Title IX Infractions: Legal Options and Winning Cases[1]

Although many people believe that Title IX applies only to sex discrimination in athletics, the federal law in fact holds that "no person…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." The law prohibits sexual harassment and discrimination against pregnant and parenting students. It also requires full access to pre-K through adult education programs—from auto repair to zoology—as well as gender equity in coeducational and single sex learning environments, testing, career education, employment and technology.

As long as so many people are unaware that they are protected and can file complaints for such a wide range of types of discrimination, educational institutions can continue to exclude, deny benefits, and discriminate with little worry. The Feminist Majority Foundation and other organizations concerned with education equity are here to change this and to make people aware that they have federal laws like Title IX on their side when faced with sex discrimination.

Many individuals, from pregnant teens to victimized gay students to angry fathers, have filed Title IX complaints or lawsuits under the federal law, and a number of them have been awarded substantial monetary sums. Although the withdrawal of federal funding is a possible penalty,[2] it has never been exercised by the US Department of Education; regardless, the recipients of this funding—nearly all U.S. elementary and secondary schools, colleges and universities, both public and private, and their affiliated programs—should recognize that Title IX compliance is in their best interests, both to ensure students' well-being and to protect themselves from large legal expenses and negative publicity.

This paper will discuss the following three legal options in the event of a Title IX violation:

1. using internal grievances with their educational institution
2. filing federal complaints with the U.S. Department of Education's Office for Civil Rights (OCR).[3]
3. filing a private lawsuit

It will provide general guidance on paying attention to important technicalities such as meeting deadlines and documenting information about the case that apply to all legal options. In addition to showing how the options might be used together, it will provide details on the OCR complaint process, including timeframes and steps in the investigation. After reviewing the types of resolutions that have come out of past complaints, it will then present the case for greater Title IX enforcement and encourage individuals to use legal means to challenge sex

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[1] This 11-29-06 paper was written by Jenny Lee, a 2006 summer intern at the Feminist Majority Foundation, with input and refinement by Susan Klein, Kamaria Campbell, Herb Dempsey, William Howe, Linda Shevitz, and Erin Buzuvis. It covers the OCR complaint process and case examples more thoroughly than the shorter web version available at http://www.feminist.org/education/consequences.asp. It also describes the results of a survey of SEA Title IX Coordinators by William Howe and provides links to other legal resources.

[2] Sometimes funds and approvals of federal grants are delayed if there are questions about the potential recipient's compliance with civil rights laws. All recipients are also required to sign a statement that they comply with Title IX and many other laws before their funding is approved.

[3] In addition to filing a federal Title IX Complaint, it may be appropriate to file a complaint with state child welfare agencies for child abuse and criminal charges with police officials.

discrimination and help carry out this enforcement. Finally, it will describe examples of cases where individuals have achieved successful results.

Legal Options

Individuals who have been the victims of sex discrimination in education that is prohibited by Title IX have various legal options.[4] These legal options should be selected based on full knowledge of their advantages and disadvantages. It is essential to know about and meet all technical requirements for filing a complaint such as strict time limits and making sure that they have legal status (standing) to complain as a direct or indirect recipient of sex discrimination. Although they are usually initially encouraged to use the internal grievance procedures established by their educational institution, this option is typically ineffective, as will be explained later. Thus, it should be known that the existence [or non-existence] of Title IX grievance procedures does not affect the right of an individual or group to file a federal complaint regarding possible Title IX violations. In filing a federal Title IX complaint, there are several possible approaches:

- Filing a **federal complaint alone**, without using the institution's internal Title IX grievance procedures. Individuals or groups may even use an online form to file a complaint with the Department of Education's Office for Civil Rights (OCR) at www.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt

- Filing a **federal complaint alongside an internal grievance**. In this case, the federal complaint must be filed within 60 days of the last act of the institutional grievance process.

- Filing a **federal complaint after the unsatisfactory resolution of a grievance** by the recipient agency/institution's grievance procedure. However, in deciding the case, the OCR may choose to defer to the result reached in the internal grievance procedure.[5] (See page 9.)

