

SECTION 9 - EMPLOYMENT

The Title IX Regulation provides comprehensive prohibitions of discrimination in the employment policies and practices of education institutions or agencies. It outlines general requirements for nondiscrimination:

86.51 Employment

(a) General.

- "(1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefore, whether full time or part time, under any education program or activity operated by a recipient which receives or benefits from federal financial assistance.
- (2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely effect any applicants or employees employment opportunities or status because of sex.
- (3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this Sub-Part, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.
- (4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominately members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this (regulation).

86.51 delineates the specific areas of employment policy and practice to which these provisions apply:

(b) Application.

The provisions of this Sub-Part apply to:

- (1) Recruitment, advertising and the process of application for employment;
- (2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, lay-off, termination, application of nepotism policies, right of return from lay-off and re-hiring;
- (3) Rates of pay or any other form of compensation and changes in compensation;
- (4) Job assignments, classifications and structure including position, descriptions, lines of progression and seniority lists;
- (5) The terms of any collective bargaining agreement;
- (6) Granting and returning from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons for either sex to care for children or dependents or any other leave;
- (7) Fringe benefits available by virtue of employment whether or not administered by the recipient;
- (8) Selection and financial support for training including apprenticeship, professional meetings, conferences and other related activities, selection for tuition assistance, selection for sabbaticals, and leave of absence to pursue training;
- (9) Employer sponsored activities including social or recreational programs; and

(10) Any other term, condition or privilege of employment.

Further specification of the application of these general provisions is provided in 86.52 - 86.61.

86.52 Employment Criteria.

A recipient shall not administer, or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such tests or criteria as shown to predict validly successful performance in the position in question;

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

86.53 Recruitment.

(a) Nondiscriminatory Recruitment in Hiring.

A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees or has been found to have in the past so discriminated the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination;

(b) Recruitment Patterns.

A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominately members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this Sub-Part.

86.54 Compensation.

A recipient shall not make or endorse any policy or practice which on the basis of sex;

- (a) Makes distinctions in rates of pay or other compensation;
- (b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs, the performance of which requires equal skill, effort and responsibility and which are performed under similar working conditions.

86.55 Job Classification and Structure.

A recipient shall not:

- (a) Classify a job as being for males or females;
- (b) Maintain or establish separate lines of progression, seniority lists, career ladders or tenure system based on sex; or
- (c) Maintain or establish separate lines of progression, seniority, systems, career ladders or tenure systems for similar jobs, position descriptions or job requirements which classify persons on the basis of sex unless sex is a bona-fide occupational qualification for the positions in question as set forth in 86.51.

86.56 Fringe Benefits.

(a) Fringe Benefits Defined.

For the purpose of this part fringe benefits means any medical, hospital, accident, life insurance or retirement benefits, service policy or plan, any profit sharing or bonus plan, leave and any other benefit or service of employment not subject to the provisions of 86.54.

(b) Prohibitions.

A recipient shall not:

- (1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families or dependents of employees differently upon the basis of the employment employee sex;
- (2) Administer, operate, offer or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex or for equal contributions to the plan by such recipient for members of each sex; or
- (3) Administer, operate, offer or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

86.57 Marital or Parental Status.

(a) General.

A recipient shall not apply any policy or take any employment action:

- (1) Concerning the potential marital, parental or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or
- (2) Which is based on whether an employee or applicant for employment is the head of household or principle wage earner in such employee's or applicant's family unit.

(b) Pregnancy.

A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) Pregnancy as a Temporary Disability.

A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in any temporary disability resulting therefrom as any other temporary disability for all job related purposes including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service and reinstatement and under any fringe benefit offered to employees by virtue of employment.

(d) Pregnancy Leave.

In the case of a recipient which does not maintain a leave policy for its employees or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for leave of absence without pay for a reasonable period of time at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position without decrease in the rate of compensation or loss of promotional opportunities or any other right or privilege of employment.

86.58 Effect of State and Local Law or Other Requirements.

(a) Prohibitory Requirements.

The obligation to comply with this Sub-Part is not obviated or alleviated by the existence of any State or local law or any other requirements which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) Benefits.

A recipient which provides any compensation, service or benefit to members of one sex pursuant to a State

or local law or other requirements shall provide the same compensation, service or benefit to members of the other sex.

86.59 Advertising.

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

86.60 Pre-employment Inquiries.

(a) Marital Status.

A recipient shall not make pre-employment inquiry as to marital status of any applicant for employment including whether such applicant is Miss, or Mrs.

(b) Sex.

A recipient may make pre-employment inquiries as to the sex of an applicant for employment but only if such inquiries 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.

