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YEARS

GAME CHANGER



WE CHEER THE 40TH ANNIVERSARY OF TITLE IX AND THE ACTIVISTS WHO HAVE FOUGHT SO HARD FOR WOMEN'S EQUAL EDUCATIONAL OPPORTUNITIES—BUT WE CAN'T FORGET THE CHALLENGES THE LAW STILL FACES

BY ERIN BUZUVIS

CHARLOTTE MURPHY KNOWS a Title IX violation when she sees one. For this Pittsburgh 11-year-old, the law is simple: Boys and girls should have equal opportunity in every aspect of their public-school education. So last year, as a fourth grader, when her school, Linden Elementary, canceled the girls' basketball season but not the boys', she earnestly wrote to the superintendent of Pittsburgh Public Schools.

Dear Dr. Lane,

... I have been a member of the girls basketball team for a while now. Our season was canceled because of funding; all the other teams dropped out. But only the girls. Boys basketball is going fine. This is a violation of federal law, title nine. I would like to request a meeting to discuss this matter. Please call to set it up.

Lane *did* meet with her, and eventually young Ms. Murphy's advocacy, along with help from the Women's Law Project, based in Pennsylvania, and its senior staff attorney Susan Frietsche, resulted in a new district policy under which elementary schools can only sponsor a boys' basketball team if they sponsor one for girls. This year, girls showed up to play at elementary schools throughout the district, putting to rest concerns that their supposed lack of interest would require schools to drop basketball for both sexes.

As Title IX celebrates its 40th anniversary this year, stories like

Murphy's illustrate not only how far the law has come, but also how much more remains before Title IX's full promise of education equality is realized. That a fourth grader knows a federal law by name and was able to successfully assert her rights is a testament to its strength and staying power. At the same time, the fact that girls' opportunities were threatened while boys' were not suggests that Title IX remains relevant and necessary.

When Congress approved Title IX as a portion of the Education Amendments of 1972, the activists and legislators who worked so hard for its passage were certainly thinking of girls like Murphy. Rep. Edith Green (D-Ore.), Rep. Patsy Mink (D-Hawaii), Sen. Birch Bayh (D-Ind.) and other advocates who helped shepherd Title IX from bill to law were concerned about discrimination all the way from kindergarten up, including the widespread exclusion of women from public colleges and universities, graduate schools, professional schools and vocational programs.

Testimony by feminist advocates at congressional hearings on the law revealed sex discrimination in hiring for faculty and other positions throughout public education. Bernice Sandler, who played a major role in the development and passage of Title IX, famously recounted that she was motivated by being passed over for seven open faculty positions at her university because she was deemed "too strong for a woman."

In 1974, prompted by efforts to exclude revenue-generating men's sports from Title IX, Congress affirmed that its prohibition on sex discrimination should apply to scholastic and collegiate athletics along with all other public education programs. And by 1975, as the federal agency responsible for enforcing Title IX created regulations to fill in the details of the broadly worded law, it became clear that Title IX would have a huge effect.

Indeed it has. The numbers of women in higher education, particularly in law, medicine, business, veterinary and dentistry, have increased dramatically. Women now earn the majority of both undergraduate and graduate degrees, although the numbers are smaller in some traditionally male-dominated fields. For example, women students are still outnumbered in many of the so-called STEM fields (science, technology, engineering and mathematics), especially in doctoral degrees, but Title IX is helping close the STEM gap by encouraging institutions to address structural discrimination, such as bias in hiring and the awarding of research grants.

In athletics alone, the number of girls playing interscholastic sports in high school has grown from about 300,000 girls before Title IX to more than 3 million today. That's 1 in 3 girls, though still less than the 1 in 2 boys who participate. Similarly, the number of women playing intercollegiate sports pre-



Young Title IX advocate Charlotte Murphy with Pittsburgh school superintendent Linda Lane

Title IX was fewer than 30,000, while today it's more than 191,000, and the number of scholarships for women athletes has increased dramatically. Title IX has also helped female athletes fight for more equitable treatment, as evidenced by the thousands of Title IX complaints filed and the landmark decisions that have awarded millions of dollars to plaintiffs. Title IX has also had a ripple effect that spread internationally to the Olympics, which this summer will see women participate for the first time in all the sports that men do, including boxing.

But while the improvement in athletic opportunities for women and girls may be Title IX's best-known result in the eyes of the general public, the law has effected even more profound changes for millions of women in other areas of public education. Since the statute applies to all educational programs and activities that receive federal funds (including federal student-loan programs), nearly all colleges and universities are covered. Public-school districts are also under its umbrella, as a result of participating in federal programs that support public education. Title IX even applies to prison-operated vocational programs that receive federal assistance.

On the elementary and secondary school level, Title IX no longer allows schools to limit class opportunities to one sex or another based on stereotypes about different interests and abilities. Cooking and sewing classes, for example, once known as "home economics," must be open to boys as well as girls, while technology, science and "shop" classes must be open to girls as well as boys. Indeed, many home ec courses were renamed "family and consumer sciences" in 1994 "to dispel the impression that home ec was about teaching girls how to be housewives," wrote Amy Scattergood in the *Los Angeles Times*. (It's also sometimes called human ecology, and still known as home ec in California, albeit with trendier and less gender-specific courses.)

Title IX also covers career education, employment, sexual harassment, education for pregnant and parenting students, standard testing and technology. In 1989, for example, a plaintiff successfully used Title IX to challenge New York state's practice of relying solely on SAT scores (rather than grades) to determine students' eligibility for merit scholarships. The court agreed that the statistical disparity between SAT scores for male and female students revealed bias in the *test*, so it was deemed discriminatory for the state to rely on those results.

