

PART 15a—EDUCATION PROGRAMS OR ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE

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APPENDIX

AUTHORITY: Title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by sec. 3 of Pub. L. 93-568, 88 Stat. 1855 and sec. 412 of Pub. L. 94-482, 90 Stat. 2234 (except secs. 904 and 906 thereof); 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

SOURCE: 44 FR 21610, April 11, 1979, unless otherwise noted.

Subpart A—Introduction

§ 15a.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Public Law 93-568, 88 Stat. 1855 and Public Law 94-482, 90 Stat. 2234 (except sections 904 and 906 of those Amendments) 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.

§ 15a.2 Definitions.

As used in this part, the term:

(a) *Title IX* means title IX of the Education Amendments of 1972, Public Law 92-318, as amended by section 3 of Public Law 93-568, 88 Stat. 1855 and section 412 of Public Law 94-482, 90 Stat. 2234 (except sections 904 and 906 thereof); 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) *Department* means the Department of Agriculture, and includes each of its

operating agencies and other organizational units.

(c) *Secretary* means the Secretary of Agriculture or any officer or employees of the Department to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate, the authority to act for the Secretary under the regulations in this part.

(d) *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

(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 of any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient, or in recognition of public interest to 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.

(e) *Recipient* means the State or political subdivision thereof, of 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 ex-

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

(f) *Applicant* 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.

(g) *Educational institution* means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (h), (i), (j), or (k) of this section.

(h) *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.

(i) *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.

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(j) *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 United States Commissioner of Education.

(k) *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.

(l) *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.

(m) *Admission* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, participation, or matriculation in or at an education program or activity operated by a recipient.

(n) *Student* means a person who has gained admission.

(o) *Transition plan* means a plan subject to the approval of the United States Commissioner of Education pursuant to section 901(a) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(p) *Educational recipient* means an educational institution as defined in §15a.2(g) and every other recipient which has education as a significant purpose.

(q) *Education program or activity* means:

- (1) Every program or activity operated by an educational recipient; and
- (2) Every program or activity operated by other recipients where a sig-

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nificant purpose of the financial assistance is education,

(r) *United States* means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term *State* means any one of the foregoing.

§ 15a.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action*. If the Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of such discrimination.

(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.

(c) *Self-evaluation*. Each recipient shall, within one year of the effective date of this part:

(1) Evaluate in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials*. Recipients shall maintain on file for at least three years following the effective date of this part or completion of the evaluation required under paragraph (c) of this section, whichever is longer, and shall provide

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to the Secretary upon request, a description of any modifications made pursuant to paragraph (c)(1) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

§ 15a.4 Assurance required.

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Secretary, that each 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 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 §15a.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 Secretary of such assurance.

(b) *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.

(c) *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 assurances 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.

(d) *Form.* The Secretary 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.

§ 15a.5 Effect of other requirements.

(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; 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 this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex to practice any occupation or profession.

(c) *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 or benefits from Federal financial assistance.

(d) *Effect of compliance with HEW regulations.* If a recipient is covered by the title IX regulations issued by HEW, 45 CFR part 86, and has already complied with the HEW requirements corresponding to §§15a.3(c), 15a.4(a), 15a.7(a) and (b), and 15a.8 (a) and (b), then the requirements of those sections need not be duplicated in order to comply with this part. However, if the requirements have not been applied to all programs funded by this Department, then

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the requirements will have to be met as to those programs.

§ 15a.6 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

§ 15a.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt, and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

§ 15a.8 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that it is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Secretary finds necessary to apprise such persons of

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the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein and to admission thereto unless subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to § 15a.7 or to the Secretary.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in:

- (i) Local newspapers,
- (ii) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and
- (iii) memoranda or other written communications distributed to every student and employees of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of non-discrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.