

Title IX at 35

EXECUTIVE SUMMARY 2008

Diversity Lacking Among College Coaches

Rochester Democrat and Chronicle, February 18, 2007

Austin Explores All-Boys Academy

Austin American-Statesman, April 9, 2007

Muskegon May Test Same-Sex Classrooms

Muskegon Chronicle, December 13, 2006

Nashville to Test Single-Sex Classes

Tennessean.com, April 4, 2007

More Public Schools Dividing Boys, Girls

Houston Chronicle (AP), January 25, 2007

Ongoing Verbal, Physical Abuse Justify Trial on Student's Title IX Claim

School Law Bulletin, February 1, 2005

Sexual Harassment on Study Abroad

The Minnesota Daily, March 5, 2007

Sexual Harassment on the School Bus

Carolina News Channel, February 19, 2007

MIT Completes Ground-Breaking Studies on Status of Women Faculty

MIT News, March 18, 2002

A Breakthrough for MIT and Science—Five Years after Conceding Rampant Sexism, MIT Has a New President, Susan Hockfield

Business Week Online, October 4, 2004

Harvard Board Names First Woman President—Drew Gilpin Faust Ends Lawrence Summers' Stormy 5-Year Tenure

Associated Press, February 11, 2007

Despite Gain in Degrees, Women Lag in Tenure in 2 Main Fields

The New York Times, January 15, 2004

9 University Presidents Issue Statement on Gender Equity

Inside Higher Ed, December 7, 2005

Harvard President Shocks with Comments on Gender Differences

University Wire, February 22, 2005

High Court Supports Title IX Protection: Law Now Covers Whistle-Blowers

Washington Post, March 30, 2005

Harvard Board Names First Woman President—Drew Gilpin Faust Ends

Associated Press, February 11, 2007

Associated Press, February 11, 2007

Beyond the Headlines

A Report of the National Coalition for Women and Girls in Education

Females Breaking Ground in Construction Industry

San Diego Business Journal, January 2007

Female Electrician Enjoys Challenges of a Demanding Job

St. Louis Post-Dispatch, July 2006

Where Are All the Women Plumbers?

St. Louis Post-Dispatch, June 2006

Harvard Chief's Comments on Women Assailed

The Washington Post, January 19, 2005

The Math Myth: The Real Truth about Women's Brains and the Science Gender Gap

TIME, February 27, 2005

For Women in Sciences, Slow Progress in Academia

The New York Times, April 15, 2005

New Title IX Debate Flares after "Clarification"

Orlando Sentinel, April 4, 2005

Study Notes Lack of Female Professors

University Wire, February 23, 2004

Many Women at Elite Colleges Set Career Path to Motherhood

The New York Times, September 20, 2005

Study Casts Doubt on the "Boy Crisis"

The Washington Post, June 26, 2006

Point: Don't Marry Career Women

Forbes.com, August 22, 2006

Study: Teacher's Gender Affects Learning

The Washington Post (AP), August 27, 2006

James Madison to Drop 10 Athletic Teams for Title IX Compliance

USA Today, September 29, 2006

A New London School Where Boys Can Be Boys And Girls Can Be Girls

TheDay.com, July 1, 2007

Education Chief Paige May Allow Proportionality Changes

The Chicago Tribune, February 26, 2003

Ex-Members of Title IX Panel Urge Against Use of Surveys

USA Today, October 17, 2005

Civil Rights Commission Turns into Heated Debate on Title IX

CBS Sportsline.com, May 11, 2007

The National Coalition for Women and Girls in Education is a nonprofit organization formed to educate the public about issues concerning equal rights for women and girls in education; to monitor the enforcement and administration of current legislation related to equal rights for women and girls in education; to perform and publish research and analysis of issues concerning equal rights for women and girls in education, and to take the steps necessary and proper to accomplish these purposes.

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Executive Summary

TITLE IX AT 35: BEYOND THE HEADLINES

Thirty-five years after the passage of Title IX of the Education Amendments of 1972, the stunning progress brought by this landmark civil rights legislation is evident in women's unprecedented achievements in many areas, including business, the professions, academics, sports and public leadership. But, much remains to be done, for the evidence shows that girls and women continue to suffer discrimination in many educational activities, although it is usually in a more subtle form than it was before Title IX was enacted.

