

**Division 15
Discrimination**

580-015-0005

Assistance to Organizations

No institution or division shall recognize, register or otherwise provide assistance to any organization that discriminates in its membership on the basis of age, disability, national origin, race, marital status, religion, sex or sexual orientation, except that institutions or divisions may provide assistance to organizations exempted under Title IX of the Educational Amendments of 1972 from discriminating on the basis of sex in their membership policies.

580-015-0010

Definition of Discrimination

For the purposes of OAR 580-015-0010 to 580-015-0105, the terms:

- (1) "Discrimination" means any act that either in form or operation, and whether intended or unintended, unreasonably differentiates among persons on the basis of age, disability, national origin, race, marital status, religion, sex or sexual orientation.
- (2) "Sexual harassment" means any sexual advance, any request for sexual favors or other verbal or physical conduct of a sexual nature by an employee when:
 - (a) Submission to such advances, requests or conduct is made either explicitly or implicitly a term or condition of a student's employment or academic experience; or
 - (b) Submission to or rejection of such advances, requests or conduct by a student is used as a basis or condition for employment and/or academic decisions affecting the student; or
 - (c) Such conduct interferes with the work or academic performance of a student because it has created an intimidating, hostile or offensive working or academic environment for the student who is the object of the conduct and a reasonable person of that student's gender would have been affected similarly to the student.
- (3) "Other prohibited harassment" means verbal or physical conduct by an employee based on a student's age, disability, national origin, race, marital status, religion or sexual orientation when such conduct interferes with the work or academic performance of the student who is the object of the conduct because it has created an intimidating, hostile or offensive working or academic environment for the student and a reasonable person of the student's age, disability, national origin, race, marital status, religion or sexual orientation would have been affected similarly to the student.

580-015-0015

Discrimination Prohibited in All Higher Education Programs, Services and Interschool Activities

No person in Oregon shall be subjected to discrimination in any public university program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by monies appropriated by the Legislative Assembly of the State of Oregon. Each public university shall promptly adopt and publicize, and shall maintain, a procedure for redressing the grievances of persons who are subject to discrimination. OAR 580-015-0010 to 580-015-0105 do not apply to claims of discrimination in employment, promotion, tenure or termination of employment except student employment as provided in 580-015-0065(1).

Admissions

- (1) No person shall, on a prohibited basis, be denied admission or be subject to discrimination in admission.
- (2) Each school, department or college in any public university, that has an independent admissions process, or one supplementary to the public university admissions process, is considered an administratively separate unit for admission purposes and may not discriminate unreasonably on any of the prohibited bases (i.e., age, sex, sexual orientation, marital status, disability, national origin, race, religion).
- (3) No test or other criterion for admission that unreasonably differentiates among individuals on a prohibited basis shall be used, unless the use of the test or criterion is shown to be a valid means of predicting success in the educational program, and other suitable tests or criteria not having such an adverse effect are shown to be unavailable.
- (4) No preference in admission shall be given one person over another on a prohibited basis, such as by ranking individuals on a prohibited basis.
- (5) Numerical limitations on the number or proportion of persons to be admitted may not be established on a prohibited basis.
- (6) In making admissions decisions, a public university:
 - (a) Shall not apply any rule concerning marital, parental or family status of an applicant or student that treats individuals differently on a prohibited basis;
 - (b) Shall not consider pregnancy, childbirth, termination of pregnancy or recovery therefrom to determine eligibility for admission, unless on a case-by-case basis the health of an individual relates directly to the capacity to participate effectively in activities necessary to the program. Such determinations shall be treated no differently than other health conditions;
 - (c) Shall not make pre-admission inquiry as to marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs."

580-015-0030**Recruitment**

(1) In recruiting students, public universities shall not unreasonably differentiate among individuals on a prohibited basis.

(2) An public university shall not recruit primarily or exclusively from schools or other educational institutions that admit students predominantly on a prohibited basis, if such actions result in discriminatory enrollment.

580-015-0035**Educational Programs and Activities**

(1) No individual shall, on a prohibited basis, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other educational program or activity operated by the public university, or, although not operated by the public university, is required of students by the public university.

(2) In providing aid, benefit, or service to students, public universities shall not discriminate on a prohibited basis, except where differential treatment is not unreasonable within the meaning of ORS 659.150 and 659.155.

580-015-0040**Access to Course Offerings**

There shall be no unreasonable differentiation among individuals on a prohibited basis in access to classes, courses of study or other educational programs or activities offered by the public university, provided, however, that:

(1) Students may be grouped within physical education classes and activities by objectively measured ability. They may also be separated by sex within classes during participation in bodily contact sports. Curricula serving the particular activity needs of males or those of females may be offered, but enrollment may not be restricted on a prohibited basis.

(2) Physical education classes may use different standards for measuring skills and progress if use of a single standard would, on a prohibited basis, have an adverse effect on persons, or on the likelihood of their participation.

(3) Theater, dance, choral music and other artistic activities may differentiate participants in roles on the basis of sex if necessary to achieve specific artistic objectives.

580-015-0045**Counseling and Use of Appraisal and Counseling Materials**

(1) Public universities shall neither discriminate among students on a prohibited basis in assistance rendered in making educational or career choices, or in the counseling and guidance services offered, nor among applicants for admission if such services are offered.

(2) Students or applicants for admission involved in the appraisal or counseling process shall not be differentiated on a prohibited basis by the nature of tests and materials used, except or unless differentiated materials covering the same occupations and interest areas are shown to be essential to the elimination of bias with respect to age, sex, sexual orientation, marital status, disability, national origin, race and religion.

580-015-0050

Housing

Public universities offering housing facilities shall not, on a prohibited basis, unreasonably differentiate among applicants or students in housing fees charged or services or benefits offered in housing, except as provided below:

- (1) Separate housing may be provided for the separate sexes.
- (2) Available housing may be divided between men and women on the basis of the number of applicants for housing of each sex, provided the housing is comparable in quality and cost.
- (3) Qualifications for occupancy of family housing shall be the same for married women students as for married men students, and shall be the same for single parents of either sex.

580-015-0055

Comparable Facilities

- (1) Separate rest rooms, change and locker rooms, showers, baths and toilet facilities, provided on the basis of sex, must be reasonably comparable in convenience and quality.
- (2) Public universities should ensure reasonable access by persons with disabilities to facilities including classrooms, locker rooms, showers and rest rooms.

580-015-0060

Financial Assistance

- (1) In providing financial assistance to applicants or students, public universities shall not unreasonably differentiate on a prohibited basis, except as provided below:
 - (a) In determining the amount or types of assistance to be granted;
 - (b) In limiting eligibility for assistance that is of any particular type or source;
 - (c) In the application of criteria.
- (2) Public universities may not assist any person, organization or group in the administration of financial aid on a prohibited basis.
- (3) Public universities shall comply with implementing regulations of Title IX, Educational Amendments of 1972, with respect to administration of sex-restricted scholarships and fellowships.

(4) Public universities that award athletic scholarships or grants-in-aid must ensure that reasonable opportunity exists for members of each sex to participate in intercollegiate athletics. Athletic scholarships, unlike nonathletic scholarships, may be awarded on the basis of sex, inasmuch as separate teams are permitted.

580-015-0065

Employment Assistance to Students

(1) Public universities shall assure that nondiscriminatory policies are followed in student employment. Discrimination grievances arising out of student employment shall be addressed using the procedures required by or described in OAR 580-015-0015 and 580-015-0090 through 580-015-0155.

(2) Public universities shall not assist prospective employers or agencies known by them to discriminate on a prohibited basis in their recruitment, hiring or employment practices. Placement officers and other personnel who assist in the recruiting and hiring of students shall take steps to inform prospective employers of the requirements of nondiscrimination under the law.

580-015-0070

Health and Insurance Benefits and Services

(1) An public university, including student groups, may not offer to students a medical, hospital or accident policy, plan, benefit or service that unreasonably discriminates on a prohibited basis.

(2) Public universities may offer a benefit or service even though it is not used by the same proportion of students of one group as of another. When full-coverage health services are provided, basic gynecological care shall be provided.

(3) Whatever limits a health service establishes as to services offered shall not differentiate unreasonably among individuals on a prohibited basis.

580-015-0075

Marital or Parental Status

(1) Any rule dealing with marital, parental or family status must be applied equally to men and women students.

(2)(a) Public universities shall not discriminate against any student, or exclude any student from an educational program or activity, including any class or extracurricular activity on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity;

(b) Public universities may require the student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal educational program or activity so long as certification is required of all students for other physical or emotional conditions requiring the attention of a physician. In such cases, the public university

may require reasonable efforts by the affected individual to secure appropriate health insurance coverage or to hold the public university harmless from consequences flowing from error or misdiagnosis on the part of the student's physician.

(3) Pregnancy, termination of pregnancy or related conditions must be treated the same as other temporary disabilities. Whatever benefits and services are available to students who are temporarily disabled, including medical services and leaves of absence, shall apply equally to pregnancy-related disabilities.

(4) Public universities may maintain, on an elective basis only, educational programs or activities specifically for pregnant students. When such programs and activities are maintained, public universities shall assure that they are comparable in quality to those offered non-pregnant students.

(5) Public universities shall consider pregnancy and pregnancy-related conditions a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

580-015-0080

Athletics

(1) No person shall, on a prohibited basis, be excluded from participation in or be treated differently from another person, or otherwise be discriminated against in any intercollegiate, club, recreational or intramural athletics offered by the institution, except as provided below:

(a) Intercollegiate and club sports, where team selection is based on competitive skills, may have separate teams based on sex or physical disability;

(b) If only one team is offered in a noncontact sport, students may not, on a prohibited basis, be excluded from trying out;

(c) If only one team is offered in a bodily contact sport, members of the excluded sex need not be allowed to try out;

(d) Noncontact intramural and recreational sports, where team selection is not competitive, must be offered on a coeducational basis. Separate teams may be offered for contact intramural and recreational sports.

(2) Public universities shall not, in the provision of athletic opportunities, unreasonably differentiate among individuals on a prohibited basis.

(3) In assessing the total athletic opportunity provided, public universities shall be guided by regulations implementing Title IX of the Educational Amendments of 1972 and shall assess at least the following:

(a) Appropriateness of equipment and supplies;

- (b) Games and practice schedules;
- (c) Travel and per diem allowances;
- (d) Opportunity for coaching and academic tutoring;
- (e) Coaches and tutors;
- (f) Locker rooms, practice and competitive facilities;
- (g) Medical and training services;
- (h) Housing and dining facilities and services;
- (i) Publicity.

(4) Athletic expenditures need not be equal but the pattern of expenditures must not result in a disparate effect on opportunity. Institutions may not discriminate in the provision of necessary equipment, supplies, facilities, and publicity for sports programs.

580-015-0085

Textbooks and Curricular Materials

Nothing herein either prohibits or requires the use of any particular textbook or curricular materials. If, however, materials are found upon investigation to exert a discriminatory impact on the basis of age, sex, sexual orientation, marital status, disability, national origin, race or religion, public universities shall make a reasonable effort to make available supplemental alternative nondiscriminatory materials.

580-015-0090

Procedure for Reporting Discrimination

- (1) Each public university shall make available a person to serve as a grievance counselor to assist students and others in formulating and following up complaints of alleged prohibited discrimination.
- (2) Each public university shall designate a compliance officer to receive complaints of alleged noncompliance with OAR 580-015-0015. Reasonable efforts shall be made to give notice of the name, office address and telephone number of the grievance counselor and compliance officer to all applicants for and recipients of the services of each public university.
- (3) All complaints shall be made to the compliance officer at the respective public university and shall be put into writing by the compliance officer if not submitted in writing, and signed by the complainant. The complaint shall set forth the factual basis of the alleged noncompliance within 180 days, or 365 days if the complaint alleges sexual harassment or other prohibited harassment as defined by OAR 580-015-0010(2) and (3), from the date of the alleged noncompliance.

(4) Upon receipt of the complaint, the compliance officer shall promptly deliver copies of the complaint to the president of the public university or designee and to any individual respondents. The compliance officer shall retain a copy of the complaint in files established at the public university for that purpose.

580-015-0095

Exemption from Reprimand or Retaliatory Action

No individual filing a complaint or otherwise participating in any of the actions authorized under OAR 580-015-0010 through 580-015-0105 shall be subject to reprimand or retaliatory action by any public university for having participated in activities provided for under these Administrative Rules.

580-015-0100

Investigation of Complaints

(1) Within 30 days after receipt of the complaint, the public university shall complete such investigation of the matter as it deems necessary, order the correction of any noncompliance found to exist or to have occurred and transmit a report of the findings of its investigation and corrective action to the complainant and to the compliance officer with whom the complaint was filed.

(2) The 30-day period allowed under section (1) of this rule may be extended for good cause upon written notification to the complainant.

580-015-0105

Request of Hearing to the Higher Education Coordinating Commission

(1) Whenever the complainant is not satisfied with the report, or if no report is made within the time allotted, the complainant may request in writing that a hearing be held on the complaint. The request shall state the reasons for dissatisfaction. The request shall be filed with the compliance officer who shall forward a copy promptly to the Executive Director of the Higher Education Coordinating Commission or designee.

580-015-0160

Requirement of Prompt Attention to Complaints

It is the desire and direction of the Board that, in carrying out the duties imposed on them by OAR 580-015-0010 to 580-015-0155, the presidents, division heads, compliance officers, hearing officers and other personnel shall give high priority to the performance of such duties and shall proceed as expeditiously as possible to ascertain whether discrimination exists and to take curative measures.

580-015-0165

Students Unable Because of Religious Beliefs to Attend Classes on Certain Days

Any student who, because of religious beliefs, is unable to attend classes on a particular day shall be excused from attendance requirements and from any examination or other assignment on that

day. The student shall make up the examination or other assignment missed because of the absence.