86.61 Sex as a Bona Fide Occupational Qualification.

A recipient may take action otherwise prohibited by this Sub-Part provided it is shown that sex is a bona fide occupational qualification for that action. Such as that consideration of sex with regard to such action is essential to the successful operation of the employment function considered. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics 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 any employees sex in relation to employment in a locker room or toilet facility used only by members of one sex.

In order to assess and evaluate present compliance with the requirements of the Title IX Regulation the following materials were reviewed:

Job descriptions and statements of qualifications required for all positions, faculty, staff and classified;

Salary schedules;

Application forms for all positions;

Policies relating to granting of leaves of absence including those for temporary disabilities, pregnancies, and related conditions;

Medical, hospital, accident, life insurance and retirement benefit policies;

Training programs, tests and other evaluation instruments used in employee selection and/or placement.

As a result of reviewing the above listed materials, the report on The College of William and Mary's Employment Policies is divided into three primary categories. Part A, Classified; Part B, Student and Part C, Faculty and Staff.

SECTION 9

PART (A) - CLASSIFIED EMPLOYMENT POLICIES

The concern expressed in the following part of this section is beyond the control of this institution and must be resolved by the Commonwealth of Virginia.

INTERDEPARTMENTAL COMMUNICATION

From I. H. Robitshek

Date March 4, 1976

To President Thomas A. Graves, Jr.

SUBJECT: Title IX Self-Evaluation Requirement (October 21, 1975)

In response to Wesley C. Wilson's correspondence noted in the subject above, I have undertaken an evaluation of those provisions of Title IX that pertain to classified personnel. With one exception only, I believe that our personnel policies and procedures are consistent with Title IX requirements.

The one exception was brought to the attention of Jerry VanVoorhis on October 3, 1974. It relates to section 86.46 in that the State employee Blue Cross/Blue Shield plan contracted with the Commonwealth of Virginia discriminates in that only those females included in a "family" plan are covered for pregnancy or physical conditions related thereto. It is further discriminatory in that single females cannot subscribe to a family plan even though they are willing to pay the additional premium costs.

This discriminatory practice was previously brought to the attention of the Division of Personnel in Richmond on April 2, 1973, by the undersigned (copy attached). The subject was subsequently discussed with the Health Insurance Committee of the Commonwealth of Virginia, and as of this date no changes have been made.

Other than noted above, I see no conflict with Title IX in the Personnel Management Policies and Procedures for classified personnel at the College.



I. H. Robitshek
Director of Personnel

IHR/bgp

Attachment

cc: Wesley C. Wilson

*WS -
I assume this
is still altogether
beyond WPM's control
JG*

April 2, 1973

Mrs. Margaret Bowlin
Division of Personnel
Post Office Box 654
Richmond, Virginia 23205

Dear Mrs. Bowlin:

Reference is made to your comments at the George Mason
College Personnel Conference last month.

Attached for your review and consideration is a suggested
change to the current Blue Cross - Blue Shield Program for
Commonwealth of Virginia employees.

Please advise what action is taken on the attached
suggested change.

Sincerely,

I. H. Robitshek
Agency Personnel Supervisor

IHR:ddc

Enclosure

INTERDEPARTMENTAL COMMUNICATION

From Carol Wallace Sherman, Chairman
Ad Hoc Committee on the Status of Women

Date 3/30/73

To Irving Robitshek, Director of Personnel
and Equal Employment Opportunity Officer

SUBJECT: Maternity Benefits: State-Wide Blue Cross/Blue Shield Program

In a most helpful phone conversation with Bob Grammer this morning, he suggested that the appropriate channel for a recommendation regarding the maternity benefits in the State-Wide Blue Cross/Blue Shield individual coverage would be to direct correspondence to your office, which, with your endorsement, would then be forwarded to Mr. Garber for consideration.

On behalf of the Ad Hoc Committee on the Status of Women, I would like to recommend the following for inclusion in the new Blue Cross/Blue Shield contract effective July 1, 1973:

Any woman employee of the State should have full maternity benefits as a part of the basic individual coverage provided by the State.

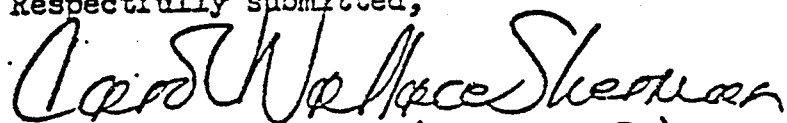
Much confusion exists regarding the existing contractual agreement which covers maternity expenses only on a family policy. For instance, if both a husband and a wife are employed by the State and carry the individual policies to which each are entitled, they may mistakenly assume they are covered by maternity benefits for a first pregnancy.

