have equal access to school facilities, it must be formed in a public secondary school that has created a limited open forum. A “public secondary school” refers to grades 7-12 in schools that receive any federal funding. A “limited open forum” is created in public secondary schools “whenever such school grants an

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<sup>1</sup> 20 U.S.C. § 4071(a).

offering to or opportunity for one or more noncurriculum related groups to meet on school premises during noninstructional time.”<sup>2</sup>

### **What is a noncurriculum related student group?**

The U.S. Supreme Court has interpreted this phrase to mean “any student group that does not *directly* relate to the body of courses offered by the school.”<sup>3</sup> Thus, a group’s category depends on the subject matter of the group and the courses the school offers. A curriculum related group is one where the subject matter of the group is actually taught in a regularly offered course or concerns a body of courses as a whole.<sup>4</sup> Examples of curriculum related groups include French club and student government.<sup>5</sup> On the other hand, examples of noncurriculum related student groups include a chess club, a stamp collecting club, a community service club.<sup>6</sup> Likewise, Gay-Straight Alliances and religiously-oriented groups have consistently been considered noncurriculum related.

### **What kinds of student group activities are protected under the Act?**

“Equal access” under the Act requires schools covered by it to provide an equal opportunity for student groups to “to meet on school premises during noninstructional time.”<sup>7</sup> So long as at least one other noncurriculum related group is allowed to meet at the school outside of normal school hours, the Act allows all other noncurriculum related student groups to benefit from that same privilege.

In addition to access to meeting locations, courts have recognized the right of student groups to use school media to advertise these meetings, so long as the school has allowed at least one other noncurriculum related student group to do so. The court’s interpretation of “school facilities” has included access to the school newspaper, bulletin boards, and the public address system.<sup>8</sup>

### **Can the school place any restrictions on a noncurriculum related student group’s access to school facilities?**

Yes. Under the Act, schools maintain the right to limit a group’s access to school facilities through reasonable time, place, and manner regulations, so long as those restrictions apply equally to all noncurriculum related student groups. For example, a school may create a rule that limits meetings of all noncurriculum related student

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<sup>2</sup> 20 U.S.C. § 4071(b).

<sup>3</sup> *Bd. of Educ. of Westside Cmty. Sch. V. Mergens*, 496 U.S. 226, 239 (1990).

<sup>4</sup> *Mergens*, 496 U.S. at 239.

<sup>5</sup> *Id.* at 240.

<sup>6</sup> *Id.*

<sup>7</sup> 20 U.S.C. § 4071(b).

<sup>8</sup> *Prince v. Jacoby*, 303 F.3d 1074,1086 ( 9th Cir. 2002).

groups to particular days and times. Schools may also designate particular areas where the groups can meet, as well as create policies to maintain order in the meetings. Again, however, any restrictions placed on access to school facilities must be consistent among all noncurriculum related student groups.

Schools are also permitted to restrict access to particular student groups when their meetings disrupt normal activities in the school. Under the Act, student groups that materially and substantially interfere with the orderly conduct of educational activities are not offered equal access to school privileges. Schools are not required to permit activities of student groups that promote violence, hate, or illegal acts.

**Can a school ever restrict access to its facilities based on a student group’s membership policy or mission statement?**

Yes. Courts have allowed schools to deny access to student groups based on the group’s refusal to comply with a school or district policy. For example, if a school determines that a student group’s guidelines regarding membership admission conflicts with the school’s anti-discrimination policy, the school can deny that group access without altering its policies for all student groups.<sup>9</sup> A school’s decision to deny access, however, must actually be based on the group’s failure to observe school policies rather than the group’s message or the content of its mission.

**Can a school deny access to a student group because it causes a disruption in the community?**

No. A school cannot refuse access to a group unless the group’s *own* activities cause school disruption. A school may not deny access to a student group solely because student and community resistance to the group’s content or message interferes with the school’s ability to maintain order and discipline.<sup>10</sup> Rather, the school can only deny access to the group if it can demonstrate that the student club’s *own* activities are interfering with the school’s ability to maintain order.

**Can school faculty or outside members of the community attend student group meetings?**

Yes. Oftentimes, schools policies require a faculty member to be present during student meetings. The Act, however, requires that student group meetings be both voluntary and student-initiated.<sup>11</sup> Outside members of the community can visit student meetings, so long as the students invite them and there is no school policy barring their

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<sup>9</sup> *Truth v. Kent School Dist.*, 542 F.3d 634 (2008)

<sup>10</sup> *Boyd County High School Gay Straight Alliance v. Board of Education*, 258 F. Supp. 2d. 667, 690 (E.D. Ky. 2003).

<sup>11</sup> 20 U.S.C. § 4071(c)(1).

attendance. The visitors, however, “may not direct, conduct, control, or regularly attend activities of student groups.”<sup>12</sup>

Furthermore, for religious-oriented student group meetings, employees of the school cannot participate in the meeting.<sup>13</sup> Rather, they must only act as an overseer.

### **Can a school ever force a student group to change its name?**

No. Under the Act, a forced name change would be a form of unequal treatment. In many cases, student groups may wish to maintain an affiliation with a national network or signal that they are part of a national movement.<sup>14</sup> In addition, private groups have a First Amendment constitutional right to choose how to present their message.<sup>15</sup> For example, at a public high school in California, students who wanted to form a recognized Gay-Straight Alliance were denied access by the school board, who suggested they change their name to the “Tolerance Club” or “Tolerance for All” to be less controversial and divisive.<sup>16</sup> The court, however, held that these suggestions infringed on the “profound expressive meaning that the group attaches to its name.”<sup>17</sup>

### **Does the Act require the student group to be ASB-affiliated?**

No. Under the Act, a school’s policies pertaining to access to school facilities and benefits cannot differ depending on a student group’s ASB status.<sup>18</sup>

## **Additional Resources**

### **For Gay-Straight Alliances:**

- **ACLU of Utah: Students’ Right to Form Gay/Straight Alliances:**  
<http://www.acluutah.org/gsa.htm>
- **ACLU: Know Your Rights! A Quick Guide for LGBT High School Students:**  
[http://www.aclu.org/lgbt-rights\\_hiv-aids/know-your-rights-quick-guide-lgbt-high-school-students](http://www.aclu.org/lgbt-rights_hiv-aids/know-your-rights-quick-guide-lgbt-high-school-students)
- **ACLU: Tips on Starting a GSA:** [http://www.aclu.org/lgbt-rights\\_hiv-aids/tips-starting-gsa](http://www.aclu.org/lgbt-rights_hiv-aids/tips-starting-gsa)

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<sup>12</sup> 20 U.S.C. § 4071(c)(5).

<sup>13</sup> 20 U.S.C. § 4071(c)(3).

<sup>14</sup> *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557 (1995).

<sup>15</sup> *Id.*

<sup>16</sup> *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000).

<sup>17</sup> *Id.*

<sup>18</sup> *Prince v. Jacoby*, 303 F.3d 1074 (9th Cir. 2002).