- If neither the internal grievance nor the federal complaint achieved adequate relief, individuals may choose to file a **private lawsuit**[6]. Although this is the most costly option, it is the one through which millions of dollars have been awarded to some victims of sex discrimination in educational institutions, through settlement awards and court-ordered compensatory and punitive damages.

In many cases, victims of sex discrimination choose to file a complaint with the OCR following unsatisfactory experiences with their institutions' internal grievance procedures,

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[4] They should also remember to see if there would be advantages for seeking remedies under other federal or state laws such as the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution or state constitutions and regulations. Sometimes they can file under different laws simultaneously.

[5] www.securityoncampus.org/victims/titleixsummary.html

[6] Victims of employment sex discrimination are advised to file a Title VII complaint. Victims must file with EEOC in order to sue privately.

especially if they are nonexistent or ineffectively administered. The paragraphs below highlight the 1975 Title IX regulations regarding these procedures.

Option 1: Using Internal Grievance Procedures

Title IX regulations require that educational institutions set up internal procedures through which individuals who face sex discrimination can file Title IX grievances.[7] The effectiveness of these grievance procedures in obtaining relief varies widely, depending on the institution. While some fail to make their procedures public (as required), others do a good job of publishing them in books and manuals available to students and faculty, as well as on their website.[8]

An institution's Title IX Coordinator[9] should ensure that there is a grievance process that is well understood and that functions effectively. In managing this process, the Title IX Coordinator needs to handle logistical tasks such as distributing and receiving grievance forms, scheduling hearings, maintaining files, and notifying parties regarding grievance decisions, as well as the hands-on and oversight duties of providing on-going training to staff about Title IX regulations and monitoring compliance after a grievance resolution.[10] State education agencies (SEAs) also have Title IX coordinators; to see a full listing visit the Feminist Majority Foundation's Education Equity website, http://www.feminist.org/education/NetworkCoordinators_state.asp.

The extent to which Title IX Coordinators perform these duties is, in reality, largely unknown. Published judicial decisions rarely mention that an institutional or SEA Title IX Coordinator played a role in pre-litigation phases of the case. Also, survey results reveal that only 13 states grant their SEA Coordinators the authority to conduct investigations under federal laws including Title IX.[11],[12]

Further, although the recipients of federal funding are required to adopt and publish internal grievance procedures for the resolution of sex discrimination complaints in their education programs (65 Fed. Reg. 52867 at § .135(b)), Title IX neither specifies a certain format for such procedures,[13] nor imposes any specific penalties for not following the regulations. In fact, the Department of Justice's website[14] explicitly states that "there is no private right of action for damages for a recipient's failure to establish grievance procedures under Title IX, [although] requirements under Title IX regulations to establish such procedures can be enforced

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[7] http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html

[8] For instance, New Mexico's SEA Title IX Coordinator directed me to the link on her state education department's website containing information about Title IX complaints at http://www.ped.state.nm.us/div/policy10/index.html. Their complaint procedure is located at http://www.ped.state.nm.us/div/policy10/docs/nmcpr_FILES/complaint_rule/06.010.0003.pdf. You can also download a simple Employee Formal Complaint & Title IX Grievance Form at the site, fill it out, and mail it back.

[9] More information on Title IX Coordinators can be found at http://www.feminist.org/education/NetworkCoordinators.asp

[10] www.usdoj.gov/crt/cor/coord/TitleIXQandA.htm

[11] These 2006 statistics were compiled by William H. Howe, SEA Title IX Coordinator for Connecticut, with help from FMF intern Jenny Lee.

[12] Additional states expect their Title IX Coordinators to investigate related reports of sex discrimination under state laws.

