

94-348 MAINE HUMAN RIGHTS COMMISSION
A Joint Rule with the
05-071 DEPARTMENT OF EDUCATION

Chapter 4: EQUAL EDUCATIONAL OPPORTUNITY

4.01 GENERALLY

A. Purpose

Pursuant to Title 5, M.R.S.A., §§ 4551 *et seq.*, as amended by P.L. 1983 c. 578, the Maine Human Rights Commission and the Commissioner of Education adopt this rule designed to assure nondiscrimination on the basis of sex in the educational institutions of the State of Maine.

B. Effect

This rule shall be accorded the full force and effect of interpretative administrative regulations.

C. Construction

- (1) Consistent with the public policy underlying the Maine Human Rights Act, this rule shall be liberally construed to accomplish the purposes of the governing legislation.
- (2) Should any provision or the application of any provision of this rule to any educational institution, be held invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or its application.

4.02 DEFINITIONS

All terms used in this rule, unless the context otherwise indicates, shall have the same meaning as in the Maine Human Rights Act, Title 5, M.R.S.A. §§ 4551, *et seq.*, and applicable provisions of Title 20-A.

- A. Commission: "Commission" shall mean the Maine Human Rights Commission.
- B. Educational institution: "Educational institution" shall mean any public school or educational program, any public post-secondary institution, and any private school or educational program approved for tuition purposes if both male and female students are admitted, and the governing body of each such school or

program. The governing body shall include, as appropriate, school committees, boards of directors of school administrative units, cooperative boards of vocational regions, the boards of trustees of the University of Maine and Maine maritime Academy, the State Board of Education for the vocational-technical institutes, the Commissioner of Education for schools in the unorganized territory and the Governor Baxter School for the Deaf, and boards of trustees or directors of private schools.

- C. Unlawful educational discrimination: "Unlawful educational discrimination" shall mean action on the basis of sex to:
- (1) Exclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic extracurricular, research, occupational training or other program or activity;
 - (2) Deny a person equal opportunity in athletic programs;
 - (3) Apply any rule concerning the actual or potential family or marital status of a person or to exclude any person from any program or activity because of pregnancy or related conditions;
 - (4) Deny admission to the institution or program or to fail to provide equal access to and information about an institution or program through recruitment; or
 - (5) Deny financial assistance availability and opportunity.
- D. Approved for tuition purposes: An institution "approved for tuition purposes" shall mean any school or educational program approved by the Commissioner of Education for the receipt of public funds pursuant to Title 20-A, Maine Revised Statutes, §§ 2951, 5104, 7252.

4.03 GENERAL REQUIREMENT OF NONDISCRIMINATION

A. Nondiscrimination

The right to freedom from discrimination on the basis of sex in public and publicly supported educational institutions is recognized and declared to be a civil right. This right includes the opportunity for an individual at an educational institution to participate in all academic and extra-curricular programs and related activities without discrimination on the basis of sex.

B. Affirmative Action

Remedial action which results in preferential treatment of one sex, undertaken pursuant to court order or a formal consent decree or settlement as the result of action by an authorized federal or state agency, shall not be unlawful educational discrimination for purposes of the Act.

Affirmative action resulting in preferential treatment of one sex, if undertaken pursuant to an affirmative action plan adopted by the governing body of the institution, shall be deemed not to be unlawful educational discrimination under the Act. Such affirmative action plans may be adopted in the absence of a finding of unlawful educational discrimination to overcome the effects of conditions of the past which have resulted in limited participation by persons of one sex and may involve special recruitment, counseling and other efforts to encourage the participation of members of that sex in programs or activities traditionally entered by the opposite sex. Neither sex can be entirely excluded from any activity by such affirmative action efforts. Nothing in this section, however, shall limit the ability of an educational institution to sponsor a single sex team in interscholastic or intercollegiate athletic competitions in compliance with § 4.11(C).

4.04 ADMISSIONS

A. General

No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission by any educational institution to which the Act applies.

B. Specific Prohibitions

- (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer or referral of admission, a educational institution shall not:
 - a. Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;
 - b. Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or
 - c. Otherwise treat one individual differently from another on the basis of sex.

