

§ 1211.300

36 CFR Ch. XII (7-1-05 Edition)

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such 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;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(1) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(2) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) 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

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) *Program or activity* does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a “program or activity” subject to these Title IX regulations if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

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

§ 1211.300 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 §§1211.300 through §§1211.310 apply, except as provided in §1211.225 and §1211.230.

(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 §§1211.300 through 1211.310 apply 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 that 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 that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *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 §§ 1211.300 through 1211.310 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;

(3) Subject to § 1211.235(d), shall treat disabilities related to pregnancy, childbirth, 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 these Title IX regulations.

§ 1211.305 Preference in admission.

A recipient to which §§ 1211.300 through 1211.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that 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 §§ 1211.300 through 1211.310.

§ 1211.310 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which §§ 1211.300 through 1211.310 apply 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 § 1211.110(a), and may choose to undertake such efforts as affirmative action pursuant to § 1211.110(b).

(b) *Recruitment at certain institutions.* A recipient to which §§ 1211.300 through 1211.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that 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 §§ 1211.300 through 1211.310.

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

§ 1211.400 Education programs or activities.

(a) *General.* Except as provided elsewhere in these Title IX regulations, 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 that receives Federal financial assistance. Sections 1211.400 through 1211.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§ 1211.300 through 1211.310 do not apply, or an entity, not a recipient, to which §§ 1211.300 through 1211.310 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§ 1211.400 through 1211.455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex: