

HUSCH BLACKWELL

Advanced Title IX Training

Scholarships, Fellowships, and Sex-Restricted Programs

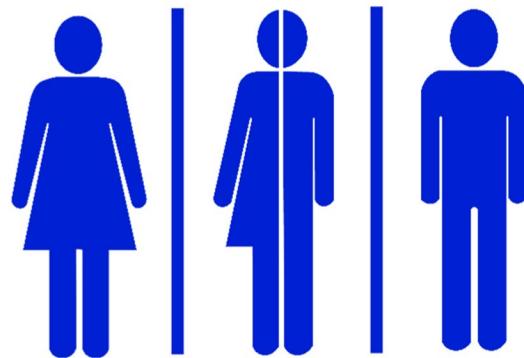
January 2026

Nature of Title IX

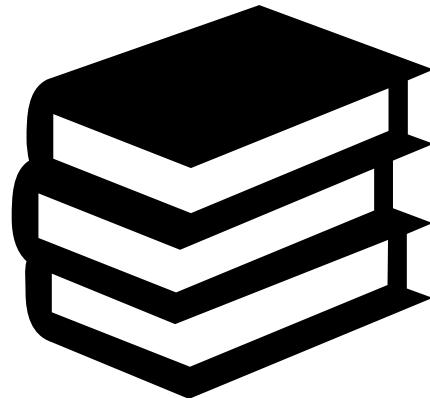
Title IX

“[N]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. . . .”

20 U.S.C. § 1681



Title IX Regulations



- Contained at 34 C.F.R. Part 106 (Department of Education)
- Regulations address a host of subjects, including general non-discrimination, scholarships, athletics, housing, employment, and sexual harassment response

Title IX Implementation



- U.S. Department of Education regulations
- Private lawsuits and related court decisions

Covered Entities



- Entities that receive federal financial assistance ***and*** that run education programs
- Includes colleges and universities that participate in federal student aid funding

Title IX's Scope

- Title IX applies to sex discrimination in the “education program or activity” of a federal funding recipient
 - Title IX defines “education program or activity” to include the “operations” of educational institutions



Education Programs and Activities

Admissions

Financial Aid

Athletics

Housing

Academics

Employment

Concerts,
Performances,
and Events on
Campus

Clinical Rotations
and Placements

Organized Trips
and Volunteer
Outings

Sponsored
Organization
Activities

Online Programs

Activities in
Property Owned
or Controlled by
the Institution

Religious Exemptions

- Title IX applies to religious educational institutions
- But Title IX contains a self-executing religious exemption



Text of Religious Exemption (Regulation)

“This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenants of such organization.”

34 C.F.R. § 106.12 (emphasis added)

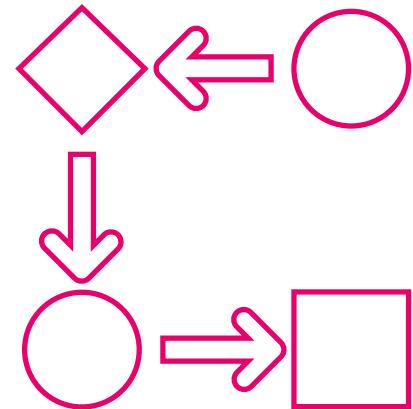
Questions



Basic Title IX Discrimination Concepts

Sex Discrimination

- Adverse treatment of a person on the basis of sex
- Limits or excludes the person from participating in the institution's education program or activity or denies or limits the benefits thereof



Adverse Treatment

- Someone can't do something others are allowed to do
- Someone doesn't get something that others get
- Something is made harder for someone than it is for others
- Someone is punished in a way that others aren't
- Someone is separated in a way that stigmatizes or stereotypes

Example: Can't Do Something

Only male students are allowed to enroll in a hand-to-hand combat physical education course.

Only female students are allowed to pursue a teaching degree with an emphasis on home economics.

Only females are allowed to participate in the women's institution-sponsored ERG.



Example: Doesn't Get Something

A school has sex-separated residence halls. Men must live in “male” halls and women must live in “female” halls.

All female halls are newly renovated, have suite-style living, spacious living rooms, ice-cream machines, and integrated fitness centers.

All male halls are old, dormitory style buildings with communal bathrooms and showers and a rudimentary shared lobby. There are no ice cream machines or fitness centers.