- (2) Any standards used as part of the admissions process, including but not limited to testing, the use of recommendations and interviewing, to any public school shall not discriminate on the basis of sex.

4.05 RECRUITMENT

An educational institution shall not discriminate on the basis of sex in the recruitment of students. Written materials or recruitment activities used by an educational institution to recruit students shall not contain references suggesting the predominance of one sex or preference for one sex.

4.06 ACADEMIC PROGRAMS

A. Availability of Programs and Courses

Each and every academic program and course offered by an educational institution shall be open and available to students regardless of sex. Nothing herein shall be construed to prohibit the use of prerequisites that have been demonstrated to be essential to success in a given program or course. However, if participation in a program or course is dependent upon completion of a prerequisite which was previously limited to students of one sex, then all members of the previously excluded group shall be given the opportunity to acquire the prerequisites or be allowed to enter the program or course without such prerequisites. If it cannot be shown that a prerequisite is essential to success in a given program or course, the prerequisite shall be abolished.

B. Required Courses

The determination of what courses are required of any student shall be made without regard to sex.

C. Scheduling of Classes

The scheduling of students into classes shall not be done on the basis of sex, except as authorized in sections 4.09 and 4.18.

4.07 VOCATIONAL PROGRAMS

The assignment of students into vocational programs or courses, including cooperative education, apprenticeships or on-the-job training sites, shall not be done on the basis of sex. Each educational institution shall require cooperating employers, vocational trainers, and special contractors to pledge that opportunities will not be restricted on the basis of sex. Where there is reasonable evidence of discrimination on the basis of sex, responsible

officials of the educational institution shall take appropriate corrective action, including, but not limited to, terminating the relationship with the outside person.

4.08 PHYSICAL EDUCATION

A. Assignments

The assignment of students to physical education courses shall not be done on the basis of sex. This section does not prohibit the grouping of students in physical education classes by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

B. Effective Date

With respect to physical education courses at the secondary and postsecondary levels, the educational institution shall comply fully with this section as expeditiously as possible but in no event later than January 1, 1985.

4.09 HUMAN SEXUALITY

Portions of courses in elementary and secondary schools which exclusively treat the topic of human sexuality may be conducted in separate sessions for boys and girls.

4.10 VOCAL INSTRUCTION

Educational institutions may establish standards for participation based on vocal range or quality which result in a chorus or choruses of one sex so long as comparable alternative vocal musical opportunities are available to students of the opposite sex.

4.11 ATHLETICS

A. General

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by an educational institution.

B. Equal Opportunity

An educational institution which sponsors or participates in interscholastic, intercollegiate, club or intramural athletics shall provide an overall equal athletic opportunity for both sexes.

To provide equal opportunity in these programs, an institution must select sports and levels of competition which effectively accommodate the interests and abilities of both sexes and provide equal opportunities on a seasonal basis.

This section does not require all teams to be integrated or the provision of identical sports for both sexes.

In determining whether equal opportunities are available in athletics programs, the Commission shall consider whether the following are substantially equal:

- * The provision of equipment and supplies;
- * Scheduling of games and practice time;
- * Travel and per diem allowance;
- * Opportunity to receive coaching and academic tutoring;
- * Assignment of coaches, tutors and officials;
- * Provision of locker rooms, practice and competitive facilities;
- * Provision of medical and training machine facilities and services;
- * Provision of housing and dining facilities and services;
- * Provision of supportive services and benefits, including publicity, band and cheerleading support sponsored by the educational institution.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if an educational institution operates or sponsors separate teams will not constitute per se noncompliance with this section, but the Commission may consider the failure to provide necessary funds for teams of one sex in assessing general equality of opportunity.

C. Single-Sex Teams

An educational institution may sponsor single-sex team in interscholastic or inter-collegiate athletics competitions in the following instances:

- (1) The institution sponsors a team for each sex in the same sport.
- (2) The sport is boxing.
- (3) The educational institution establishes one team in a sport and, as a result of athletic competition for places on the team, or the lack of interest of students, only the members of one sex become members of the team.

In such a case, the educational institution must provide equal opportunity in athletics by sponsoring a team in another sport which effectively accommodates the interests and abilities of the opposite sex.