[13] The Department of Justice, however, does provide a guidance document, "Title IX Grievance Procedures: An Introductory Manual," (available at: http://www.ed.gov/about/offices/list/ocr/publications.html)

[14] http://www.usdoj.gov/crt/cor/coord/TitleIXQandA.htm

administratively by the federal funding agency." Consequently, Herb Dempsey, who has filed numerous Title IX OCR complaints regarding unequal athletic facilities in Washington State and other states, has found that figuring out how to file an internal grievance "isn't always as easy as it sounds. Sometimes I can't even find the rules for how to accomplish this. At colleges I am frequently told that they have never had to develop a policy because they have never had a complaint."[15]

As illustrated by Dempsey's experience with educational institutions and the cases of Title IX violations compiled below, victims of sex discrimination are typically forced to turn to federal legal remedies, the next step which involves filing a complaint with the OCR.

Option 2: Filing a Federal Title IX Complaint with the OCR

The website for the U.S. Department of Education's Office for Civil Rights posts instructions and forms for filing an OCR complaint, see www.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt. OCR is charged with enforcing Title IX as well as other federal antidiscrimination statutes that govern educational institutions, such as Title VI of the Civil Rights Act of 1965 (for discrimination based on race, color and national origin), Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 (for discrimination based on disability), the Age Discrimination Act of 1975 (for discrimination based on age), and, of course, Title IX of the Education Amendments of 1972 (for discrimination based on sex)[16].[17]

The OCR's electronic complaint form, available from the Feminist Majority Foundation's "Take Action" site at http://www.feminist.org/education/TakeAction.asp, or at www.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt, requests the contact information for the individual filing the complaint, for the victim of the discrimination, and for the institution that discriminated; whether or not the individual tried to resolve the complaint through the institution's grievance procedure, due process hearing, or with another agency, and the results of any such attempts; the type of discrimination that occurred, and a description of each incident of discrimination. For each incident, the individual must provide the date(s) the discriminatory action occurred, the name(s) of individual(s) who discriminated, what happened, witnesses, (if any), and why he or she believes the discrimination was because of race, sex, disability, or whatever basis indicated above, or why the action was retaliatory.

Keeping Good Records

OCR's electronic complaint form asks for detailed information and documentation of the grievance, but **it is critically important to keep a detailed, comprehensive, up to date and accurate file of the incident or situation underlying the grievance for many legal purposes.** Include the timeline of events, the names and contact information for those involved, a list of efforts to resolve the incident or situation, and detailed information on how the institution responded. **This record will help ensure that the grievance is filed within OCR's deadline**

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[15] http://www.athleticsearch.com/bonus6.html

[16] http://www.ed.gov/about/offices/list/ocr/index.html

[17] Since Title IX covers recipients of federal financial assistance for education programs and activities, most federal agencies ranging from the Department of Agriculture to the National Science Foundation have civil rights offices to enforce this law. However, since most of the education funding is from the Department of Education, this paper will focus on the U.S. Department of Education OCR procedures.

(180 days after the last incident, 60 days after the last act of an internal grievance procedure). In addition, a well completed form will more likely reflect a strong case and help guarantee that the OCR will not dismiss a complaint due to inadequately presented or missing information.

Who Can File?

Anyone who is a victim of sex discrimination in a federally funded educational institution or program can file a Title IX complaint. Whether you are a victim of peer-on-peer sexual harassment, whether your athletic team is denied resources that the same team of the opposite sex regularly receives, or whether you believe that the standardized test you are taking is gender-biased, you have the right to use legal means to challenge these violations of federal law. In many instances you may file a complaint even if you are not the direct recipient of discrimination, but have knowledge about the discrimination. In contrast to many legal jurisdictions including federal courts, many state courts and most state administrative procedures, where the individuals who file must be actual victims of discrimination and establish "standing" as having been discriminated against, OCR procedure is more lenient. Within the federal administrative remedies under the Office for Civil Rights, a well documented complaint may be fielded by citizens and standing is much less of an issue.

If someone you know is a victim of sex discrimination, be it your daughter, younger brother, neighbor, or student, you have the right to file a complaint on their behalf. Since the Supreme Court's 2005 decision in *Jackson v. Birmingham Board of Education*, Title IX also protects those who report Title IX violations on behalf of direct victims from retaliation by the institution. (The OCR's electronic complaint form invites documentation of grievances that are either retaliatory or directly discriminatory in nature.) The *Jackson* decision protects whistleblowers and ensures that Title IX Coordinators and other concerned parties can report violations and facilitate and/or file complaints safely, and thus be more effective in reducing sex discrimination in education.[18]

How Long Does It Take?