Example: Something is Harder

A faculty member prefers male students over female students. Because of his preference, the faculty member consistently grades male students more generously than female students. An analysis of grades assigned to three hundred students over the last three years shows that, on average, male students received grades that were 30% higher than those of female students. This disparity is not present in the grades assigned by other faculty members who teach the same course.



Example: Someone is Punished

A school's code of conduct prohibits sexual assault. A male student, Johnny, is found to have committed sexual assault by having sex with Jenny while Jenny was incapacitated. Johnny is expelled. Jane is found to have committed sexual assault by having sex with Ricky while Ricky was incapacitated. Jane is given probation. Neither Johnny, nor Jane, had any prior disciplinary history. The deciding administrator expelled Johnny because he believes males who commit sexual assault pose a greater risk than females who commit sexual assault.



Example: Someone is Separated . . .

A private college has an elective course called Creative Writing 350. The college has “male” and “female” sections of the course, and students are only allowed to enroll in a section that matches their sex. The college justifies the separation because student evaluations indicate that men “prefer writing about factual events like athletics, while women prefer writing on topics that involve emotional insight, and women do not feel comfortable doing so with men in the course.”



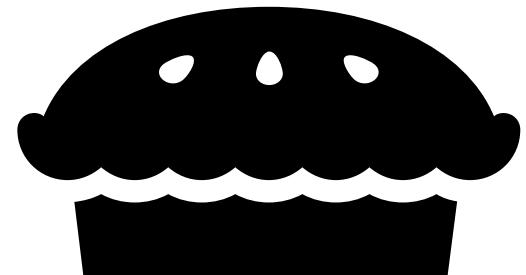
Questions for Discussion

Is all separation based on sex prohibited by Title IX?



Adverse Treatment and “Zero Sum”

- When a fixed amount of a given thing is available and people compete for it
- A benefit to one person based on sex
- Necessarily discriminates against a person of the opposite sex



Example: Zero Sum Admissions

An elite, public university grants admission to only 15% of students who apply to its graduate program. The university considers many factors in determining who to admit, including both academic and non-academic factors. An admissions committee awards a total number of “points” to each applicant, based on these factors, and the applicants with the most points are admitted. Because the institution’s student body is 70% male, and the institution wants to have more female students, it revises its admission criteria to give each female applicant one “point” based on their sex.



Questions for Discussion

How do we tell if sex is being used as a causal factor?



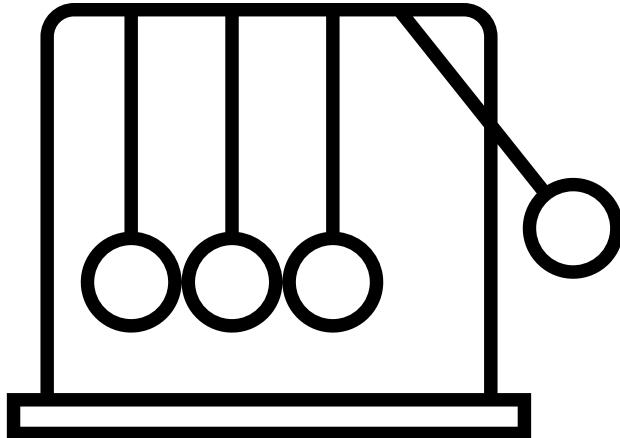
Similarly Situated

- Assume a hypothetical male student and a hypothetical female student are equally situated on all matters except their sex
- Would one then receive the benefit in question, over the other, because of sex?



“On the Basis of Sex”

- Means that sex is a *causal* factor
- ***But for sex***, a given thing would have occurred; or
- ***But for sex***, a given thing would not have occurred





Programmatic
Discrimination

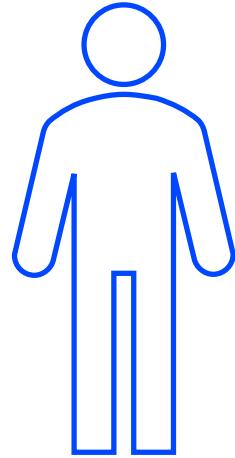


Individualized
Discrimination

Programmatic Discrimination

- Where discrimination occurs in a systematic way due to an *institutional* policy or practice
- Programmatic discrimination adversely affects persons as a group or by category, rather than by individualized decision
- Programmatic discrimination is usually *not* attributed to an individual perpetrator (e.g., “respondent”)