A glance at the news headlines from the last five years shows that in spite of the continuing discrimination against girls, Title IX is under attack from critics who claim that there is a "boys' crisis" and that the law now favors girls and women at the expense of boys and men. However, studies show that the educational performance of both sexes has continued to improve under Title IX and that girls' gains have not come at boys' expense. Moreover, both boys and girls face problems such as low high school graduation rates, sexual harassment, and sex stereotyping. Policymakers must seek solutions that benefit all students.

This report sets forth the facts behind the headlines in six areas covered by Title IX that have been focused on in recent years: athletics in schools; education in the "STEM" subjects—science, technology, engineering and mathematics; career and technical education; employment in educational institutions; sexual harassment of students; and single-sex education. Through this examination, NCWGE seeks to inform the continued search for policies that will promote true equality of educational opportunity in all of these areas.

Some critics contend that Title IX has weakened boys' and men's opportunities in athletics. However, while Title IX has opened up the playing fields, women and girls still lag behind men and boys in participation, resources and coaching. And, contrary to the critics' claims, boys' and men's opportunities to play sports have continuously increased since 1972, albeit at a slower rate than that of girls and women—who had so few opportunities before Title IX.

Nevertheless, opponents continue to claim—ignoring relevant court decisions to the contrary—that Title IX policies set forth quotas that are taking participation opportunities and resources away from boys and men. After convening a Commission on Opportunity in Athletics in 2002 to consider changes to Title IX policies, including the so-called "quotas," the Department of Education declined to make any changes. Then, in March 2005, without any notice or opportunity for public comment, it suddenly released an "Additional

Clarification" of its athletics policies, which authorizes schools to use e-mail surveys as the sole measure of girls' and women's interest in playing sports. The Clarification creates a major loophole through which schools can evade their obligation to provide girls and women with opportunities in athletics.

Before Title IX, many educators accepted the stereotype that girls could not achieve in STEM subjects. Since then, that stereotype has been weakened, and significant progress has been made in this area. The gender gap at all grade levels has decreased significantly since 1970 in nationwide assessments of science and math performance; women's share of bachelor's degrees in natural sciences and engineering has more than doubled, and their share of doctoral degrees in these fields has more than quadrupled. However, women still only earn 20% to 25% of degrees in physics, computer sciences and engineering, and the culture of STEM fields still isolates and excludes girls and women. A GAO study in 2004 found that enforcement of Title IX in STEM has been severely lacking, and that students and faculty generally do not know that Title IX applies to this area. In addition to remedying this situation, educational institutions should cultivate girls' and women's talents in STEM to meet the demand for workers in the emerging high-tech world and grow America's capacity for innovation.

In the last 35 years, women and girls have made very little progress in "blue-collar" technology and trades occupations. Male students continue to predominate in courses that lead to high-skill, high-wage jobs, while female students fill the low-wage, low-skill tracks. Before the 1970s, the career and technical education system in the United States intentionally segregated students by sex. Title IX made this unlawful and required that schools take steps to address the disproportionate enrollment of students of one sex in a course. Between 1984 and 1998, Congress spent about \$100 million annually for sex-equity coordinators and programs in each state to



eliminate sex bias and stereotyping and to meet the needs of single parents, displaced homemakers and other individuals facing significant barriers. Congress eliminated this funding in 1998, and OCR has done little to investigate sex segregation in career and technical education, despite the patterns of persistent discrimination. Girls still make up almost 90% of the students enrolled in classes leading to traditionally female occupations and only 15% of those in classes in traditionally



male fields. Biased career counseling, gender stereotypes, unequal treatment by teachers, sexual harassment and other discriminatory practices result in a career and technical education system that limits the educational opportunities of women and girls. This has significant negative consequences for women's economic security, and fails to develop women's skills in fields with a high demand for skilled labor at good wages.