Further, if a woman is employed by the State and covered by the individual policy to which she is entitled, and has a husband who is also covered on an individual basis by a group policy at a non-State place of employment, similar confusion can exist.

In either of the above cases, should the couple realize that they are not covered for maternity expenses, what then? Should the wife in the first example and the husband in the second example withdraw from the individual coverage to which they are entitled and be taken on under a family policy at added expense to the insured party?

To avoid all of the above confusion, and also to insure proper protection for single, divorced or widowed women employed by the State, it is sincerely hoped that the above recommendation will receive your favorable consideration.

Respectfully submitted,


Carol Wallace Sherman (Mrs. Roger D.)
Associate Professor

cc: President Graves
President Healy

SECTION 9

PART (B) - STUDENT EMPLOYMENT POLICIES

The following is the applicable section of the report rendered by the Committee on Student Aid and Placement. The complete report can be found under a separate cover on file in the College's Office of AA/EEO.

CONCLUSION

The policies and practices of the College in the areas of student employment and placement appear to be well documented and already in full compliance with Title IX. One possible exception to this finding is in the procedures followed to award graduate assistantships. There is absolutely no evidence of discriminatory practices here. However, the procedures and multiplicity of decision makers creates a situation in which criteria and selection practices may not be well defined. The Graduate Dean for Arts and Sciences has agreed to remind department chairmen of the need for equitable procedures.

STUDENT EMPLOYMENT AND PLACEMENT

The College assists the student in finding employment in two ways. First, during his college career, the Student Aid Office provides part-time employment opportunities for students. Then, as the student approaches graduation, the College operates several placement offices to help seniors securing full time employment after graduation.

PART TIME STUDENT EMPLOYMENT PROGRAMS

Undergraduates may seek added income through a work-study program administered by the Student Aid Office. Graduate students are eligible for aid, in the form of graduate assistantships. While the Student Aid Office coordinates the work-study program for all undergraduates, each individual School (Arts and Sciences, Law, Education and Business Administration) awards assistantships separately. Accordingly, this committee has reviewed each selection procedure separately.

WORK-STUDY PROGRAM

The purpose of the work-study program is to provide part time employment for students in need of earnings from such employment to meet their educational expenses. Some job opportunities are available to students without financial need, but only after students with need have been placed.

All undergraduate financial assistance recipients receive the offer of a part time job as a part of the assistance offer. In 1976-77, the first-year student will be expected to earn \$300 which will require approximately 4 1/2 hours per week. The earnings expectation increases with each year of maturity

and student classification. For example, in 1976-77, sophomores will receive a \$400 job offer requiring approximately 6 hours per week; juniors will receive a \$500 job offer requiring approximately 7 1/2 hours; and seniors will receive a \$600 job offer requiring approximately 9 hours per week.

The College pays the minimum wage to students without regard to student classification. Graduate students receive the same hourly rate as that paid to undergraduates.

Students who seek part time employment must complete a work-study application in the Student Aid Office. This application is included in the appendix to this chapter. The students who receive a job offer as a part of financial assistance receive first consideration for job placement.

Student selection for jobs is made on the basis of the students' stated skills, previous work experience, and stated interests. The majority of students who are employed through the Student Aid Office are employed on campus.

As requests for part time student work are received, applications are reviewed, students are contacted and offered the opportunity for an interview. If interested, the student secures a referral slip from the Student Aid Office to present to the prospective employer. This procedure is followed for students employed on campus and in the community.

Occasionally prospective employers will state a preference for a given sex. Although the preference stated may appear to be for good reason, sex

is never included on any card included in the job reference file maintained in the Student Aid Office. As a part of the job information provided to students, the fact that a female or male was a stated preference and the reason for the preference, are related to the interested student as a courtesy.

The Committee feels that these policies and practices, as observed, are fully in compliance with Title IX.

GRADUATE ASSISTANTSHIPS--FACULTY OF ARTS AND SCIENCES

The Faculty of Arts and Sciences awards between 80 and 100 full or partial graduate assistantships each year in ten graduate departments. Graduate assistants work 20 hours a week during the 9-month academic year. They must satisfactorily carry out the assignments of the chairman of the department to which they are assigned and they must make satisfactory progress in the course of study approved by the department. They may not hold any other employment or appointment of a remunerative nature during the term of the assistantship.

In addition, the Department of History awards 3 to 5 apprenticeships in the editing of historical books and magazines, 2 in the operations of a historical library, and in association with the Department of Anthropology, 2 in historical archaeology. These apprenticeships are for a 12 month period, July 1 to June 30, and require the apprentices to work full time during the periods in which class is not in session as well as 20 hours a week during the regular academic year. The other requirements imposed upon graduate assistants are also required of apprentices.