Individualized Discrimination



- A particular decision is made, or particular action taken, that results in adverse treatment of a particular person that limits or excludes them from participation or denies or limits benefits
- Typically, individualized discrimination has an identifiable “respondent” who makes the discriminatory decision

Questions



Scholarships

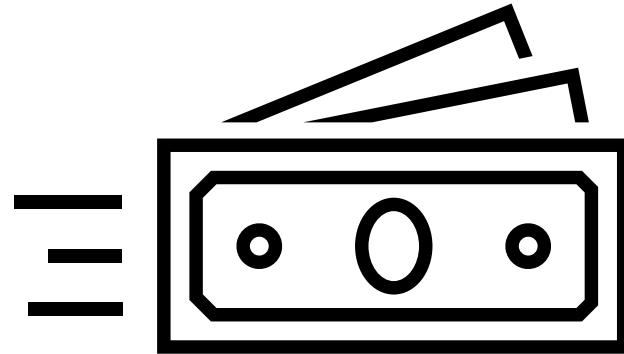
Three Types

- Institution-funded and administered
- Institution-administered
- Institution-received



Institution-Funded and Administered

- Monies come from the institution itself (or a controlled entity)
- Institution administers the awarding of the monies



Example A: Institution-Funded and Administered

The institution automatically considers all incoming, first year students for scholarships. To attract more female students, the institution creates a “First Year Women’s Scholarship” that awards \$5,000 to every incoming female student who scores at least a 32 on the ACT or who graduated high school with at least a 3.8 GPA.



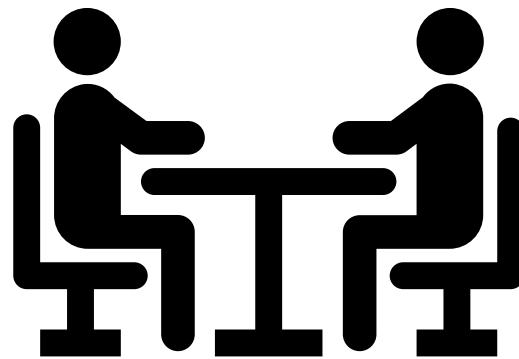
Example B: Institution Funded and Administered

The institution’s School of Nursing wishes to attract more male students into the program. The Dean secures a significant donation from a male nurse who endows the “Jerry Jones Scholarship”— a \$500 award that is available only to male students entering the program. The corpus of the endowment is held by the institution’s controlled foundation, and the School of Nursing’s Dean’s office administers the award.



Institution-Administered

- Monies come from a separate, non-controlled entity
- But institution administers selecting and granting of award



Example A: Institution-Administered

A group of female alumni called the “University Women’s Club” raises money every year to award \$1,500 to a “deserving female student leader.” The University President’s office advertises the scholarship and receives applications from female student leaders, from which the University President selects the recipient. The President then notifies the University Women’s Club of the student’s name, and the Club sends the University a check for the student’s account.



Example B: Institution-Administered

A group of female alumni called the “University Women’s Club” raises money every year to award \$1,500 to a “deserving female student leader.” Each year, the University President’s office sends the Club a list of female students who participate in Student Senate with the President’s comments on any students who are particularly good candidates. The Club then selects the recipient, and the President’s office notifies the student in question. The Club then sends a check to the institution for the student’s account.



Institution-Received



- Separate, non-controlled entity determines recipient
- Separate, non-controlled entity sends the institution the money
- Institution only receives the money

Example A: Institution-Received

The local P.E.O. chapter in a town in rural Indiana awards a scholarship each year to a female graduate of the local high school. The scholarship recipient is selected by the chapter and can use the scholarship at any college or university. Once the recipient tells the chapter what college or university she is attending, the chapter sends a scholarship check to the institution for the student's account. The institution has no involvement in the selection process.