Women continue to face sex discrimination in education employment. Despite progress, relatively few women hold administrative positions at any level of education and they remain under-represented in higher levels of academia, especially at the most prestigious universities. The numbers are especially low for women in the "hard sciences." Women's salaries remain below those of men in every job category, and they also face inequities in grant funding, lab space, leave policies and other support necessary for their advancement. While some institutions are addressing under-representation of women, more must be done to address discrimination in employment in education.

Sexual harassment is sex discrimination that is prohibited by Title IX, whether the student is harassed by employees such as teachers or coaches, or by other students. Students who have suffered sexual harassment may sue for damages in court under Title IX, but schools have an obligation to end

harassment that goes well beyond their monetary liability. OCR issued a Sexual Harassment Guidance in 1997, which was revised in 2001, that requires all schools subject to Title IX to maintain an environment that is free of sexual harassment and to remedy the effects of harassment on the victim. However, sexual harassment remains a problem for students in our schools. One study found that four of five students in 8th through 11th grade—both boys and girls—reported that they had experienced some type of sexual harassment in school. A recent survey of sexual harassment on college and university campuses found that 62% of female college students reported being sexually harassed, some severely enough to make them drop a course or stay away from particular buildings or places on campus. Institutions at all levels of education must address this problem, including by ensuring that they have effective policies and procedures in place to address sexual harassment complaints.

The last area discussed, single-sex education, focuses on problems with the changes to the Title IX regulations issued by the Department of Education in 2006, which allow schools to provide single-sex programs without adequate protection against stereotyping and other forms of sex discrimination. The 1975 Title IX regulations allowed some single sex classes and programs for specific purposes such as contact sports, instruction in human sexuality, and for remedial or affirmative activities to decrease sex discrimination. The 2006 changes allow K-12 non-vocational single sex education for many more purposes and do not have adequate safeguards to ensure that sex segregated schools, classes or activities will not increase sex discrimination. They fail to recognize that women and girls have historically been treated inequitably and received fewer resources when programs are separated on the basis of sex. In addition, the 2006 changes do not require that sex segregation be used only if there is adequate justification to show that it will be better than coeducation in accomplishing the desired objectives, such as increasing gender equity in



education. Educators must understand the dangers of single sex programs, and should carefully

examine them to ensure that they are not discriminating on the basis of sex and reversing the significant progress made under Title IX since 1972.

Probing beyond the headlines in these six key areas covered by Title IX, NCWGE has found significant progress along with serious enforcement gaps and disappointing setbacks. Looking forward, it has identified key opportunities to continue improving women's and girls' access to educational opportunities. Policymakers, administrative agencies and educational institutions all have an important role to play in achieving gender equity, along with students, parents and teachers. Policymakers must increase oversight of Title IX enforcement



and continue to provide resources and incentives for research and development of effective gender equity programs. OCR should rescind the athletics policy clarification on interest surveys and the new single-sex regulations, as well as increase compliance reviews and reporting. Educational institutions should appoint Title IX coordinators, conduct self-assessments and continue efforts to end all forms of sex discrimination, including harassment, in order to improve women's and girls' opportunities in all areas of education. Implementing these and other items in the action agenda will expand progress toward gender equity in education and change the headlines for years to come.

NCWGE ACTION AGENDA

This report looks critically at 35 years of progress under Title IX. Probing beyond the headlines in six key areas covered by the law, NCWGE has found serious enforcement gaps and disappointing setbacks. However, looking forward, it has identified key opportunities to continue improving women's and girls' access to educational opportunities. Con-

gress, administrative agencies, and educational institutions all have an important role to play, along with students, parents and teachers, in effectively applying Title IX. NCWGE believes that implementing this action agenda will expand progress toward gender equity in education and lead to more positive headlines in the years to come.

CONGRESS

Fulfilling the promise of Title IX will further the goal of improving educational opportunities for all students throughout our nation—both female and male. Congress should take the following steps:

- Conduct oversight hearings and call for enhanced agency enforcement, particularly an increase in the number and frequency of compliance reviews conducted by the Offices for Civil Rights (OCRs) in the Department of Education and other federal agencies, to ensure that federally-funded education programs provide equal access and opportunity to all students.
- Restore federal funding to states for gender equity work, including funding for state Title IX coordinators and programs.
- Pass legislation improving protections for equal pay for women and men working at all levels of educational institutions, from pre-K through universities as well as in all other areas of our society.
- Authorize and fund a comprehensive public education campaign to raise awareness of rights and responsibilities under Title IX as well as the importance of gender equity in education among students, parents, teachers and administrators.

