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Questions and Answers Regarding OCR's Interpretation of Title IX and Single Sex Scholarships, Clubs, and other Programs

The U.S. Department of Education's (Department) Office for Civil Rights (OCR) issues the following technical assistance document to describe how OCR has historically addressed issues regarding scholarships, fellowships, other forms of financial assistance, courses, clubs, extracurricular activities, school facilities, and other programs that impose a preference or restriction based on sex, with examples of how OCR has evaluated these issues upon receipt of complaints alleging sex discrimination. This document does not address OCR's regulations regarding athletics under 34 C.F.R. § 106.41 or athletic scholarships under 34 C.F.R. § 106.37(c).

This document is designed to assist educational institutions that receive federal financial assistance with meeting their civil rights obligations under Title IX of the Education Amendments of 1972 (Title IX). This question-and-answer document does not have the force and effect of law, and is not meant to bind the public or regulated entities in any way. This document is intended only to provide clarity to the public regarding existing requirements under legally binding statutory and regulatory requirements.

Question 1:

May a school offer a scholarship, fellowship, or other form of financial assistance, the title of which contains the name of a person—male or female—when the school does not impose any sex-based preference or restriction to determine the awardees? For example, is it permissible to offer either the *John Doe* or *Jane Doe Scholarship*, for which both men and women may apply on equal terms?

Answer:

Generally, yes. The general rule is that a school may not limit eligibility of financial aid, including scholarships, fellowships, and other forms of financial assistance ("scholarships"), on the basis of sex, nor otherwise limit individuals in the enjoyment of such opportunities based on their sex.¹

However, the name of a scholarship generally will not limit eligibility or otherwise discourage or dissuade participation by a reasonable person based on sex merely by including the name of a person in its title—even if that name is considered traditionally male or female.² For instance, OCR has declined to open complaints alleging a violation of Title IX in response to allegations involving the following titles of scholarships or fellowships, when there was no evidence that the school applied a preference or restriction based on sex:

- Elizabeth Cady Stanton Award

¹ 34 C.F.R. § 106.37(a)(1); 34 C.F.R. § 106.31(b)(7).

² 34 C.F.R. § 106.31(b)(7).

- Zora Neale Hurston Award

Question 2:

May a school offer a class focused on a particular sex? May an academic program or department have a sex-specific name like *Women’s Studies* or *Men’s Studies*?

Answer:

Generally, yes. Unless an exception applies, both sexes must be permitted to enroll in and participate in a course, academic program, or department, and the name or content of any course, academic program, or department must not discourage or dissuade a reasonable person (regardless of sex) from participation. However, a program or course open equally to both men and women does not violate Title IX simply because of its pedagogical orientation involving course material focused on one sex or the other. Thus, a university’s program or department of Women’s Studies will not raise a concern under Title IX simply for including “women” in its name or containing course material focused on women’s issues.³ Likewise, Title IX is not implicated when a school offers a course containing the name of a man or a woman such as *Jane Austen’s England* or *Henry the Navigator and the Age of Discovery*. For example, OCR has declined to open complaints alleging a violation of Title IX in response to allegations involving the following programs and departments, when there was no evidence that they involved a preference or restriction based on sex:

- Department of Women’s Gender and Sexual Studies
- Committee on the Status of Women in Medicine
- Women’s Studies

Question 3:

May a school actually impose a preference or restriction on the basis of sex with respect to a scholarship, fellowship, or other forms of financial assistance?

Answer:

Generally, no. As noted above, a school may not administer scholarships, fellowships or other forms of financial assistance that impose a preference or restriction on the basis of sex, with limited exceptions.⁴

One exception is that a school may administer or assist in the administration of a scholarship, fellowship, or other form of financial assistance established through a will, trust, bequest, or similar legal instrument which requires that awards be made to members of a particular sex specified in the legal instrument, so long as 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.⁵ To

³ See *Ripa v. Stony Brook Univ.*, 808 F. App’x 50, 51 (2d Cir. June 9, 2020).

⁴ 34 C.F.R. § 106.37(a).