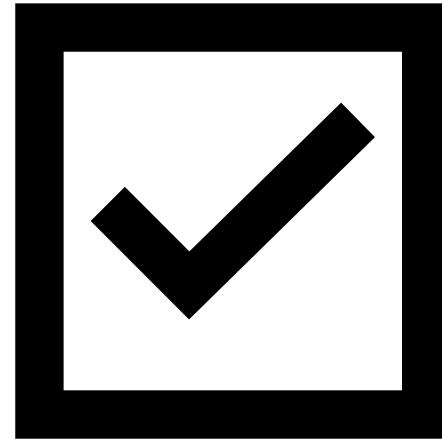
Example B: Institution-Received

A wealthy philanthropist, who was himself an orphan, establishes a non-profit foundation that funds the Warbucks Scholarship – a \$10,000 per year scholarship that the recipient can use at any college or university. The scholarship's eligibility criteria include that the recipient must be a male and that preference is given to recipients who have experienced the death of one or both parents as a child. The foundation has a committee of accomplished persons who screen and interview applicants. Once a recipient is selected, the foundation sends a check to the recipient's college or university.



Basic Title IX Rule

- Institution cannot award or administer scholarships based on sex
- Institution can receive funds awarded independently by a separate, non-controlled entity even if based on sex



Athletics Exception

- Title IX athletics equity regulations require that men and women be treated equally with regard to athletic scholarships
- Athletic scholarships must be proportionate, in the aggregate, to the percentage of male and female athletes
- Institutions may be required to allocate athletic scholarships based on sex to achieve proportionality



Example: Athletics Proportionality

60% of a college's varsity student athletes are women, while 40% are men. Yet, of the total amount of athletic scholarships, 55% go to men, while only 45% go to women. The school must increase the amount of aid to women by new spending or reallocation to achieve substantial proportionality.



Questions for Discussion

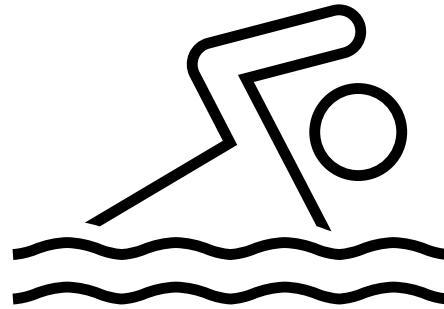
Does this mean that every female student athlete must receive a scholarship?

Is it possible for some male student athletes to receive athletic scholarships that are higher than those received by some female student athletes?



Pool-and-Match Structure

- A narrow exception that allows an institution to use funds from donor-restricted endowments
- Does not permit awarding based on sex, but does permit funding based on sex



Pool-and-Match Elements

- There is a legal instrument that imposes a sex-based donor restriction on the use of particular scholarship funds
- Institution creates a broad pool of applicants for a particular scholarship and selects recipients without regard to sex
- Institution may then “match” the donor-restricted monies to “fund” a scholarship that has already been awarded without regard to sex
- Overall effect of pool must not be discriminatory

Example: Pool-and-Match

Each year, the institution awards ten ‘full-ride’ “Presidential” scholarships to incoming students with elite academic credentials. Recipients are selected based on test scores, GPA, an essay, and an interview, and without regard to sex. The institution has a donor-restricted scholarship that is intended to provide a ‘full-ride’ scholarship to a female student. If one or more women are selected to receive a “Presidential” scholarship, the institution may match the donor-restricted funds to pay for those scholarships, but the institution must also pay for all scholarships for male recipients, whether from other endowed funds or general funds.



Questions for Discussion

Suppose an institution has restricted endowments that will fund five ‘full-ride’ scholarships for women and five ‘full-ride’ scholarships for men. Suppose also that the Presidential selection committee selects six male and four female recipients for the upcoming academic year.

May the school exclude one male recipient and add a female recipient so that the donor-restricted funds pay for all scholarships?



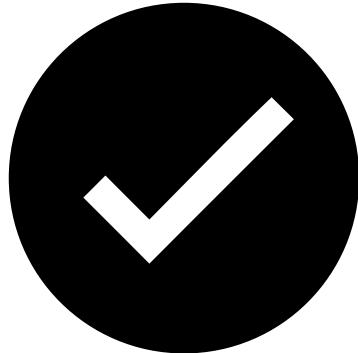
Questions for Discussion

Suppose a university offers a bachelor's degree in Latin. The degree exists only because a wealthy alumnus insists on the program's continuance. Only one or two students participate each year. The alumnus makes a restricted gift to fund one, 'full-ride' scholarship to a female student pursuing a bachelor's degree in Latin. The institution's yearly tuition is \$30,000. The donor insists on funding only one scholarship.

Is it practical to use pool-and-match in this scenario? What if the institution is cash-strapped and has no resources to fund a 'full-ride' scholarship itself?



