

§ 106.61

34 CFR Ch. I (7-1-10 Edition)

§ 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.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart F—Procedures [Interim]

§ 106.71 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 34 CFR 100.6-100.11 and 34 CFR, part 101.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

SUBJECT INDEX TO TITLE IX PREAMBLE AND REGULATION<sup>1</sup>

A

- Access to Course Offerings [43, 55, 56, 57, 58]; 106.34
Access to Schools Operated by LEA's, [44]; 106.35
Admissions, [5, 6, 30]; 106.15, 106.21
Affirmative and remedial action, [16, 17, 24]; 106.3(a); (b)
Administratively separate units, [30]; 106.15(b) 106.2(o)
Educational Institutions, [30], 106.15(d), 106.2(n)
General, 106.21(a), 106.2(p),

<sup>1</sup>Preamble paragraph numbers are in brackets [ ].

- Prohibitions relating to marital and parental status, [32, 36]; 106.21(c)
Professional schools, [30], 106.2(m)
Public institutions of undergraduate higher education, 106.15(e)
Recruitment, [34, 35]; 106.23
Specific prohibitions, 106.21(b)
Tests, [31]; 106.21(b) (2)
Preference in admission, [35]; 106.22
Advertising, 106.59
Affirmative Action, see "Remedial and Affirmative Actions"
Assistance to "outside" discriminatory organizations, [40, 53]; 106.31(b) (7), (c)
Assurances, [18]; 106.4
Duration of obligation, 106.4(b)
Form, 106.4(c)
Athletics, [69 to 78]; 106.41
Adjustment period, [78]; 106.41(d)
Contact sport defined, 106.41(d)
Equal opportunity, [76, 77]; 106.41(d)
Determining factors, 106.41(c) (i) to (x)
Equipment, 106.41(c)
Expenditures, 106.41(c)
Facilities, 106.41(c)
Travel, 106.41(c)
Scholarships, [64, 65]; 106.37(d)
General, [69, 70, 71, 72, 73, 74, 75]; 106.41(a)
Separate teams, [75]; 106.41(b)

B

- BFOQ, [96]; 106.61

C

- Comparable facilities
Housing, [42, 54]; 106.32
Other, 106.33, 106.35(b)
Compensation, [84, 87, 92]; 106.54
Counseling
Disproportionate classes, [45, 59]; 106.36(c)
General, [45, 59]; 106.36(a)
Materials, [45, 59]; 106.36(b)
Course Offerings
Adjustment period, [55]; 106.34(a) (i)
General, [7, 43]; 106.34
Music classes, [43]; 106.34(f)
Physical education, [43, 56, 58];
Sex education, [43, 57]; 106.34(e)
Coverage, [5]; 106.11 to 106.17
Exemptions
Curricular materials, [52]; 106.42(a)

D

- Definitions, [14, 15]; 106.2 (a) to (r)
Designation of responsible employee, [20, 22]; 106.8(a), (b)
Dissemination of policy, [21]; 106.9
Distribution, 106.9(c)
Notification of policy, [21]; 106.9(a)
Publications, 106.9(b)
Dress codes 106.31(b) (4)

E

- Education Institutions
Controlled by religious organizations, 106.12

## Office for Civil Rights, Education

Application, [28, 29]; 106.12(a)  
Exemption, [26]; 106.12(b)  
Education Program and Activities  
Benefiting from Federal financial assistance, [10, 11]; 106.11  
General, [10, 11, 53]; 106.31(a)  
Programs not operated by recipient, [41, 54]; 106.31(c)  
Specific prohibitions, [38, 39, 40, 53]; 106.31(b)  
Effective Date, [3]  
Employee responsible for Title IX, see "Designation of Responsible Employee"  
Employment  
Advertising, 106.59  
Application, 106.51(b)  
Compensation, [84, 92]; 106.54  
Employment criteria, 106.52  
Fringe benefits, [88, 89]; 106.56  
General, [81, 82, 87]; 106.51  
Job Classification and Structure, 106.55  
Marital and Parental Status, 106.57  
Pregnancy, [85, 93]; 106.57(b)  
Pregnancy as Temporary Disability, [85, 93]; 106.57(c)  
Pregnancy Leave, [85, 93, 94]; 106.57(d)  
Pre-Employment Inquiry  
Recruitment, [83, 90, 91, 95]  
Sex as a BFOQ, [96]; 106.61  
Student Employment, [66]; 106.38  
Tenure, 106.51(b) (2)  
Exemptions, [5, 27, 28, 29, 30, 53]; 106.12(b), 106.13, 106.14, 106.15(a), 106.15(d), 106.16