⁵ 34 C.F.R. § 106.37(b). One other exception to this general rule is that Title IX does not apply to certain beauty pageant awards made to members of one sex. 20 U.S.C. § 1681(a)(9).

ensure that awards are appropriately non-discriminatory in their overall effect, a school must also develop and use procedures that comply with 34 C.F.R. § 106.37(b)(2).⁶

OCR has resolved complaints involving the following legal-instrument scholarships, because other awards offered by the recipient caused the overall effect of the awards not to discriminate on the basis of sex:

- The Arleen Amert Annual Scholarship
- The Dr. Cecilia Wittmayer Endowed Scholarship
- The Helen Walker Memorial Endowment
- The Madison Business and Professional Women’s Endowed Scholarship⁷

Question 4:

May a college or university offer forms of financial assistance or programs to only one sex as a remedial or affirmative action to overcome the effects or conditions which resulted in limited participation in an education program or activity by persons of that sex?

Answer:

In limited circumstances. While a school generally may not administer forms of financial assistance or programs that impose a preference or restriction on the basis of sex, there may be limited circumstances in which a school may take affirmative action with respect to forms of financial assistance or programs to overcome the effects of conditions which resulted in limited participation in its education program or activity by persons of a particular sex.⁸

In cases where a school chooses to discriminate on the basis of sex in scholarship allocation or other programs as a form of affirmative action, it must still avoid any resort to sex-based quotas.⁹ Nor may

⁶ See *Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting From Federal Financial Assistance*, 40 Fed. Reg. 24128, 24133 (June 4, 1975) (“[T]he regulation requires institutions to award financial aid on the basis of criteria other than sex. Once those students eligible for financial aid have been identified, the financial aid office may award aid from both sex-restrictive and non-sex-restrictive sources. If there are insufficient sources of financial aid designated for members of a particular sex, the institution would be required to obtain the funds from other sources or to award less assistance.”). 34 C.F.R. § 106.37(b). Some schools may use a “pool and match” system for financial aid created by legal instruments such a will or other gift, where students apply to a unified pool of financial assistance, and the school then assigns sex-restricted awards to the applicants, as necessary to satisfy Title IX. OCR will review a school’s pool-and-match policies and practices on a case-by-case basis to determine whether they comply with 34 C.F.R. § 106.37(b)(2). A pool-and-match or similar system may not be used unless the financial aid is created by a will, trust, bequest, or similar legal instrument, or by acts of a foreign government which requires that awards be made to members of a particular sex. 34 C.F.R. § 106.37(a) and (b). A school may only use a pool-and-match or similar system when administering a sex-restricted donor scholarship, i.e., one that requires awards be made to members of a particular sex. A pool-and-match or similar system is inapplicable to donor scholarships with a sex preference.

⁷ *Dakota State University*; No. 07-19-2126 (OCR March 26, 2020), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/07192126-a.pdf>.

⁸ 34 C.F.R. § 106.3(b). Thus, for example, OCR has acknowledged that “[s]chools *might*, under certain circumstances, provide scholarships to women in programs that are traditionally dominated by men (such as certain STEM fields).” U.S. Dep’t of Educ., Office for Civil Rights, *Title IX and Access to Courses and Programs in Science, Technology, Engineering, and Math (STEM)*, at 20 (October 2012), <https://www2.ed.gov/about/offices/list/ocr/presentations/stem-t9-powerpoint.pdf> (emphasis in original). The Title IX regulations also require recipients to take any remedial actions that the Assistant Secretary for Civil Rights may deem necessary to remedy a violation of Title IX. 34 C.F.R. § 106.3(a).

⁹ *Cf. Hill v. Ross*, 183 F.3d 586, 590 (7th Cir. 1999) (An affirmative action plan may not “jettison the ... constitutional anti-discrimination principle and establish a quota system.”).

it rely on national statistics as evidence of limited participation, but must instead clearly articulate why the particular sex-based scholarship or program was necessary to overcome the conditions in its own education program or activity which resulted in limited participation *therein*. As part of this analysis, OCR evaluates whether the classification based on sex was supported by an “exceedingly persuasive justification,” based on a substantial relationship between the classification and an important governmental or educational objective.¹⁰