Remediation of Discrimination Rationale



- Institution has a recent history of discriminating based on sex in its own programs
- Awarding financial aid based on sex is necessary to remediate the effects of this recent discrimination

Example: Remediation

As part of a lawsuit filed by an aggrieved female student, a court determines that an institution has systematically discriminated against women in its nuclear engineering program. The court finds the program chair directed all scholarship funds only toward male students, to keep female students out of the program. For four years, the institution allocates up to four \$2,000 scholarships explicitly for female students who pursue a degree in nuclear engineering. Male students and female students can equally compete for all other scholarships.



Example: Not Remediation

It is well-known that only a small percentage of computer scientists are women. To remediate (in a very small way) this disparity in the industry, a college allocates money to fund scholarships for up to six women who pursue a computer science degree at the institution. The institution advertises the scholarships as part of a broader promotional effort to get women to pursue a computer science degree.



Questions



Fellowships and Similar Programs

Fellowship

- An often-competitive program that provides funding, training, and/or opportunities for education, research, travel, networking or leadership
- Distinct from a scholarship that simply provides funding for tuition, fees, housing, and cost of attendance



Example: Female Leadership

A public university operates a “Female Leaders of Tomorrow” fellowship program. Participants receive a travel stipend to attend a national leadership conference, participate in special leadership courses, network with prominent female leaders and entrepreneurs, and receive a plaque and swag like hats and sweatshirts. Only undergraduate women are allowed to apply. The university has other fellowship programs that operate without regard to sex.



Questions for Discussion

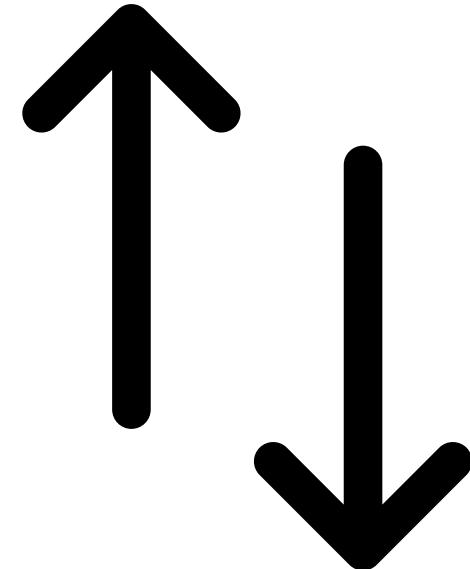
Does the Female Leaders of Tomorrow fellowship violate Title IX?

Does it matter if the stipend and swag are removed?



General Rule

- Like scholarships, eligibility for fellowships cannot be determined based on sex
- An institution (likely) can use pool-and-match to fund fellowships



Example: Leadership Fellows

A public university operates a “Leaders of Tomorrow” fellowship program. Participants receive a travel stipend to attend a national leadership conference, participate in special leadership courses, network with prominent leaders and entrepreneurs, and receive a plaque and swag like hats and sweatshirts. All undergraduates can apply. If one or more women are selected, the school uses a sex-restricted endowment to pay for the cost of their fellowship.



Fellowship Collaborations

- Title IX prohibits schools from providing “significant assistance” to external organizations that discriminate based on sex
- Effectively, this precludes some forms of institutional collaboration with external sex-restricted programs



Example A: External Fellowship

A local chamber of commerce operates a “Female Business Leaders of Tomorrow” fellowship that provides participants with a stipend, programming, networking, and specialized training designed to “catapult” participants into leadership positions in business. The chamber wants to partner with the college’s Department of Business to market the program, deliver lectures to participants, host a reception, and screen candidates.



Questions for Discussion

Would the college violate Title IX if it collaborated with the chamber of commerce?

What if the chamber also offered a “Male Business Leaders of Tomorrow” fellowship, and the school collaborated with that program too?



Example B: External Fellowship

A local chamber of commerce operates a “Female Business Leaders of Tomorrow” fellowship that provides participants with a stipend, programming, networking, and specialized training designed to “catapult” participants into leadership positions in business. A faculty member in the college’s business school serves on the program’s advisory board, attending board meetings in the evenings and weekends and sometimes attending program events elsewhere in the community.



Questions for Discussion

**Does the faculty member's participation constitute
“significant assistance” by the college?**

What factors would be relevant?