- (4) The educational institution establishes a single sex team in one or more sports in order to accommodate effectively the interests and abilities of one sex and to increase the general opportunities for participation by that sex.

This may be done where competition open to both sexes has or will likely result in an overall lessening of equal opportunities in athletics for one sex.

4.12 COUNSELING

A. Counseling

An educational institution shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants.

B. Use of Appraisal and Counseling Materials

An educational institution 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 would encourage members of one sex to enter programs or activities which are traditionally entered by the opposite sex.

4.13 COMPARABLE FACILITIES

An educational institution may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

4.14 HOUSING

A. Generally

An educational institution shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

B. Separate Housing Facilities

An educational institution may provide separate housing on the basis of sex. However, housing provided by an educational institution to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

- (1) Proportionate in quantity to the number of students of that sex applying for such housing, and
- (2) Comparable in quality and cost to the student.

4.15 FINANCIAL ASSISTANCE

A. General

Except as provided in subsections B and C of this section, an educational institution, in providing financial assistance to any of its students shall not:

- (1) On the basis of sex, provide different amount of types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;
- (2) Apply any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

B. Financial Aid Established by Certain Legal Instruments

An educational institution may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; provided that the aggregate of all the awards of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

C. Athletic Scholarships

- (1) To the extent that an educational institution 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 interscholastic 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 section.

4.16 EMPLOYMENT ASSISTANCE TO STUDENTS

A. Assistance by Educational Institution in Making Available Outside Employment

An educational institution which assists any agency, organization, business or person in making employment available to any of its students shall meet the following:

- (1) It shall take reasonable steps to assure that such employment is made available without discrimination on the basis of sex; and
- (2) It shall not render such services to any agency, organization, business or person which discriminates on the basis of sex in its employment practices; and shall issue that any employment recruitment activities are offered to both male and female students in a non-discriminatory manner.

4.17 HEALTH AND INSURANCE BENEFITS AND SERVICES

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, an educational institution shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would constitute discrimination on the basis of sex.

4.18 MARITAL OR PARENTAL STATUS

An educational institution shall not establish or implement any policy concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

B. Pregnancy and Related Conditions

- (1) An educational institution shall not unlawfully discriminate against any student, or exclude any student from any program or course activity on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom.
- (2) An educational institution may require such a student to obtain the certification of a physician that the student is able to continue participation in the regularly scheduled program, course or activity so long as such a certification is required of all students for other conditions which may require the attention of a physician.
- (3) An educational institution which operates a portion of its programs or activities separately for pregnant students, admission to which is voluntary on the part of the student as provided in paragraph (b) (1) of this section, shall ensure that the separate instruction is comparable to that offered to other students.
- (4) An educational institution shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit service, plan, or policy which such educational institution administers, operates, offers, or participates in with respect to students admitted to the institution's educational programs.
- (5) In the case of an educational institution which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, an educational institution shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as 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 which she held when the leave began.

Public schools, however, shall excuse students who are disabled by pregnancy, as an excusable absence pursuant to Title 20-A, section 5001-A (4).

- (6) Nothing in this rule shall prevent a school from providing educational programs/courses and related activities separately to pregnant students, who, with the consent of their parents, request to be excused from regular programs and activities.

4.19 SEXUAL HARASSMENT

Harassment on the basis of sex shall be unlawful educational discrimination within the meaning of Title 5, §4602. This shall include unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature in the following situations:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of a student's educational benefits;
- (2) Submission to or rejection of such conduct by a student is used as the basis for decisions on educational benefits;
- (3) Such conduct has the purpose or effect of substantially interfering with an individual's academic performance or creating an intimidating, hostile or offensive educational environment.

4.20 EXCLUSIONS

A. Social Fraternities and Sororities

This rule does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists of students at institutions of higher education.

B. Special Occasions or Events

This rule does not prohibit the occasional holding of special events organized for members of one sex, such as father-son, mother-daughter dinners.

C. Single Sex Organizations

This rule does not prohibit the single-sex membership practices of The Girl Scouts, Boy Scouts, Young Men's Christian Association, Young Women's Christian Association, Boys State, Girls State, or other such groups which may use the facilities of the educational institution.

EFFECTIVE DATE:

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