

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.

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

§§ 86.62–86.70 [Reserved]

Subpart F—Procedures [Interim]

§ 86.71 Interim procedures.

For the purposes of implementing this part during the period between its effective date and the final issuance by the Department of a consolidated procedural regulation applicable to title IX and other civil rights authorities administered by the Department, 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 45 CFR 80–6 through 80–11 and 45 CFR part 81.

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

SUBJECT INDEX TO TITLE IX PREAMBLE AND REGULATION¹

A

- Access to Course Offerings [43, 55, 56, 57, 58]; 86.34
- Access to Schools Operated by LEA's, [44]; 86.35
- Admissions, [5, 6, 30]; 86.15, 86.21
 - Affirmative and remedial action, [16, 17, 24]; 86.3 (a), (b)
 - Administratively separate units, [30]; 86.15(b), 86.2(o)
 - Educational Institutions, [30], 86.15(d), 86.2(n)

¹Preamble paragraph numbers are in brackets [].

- General, 86.21(a), 86.2(p),
- Prohibitions relating to marital and parental status, [32, 36]; 86.21(c)
- Professional schools, [30], 86.2(m)
- Public institutions of undergraduate higher education, 86.15(e)
- Recruitment, [34, 35]; 86.23
- Specific prohibitions, 86.21(b)
- Tests, [31]; 86.21(b)(2)
- Preference in admission, [35]; 86.22
- Advertising, 86.59
- Affirmative Action, see "Remedial and Affirmative Actions"
- Assistance to "outside" discriminatory organizations, [40, 53]; 86.31(b)(7), (c)
- Assurances, [18]; 86.4
 - Duration of obligation, 86.4(b)
 - Form, 86.4(c)
- Athletics, [69 to 78]; 86.41
 - Adjustment period, [78]; 86.41(d)
 - Contact sport defined, 86.41(d)
 - Equal opportunity, [76, 77]; 86.41(d)
 - Determining factors, 86.41(c) (i) to (x)
 - Equipment, 86.41(c)
 - Expenditures, 86.41(c)
 - Facilities, 86.41(c)
 - Travel, 86.41(c)
 - Scholarships, [64, 65]; 86.37(d)
 - General, [69, 70, 71, 72, 73, 74, 75]; 86.41(a)
 - Separate teams, [75]; 86.41(b)

B

- BFOQ, [96]; 86.61

C

- Comparable facilities
 - Housing, [42, 54]; 86.32
 - Other, 86.33, 86.35(b)
- Compensation, [84, 87, 92]; 86.54
- Counseling
 - Disproportionate classes, [45, 59]; 86.36(c)
 - General, [45, 59]; 86.36(a)
 - Materials, [45, 59]; 86.36(b)
- Course Offerings
 - Adjustment period, [55]; 86.34(a) (i)
 - General, [7, 43]; 86.34
 - Music classes, [43]; 86.34(f)
 - Physical education, [43, 56, 58];
 - Sex education, [43, 57]; 86.34(e)
- Coverage, [5]; 86.11 to 86.17
 - Exemptions
- Curricular materials, [52]; 86.42(a)

D

- Definitions, [14, 15]; 86.2(a) to (r)
- Designation of responsible employee, [20, 22]; 86.8(a), (b)
- Dissemination of policy, [21]; 86.9
- Distribution, 86.9(c)
- Notification of policy, [21]; 86.9(a)
- Publications, 86.9(b)
- Dress codes 86.31(b) (4)

E

- Education Institutions
 - Controlled by religious organizations, 86.12

Pt. 86, Index

Application, [28, 29]; 86.12(a)
Exemption, [26]; 86.12(b)
Education Program and Activities
Benefiting from Federal financial assistance, [10, 11]; 86.11
General, [10, 11, 53]; 86.31(a)
Programs not operated by recipient, [41, 54]; 86.31(c)
Specific prohibitions, [38, 39, 40, 53]; 86.31(b)
Effective Date, [3]
Employee responsible for Title IX, see "Designation of Responsible Employee"
Employment
Advertising, 86.59
Application, 86.51(b)
Compensation, [84, 92]; 86.54
Employment criteria, 86.52
Fringe benefits, [88, 89]; 86.56
General, [81, 82, 87]; 86.51
Job Classification and Structure, 86.55
Marital and Parental Status, 86.57
Pregnancy, [85, 93]; 86.57(b)
Pregnancy as Temporary Disability, [85, 93]; 86.57(c)
Pregnancy Leave, [85, 93, 94]; 86.57(d)
Pre-Employment Inquiry
Recruitment, [83, 90, 91, 95]
Sex as a BFOQ, [96]; 86.61
Student Employment, [66]; 86.38
Tenure, 86.51(b) (2)
Exemptions, [5, 27, 28, 29, 30, 53]; 86.12(b), 86.13, 86.14, 86.15(a), 86.15(d), 86.16

F

Federal Financial Assistance, 86.2(a)
Financial Assistance to students, [46, 60, 61]; 86.37
Athletic Scholarships, [46, 64, 65]; 86.37(d)
Foreign institutions, study at [63]; 86.31(c)
General, 86.37
Non-need scholarships, [62]; 86.37(b)
Pooling of sex-restrictive, [46, 61, 62]; 86.37(b)
Sex-restrictive assistance through foreign or domestic wills [46, 61, 62]; 86.37(b)
Foreign Scholarships, see "Financial assistance" 86.37 and "Assistance to 'outside' discriminatory organizations", 86.31(c)
Fraternities/Sororities
Social, [53, 27, 28]; 86.14(a)
Business/professional, [40, 53, 27, 28]; 86.31(b) (7)
Honor societies, [40, 53]; 86.31(b) (7)
Fringe benefits, [67, 88, 89]; 86.56, 86.39
Part-time employees, [89]