If OCR receives a complaint about a sex-restricted scholarship or program, and in response, the school seeks to invoke its ability to engage in affirmative action, OCR will require the school to support its justification with a specific assessment of the facts and circumstances surrounding the scholarship or other program. Additionally, OCR will analyze evidence of the conditions which led to limited participation by members of a particular sex in that school’s education program or activity, as well as whether the school’s purported remedial discrimination on the basis of sex is in fact directed at overcoming the effects of those conditions. The school’s justification for administering sex-restricted scholarships as an affirmative action may never rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.¹¹

Question 5:

Does the title or description of a scholarship, fellowship, or other form of financial assistance implicate Title IX if the content is reasonably perceived as stating that the school applies a preference or restriction to applicants based on sex even where no such preference or restriction is actually applied?

Answer:

Yes. If the title or description of a scholarship, fellowship, or other form of financial assistance (“scholarship”) may be reasonably perceived as sex-restricted, Title IX may be implicated.

For instance, where the title of a scholarship raises an inference that the school imposes a preference or restriction based on sex, OCR has required that schools clearly state in their public-facing communications (websites, catalogues, materials, promotional materials, recruiting materials, admissions and registrar information, etc.) that the scholarship is being offered without a preference or restriction based on sex.¹² Additionally, OCR has reviewed recipients’ scholarship applications, as well as awardee data, disaggregated by sex, to ensure that the school’s materials and non-discrimination policies have in fact been communicated effectively. OCR has dismissed complaints alleging that the following scholarships violated Title IX based on the title of a scholarship, after confirming that the school has communicated effectively that awards would not be made on the basis of sex:

- Center for Women and Gender Equity Non-Traditional Scholarship
- A Professional Development Award for Advancement of Women in Sport & Physical Activity

On the other hand, if the title or description of a school’s scholarship clearly indicates to a reasonable person that awards are restricted to one particular sex, and if there is no effective means to

¹⁰ *United States v. Virginia*, 518 U.S. 515, 533 (1996).

¹¹ *VMI*, 518 U.S. at 533 (explaining that a school’s justification for differential treatment “must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.”).

¹² A recipient must not use publications that state that the recipient discriminates on the basis of sex (unless such discrimination is lawful pursuant to the Title IX statute or regulations). 34 C.F.R. § 106.8(b)(2)(ii).

communicate otherwise, the school would be required to change the title or description, absent an applicable exception. In such cases, OCR will not consider application and awardee data, disaggregated by sex, to be relevant to determining whether a scholarship or fellowship is technically open to both males and females equally. For example, after a complaint was filed with OCR, one school resolved an allegation involving an “Award for Student Mothers” by voluntarily retitling it as an “Award for Student Parents.”

Question 6:

May a school advertise or promote third-party scholarships, fellowships, or other forms of financial assistance to its students if those scholarships impose a preference or restriction for students of one sex?

Answer:

Generally, no. Under Title IX, a recipient is prohibited from advertising or promoting (including by listing on the recipient’s website or by any other means) any scholarship, fellowship, or other form of financial assistance (“scholarship”) that discriminates on the basis of sex, even when the scholarship is administered by a third party, and not by or on behalf of the recipient.¹³

Additionally, as to any third-party scholarship that the school does promote or advertise, OCR expects that schools will take reasonable steps to verify that the sponsoring organization’s or person’s rules for determining awards do not, expressly or in fact, discriminate on the basis sex. OCR has accordingly resolved claims against schools that have listed on school websites the following scholarships that apply a sex-based preference or restriction to awardees by dismissing the complaints after the schools removed the sex-restrictive scholarships from school websites:

- Sioux Empire Rock-a-Betty’s Scholarship
- Megan E. Collins Memorial Award

Question 7:

May a school promote, sponsor, or partner with a third party that provides a non-funded fellowship, leadership, or other advancement program for its students that imposes a preference or restriction for students of one sex?

