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MEMORANDUM

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

MAY 31 1989

TO : OCR Senior Staff

FROM : William L. Smith 
Acting Assistant Secretary
for Civil Rights

SUBJECT: Social Fraternities and Sororities and Title IX Exemptions

Recent correspondence indicates that there may be questions concerning the Office for Civil Rights (OCR) policy for distinguishing social fraternities and sororities from professional, service or honorary fraternities and sororities for the purposes of Title IX of the Education Amendments of 1972 and the Title IX regulation, at 34 C.F.R. Part 106 (1987).

Under Title IX and the implementing regulation, the membership practices of social fraternities and sororities are specifically excluded from coverage if (1) the active membership consists primarily of students in attendance at institutions of higher education, and (2) the fraternity or sorority is exempt from taxation under the Internal Revenue Code. 34 C.F.R. § 106.14(a).

Professional fraternities and sororities and service and honor societies, on the other hand, are subject to the requirements of Title IX and may not exclude members on the basis of sex.

Specific prohibitions. Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(7) otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

34 C.F.R. § 106.31(b)(7).

The rationale for this distinction is based on the intangible educational advantage afforded by membership in such professional, service and honorary organizations. As the Court of Appeals for the Fifth Circuit held in Iron Arrow Honor Society v. Heckler, 702 F.2d 549 (5th Cir. 1983), vacated as moot, 464 U.S. 67, 107 S. Ct. 373 (1983), student members of such organizations graduate with a "degree plus more." The Iron Arrow Honor Society, which selected students on the basis of "love for Alma Mater, leadership, scholarship and humility," had alumni serving as members on boards of most of the colleges, as staff, faculty and University administrators, and had plaques and monuments around the campus recognizing the Society as "the highest honor at the University of Miami," 702 F.2d 549, 551. The court concluded that the policy to exclude women from membership had a pervasive discriminatory effect upon women because the Society was considered the most prestigious honor-recognition society at the University, and because this

recognition of the members as attaining a superior level of accomplishment was one to which women on the campus could never rise. Many such honor and service organizations have school and alumni recognition and reputations which enhance student members' careers. Members frequently gain enhanced status which, as alumni, is often influential in decisions affecting campus life and University policy. This type of educational opportunity and benefit is significant and may not be denied to students on the basis of sex.

In order to distinguish social fraternities and sororities from professional, service and honorary fraternities and sororities, OCR asks the following questions:

- (1) Is the organization's membership limited to persons pursuing or having interest in a particular field of study, profession or academic discipline?
- (2) Is the membership limited to individuals who have a high level of achievement in scholarship or any other endeavor?
- (3) Are the members permitted to hold membership in other fraternities or sororities at the same level of education?

An affirmative answer to any of these questions is evidence that the organization is professional, service, or honorary in nature and not a social fraternity or sorority for Title IX purposes. Other questions also may be probative in given cases and all of these determinations should be made on a case by case basis. Please bring to our attention any additional considerations which you think may be helpful in resolving this issue.

In conclusion, the guiding principle is that only social fraternities and sororities may choose to exclude men or women from membership. If an organization is determined to be a professional, service or honorary fraternity, sorority, or society, it falls within the Title IX regulation coverage and may not exclude an individual from its membership on the basis of sex. If you have any questions regarding this memorandum you may call Jeanette Lim at 732-1645.