### F

Federal Financial Assistance, 106.2(a)  
Financial Assistance to students, [46, 60, 61]; 106.37  
Athletic Scholarships, [46, 64, 65]; 106.37(d)  
Foreign institutions, study at [63]; 106.31(c)  
General, 106.37  
Non-need scholarships, [62]; 106.37(b)  
Pooling of sex-restrictive, [46, 61, 62]; 106.37(b)  
Sex-restrictive assistance through foreign or domestic wills [46, 61, 62]; 106.37(b)  
Foreign Scholarships, see "Financial assistance" 106.37 and "Assistance to 'outside' discriminatory organizations", 106.31(c)  
Fraternities/Sororities  
Social, [53, 27, 28]; 106.14(a)  
Business/professional, [40, 53, 27, 28]; 106.31(b) (7)  
Honor societies, [40, 53]; 106.31(b) (7)  
Fringe benefits, [67, 88, 89]; 106.56, 106.39  
Part-time employees, [89]

### G

Grievance Procedure, see "Designation of responsible employee", 106.8(a), (b)

### H

Health and Insurance Benefits and Services, [67, 88, 93]; 106.39, 106.56  
Honor societies, [40, 53]; 106.31(b) (7)  
Housing, 106.32

## Subject Index

Generally, [42]; 106.32(b)  
Provided by recipient, 106.32(b)  
Other housing, [54]; 106.32(c)

### J

Job Classification and Structure, 106.55

### L

LEA's, [44]; 106.35

### M

Marital and Parental Status

Employment

General, [85, 93, 94]; 106.57

Pregnancy, [85, 93, 94]; 106.57(b)

Pregnancy as a temporary disability, [85, 93, 94]; 106.57(c)

Pregnancy leave, [85, 93, 94]; 106.57(d)

Students

General, [49]; 106.40(a), (b)

Pregnancy and related conditions, [50]; 106.40(b) (1) (2) (3) (4) (5)

Class participation, [50]; 106.40(b) (1)

Physician certification, [50]; 106.40(b) (2)

Special classes, [50]; 106.40(b) (3)

Temporary leave, [50]; 106.40(b) (4), (5)

Membership Practices of Social fraternities and sororities, [27, 28, 53]; 106.14(a)

Voluntary youth service organizations, [27, 28, 53]; 106.14(c)

YMCA, YWCA and others, [27, 28, 53]; 106.14(b)

Military and Merchant Marine Educational Institutions, [29]; 106.13

### P

Pooling, see "Financial Assistance", 106.37

Pre-employment Inquiries

Marital status, [86, 95]; 106.60(a)

Sex, 106.60(b)

Preference in Admissions, [35]; 106.22

See also "Remedial and Affirmative Action"

Pregnancy, Employment

General, [85, 93, 94]; 106.57

Pregnancy, [85, 93, 94]; 106.57(b)

Pregnancy as temporary disability, [85, 93, 94]; 106.57(c)

Pregnancy leave, [85, 93, 94]; 106.57(d)

Students

General, [49, 50]; 106.40 (a) and (b)

Pregnancy and related conditions; [50]; 106.40(b) (1) to (5)

Class Participation, [50, 55, 58]; 106.40(b) (1)

Physical certification, [50]; 106.40(b) (2)

Special class, [50]; 106.40 (b) (3)

Temporary leave, [50]; 106.40(b) (4), (5)

Private Undergraduate Professional Schools, [30]; 106.15(d)

Purpose of Regulation, [13]; 106.1

### R

Real Property, 106.2(g)

Recruitment

Employment

Nondiscrimination, [83, 91]; 106.53(a)

**P. 106, App. A, Nf.**

**34 CFR Ch. I (7–1–10 Edition)**

Patterns, 106.53(b)  
Student  
Nondiscrimination, [34, 35]; 106.23(a)  
Recruitment at certain institutions, 106.23(b)  
Religious Organizations  
Application, [29, 28]; 106.12(a)  
Exemption, [26]; 106.12(b)  
Remedial and Affirmative Actions, [16, 17, 24]; 106.3

**S**

Scholarships, see “Financial Assistance”, 106.37  
Self-evaluation, [16, 22]; 106.3(c), (d)  
Surplus Property (see Transfer of Property 106.5)  
Duration of obligation 106.4(b)  
Real Property 106.4(b) (1)

**T**

Textbooks and curricular materials, [52, 79, 80]; 106.42  
Termination of funds, [10, 11]  
Transfer of property, 106.5  
Transition Plans  
Content of plans, 106.17(b)  
Different from Adjustment period, [78]; 106.41(d)  
Submission of plans, 106.17(a)

**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 VOCATIONAL 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**

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

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

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