- Require increased data collection, including analysis and disaggregation of data by gender, race and other appropriate characteristics, for use in ensuring accountability and progress in attaining gender equity in educational institutions receiving federal financial assistance and require schools to publicize this information. For example, enact the High School Athletics Accountability Act/High School Sports Information Collection Act to require high schools to report key data, including participation numbers, budgets and expenditures, which can be used to gauge schools' compliance with Title IX in athletics.
- Fund research and program development to improve gender equity in education through federal programs such as the Women's Educational Equity Act (WEEA), the Fund for the Improvement of Postsecondary Education and the Institute of Education Sciences in the Department of Education.
- Increase funding for programs that focus on attracting and retaining women and girls in non-traditional and STEM careers, including afterschool programs and the National Science Foundation's ADVANCE grants for STEM faculty.

ADMINISTRATIVE AGENCIES

Title IX applies to every educational institution and activity that receives federal funds. The federal agencies that oversee that funding should implement Congressional mandates and take the following steps to strengthen enforcement of Title IX and further gender equity in education:

- The Department of Education should rescind the March 2005 Clarification allowing email surveys to be used as the sole means to satisfy the third prong of the test for determining whether schools are providing equal opportunity for males and females to participate in athletics programs. It should affirm the 1996 Policy

Clarification, pursuant to which surveys are only one of a multitude of factors schools can use to determine whether they are satisfying the interests of their female students.

- The Department of Education should rescind the 2006 amendments to the 1975 Title IX regulations that allow single-sex education without accountability or protections against discrimination.
- In addition to responding to complaints, OCRs in the federal agencies must initiate more compliance reviews of educational institutions and be vigilant in following through to ensure that

schools implement their compliance plans. Where appropriate, OCRs should deny funding when schools fail to comply with Title IX.

- The Department of Education should reinstate the Gender Equity Expert Panel and support the use of effective replicable gender equity programs.
- Collect detailed data on employment from elementary and secondary school districts and postsecondary institutions to better analyze educator pay rates and promotional opportunities. This data should be used, among other things, to develop programs to promote a wide range of diversity (gender, ethnicity, race, age, sexual orientation, etc.) in teaching, including tenure track jobs and administrative positions.

- Provide technical assistance to schools to help them understand their obligations under Title IX and to disseminate promising practices. Enforce the Title IX requirement that each institution receiving federal funds have a coordinator to ensure proper implementation of Title IX.
- Support high quality evaluation and research on single-sex education, focusing on comparing single-sex education programs with appropriately matched coeducational programs. Fund gender equity organizations to develop and disseminate model criteria, standards and procedures to evaluate single-sex education programs to ensure that they are not discriminatory.

STATE AND LOCAL EDUCATIONAL PROGRAMS AND ACTIVITIES

All education programs or activities receiving federal financial assistance must comply with Title IX's requirements. The following activities will further compliance and improve educational equity:

- Appoint Title IX coordinators for each educational institution and school district to organize efforts to comply with the law, investigate complaints, and publicize information on patterns of compliance with Title IX. The Title IX coordinators should ensure that all staff and students are educated about their rights and responsibilities under Title IX and that plans are implemented to end sex discrimination.
- Provide all members of the school community, including students, applicants, parents, admissions and recruitment personnel, union representatives, faculty, and staff, with information about Title IX protections, grievance procedures and the name and contact information of the Title IX coordinator at the school, using the Internet and other means.
- The Title IX coordinators should participate in an annual self-assessment of compliance with the 1975 Title IX regulations and subsequent policies and guidances. This assessment should include an examination of institutional policies, procedures and practices for ending gender bias.
- Provide professional development and training to educators and administrators about approaches to counteracting sex stereotyping and sex discrimination to meet the needs of all students and society.
- Continue and expand programs to attract women into career fields relying on science, technology, engineering and mathematics, at every level

from career and technical education to higher education. This includes strategies such as educating parents, increasing networking and peer support activities, integrating more hands-on activities into curricula and offering after-school and other informal education programs that can engage women and girls in these fields.

