

# Full Text: Title IX of the Education Amendments of 1972 (34 C.F.R. Part 106)

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**Source:** Electronic Code of Federal Regulations (eCFR), Title 34, Part 106

**Date:** December 9, 2025

## Subpart A—Introduction

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### § 106.1 Purpose.

The purpose of this part is to effectuate Title IX, which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Public Law 93-380, 88 Stat. 484.

### § 106.2 Definitions.

As used in this part, the term:

- *Administrative law judge* means a person appointed by the reviewing authority to preside over a hearing held under § 106.81.
- *Administratively separate unit* means a school, department, or college of an educational institution (other than a local educational agency), admission to which is independent of admission to any other component of such institution.
- *Admission* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

- *Applicant*, as used in the definition of educational institution in this section and as used in § 106.4, means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.
- *Assistant Secretary* means the Assistant Secretary for Civil Rights of the Department.
- *Complainant* means:
  - (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part; or
  - (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part and who was participating or attempting to participate in the recipient' s education program or activity at the time of the alleged sex discrimination.
- *Complaint* means an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part.
- *Confidential employee* means:
  - (1) An employee of a recipient whose communications are privileged or confidential under Federal or State law. The employee' s confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
  - (2) An employee of a recipient whom the recipient has designated as confidential under this part for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee' s confidential status is only with respect to information received about sex discrimination in connection with providing those services; or
  - (3) An employee of a postsecondary institution who is conducting an Institutional Review Board-approved human-subjects research study designed to gather

information about sex discrimination—but the employee’s confidential status is only with respect to information received while conducting the study.

- *Department* means the Department of Education.
- *Disciplinary sanctions* means consequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient’s prohibition on sex discrimination.
- *Educational institution* means a local educational agency (LEA) as defined by section 8101 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. 7801(30)), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education.
- *Elementary school* means elementary school as defined by section 8101 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. 7801(19)), and a public or private preschool.
- *Federal financial assistance* means any of the following, when authorized or extended under a law administered by the Department:
  - (1) A grant or loan of Federal financial assistance, including funds made available for:
    - (i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and
    - (ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.
  - (2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.
  - (3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

- *Institution of graduate higher education* means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

- *Institution of professional education* means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.

- *Institution of undergraduate higher education* means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

- *Institution of vocational education* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled,

or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

- *Parental status*, as used in §§ 106.21©(2)(i), 106.37(a)(3), 106.40(a), and 106.57(a)(1), means the status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:
  - (1) A biological parent;
  - (2) An adoptive parent;
  - (3) A foster parent;
  - (4) A stepparent;
  - (5) A legal custodian or guardian;
  - (6) *In loco parentis* with respect to such a person; or
  - (7) Actively seeking legal custody, guardianship, visitation, or adoption of such a person.
- *Party* means a complainant or respondent.
- *Peer retaliation* means retaliation by a student against another student.
- *Postsecondary institution* means an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education that serves postsecondary school students.
- *Pregnancy or related conditions* means:
  - (1) Pregnancy, childbirth, termination of pregnancy, or lactation;
  - (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
  - (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

- *Program or activity* and *program* means all of the operations of—
  - (1) (i) A department, agency, special purpose district, or other instrumentality of a State or local government; or  
(ii) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
  - (2) (i) A college, university, or other postsecondary institution, or a public system of higher education; or  
(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;
  - (3) (i) An entire corporation, partnership, other private organization, or an entire sole proprietorship—
    - (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
    - (B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or  
(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
  - (4) Any other entity that is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition, any part of which is extended Federal financial assistance.
- *Recipient* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal

financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

- *Relevant* means related to the allegations of sex discrimination under investigation as part of the grievance procedures under § 106.45, and if applicable § 106.46. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.
- *Remedies* means measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient' s education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person' s access to the recipient' s education program or activity after a recipient determines that sex discrimination occurred.
- *Respondent* means a person who is alleged to have violated the recipient' s prohibition on sex discrimination.
- *Retaliation* means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient' s education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process under § 106.44(k), in grievance procedures under § 106.45, and if applicable § 106.46, and in any other actions taken by a recipient under § 106.44(f)(1). Nothing in this definition or this part precludes a recipient from requiring an employee or other person authorized by a recipient to provide aid, benefit, or service under the recipient' s education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.
- *Reviewing authority* means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

- *Secondary school* means secondary school as defined by section 8101 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. 7801(45)), and an institution of vocational education that serves secondary school students.
- *Secretary* means the Secretary of Education.
- *Sex-based harassment* prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in § 106.10, that is:
  - (1) *Quid pro quo harassment*. An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
  - (2) *Hostile environment harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
    - (i) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
    - (ii) The type, frequency, and duration of the conduct;
    - (iii) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
    - (iv) The location of the conduct and the context in which the conduct occurred; and
    - (v) Other sex-based harassment in the recipient's education program or activity; or
  - (3) *Specific offenses*.