Examples: Significant Assistance

- **Providing funding, facilities, and equipment**
- **Actively recruiting, referring, or selecting participants**
- **Providing content or otherwise integrating with the school's programs**
- **Entering into contractual or other legal arrangements with the third-party**



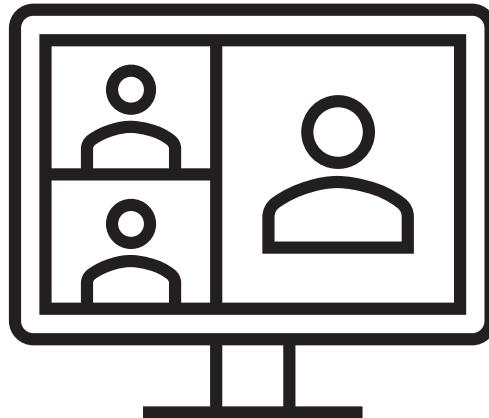
Example: Significant Assistance?

A local chamber of commerce operates a “Female Business Leaders of Tomorrow” fellowship. The college’s business school hosts a webpage where it lists dozens of external fellowships that may be of interest to college students. The chamber’s fellowship is listed on this webpage, with a hyperlink to the fellowship’s webpage.



Similar Programs

- Sex-restricted orientations
- Sex-restricted mentorships
- Sex-restricted seminars
- Sex-restricted tutoring or other academic supports



Example: Sex-Restricted Mentorship

A school has very few women in its engineering program, and the women who do participate drop out at a higher rate than the men. To address the high dropout rate of women, the Dean of Engineering creates a mentorship program that pairs each female engineering student with a female faculty member. Participating faculty members meet with their student at least three times per week, provide advice and guidance, and help their student find summer internships. While some other students have informally found mentors, there is no other organized mentorship program.



Example: Sex-Restricted Seminars

A nursing department hosts a seminar titled “Challenges Faced By Men in the Nursing Profession.” The seminar is taught by the sole male faculty member and is intended to provide the limited number of male nursing students with candid advice and information about challenges they will face in a female-dominated field. The seminar is not publicly advertised. Each male nursing student receives an email inviting him to attend. Female students are not invited.



Questions for Discussion

Would the program be permissible if it were publicly advertised and if it were open to both male and female students, even though the subject matter is focused on issues most relevant to men?



Subject Matter-Defined Fellowships and Programs

- A fellowship or program designed around a subject matter of particular interest to persons of a given sex does not inherently violate Title IX
- Provided eligibility is not sex-based and there is a bona fide opportunity for persons to participate without regard to sex

Example: Women's Studies

Each year, the Department of Women's Studies offers a research fellowship to a student selected by a faculty panel. The eligibility criteria are: (1) high academic performance; (2) demonstrated research competency; and (3) an interest in pursuing a graduate degree in Women's Studies. There are thirty students pursuing bachelor's degrees in Women's Studies - Twenty-eight are women and two are men.



Questions for Discussion

What if there is an “understanding” amongst the faculty panel that if the two finalists are a female and a male student, a strong preference will be given to the female?



Questions



Other Sex-Restricted Programs

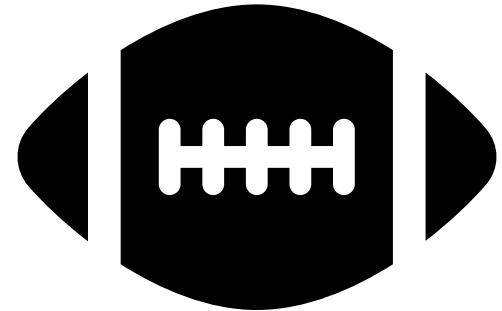
Sports Teams

- **General Rule:** Title IX permits sports teams to be single-sex where selection is based on competitive skill or activity is a contact sport
- **Caveat:** Title IX athletics equity regulations apply, and require equitable opportunities and supports for both sexes



Exception: No Sport Offered

- If a men's team exists for a particular sport, and there is no women's team for the same sport, women can try out for the men's team
- Unless it is a contact sport, such as boxing, wrestling, rugby, ice hockey, football, or basketball



Example: No Sport Offered

A school has a varsity men's ping pong team and does not offer a women's team. Ping pong is not a contact sport; therefore, a female ping pong player would be allowed to try out for the men's ping pong team.