- Work with search committees and personnel departments to effectively address all hiring programs and promote diversity among staff and faculty. Provide employees with opportunities for advancement, such as training and mentoring for administrative positions. Support family-friendly employment policies and provide increased networking opportunities.
- Ensure that female and male students have equal opportunities to participate in athletics and other types of education programs where one sex is under-represented, and ensure equal treatment when students of the under-represented sex do participate.

With community cooperation and increased enforcement of Title IX, the nation can ensure that the headlines of the future will reflect increased progress in ending sex discrimination in education.

Title IX Timeline

- 1964** Title VII of the Civil Rights Act of 1964 is enacted, prohibiting discrimination in employment based on race, color, sex, national origin, or religion. Title VI of this Act prohibits discrimination in federally assisted programs—including education programs—on the basis of race, color and national origin, but not on the basis of sex.
- 1970** Congress holds first hearings on sex discrimination in higher education.
- 1972** Title IX of the Education Amendments of 1972 is enacted, prohibiting discrimination on the basis of sex in all federally-assisted education programs and activities.
- 1974** Tower Amendment, which would have exempted revenue-producing sports from Title IX compliance, is proposed and rejected. Javits Amendment, an alternative to the Tower Amendment, is passed. It states that Title IX regulations must include reasonable provisions considering the nature of particular sports.
- 1975** Department of Health, Education and Welfare (HEW) issues final Title IX regulations. Elementary schools are given one year to comply. High schools and colleges are given three years to comply. Several attempts in Congress to disapprove the HEW regulations and to amend Title IX are rejected, including a reintroduced version of the Tower Amendment. HEW publishes “Elimination of Sex Discrimination in Athletics Programs” in the Federal Register and sends it to school officials and college and university presidents.
- 1976** NCAA unsuccessfully files a lawsuit challenging the Title IX athletic regulations.
- 1979** After notice and comment, HEW issues a Policy Interpretation, “Title IX and Intercollegiate Athletics,” introducing the “three-part test” for assessing compliance with Title IX’s requirements for equal participation opportunities. U.S. Supreme Court rules in *Cannon v. University of Chicago* that individuals have the right to sue under Title IX.
- 1980** Federal education responsibilities are transferred from HEW to a new Department of Education. Primary oversight of Title IX is transferred to the Office for Civil Rights (OCR) of the new Department. OCR issues Interim Investigators’ Manual re Title IX Compliance to investigators in its regional offices.
- 1984** U.S. Supreme Court rules in *Grove City v. Bell* that Title IX applies only to the specific programs within an institution that receive targeted federal funds. This decision effectively eliminates Title IX coverage of most athletic programs and other activities and areas of schools and colleges not directly receiving federal funds.
- 1987** OCR publishes “Title IX Grievance Procedures: An Introductory Manual” to assist schools with their obligation to establish a Title IX complaint procedure and designate a Title IX coordinator to receive those complaints.
- 1988** Civil Rights Restoration Act is passed over President Reagan’s veto. This Act restores Title IX coverage to all of an educational institution’s programs and activities if any part of the institution receives federal funds.
- 1990** OCR updates and finalizes its Title IX Investigators’ Manual.
- 1992** U.S. Supreme Court rules unanimously in *Franklin v. Gwinnett County Schools* that students who suffer sexual harassment in schools may be awarded monetary damages under Title IX. NCAA publishes a Gender-Equity Study of its member institutions, detailing widespread sex discrimination in athletics programs.
- 1994** Equity in Athletics Disclosure Act (EADA) is passed, requiring federally assisted, coeducational institutions of higher education to disclose information about the gender breakdown of their intercollegiate athletic programs. The requisite annual reports from these institutions allow for better monitoring of Title IX compliance.

1996 OCR issues the “Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test,” explaining in detail how schools can comply with each prong of the three-part “effective accommodation test” first set forth in the 1979 Policy Interpretation.

U.S. Court of Appeals for the First Circuit, after an extensive analysis, upholds the lawfulness of the three-part test in *Cohen v. Brown University*.