Answer:

In limited circumstances. A school generally may not provide significant assistance to a third-party organization or person that offers non-funded fellowship, leadership, or other advancement programs (“fellowships”) if those programs impose a preference or restriction on the basis of sex.¹⁴

Whether a school is providing significant assistance to an outside organization “will turn on the facts and circumstances of specific situations.”¹⁵ However, OCR has long interpreted “significant assistance” to include a school’s “giv[ing] an organization special status or privileges that it does not offer to all community organizations,” including “official recognition of the organization, the

¹³ 34 C.F.R. § 106.37(a)(2) (schools must not solicit, list, approve, provide facilities or services for, or assist any third party providing financial assistance to the school’s students in a manner that discriminates on the basis of sex).

¹⁴ 34 C.F.R. § 106.31(b)(6) (“A school may not aid or perpetuate discrimination 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.”).

¹⁵ 40 Fed. Reg. at 24132.

designation of faculty sponsors, or the use of campus facilities at less than fair market value.”¹⁶ There also may be other instances in which non-financial assistance given to an organization by a school may constitute significant assistance.¹⁷ Significant assistance may also involve the provision of funding to third-party groups. Schools must therefore avoid providing faculty sponsors, administrative staff, or other such support to organizations or individuals who sponsor third-party fellowships that discriminate on the basis of sex.¹⁸ However, simply advertising or publicizing the availability of a third-party fellowship that provides no financial support for student applicants does not constitute significant assistance under Title IX, although schools remain generally bound by 34 C.F.R. § 106.31. On this basis, OCR has dismissed claims against schools that did not provide any approval or support for the following third-party programs beyond listing them on their website:

- National Women’s Studies Association
- Society of Women Engineers
- Association for Women in Computing
- Accounting and Financial Women’s Alliance
- Women in Engineering Program

Question 8:

May private undergraduate institutions limit participation in their education programs or activities based on sex, as part of a general “admissions” policy that is exempt from Title IX?

Answer:

Generally, no. Excluding students from admission to an educational institution on the basis of sex is generally not permitted under Title IX, with a few exceptions. For example, Title IX does exempt from its prohibition on sex discrimination “admissions to [certain] educational institutions,” including those of private undergraduate institutions.¹⁹ This exemption regarding admissions, however, applies to the selection of individuals as students with regard to the “enrollment, membership, or matriculation” of those students at educational institutions, or at any of their schools, colleges, or departments.²⁰ OCR has accordingly opened investigations when complaints have alleged that other programs or activities at those institutions—such as mentorship or outreach programs or summer camps—have restricted or otherwise limited participation on the basis of sex.

Question 9:

¹⁶ Letter from Joseph A. Califano, Jr., Secretary, Department of Health, Education, and Welfare, to the Hon. Trent Lott, Member, U.S. House of Representatives (Dec. 27, 1978).

¹⁷ Brief for Respondent Secretary of Education, at 6-7, sub nom. *Iron Arrow Honor Society v. Schweiker*, 458 U.S. 1102 (1982) (No. 81-835).

¹⁸ 40 Fed. Reg. at 24132; see also *Education Programs and Activities Receiving or Benefiting From Federal Financial Assistance: Nondiscrimination on the Basis of Sex*, 39 Fed. Reg. 22228, 22229 (June 20, 1974) (same).

¹⁹ See 20 U.S.C. §§ 1681(a)(1) (“[I]n regard to admissions to educational institutions, this section [i.e., Title IX’s general prohibition against discrimination] shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education). See also 34 C.F.R. §§ 106.15(d), (e).

²⁰ 20 U.S.C. § 1681(a)(1) (prohibiting sex discrimination in “admissions” only to certain “educational institutions,” not including private institutions of higher education); 34 C.F.R. § 106.2(q) (defining “admission” under Title IX to “mean[] the 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”).

May an elementary or secondary school offer or sponsor a class or extracurricular activity that is open to students of only one sex?