- (i) *Sexual assault* meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
  - (ii) *Dating violence* meaning violence committed by a person:
    - (A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
    - (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
      - (1) The length of the relationship;
      - (2) The type of relationship; and
      - (3) The frequency of interaction between the persons involved in the relationship;
  - (iii) *Domestic violence* meaning felony or misdemeanor crimes committed by a person who:
    - (A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;
    - (B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
    - © Shares a child in common with the victim; or
    - (D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or
  - (iv) *Stalking* meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
    - (A) Fear for the person's safety or the safety of others; or
    - (B) Suffer substantial emotional distress.
- *Student* means a person who has gained admission.

- *Student with a disability* means a student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B), (20) (B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3).
- *Supportive measures* means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:
  - (1) Restore or preserve that party's access to the recipient's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or
  - (2) Provide support during the recipient's grievance procedures under § 106.45, and if applicable § 106.46, or during the informal resolution process under § 106.44(k).
- *Title IX* means Title IX of the Education Amendments of 1972 (Pub. L. 92-318; 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688, 1689), as amended.

## **§ 106.3 Remedial and affirmative action and self-evaluation.**

(a) Remedial action. If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity under this part, or otherwise violated this part, such recipient must take such remedial action as the Assistant Secretary deems necessary to remedy the violation, consistent with 20 U.S.C. 1682.

(b) Affirmative action. In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

## **§ 106.4 Assurance required.**

(a) General. Every application for Federal financial assistance shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary, that the education program or activity operated

by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 106.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary of such assurance.

(b) Duration of obligation.

- (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.
- (2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.
- (3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

© Form. The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant' s or recipient' s subgrantees, contractors, subcontractors, transferees, or successors in interest.

## **§ 106.5 Transfers of property.**

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of subpart B of this part.

## **§ 106.6 Effect of other requirements and preservation of rights.**

- (a) Effect of other Federal provisions. The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex

imposed by Executive Order 11246, as amended; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 292d and 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(b) Effect of State or local law or other requirements. The obligation to comply with Title IX and this part is not obviated or alleviated by any State or local law or other requirement that conflicts with Title IX or this part.

© Effect of rules or regulations of private organizations. The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives Federal financial assistance.

(d) Constitutional protections. Nothing in this part requires a recipient to:

(1) Restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution;

(2) Deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution; or

(3) Restrict any other rights guaranteed against government action by the U.S. Constitution.

(e) Effect of Section 444 of General Education Provisions Act (GEPA)/Family Educational Rights and Privacy Act (FERPA). The obligation to comply with Title IX and this part is not obviated or alleviated by FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99.

(f) Title VII of the Civil Rights Act of 1964. Nothing in this part may be read in derogation of any individual's rights under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. or any regulations promulgated thereunder.

(g) Exercise of rights by parents, guardians, or other authorized legal representatives. Nothing in Title IX or this part may be read in derogation of any legal right of a parent, guardian, or other authorized legal representative to act on behalf of a complainant, respondent, or other person, subject to paragraph (e) of this section, including but not

limited to making a complaint through the recipient's grievance procedures for complaints of sex discrimination.

## **Subpart B—Coverage**

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### **§ 106.11 Application.**

Except as provided in this subpart, this part 106 applies to every recipient and to each education program or activity operated by such recipient which receives Federal financial assistance.

### **§ 106.12 Educational institutions controlled by religious organizations.**

(a) Application. This part does not apply to an educational institution which is controlled by a religious organization to the extent that application of this part would not be consistent with the religious tenets of such organization.

(b) Exemption. An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

### **§ 106.13 Military and merchant marine educational institutions.**

This part does not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States or for the merchant marine.

### **§ 106.14 Membership practices of certain organizations.**

(a) Social fraternities and sororities. This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls. This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

© Voluntary youth service organizations. This part does not apply to the membership practices of any voluntary youth service organization which is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

## **Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

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### **§ 106.21 Admission.**

(a) General. No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 106.16 and 106.17.