The OCR typically only accepts complaints filed within 180 days of the last discriminatory act, although it may decide to extend that deadline for "good cause." Since most institutional discrimination occurs within a system that permits repeat offenses, such activity may be labeled "continuing" and a series of examples may stretch over a period of years. If the complainant had already used the grievance process of the particular educational institution, he or she must file the separate OCR complaint within 60 days of the last act of the institutional grievance process. The complaints are followed up promptly; within 7 school days of the complaint date, the OCR will contact the plaintiff by letter or phone to let him or her know whether it will proceed further with the complaint. The OCR's goal is to resolve complaints within 180 days, and according to its website, most complaints are resolved within that period.[19] "Godmother of Title IX" Bernice Sandler advises that after filing a complaint, you ask your two Senators and your Representative to write the Secretary of Education, asking that they be kept informed of the progress and results of the investigation; this can speed up the process and

[18] Note that unless the person filing the complaint is actually a victim and has been victimized by the action of an institution or agency covered by Title IX, the courts are generally unavailable.

[19] http://www.ed.gov/about/offices/list/ocr/qa-complaints.html

ensure that it is carried out properly.[20] "This excellent advice, from a seasoned campaigner, can avoid the agency's tendency to delay endlessly," says Herb Dempsey, who has specific complaints in his files where school districts have been under the same open complaint six years after the OCR deemed them noncompliant with Title IX.

What Happens Afterwards? The OCR Investigation and Resolution Process

If the OCR decides to proceed further with the complaint, it will (1) investigate the complaint, (2) issue findings for or against the educational institution, and (3) if appropriate, require the institution to take corrective action. The OCR Case Resolution and Investigation Manual, a thorough guide covering this process, is available at http://www.ed.gov/about/offices/list/ocr/docs/ocrcrm.html#II_1.

In investigating the complaint, the OCR's aim is to act neutrally and promptly toward the objective of fact-finding. First, the OCR evaluates the complaint to determine whether a facilitated resolution is possible. If so, it moves on to the facilitated resolution process, in which it negotiates a resolution with both parties and prepares a settlement for both to sign upon agreement. If both parties cannot agree to a resolution, the investigation will continue. During the investigation, the OCR reviews as much factual information as possible, including documentary evidence submitted by both parties, along with interviews with the complainant, the educational institution's personnel, and other witnesses. Title IX Coordinators at the local and state levels may also be involved in this process. Some state education agencies grant their Title IX coordinators, the authority to investigate Title IX complaints throughout their states. Sometimes this is also tied to their roles in enforcing related state laws against sex discrimination.

At the end of the investigation, the OCR will decide whether: 1) there is a **"**Determination of Insufficient Evidence to Support a Conclusion of Noncompliance," which will close the complaint, or 2) there is a Determination of Sufficient Evidence to Support a Conclusion of Noncompliance. If noncompliance with Title IX is found, the OCR will negotiate with the institution to reach a voluntary agreement of corrective action that settles the complaint.[21] OCR acts separately from complaints that have been brought to a school or university under their internal grievance procedures, but it may decide whether or not to defer to the result reached in the alternate complaint.[22]

The corrective action typically involves a list of administrative and policy changes that educational institutions must abide by in order to keep their federal funding. As its primary enforcement role is to ensure that the recipients of federal funding are complying with federal law, the OCR has the authority only to provide administrative remedies and threaten to take away or withhold funding. Herb Dempsey recently filed a Title IX complaint concerning unequal athletic facilities in the Vashon Island School District in Washington State. The OCR closed the complaint in July of 2006 after the school district took the corrective actions of improving the girls' softball field dugouts and allowing the girls' team to use the same batting facilities as the boys' baseball team.[23]

