

## Office for Civil Rights, Education

## § 106.71

### § 106.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question.

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

EFFECTIVE DATE NOTE: At 85 FR 30579, May 19, 2020, § 106.59 was amended by removing the parenthetical authority citation at the end of the section, effective Aug. 14, 2020.

### § 106.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss or Mrs.”

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, 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 this part.

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

EFFECTIVE DATE NOTE: At 85 FR 30579, May 19, 2020, § 106.60 was amended by removing the parenthetical authority citation at the end of the section, effective Aug. 14, 2020.

### § 106.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide 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.

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

EFFECTIVE DATE NOTE: At 85 FR 30579, May 19, 2020, § 106.61 was amended by removing the parenthetical authority citation at the end of the section, effective Aug. 14, 2020.

### § 106.62 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

EFFECTIVE DATE NOTE: At 85 FR 30578, May 20, 2020, § 106.62 was added, effective Aug. 14, 2020.

## Subpart F—Procedures [Interim]

### § 106.71 Procedures.

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 34 CFR 100.6–100.11 and 34 CFR, part 101.

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

EFFECTIVE DATE NOTE: At 85 FR 30578, May 20, 2020, Subpart F was revised, effective Aug. 14, 2020. For the convenience of the user, the revised text is set forth as follows:

## Subpart F—Retaliation

### § 106.71 Retaliation.

(a) *Retaliation prohibited.* No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or

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this part, constitutes retaliation. The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under § 106.8(c).

(b) *Specific circumstances.* (1) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of this section.

(2) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under paragraph (a) of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

### § 106.72 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

## Subpart G—Procedures

SOURCE: 85 FR 30579, May 19, 2020, unless otherwise noted.

EFFECTIVE DATE NOTE: At 85 FR 30579, May 19, 2020, subpart G was added, effective Aug. 14, 2020.

### § 106.81 Procedures.

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 34 CFR 100.6–100.11 and 34 CFR part 101. The definitions in § 106.30 do not apply to 34 CFR 100.6–100.11 and 34 CFR part 101.

### § 106.82 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of

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the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

### SUBJECT INDEX TO TITLE IX PREAMBLE AND REGULATION<sup>1</sup>

EFFECTIVE DATE NOTE: At 85 FR 30579, May 19, 2020, the Subject Index to Title IX Preamble and Regulation was removed, effective Aug. 14, 2020.

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<sup>1</sup>Preamble paragraph numbers are in brackets [ ].