(b) Specific prohibitions. (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

© Prohibitions relating to marital or parental status. In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a

recipient to which this subpart applies:

- (1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;
- (2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;
- (3) Shall treat disabilities related to pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and
- (4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

## **§ 106.22 Preference in admission.**

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

## **§ 106.23 Recruitment.**

- (a) Nondiscriminatory recruitment. A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 106.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 106.3(b).
- (b) Recruitment at certain institutions. A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools, or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

## **Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited**

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### **§ 106.31 Education programs or activities.**

- (a) General. Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if it were a recipient.
- (b) Specific prohibitions. Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:
- (1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
  - (2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
  - (3) Deny any person any such aid, benefit, or service;
  - (4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;
  - (5) Discriminate against any person in the application of any rules of appearance;
  - (6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
  - (7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;
  - (8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

## **§ 106.32 Housing.**

- (a) General. A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).
- (b) Housing provided by the recipient. A recipient may provide separate housing on the basis of sex.
- © Other housing. A recipient shall not, in connection with its education program or activity, directly or indirectly assist any person or entity in making housing available to any of its students in a manner which discriminates on the basis of sex. A recipient which makes available to any of its students, through solicitation, listing, approval of housing, or otherwise, housing which is owned or operated by someone other than the recipient, shall take such action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (1) Proportionate in quantity to the number of students of that sex applying for such housing; and (2) comparable in quality and cost to the student.

## **§ 106.33 Comparable facilities.**

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

## **§ 106.34 Access to course offerings.**

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

## **§ 106.35 Access to schools operated by LEAs.**

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to: (a) Any institution of vocational education operated by

such recipient; or (b) any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities which are comparable to each course, service, and facility operated by such recipient.

### **§ 106.36 Counseling and use of appraisal and counseling materials.**

(a) Counseling. A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) Use of appraisal and counseling materials. A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not so discriminate. Where the use of a test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

© Disproportion in classes. Where a recipient finds that a particular class contains a substantially disproportionate number of students of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

### **§ 106.37 Financial assistance.**

(a) General. Except as provided in paragraphs (b) and © of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any

rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) Financial aid established by certain legal instruments. (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which require that awards be made to members of a particular sex specified therein; Provided, That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

© Athletic scholarships. (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 106.41.

## **§ 106.38 Employment assistance to students.**

(a) Assistance by recipient in making available outside employment. A recipient which assists any agency, organization or person in making employment available to any of its students:

- (1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and
  - (2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.
- (b) Employment of students by recipients. A recipient which employs any of its students shall not do so in a manner which violates subpart E of this part.

### **§ 106.39 Health and insurance benefits and services.**

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

### **§ 106.40 Parental, family, or marital status; pregnancy or related conditions.**

- (a) Status generally. A recipient must not adopt or implement any policy, practice, or procedure concerning a student' s current, potential, or past parental, family, or marital status that treats students differently on the basis of sex.
- (b) Pregnancy or related conditions.
  - (1) Nondiscrimination. A recipient must not discriminate in its education program or activity against any student based on the student' s current, potential, or past pregnancy or related conditions. A recipient does not engage in prohibited discrimination when it allows a student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of its education program or activity provided the recipient ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.
  - (2) Responsibility to provide Title IX Coordinator contact and other information. A recipient must ensure that when a student, or a person who has a legal right to act on

behalf of the student, informs any employee of the student' s pregnancy or related conditions, unless the employee reasonably believes that the Title IX Coordinator has been notified, the employee promptly provides that person with the Title IX Coordinator' s contact information and informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student' s equal access to the recipient' s education program or activity.

(3) Specific actions to prevent discrimination and ensure equal access. A recipient must take specific actions under paragraphs (b)(3)(i) through (vi) of this section to promptly and effectively prevent sex discrimination and ensure equal access to the recipient' s education program or activity once the student, or a person who has a legal right to act on behalf of the student, notifies the Title IX Coordinator of the student' s pregnancy or related conditions. The Title IX Coordinator must coordinate these actions.

(i) Responsibility to provide information about recipient obligations. The recipient must inform the student, and if applicable, the person who notified the Title IX Coordinator of the student' s pregnancy or related conditions and has a legal right to act on behalf of the student, of the recipient' s obligations under paragraphs (b)(1) through (5) of this section and § 106.44(j) and provide the recipient' s notice of nondiscrimination under § 106.8©(1).

(ii) Reasonable modifications. (A) The recipient must make reasonable modifications to the recipient' s policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the recipient' s education program or activity. Each reasonable modification must be based on the student' s individualized needs. In determining what modifications are required under this paragraph, the recipient must consult with the student. A modification that a recipient can demonstrate would fundamentally alter the nature of its education program or activity is not a reasonable modification.

(B) The student has discretion to accept or decline each reasonable modification offered by the recipient. If a student accepts a recipient' s offered reasonable modification, the recipient must implement it.

© Reasonable modifications may include, but are not limited to, breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education;

changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and examinations; allowing a student to sit or stand, or carry or keep water nearby; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other changes to policies, practices, or procedures.

(iii) Voluntary access to separate and comparable portion of program or activity. The recipient must allow the student to voluntarily access any separate and comparable portion of the recipient' s education program or activity under paragraph (b)(1) of this section.