Answer:

This is permissible in limited circumstances. The general rule under Title IX is that a school may not exclude, separate, deny benefits to, or otherwise treat differently any person on the basis of sex in its education programs or activities—including classes and extracurricular activities—unless expressly permitted to do so under Title IX or the Department’s implementing regulations. The Department’s Title IX regulations identify the following categories for which a recipient may intentionally separate students by sex: (a) contact sports in physical education classes; (b) physical education classes and activities grouped by ability; (c) classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality; and (d) choruses, to the extent that requirements based on vocal range or quality may result in a chorus or choruses of one or predominantly one sex.²¹

Absent one of those exceptions, a nonvocational elementary or secondary school may not offer a nonvocational single-sex class or extracurricular activity unless the school can demonstrate that: (i) each nonvocational single-sex class or extracurricular activity is based on the school’s important objective either to improve its students’ educational achievement through its overall established policies to provide diverse educational opportunities, or to meet the particular, identified educational needs of its students; and (ii) the single-sex nature of the class is substantially related to achieving that important objective.²² In addition to establishing a justification for offering a single-sex class, the school must implement its objective in an evenhanded manner; ensure that student enrollment in the single-sex class or extracurricular activity is completely voluntary; provide a substantially equal coeducational class or extracurricular activity in the same subject or activity; and conduct periodic evaluations to determine whether the class or extracurricular activity complies with Title IX, and if not, modify or discontinue the class or extracurricular activity to ensure compliance with Title IX.²³

With respect to extracurricular activities, additional exceptions apply to the general rule of non-discrimination on the basis of sex. For example, Title IX permits schools to sponsor father-son or mother-daughter activities; however, if such activities are provided for students of one sex, opportunities for reasonably comparable activities must be provided for students of the other sex.²⁴ Furthermore, Title IX’s non-discrimination obligations do not apply to the YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls, as well as membership practices of other voluntary youth service organizations which are exempt from taxation,²⁵ nor to the programs or activities of Boys State/Nation and Girls State/Nation conferences, including selection of students to attend such conferences.²⁶

Generally, a school district must not provide significant assistance to a third party offering a program or activity that discriminates on the basis of sex. However, because Title IX does not apply to the membership practices of voluntary youth service organizations (such as YMCA, YWCA, Girl Scouts,

²¹ 34 C.F.R. § 106.34(a).

²² 34 C.F.R. § 106.34(b)(1); *see also* [Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities \(Single Sex Q&A\) 4 \(December 1, 2014\)](https://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf), <https://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

²³ *See* Single Sex Q&A at 5.

²⁴ 20 U.S.C. § 1681(a)(8).

²⁵ 20 U.S.C. § 1681(a)(6)(B); 34 C.F.R. § 106.14.

²⁶ 20 U.S.C. § 1681(a)(7).

or Boy Scouts), a school district that provides assistance (whether significant assistance, financial or non-financial assistance, or otherwise) to such an organization would therefore not violate Title IX's general prohibition against excluding students from programs on the basis of sex. In order to qualify for this exemption, however, the youth service organization must meet several requirements.²⁷ Membership in the organization must be voluntary (e.g., participation may not be required as part of a class, and students may not be automatically enrolled), traditionally limited to members of one sex, principally limited to persons under nineteen years old, and the organization's program must include a service component. Furthermore, if a recipient does provide significant assistance to a voluntary youth service organization, the school still must ensure females and males have comparable educational opportunities overall.

Question 10:

May a college or university separate or exclude individuals on the basis of sex from academic or extracurricular activities?

Answer:

Generally, a college or university may not provide or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation by any of its students on the basis of sex.²⁸ In the context of academic instruction, the Title IX regulations include three exceptions to the general prohibition on separating students based on sex, applicable to colleges and universities: (1) contact sports in physical education classes; (2) grouping by ability in physical education classes; and (3) choruses, to the extent that requirements based on vocal range or quality may result in a chorus or choruses of one or predominantly one sex.²⁹ Unless the course or program falls within one of these three categories, a college or university is generally prohibited from separating students on the basis of sex.

With respect to extracurricular activities, additional exceptions to the general rule apply. For example, Title IX permits father-son or mother-daughter activities at all schools, including colleges and universities; however, if those activities are provided for students of one sex, opportunities for reasonably comparable activities must be provided for students of the other sex³⁰ Furthermore, Title IX's non-discrimination obligations do not apply to the membership practices of tax-exempt social fraternities and sororities (where the active membership consists primarily of students at institutions of higher education),³¹ nor to the YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls, nor to other voluntary youth service organizations that are tax-exempt,³² nor to the programs or activities of Boys State/Nation and Girls State/Nation conferences, including selection of students to attend such conferences.³³

OCR has required that institutions of higher education ensure that a program or activity is coeducational (that is, open to members of both sexes) where the title of an academic or extracurricular

²⁷ 20 U.S.C. § 1681(a)(6)(B); 34 C.F.R. § 106.14.