Pregnant and parenting students also receive Title IX protections, such as curtailing the once-accepted practice of forcing them out of mainstream classes and into special programs of questionable academic value. While it is legal

for school districts to operate special schools or programs designed to meet the needs of pregnant and parenting students, enrollment must be voluntary and must provide similar quality education.

Protections against sexual harassment, along with sexual assault and bullying of a sexual nature, have also been increased under Title IX. The U.S. Supreme Court recognized such harassment as sex discrimination back in the 1999 Georgia-based case *Davis v. Monroe County Board of Education*. When LaShonda Davis was in the fifth grade, a male classmate barraged her for months with vulgar comments and gestures, frequently trying to touch her inappropriately. She reported his actions to several different teachers, but they ignored the problem. Her grades dropped and she even wrote a suicide note, saying she "didn't know how much longer she could keep [the harassing student] off of her."

Finally, Davis and her family sued the school district for sex discrimination under Title IX—and the Supreme Court agreed that when school officials know about but fail to respond to severe or persistent harassment, the educational institution is liable. The *Davis* decision has since been cited more than 500 times by lower courts, and even applied to cases involving students targeted for harassment or bullying because they didn't conform to gender stereotypes, including gays and lesbians. Most importantly, the case prompted schools across the country to develop policies prohibiting sexual harassment and protecting students.

Title IX doesn't just protect students: Teachers, professors, administrators, coaches and other school employees can use the law to challenge sex discrimination in such areas as hiring, firing and equal pay or benefits. There have also been several high-profile Title IX retaliation cases

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involving coaches who were fired or otherwise punished after advocating for gender equity on behalf of themselves and their teams, and at least two universities—California State University, Fresno, and Florida Gulf Coast University—have paid millions to settle those types of claims (see *Ms.*, Spring 2008).

But for all its successes, Title IX has faced consistent attacks throughout its 40 years. In the most serious setback to date, the Supreme Court ruled in the 1984 case *Grove City College v. Bell* that the conservative Christian college was only required to comply with Title IX in those programs that *directly* received federal funds (in that case, it was the financial aid/admissions office) but not in the rest of the college. The engineering department, say, could discriminate against female students with impunity so long as it wasn't receiving federal funds.

The decision effectively gutted Title IX and immediately jeopardized other civil rights laws, including prohibitions against race, age and disability discrimination, which had been worded similarly to Title IX. It took a huge campaign—led by the National Organization for Women (NOW) and the Leadership Conference on Civil and Human Rights, plus a host of other women's, civil rights and anti-discrimination groups—to restore the full authority of these laws. They fought for legislation that would make sure the *whole* educational institution and its programs would be covered if any part of it received federal funds.

After four years of wrangling, the Civil Rights Restoration Act of 1988 was passed by both houses of Congress, only to be vetoed by President Ronald Reagan. But advocates won enough votes in Congress to override Reagan and enact the law.

By 2003, with the dramatic expan-

sion of sports opportunities for women and girls, there was another Title IX backlash. President George W. Bush's Department of Education created a heavily stacked "Commission on Opportunity in Athletics" to review Title IX and recommend changes. Women advocates took action again, led by many organizations in the National Coalition for Women and Girls in Education (NCWGE). They attended commission hearings, held demonstrations and engaged in e-activism along with traditional lobbying.

The commission, by majority vote, made many recommendations that would have gravely wounded Title IX, but two Olympic sportswomen on the commission, soccer player Julie Foudy and swimmer Donna DeVarona, wrote a stinging minority report. The campaign had been so hot, and there was so much pressure on the Bush administration to not "bench my daughters," that the secretary of education actually rejected the very recommendations for which the commission had presumably been created.

Two years later, however, the Bush administration announced a policy under which colleges could assess female students' interest in competitive sports through an Internet or email survey—and treat a nonresponse (even if the student never saw the survey) as a presumption of disinterest. There was no survey for boys—apparently they were all presumed to be interested. Then, even if the institution provided fewer athletic opportunities for women, the unscientific survey could be used as evidence of the school's compliance with Title IX. In 2010, after persistent objections from women's organizations, the Obama administration's Department of Education rescinded the policy.

In another unpopular move, the Bush Department of Education in 2006 changed Title IX's regulations to allow more single-sex public education in K-12, something that had been previously permitted only for very limited purposes. While the law still technically forbids using stereotypes and generalizations to justify gender segregation, more than 500 schools have now implemented single-sex academic classes, many reflecting gender stereotypes. For example, at one middle school in Alabama, whose single-sex education program was successfully challenged by the ACLU, girls reportedly received an assignment in their language arts class to find as many words as possible to describe their dream wedding cake, while boys had to brainstorm action verbs used in sports. The NCWGE has been campaigning to convince the Department of Education to rescind the 2006 regulations, but the department has not yet done so.

If the last 40 years are any indication, Title IX's success is due to the eternal vigilance of the law's supporters, who continue to defend it through the political process and in the courts. This vigilance must continue in order for the law to address persistent sex discrimination, and to guard against unwarranted sex segregation. Title IX advocates are also pushing for schools to identify a dedicated Title IX coordinator within each school, as required in Title IX's federal regulations.

But as the struggle to end sex discrimination continues, Title IX's 40th anniversary provides an opportunity to cheer how far we have come—to a world in which even an 11-year-old girl knows when something's wrong and that there's something called Title IX to help right the injustice. ■

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