(iv) Voluntary leaves of absence. The recipient must allow the student to voluntarily take a leave of absence from the recipient' s education program or activity to cover, at minimum, the period of time deemed medically necessary by the student' s licensed healthcare provider. To the extent that a student qualifies for leave under a leave policy maintained by a recipient that allows a greater period of time than the medically necessary period, the recipient must permit the student to take voluntary leave under that policy instead if the student so chooses. When the student returns to the recipient' s education program or activity, the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.

(v) Lactation space. The recipient must ensure that the student can access a lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.

(vi) Limitation on supporting documentation. A recipient must not require supporting documentation under paragraphs (b)(3)(ii) through (v) unless the documentation is necessary and reasonable for the recipient to determine the reasonable modifications to make or whether to take additional specific actions under paragraphs (b)(3)(ii) through (v). Examples of situations when requiring supporting documentation is not necessary and reasonable include, but are not limited to, when the student' s need for a specific action under paragraphs (b)(3)(ii) through (v) is obvious, such as when a student who is pregnant needs a bigger uniform; when the student has previously provided the recipient with sufficient supporting documentation; when the reasonable modification because of pregnancy or related conditions at issue is allowing a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; when the student has lactation needs; or when the

specific action under paragraphs (b)(3)(ii) through (v) is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.

(4) Interaction with the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973. Nothing in this paragraph (b) affects a recipient's obligations to evaluate a student for a disability and provide a student with a disability with a free appropriate public education under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.

(5) Instruction about pregnancy. A recipient may provide instruction about pregnancy or related conditions as part of a family life or sex education curriculum, but it must not subject any student to any requirement concerning the appearance of any student who is pregnant or has a related condition that is not imposed on other students.

## **§ 106.41 Athletics.**

(a) General. No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

© Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;
- (3) Scheduling of games and practice time;
- (4) Travel and per diem allowance;
- (5) Opportunity to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;
- (7) Provision of locker rooms, practice and competitive facilities;
- (8) Provision of medical and training facilities and services;
- (9) Provision of housing and dining facilities and services;
- (10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

#### **§ 106.42 Textbooks and curricular material.**

Nothing in this part shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

#### **§ 106.43 Student health and insurance benefits and services.**

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning

services. However, any recipient which provides full coverage health service shall provide gynecological care.

## **Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited**

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### **§ 106.51 Employment.**

(a) General. (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status on the basis of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) Application. The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from

layoff, and rehiring;

- (3) Rates of pay or any other form of compensation, and changes in compensation;
- (4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;
- (5) The terms of any collective bargaining agreement;
- (6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;
- (7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
- (8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;
- (9) Employer-sponsored activities, including social or recreational programs; and
- (10) Any other term, condition, or privilege of employment.

## **§ 106.52 Employment criteria.**

A recipient shall not administer any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the employment opportunity in question and alternative tests or criteria for such purpose which do not have such a disproportionately adverse effect are shown to be unavailable.

## **§ 106.53 Recruitment.**

- (a) Nondiscriminatory recruitment and hiring. A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) Recruitment patterns. A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such recruitment has the effect of discriminating on the basis of sex in violation of this subpart.

### **§ 106.54 Compensation.**

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

- (a) Makes distinctions in rates of pay or other compensation;
- (b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

### **§ 106.55 Job classification and structure.**

A recipient shall not:

- (a) Classify a job as being for males or for females;
- (b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or
- © Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § 106.61.

### **§ 106.56 Fringe benefits.**

- (a) “Fringe benefits” defined. For purposes of this part, “fringe benefits” means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 106.54.
- (b) Prohibitions. A recipient shall not: (1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to

spouses, families, or dependents of employees differently upon the basis of the employee's sex;

- (2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex or for equal contributions to the plan by such recipient for members of each sex; or
- (3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

## **§ 106.57 Marital or parental status.**

(a) General. A recipient shall not apply any policy or take any employment action: (1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or (2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) Pregnancy. A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

© Pregnancy as a temporary disability. A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) Pregnancy leave. In the case of a recipient which does not have a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in

rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

### **§ 106.58 Effect of State or local law or other requirements.**

- (a) Prohibitory requirements. The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.
- (b) Benefits. A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

### **§ 106.59 Advertising.**

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona-fide occupational qualification for the particular job in question.

### **§ 106.60 Pre-employment inquiries.**

- (a) Marital status. A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss" or "Mrs."
- (b) Sex. A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

### **§ 106.61 Sex as a bona-fide occupational qualification.**

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex

of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

## **Subpart F—Procedures**

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### **§ 106.71 Procedures.**

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are adopted and incorporated herein. These procedures may be found at 34 CFR 100.6 through 100.11 and 34 CFR part 101.