Questions for Discussion

May a school have single-sex intramural teams?



Questions for Discussion

What if a school operates a “rec” league where membership on a team is not determined by competitive skill?



Example: No Competitive Skill

A school operates an intramural “rec” league for fun sports like cornhole. Any group of students can form a team, and there are no tryouts, cuts, or other competitive selection processes. In this scenario, having sex-restricted teams is not permissible.



Questions for Discussion

What about gender identity? If a school has sex-restricted teams, must it allow participation based on a student's gender identity, or may it restrict the team based on “biological” sex?



Executive Order on Gender Identity 1/20/2025

- Sex is “not changeable” and refers to an “immutable biological classification”
- Agencies must enforce laws “governing sex-based rights” to “protect men and women as biologically distinct sexes”
- Agencies must remove all statements, regulations, guidance, etc. that “promote or otherwise inculcate gender ideology”

Executive Order on Women's Sports 2/5/2025

- Take action to affirmatively protect all-female athletic opportunities and all-female locker rooms, including through enforcement action
- Prioritize enforcement actions against institutions that deny female students an equal opportunity to participate in sports

Idaho and West Virginia Sports Cases

- Recently, the Supreme Court heard argument on the legality of Idaho and Tennessee laws that restrict transgender women from participation on women's-designated sports teams
- Directly implicates the extent to which the Constitution and Title IX incorporate gender identity as a non-discrimination category
- Most prognosticators predict the Supreme Court will uphold the state laws

Housing

- ***Basic Rule:*** Institutions can establish same-sex housing
- **But**, housing must be proportionate in quantity and comparable in quality
- **And** fees cannot vary based on sex



Example A: Housing

A school's undergraduate population is approximately 55% female and 45% male. The school has multiple residence halls that have sex-separated floors. Approximately 54% of capacity are female-designated floors and 46% are male-designated floors. There are female-designated and male-designated floors in all residence halls, including both older and newer halls. As a general practice, returning students are placed in the newer halls while first-year students are generally placed in the older halls.



Example B: Housing

A school's undergraduate population is approximately 55% female and 45% male. The school has multiple residence halls that are separated by sex at the hall level. 60% of capacity is in male-designated halls, while 40% of capacity is in female-designated halls. There is a long waiting list for the female-designated halls, therefore many women have to live in more expensive, off-campus apartments.



Questions for Discussion

What about gender identity? If a school has sex-designated residence halls, may a student select the hall consistent with their gender identity, or may the school limit hall selection based on “biological” sex?



Restrooms

- ***General Rule:*** Institutions can have sex-separated toilet, locker room, and shower facilities
- **But,** facilities must be comparable in quantity and quality



Questions for Discussion

What about gender identity? If a school has sex-designated restrooms, may a student select the restroom consistent with their gender identity, or may the school limit selection based on “biological” sex?



State Laws

- Some states have laws requiring use based on biological sex
- Some states have laws requiring that persons be allowed to select based on gender identity
- Some states have laws requiring some gender-neutral restroom availability

Questions for Discussion

Could a school choose to convert all restrooms to gender-neutral?

Could a school choose to convert some restrooms to gender-neutral?



Example: Conversion to Gender-Neutral

A school historically had men's and women's designated restrooms. Over the entire campus, the school converts four men's and four women's designated restrooms into single-stall gender-neutral restrooms. Every major building on campus still has at least one men's or women's designated restroom after the conversion.



Questions for Discussion

What if a disproportionate number of women's restrooms are converted to gender-neutral?



Example: Privacy Issue?

A college has a men's and women's locker room in its student recreation center. Each locker room has a communal shower, resulting in users often seeing each other in states of full or partial undress. The college allows students to select their locker room of choice based on gender identity. A transgender woman uses the women's locker room.

Does this violate the Title IX rights of biological women?



Greek Organizations

- Title IX does not apply to the membership practices of social fraternities and sororities
- This means fraternities and sororities at public and private universities can restrict membership based on sex



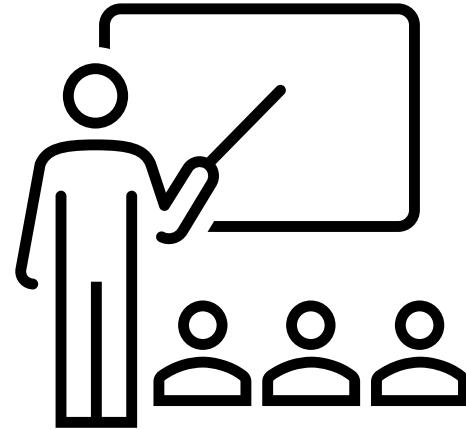
Questions for Discussion

Could a school choose to prohibit sex-based sororities and fraternities if it wanted to?