²⁸ 34 C.F.R. § 106.34(a). Notably, some schools maintain an applicable religious exemption or permissibly operate as single-sex institutions, which could affect the manner in which these regulations apply to such institutions. *Id.* (“Except as provided for in this section or otherwise in this part ...”).

²⁹ 34 C.F.R. § 106.34(a)(1-2, 4).

³⁰ 20 U.S.C. § 1681(a)(8).

³¹ 20 U.S.C. § 1681(a)(6)(A); 34 C.F.R. § 106.14.

³² 20 U.S.C. § 1681(a)(6)(B); 34 C.F.R. § 106.14.

³³ 20 U.S.C. § 1681(a)(7).

activity raises an inference that the school imposes a preference or restriction based on sex. OCR has required institutions to implement strategies (including review of the design and content of their website and review of the procedures for promotion of and recruitment for the activity) to ensure that the institutions are communicating effectively to the university community and the public that the activity, notwithstanding the name, is open to all students and participants regardless of sex.³⁴

Question 11:

Will a school-sponsored or recognized club, group, organization, or other program for students implicate Title IX if the club’s name suggests that it applies a preference or restriction for participation based on sex even though the club is in fact open to all students regardless of sex?

Answer:

Yes. As to all recipients (i.e., school districts as well as institutions of higher education), if the name of a school-sponsored or recognized club, group, organization, or similar program for students (“school-sponsored club”) may be reasonably perceived as imposing a preference or restriction on members or participants based on sex, Title IX may be implicated.³⁵

In cases where the name of a school-sponsored club has raised an inference that the school imposes a preference or restriction based on sex, OCR has required that schools clearly state in their public-facing communications (websites, catalogues, materials, promotional materials, recruiting materials, admissions and registrar information, etc.) that membership or participation in the school-sponsored club is not limited by sex. Thus, for example, OCR has required schools to communicate effectively to their respective communities and the public that school-sponsored clubs do not limit participation or affiliation based on sex, and are open to all students regardless of sex, despite their name. OCR has accordingly dismissed complaints or found insufficient evidence in cases alleging that a school sponsoring the following organizations violated Title IX based on the club names, after determining that the school communicated effectively that the clubs were open to all students, regardless of sex:

- Society of Women Engineers (SWE) Student Chapter
- Women in Science
- Environmental Women

As noted above, Title IX does not apply to the membership practices of fraternities and sororities, nor to the YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls, or other voluntary youth service organizations, nor to the programs or activities of Boys State/Nation and Girls State/Nation conferences.

Question 12:

³⁴ *Duke University*, No. 11-19-2224 (OCR Nov. 5, 2020),

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11192224-a.pdf>.

³⁵ If a club is not officially recognized or sponsored by a school, Title IX is implicated only when the school’s involvement is “so significant that the activities of the [club] are fairly imputable to the [school] itself.” Brief for Respondent Secretary of Education, at 6-7, *sub nom. Iron Arrow Honor Society v. Schweiker*, 458 U.S. 1102 (1982) (No. 81-835) (so explaining 34 C.F.R. § 106.31(b)(6)).

May a school promote, sponsor, or advertise an academic or extracurricular program offered to students or employees by a third party if that program imposes a preference or restriction based on sex?

Answer:

In limited circumstances. Schools generally may not provide significant assistance to a third-party organization or person that offers academic or extracurricular programs if those programs impose a preference or restriction on the basis of sex.³⁶ Whether a school is providing significant assistance to an outside organization “will turn on the facts and circumstances of specific situations.”³⁷ However, OCR has long interpreted “significant assistance” to include a school’s “giv[ing] an organization special status or privileges that it does not offer to all community organizations,” including “official recognition of the organization, the designation of faculty sponsors, or the use of campus facilities at less than fair market value.”³⁸ There may be other instances in which a school’s non-financial support for an organization constitutes significant assistance. Significant assistance may also involve the provision of funding to third-party groups.³⁹ Recipients must therefore generally avoid providing faculty sponsors, administrative staff, or other such support to third-party academic or extracurricular programs offered by organizations that discriminate on the basis of sex. However, simply advertising (by listing on the school’s website or otherwise) the availability of an academic, extracurricular, or other program offered by third party that provides no financial support for the school’s students is unlikely to violate Title IX.