G

Grievance Procedure, see "Designation of responsible employee", 86.8(a) (b)

H

Health and Insurance Benefits and Services, [67, 88, 93]; 86.39, 86.56
Honor societies, [40, 53]; 86.31(b) (7)
Housing, 86.32

45 CFR Subtitle A (10-1-15 Edition)

Generally, [42]; 86.32(b)
Provided by recipient, 86.32(b)
Other housing, [54]; 86.32(c)

J

Job Classification and Structure, 86.55

L

LEA's, [44]; 86.35

M

Marital and Parental Status

Employment
General, [85, 93, 94]; 86.57
Pregnancy, [85, 93, 94]; 86.57(b)
Pregnancy as a temporary disability, [85, 93, 94]; 86.57(c)
Pregnancy leave, [85, 93, 94]; 86.57(d)
Students
General, [49]; 86.40(a) (b)
Pregnancy and related conditions, [50]; 86.40(b) (1) (2) (3) (4) (5)
Class participation, [50]; 86.40(b) (1)
Physician certification, [50]; 86.40(b) (2)
Special classes, [50]; 86.40(b) (3)
Temporary leave, [50]; 86.40(b) (4) (5)
Membership Practices of Social fraternities and sororities, [27, 28, 53]; 86.14(a)
Voluntary youth service organizations, [27, 28, 53]; 86.14(c)
YMCA, YWCA and others, [27, 28, 53]; 86.14(b)

Military and Merchant Marine Educational Institutions, [29]; 86.13

P

Pooling, see "Financial Assistance", 86.37
Pre-employment Inquiries
Marital status, [86, 95]; 86.60(a)
Sex, 86.60(b)
Preference in Admissions, [35]; 86.22
See also "Remedial and Affirmative Action"
Pregnancy, Employment
General, [85, 93, 94]; 86.57
Pregnancy, [85, 93, 94]; 86.57(b)
Pregnancy as temporary disability, [85, 93, 94]; 86.57(c)
Pregnancy leave, [85, 93, 94]; 86.57(d)
Students
General, [49, 50]; 86.40(a) and (b)
Pregnancy and related conditions; [50]; 86.40(b) (1) to (5)
Class Participation, [50, 55, 58]; 86.40(b) (1)
Physical certification, [50]; 86.40(b) (2)
Special class, [50]; 86.40(b) (3)
Temporary leave, [50]; 86.40(b) (4), (5)
Private Undergraduate Professional Schools, [30]; 86.15(d)
Purpose of Regulation, [13]; 86.1

R

Real Property, 86.2(g)
Recruitment
Employment
Nondiscrimination, [83, 91]; 86.53(a)

Department of Health and Human Services

§ 87.1

Patterns, 86.53(b)
Student
Nondiscrimination, [34, 35]; 86.23(a)
Recruitment at certain institutions, 86.23(b)
Religious Organizations
Application, [29, 28]; 86.12(a)
Exemption, [26]; 86.12(b)
Remedial and Affirmative Actions, [16, 17, 24]; 86.3

S

Scholarships, see “Financial Assistance”, 86.37
Self-evaluation, [16, 22]; 86.3(c) (d)
Surplus Property (see Transfer of Property 86.5)
Duration of obligation 86.4(b)
Real Property 86.4(b) (1)

T

Textbooks and curricular materials, [52, 79, 80]; 86.42
Termination of funds, [10, 11]
Transfer of property, 86.5
Transition Plans
Content of plans, 86.17(b)
Different from Adjustment period, [78]; 86.41(d)
Submission of plans, 86.17(a)

APPENDIX A TO PART 86—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS [NOTE]

NOTE: For the text of these guidelines, see 45 CFR part 80, appendix B.
[44 FR 17168, Mar. 21, 1979]

PART 87—EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS

Sec.
87.1 Discretionary grants
87.2 Formula and block grants

AUTHORITY: 5 U.S.C. 301.

SOURCE: 69 FR 42593, July 16, 2004, unless otherwise noted.

§ 87.1 Discretionary grants.

(a) This section is not applicable to the programs governed by the Charitable Choice regulations found at 42 CFR part 54a.

(b) Religious organizations are eligible, on the same basis as any other organization, to participate in any Department program for which they are

otherwise eligible. Neither the Department nor any State or local government and other intermediate organizations receiving funds under any Department program shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization’s religious character or affiliation. As used in this section, “program” refers to activities supported by discretionary grants under which recipients are selected through a competitive process. As used in this section, the term “recipient” means an organization receiving financial assistance from an HHS awarding agency to carry out a project or program and includes the term “grantee” as used in 45 CFR Parts 74, 92, and 96.

(c) Organizations that receive direct financial assistance from the Department under any Department program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

(d) A religious organization that participates in the Department-funded programs or services will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from the Department to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization may use space in its facilities to provide programs or services funded with financial assistance from the Department without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from the Department retains its authority over its internal governance, and it may retain