U.S. Government Accountability Office issues a report entitled “Issues Involving Single-Gender Schools and Programs.”

1997 OCR issues “Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties.” The Guidance establishes standards for Title IX compliance, and emphasizes that institutions are responsible for preventing and punishing student-on-student sexual harassment.

1998 U.S. Supreme Court rules in *Gebser v. Lago Vista Independent School District* that a student may sue for damages for a teacher’s sexual harassment only if the school had actual notice of the teacher’s misconduct and acted with “deliberate indifference” to the harassment.

1999 U.S. Supreme Court rules in *Davis v. Monroe County Board of Education* that Title IX covers student-on-student harassment, and, as with teacher-student harassment, that damages are available only if the school had actual notice of and was “deliberately indifferent” to the harassment. The harassment must go beyond teasing and be so severe, pervasive and objectively offensive that it deprives the victim of access to the benefits of education.

2001 OCR issues “Revised Sexual Harassment Guidance” reaffirming in large part the compliance standards described in the 1997 Guidance. It makes clear that the *Gebser* and *Davis* standards only apply to suits for damages, not to OCR’s enforcement or to suits for injunctive relief.

Department of Justice issues the Final Common Rule on Title IX enforcement for all federal agencies that did not already have their own regulations.

Department of Justice issues “Title IX Legal Manual” providing guidance to federal agencies regarding compliance with Title IX.

2002 The National Wrestling Coaches Association files suit against the Department of Education challenging the three-part test. The Department establishes a Commission on Opportunity in Athletics to evaluate changes to Title IX athletics policies.

President’s budget calls for the elimination of all funding for programs under the Women’s Educational Equity Act.

2003 The Title IX Commission on Opportunity in Athletics issues its report, recommending significant and damaging changes to the Department of Education athletics policies. The Secretary of Education rejects all recommendations, and a “Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance” affirming the existing policies is issued in July.

2005 U.S. Supreme Court rules in *Jackson v. Birmingham Board of Education* that individuals, including coaches and teachers, have a right of action under Title IX if they are retaliated against for protesting sex discrimination.

Without any notice or opportunity for comment, the Department of Education issues an “Additional Clarification of Intercollegiate Athletics Policy Guidance: Three-Part Test—Part Three,” allowing colleges to use a single e-mail survey to show that they are meeting women’s interests in playing sports.

2006 Department of Education issues changes to the 1995 Title IX regulations, allowing schools to offer single-sex programs without adequate safeguards against stereotyping and other forms of sex discrimination.

NCWGE Affiliate Organizations

Academy for Educational Development
American Association for the Advancement of Science
American Association of School Administrators
American Association of University Women
American Civil Liberties Union: Women's Rights Project
American Civil Liberties Union
American Federation of Teachers
American Psychological Association
Association for Gender Equity Leadership in Education
Association for Women in Science
Association of American Colleges and Universities
Association of Junior Leagues International, Inc.
Association of Teacher Educators
Business & Professional Women USA
Center for Advancement of Public Policy
Center for Women's Policy Studies
Council of Chief State School Officers Resource Center on Educational Equity
Dads and Daughters
Equal Rights Advocates
Federation of Organizations for Professional Women
Feminist Majority Foundation
Gallaudet University
Girl Scouts of the USA
Girls Incorporated
Girlstart
Healthy Teen Network
Leadership Conference on Civil Rights
Ms. Foundation for Women
Myra Sadker Advocates for Gender Equity
National Alliance for Partnerships in Equity
National Association for Girls & Women in Sport
National Association of Collegiate Women Athletic Administrators
National Center for Lesbian Rights
National Council of Administrative Women in Education
National Council of Negro Women
National Education Association
National Organization for Women
National Partnership for Women and Families
National Women's History Project
National Women's Law Center
National Women's Political Caucus
Legal Momentum
NOW Legal Defense and Education Fund
Parent and Teacher Association
Partners of the Americas
Society of Women Engineers
U.S. Student Association
Wider Opportunities for Women
Women Work!
Women's Edge
Women's Research and Education Institute
Women's Sports Foundation
YWCA