The graduate programs of the Faculty of Arts and Sciences, including the availability of assistantships, apprenticeships, and other financial aid, are publicized through the graduate catalog which is available to anyone upon request and is also distributed throughout the country to institutions with which the Swem Library exchanges catalogs. In addition, the College publishes posters and brochures describing individual graduate programs and the assistantships and financial aid that are available for each one. These posters and brochures are also distributed to the institutions with which Swem Library exchanges catalogs and are mailed to several thousands of departments of other institutions of higher learning. The College's graduate programs are listed in such counseling manuals as Barron's, Peterson's, etc. The College also subscribes to the Minority Graduate Student Locator Service.

To be eligible for graduate assistantships and apprenticeships, a person must be admitted as a regular graduate student in the department awarding the assistantship or apprenticeship and, during the term of the award, must be registered as a full time student in the College. Advanced doctoral students who have completed residence requirements and are conducting research may register for fewer hours.

No separate application for an assistantship or apprenticeship is required beyond the application for admission to a graduate program. The minimum requirements for application for admission are a 1.5 (on a 3.0 basis)

undergraduate grade point average, the submission of three letters of recommendation and of certified transcripts from all institutions of higher learning that the applicant attended before applying to William and Mary, and in most departments, the Graduate Record Examination. The award of graduate assistantships and apprenticeships and of other financial aid is based upon merit as determined by the department under which the student intends to pursue his studies. The department recommends to the Graduate Dean of Arts and Sciences who approves the appointment or award.

The Committee discussed the need to identify all eligible applicants, and document the selection process with Dr. John Selby, Graduate Dean, Arts and Sciences. He has agreed to write all department chairmen a memo emphasizing the need to establish procedures which insure equitable treatment. In all other respects, the practices and procedures meet the requirements of Title IX.

GRADUATE ASSISTANTSHIPS--SCHOOL OF BUSINESS ADMINISTRATION

The School of Business Administration currently awards 4 graduate assistantships in the areas of statistics, accounting, economic research, and computer programming. Each of these positions imposes substantial responsibility. The economic research assistant supports the Director of the Bureau of Business Research in developing data for the preparation of the Virginia and the Williamsburg Business Index Reports, economic analyses, and responses to business community requests for economic data and forecasts. The position requires a skill in research methodology, statistical analysis,

data processing, computer operation, and charting. Assistants in statistics, accounting, and computer programming must have attained a superior scholastic rating in the pertinent discipline in order that they may participate effectively in the curricular activities of the supported faculty member, and provide personal help to Business School undergraduates.

Availability of and qualifications for these positions are published in the MBA Program catalogue, a copy of which is given to all MBA program applicants. The cover page has a General Statement of Policy which says that "facilities and services of the College are open to all enrolled students on the same basis," and the sub-chapter on Financial Aid, page 20, elaborates on the specific nature and requirements of the positions, noting that assessment of applications is based upon past study and demonstrated competence. Information about the assistantships is also provided directly to undergraduate students who plan to continue into the graduate level of study.

All applicants must meet four primary requirements:

- Be a full time student;
- Possess a high level of competence;
- Be able to work 20 hours per week;
- Carry a normal academic course load.

All other requisites and considerations being about equal, financial need may be added as a consideration.

The primary selection criteria is competence in the particular area applied for. Competence is determined from an evaluation of training and experience, based on information contained in the letter of application,

academic and employment records, GAPSFAS, personal knowledge in the case of continuing students, and interviews. The Associate Dean for Graduate Studies is responsible for selection of award recipients and he is assisted in the evaluation process by the faculty member to whom the assistant will be assigned.

The Committee finds that the procedures and practices are essentially in line with Title IX requirements.

GRADUATE ASSISTANTSHIPS -- SCHOOL OF EDUCATION

The availability of graduate assistantships is published in the School of Education Catalog, which is sent to each applicant for admission to the graduate programs. In addition to the Catalog, individual letters of inquiry in regard to financial support for graduate study explain the graduate assistant program. Individuals, during personal interviews, are also given clarification in regard to the program.

Applications for graduate assistantships are available from the Office of Educational Placement and the Office of the Director of Graduate Studies. All applications are returned to the Office of Educational Placement (sample attached). These forms are mailed to applicants or given directly to those who inquire at the Office of Educational Placement.

The primary criteria used in the selection of graduate assistants is the applicants background and experience which will permit them to render some service to the staff of the School of Education. This criteria was established