

From: Eleanor Dearman
To: Joy Baskin

No, I appreciate you geeking out. This is very helpful! Thank you!

From: Joy Baskin
To: Eleanor Dearman

Eleanor,

I fear you are going to think I am the biggest geek, but I did want to share one part of the Title IX regulations that speaks to employment in educational programs, Subpart E (text below). Your question reminded me to check it, and it is rather broad, but if you look at the footnotes in the OCR Dear Colleague Letter (link below), you will see that this Subpart is not cited or discussed in the body of the letter. I think it is fair to say that the letter was written about accommodations for students, and not employees or visitors.

Sorry for geeking out.

Joy

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

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

§ 106.51 Employment.

(a) General. (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) Application. The provisions of this subpart apply to:

- (1) Recruitment, advertising, and the process of application for employment;
- (2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;
- (3) Rates of pay or any other form of compensation, and changes in compensation;

- (4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;
- (5) The terms of any collective bargaining agreement;
- (6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;
- (7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
- (8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;
- (9) Employer-sponsored activities, including those that are social or recreational; and
- (10) Any other term, condition, or privilege of employment.

From: Eleanor Dearman
To: Joy Baskin

Thank you so much! This is all very helpful. Have a nice evening.

From: Joy Baskin
To :Eleanor Dearman

Mon 5:38 PM
Hi Eleanor,

The text of federal regulation 34 CFR 106.31 interpreting Title IX is attached below. As you can see, Title IX regulations talk specifically about “aid, benefit, or service to a student” (not visitors or others). For this reason, the OCR/DOJ guidance speaks only about prohibiting discrimination against students on the basis of sex.

As a post script, I would reiterate that visitors’ access to school campuses is quite limited. Visitors are not generally free to roam campuses. Regardless of any concept of nondiscrimination, a school official is certainly authorized to stop and ask a visitor about their purpose for being on campus. Moreover, a school official who observes an adult who appears to be one gender entering a student restroom of the opposite gender may unquestionably stop the individual and seek clarification of the adult’s purpose in entering.

Thanks,
Joy

§ 106.31 Education programs or activities.

(a) *General.* Except as provided elsewhere in this part, 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 which receives Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which subpart C does not apply, or (2) an entity, not a recipient, to which subpart C would not apply if the entity were a recipient.

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

- (1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
- (2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
- (3) Deny any person any such aid, benefit, or service;
- (4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;
- (5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
- (6) Aid or perpetuate discrimination against any person 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;
- (7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.