§ 86.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

§ 86.35 Access to schools operated by L.E.A.s.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

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

§ 86.36 Counseling and use of appraisal and counseling materials.

(a) Counseling. A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) Use of appraisal and counseling materials. A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) Disproportion in classes. Where a recipient finds that a particular class
contains a substantially dispropor-
tionate number of individuals of one
sex, the recipient shall take such ac-
tion as is necessary to assure itself
that such disproportion is not the re-
sult of discrimination on the basis of
sex in counseling or appraisal mate-
rials or by counselors.
(Secs. 901, 902, Education Amendments of
1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.37 Financial assistance.

(a) General. Except as provided in
paragraphs (b) and (c) of this section,
in providing financial assistance to any
of its students, a recipient shall not: (1)
On the basis of sex, provide different
amount or types of such assistance,
limit eligibility for such assistance
which is of any particular type or
source, apply different criteria, or oth-
erwise discriminate; (2) through solici-
tation, listing, approval, provision of
facilities or other services, assist any
foundation, trust, agency, organiza-
tion, or person which provides assist-
ance to any of such recipient’s students
in a manner which discriminates on
the basis of sex; or (3) apply any rule or
assist in application of any rule con-
cerning eligibility for such assistance
which treats persons of one sex dif-
ferently from persons of the other sex
with regard to marital or parental sta-
tus.

(b) Financial aid established by certain
legal instruments. (1) A recipient may
administer or assist in the administra-
tion of scholarships, fellowships, or
other forms of financial assistance es-
tablished pursuant to domestic or for-
(eighty) wills, trusts, bequests, or similar
legal instruments or by acts of a for-
eign government which requires that
awards be made to members of a par-
ticular sex specified therein; Provided,
that the overall effect of the award of
such sex-restricted scholarships, fel-
lowships, and other forms of financial
assistance does not discriminate on the
basis of sex.
(2) To ensure nondiscriminatory
awards of assistance as required in
paragraph (b)(1) of this section, recipi-
ents shall develop and use procedures
under which:
(1) Students are selected for award of
financial assistance on the basis of
nondiscriminatory criteria and not on
the basis of availability of funds re-
stricted to members of a particular sex;
(ii) An appropriate sex-restricted
scholarship, fellowship, or other form
of financial assistance is allocated to
each student selected under paragraph
(b)(2)(i) of this section; and
(iii) No student is denied the award
for which he or she was selected under
paragraph (b)(2)(i) of this section be-
cause of the absence of a scholarship,
fellowship, or other form of financial
assistance designated for a member of
that student’s sex.

(c) Athletic scholarships. (1) To the ex-
tent that a recipient awards athletic
scholarships or grants-in-aid, it must
provide reasonable opportunities for
such awards for members of each sex in
proportion to the number of students of
each sex participating in inter-
scholastic or intercollegiate athletics.
(2) Separate athletic scholarships or
grants-in-aid for members of each sex
may be provided as part of separate
athletic teams for members of each sex
to the extent consistent with this para-
graph and §86.41.

(Secs. 901, 902, Education Amendments of
1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and
L. 93–380, 88 Stat. 484)

[40 FR 24128, June 4, 1975; 40 FR 39506, Aug.
28, 1975]

§ 86.38 Employment assistance to stu-
dents.

(a) Assistance by recipient in making
available outside employment. A recipi-
ent which assists any agency, organiza-
tion or person in making employment
available to any of its students:
(1) Shall assure itself that such em-
ployment is made available without
discrimination on the basis of sex; and
(2) Shall not render such services to
any agency, organization, or person
which discriminates on the basis of sex
in its employment practices.

(b) Employment of students by recipi-
ents. A recipient which employs any of
its students shall not do so in a manner
which violates Subpart E of this part.

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