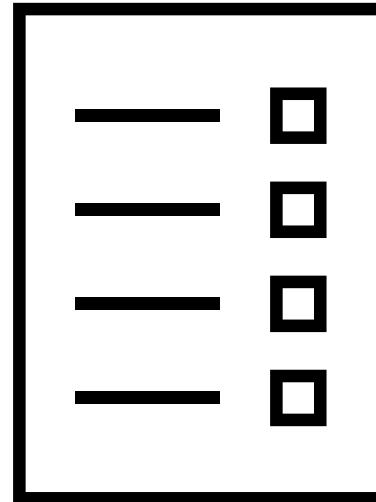
Classes

- ***Basic rule:*** Classes cannot be separated based on sex



Exceptions to Class Separation Rule

- Physical education classes involving physical contact
- Ability grouping in physical education classes
- Human sexuality classes
- Choruses based on vocal range or quality



Example: Physical Education

A public university located in Michigan offers a physical education course titled “Ice Hockey 101.” The school offers one section for male students and another for females. Students in the course learn to play ice hockey and must wear pads and helmets due to the physical contact.



Example: Physical Education Grouping

A college offers three different physical education courses in swimming: beginner, intermediate, and elite. To enroll in the elite course, students must demonstrate their ability to swim certain strokes at a certain pace. While a few women can satisfy the elite pace, most cannot, and the elite course therefore predominantly consists of men.



Example: Chorus

A school has a “bass chorus” that includes only singers with a very low vocal range. In practice, only a limited number of males are capable of singing in the low range; no women can. The institution offers other choruses, including a tenor chorus and a “mixed” course that includes different vocal ranges. The “bass chorus” focuses on performing music specifically written for a low vocal range, such as certain Russian chants that include lines for an “oktavist.”



Questions for Discussion

What about non-credit courses and classes? Can they be separated based on sex for any reason?



Questions for Discussion

Can an institution have classes that focus on subject matter based on sex?



Example A: Sex-Based Subject Matter

A school's political science department offers a course titled "Pol 550: Women's Political Movements In Latin America." The course is taught by a female instructor, and the subject matter focuses on political phenomenon uniquely affecting women or initiated by women in central and south America. Students are required to read essays and other works primarily written by female politicians or female political activists in these countries. Enrollment is not restricted based on sex.



Example B: Sex-Based Subject Matter

A school has recently experienced several incidents where female students were accosted in parking lots and dark areas of campus. In response to demand from female students, the school hosts a free seminar on “defense techniques for women” that includes specific instruction on techniques that women might use to escape an attack by a stronger male. The seminar is widely advertised to all students, and the marketing material explicitly states “both male and female students are invited to attend.”



Degrees

- ***Basic rule:*** A college or university cannot restrict participation in a given degree program based on sex.
- **Exception** for religious institutions with a religious rationale



Example: Religious Exception

A religious college affiliated with a particular denomination holds the religious belief that men have certain pastoral needs that can only be met by male ministers. It offers a degree in “Men’s Ministry” and only men are allowed to enroll. The degree is intended to credential male, men’s ministers who will then go on to serve in the denomination.



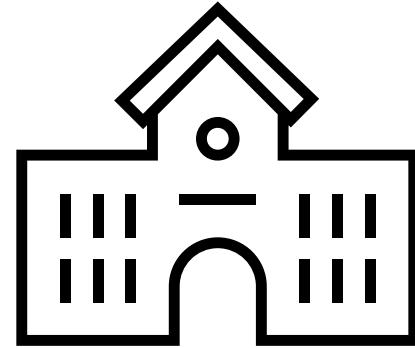
Questions for Discussion

Does Title IX permit the existence of single-sex institutions?



Single-Sex Institutions

- Title IX permits the existence of:
 - Private, undergraduate single-sex institutions
 - Public, undergraduate single-sex institutions that have ***traditionally and continually from establishment*** operated as ***single-sex***



Questions





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