Moreover, as noted above, Title IX does not apply to the membership practices of social fraternities and sororities,⁴⁰ voluntary youth service organizations (such as the YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls),⁴¹ nor to Boys State/Nation and Girls State/Nation conferences.⁴² Schools are permitted to provide significant assistance (whether financial or otherwise) to, and to advertise or promote, these types of organizations even when the organization’s programs or activities are restricted to students of one sex, so long as the school offers “comparable opportunities” to male and female students.⁴³

Question 13:

May a school restrict use of school facilities or property based on sex?

Answer:

Generally, no. Title IX prohibits a school from restricting use of its facilities or property (“facilities”) to students based on sex, although Title IX recognizes certain limited exceptions to this general rule. For example, a school can provide housing to students of one sex so long as it also provides housing

³⁶ 34 C.F.R. § 106.31(b)(6) (schools must not provide “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”).

³⁷ 40 Fed. Reg. at 24132.

³⁸ Letter from Joseph A. Califano, Jr., Secretary, Department of Health, Education, and Welfare, to the Hon. Trent Lott, Member, U.S. House of Representatives (Dec. 27, 1978).

³⁹ *Education Programs and Activities Receiving or Benefiting From Federal Financial Assistance: Nondiscrimination on the Basis of Sex*, 39 Fed. Reg. 22228, 22229 (June 20, 1974) (noting “financial support by the recipient” school as one of several criteria that OCR would use to assess whether the school is providing a third party significant assistance).

⁴⁰ 20 U.S.C. § 1681(a)(6); 34 C.F.R. § 106.14.

⁴¹ 20 U.S.C. § 1681(a)(6); 34 C.F.R. § 106.14.

⁴² 20 U.S.C. § 1681(a)(7).

⁴³ [Dear Colleague Letter: Voluntary Youth Service Organizations](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201512-voluntary-youth-service-organizations.pdf), at 6 (Dec. 15, 2015), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201512-voluntary-youth-service-organizations.pdf>.

that is, on the whole, proportionate in quantity, quality, and cost to students of the other sex.⁴⁴ A school can also provide separate bathroom, locker room, and shower facilities on the basis of sex, so long as such facilities provided for students of one sex are comparable to such facilities provided for students of the other sex.⁴⁵

In cases where a recipient does not actually exclude students of one sex, but the name of the facility raises an inference that the school imposes a preference or restriction based on sex for use of or access to such facilities, OCR has required that schools clearly state in their public-facing communications (websites, catalogues, materials, promotional materials, recruiting materials, admissions and registrar information, etc.) that access to the facility is not limited on the basis of sex. Thus, for example, OCR has dismissed complaints or found insufficient evidence in cases alleging that a university’s “Women’s Center” violated Title IX based on its name, after determining that the school communicated effectively that the Women’s Center was open to all students regardless of sex. On the other hand, OCR has opened an investigation into whether a university that offered a designated “women’s only” workout space in its gym facilities violated Title IX by restricting that space to members of only one sex.

If you have questions for the Office for Civil Rights (OCR), want additional information or technical assistance, or believe that a school is violating federal civil rights law, visit OCR’s website at www.ed.gov/ocr, or the Department’s Title IX page at www.ed.gov/titleix. You may contact OCR at (800) 421-3481 (TDD: 800-877-8339), ocr@ed.gov, OCR’s Outreach, Prevention, Education and Non-discrimination (OPEN) Center at OPEN@ed.gov, or e-mail the OPEN Center with additional questions about the Title IX regulations at T9questions@ed.gov. You may also fill out a complaint form online at <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

⁴⁴ 34 C.F.R. § 106.32.

⁴⁵ 34 C.F.R. § 106.33.