Monetary awards to complainants, on the other hand, are rare. Institutions usually only settle with complainants for monetary awards if they are intimidated by an especially strong case

[20] http://burro.astr.case.edu/women/harassment/how.html
[21] http://www.ed.gov/about/offices/list/ocr/complaints-how.html
[22] www.securityoncampus.org/victims/titleixsummary.html
[23] Letter from Deputy Chief Attorney Joan D. Rubin of the OCR addressed to Mr. Herb Dempsey, July 12, 2006

and/or are too poor to take the case to court. This is most likely what happened in the Katy Lyle settlement involving harassment via sexual graffiti or the Virginia Tech athletic suit – two cases in which Title IX OCR complaints resulted in monetary settlements: $15,000 in the former case, and $50,000 in the latter. These settlements should not be confused with judicial remedies resulting from private lawsuits, to be covered in the next section.

Option 3: Filing Private Lawsuits and Obtaining Judicial Remedies

Individuals may also choose to file private lawsuits under Title IX, and typically do so if neither institutional grievances nor OCR complaints result in the desired outcomes. In *Cannon v. University of Chicago* (1979), the Supreme Court held that Title IX is enforceable through an "implied private right of action."[24] Thirteen years later, in *Franklin* v. *Gwinnett County Public Schools* (1992), the Court ruled that monetary damages are available in such an action, though it was vague about the circumstances and types of damages that may be awarded.[25] A decade later, in Duke University's appeal to the $2 million in punitive damages awarded to former football kicker Heather Sue Mercer, the 4th Circuit Court of Appeals held that only compensatory damages, and not punitive damages, could be awarded under Title IX (see page 17). However, in some jurisdictions, it appears that both compensatory and punitive damages are available.[26]

A civil lawsuit may be more costly than an OCR complaint, yet it also may be more effective than any administrative remedy provided by the Office for Civil Rights. On the other hand, a Title IX lawsuit may also be more difficult to win than an OCR complaint. Regarding cases of sexual harassment, an individual must prove that the institution had actual knowledge of the harassment in order to win monetary damages, although actual knowledge is not required if the individual is only seeking non-monetary damages.[27] In its Title IX Legal Manual, the Department of Justice emphasizes that "the standard for an agency to determine whether a recipient has violated Title IX differs from the *higher liability standard of proof* that must be met in a court action before monetary damages are awarded." In deciding to apply the monetary damages remedy to a particular case, the Manual demands that at least four factors be considered: 1) the degree of seriousness of the violation; 2) whether the injury is substantial; 3) whether the injury is pecuniary in nature; and 4) whether the discrimination victim has a current, ongoing relationship with the recipient that involves regular interactions between the two.[28] A lawsuit also requires the hiring of an attorney. Added to the fact that lawsuits may span several years, such as the lawsuit against Louisiana State University that dragged on for seven years, the whole ordeal may end up exceptionally costly. On the other hand, that very same seven-year LSU lawsuit resulted in a settlement of over $1 million (see next section).

There have been numerous cases involving private lawsuits in which extensive monetary damages have been awarded. In a lawsuit alleging university indifference to the female victim and bias in favor of the male football player suspects, described above, former Virginia Tech student Christy Brzonkala won $75,000 in the Title IX portion of her claim against the university. Represented by Attorney Arthur Benson in a settlement deemed "groundbreaking,"

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[24] http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=441&invol=677
[25] http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=503&invol=60
[26] For example, in *Henckle v. Gregory*, the federal district court in Nevada held that punitive damages could be awarded under Title IX if the situation warranted.
[27] http://www.securityoncampus.org/victims/titleixsummary.html
[28] Department of Justice, Title IX Legal Manual

gay student Dylan Theno won $250,000 in a sexual harassment lawsuit against his school district. In a suit against Louisiana State University's lack of "substantive proportionality" in its athletic teams, four plaintiffs and two law firms received well over $1 million.

The Need For More Effective Title IX Enforcement

Since Title IX's inception, *not one institution has had its federal funding withdrawn because it is in violation of Title IX*. According to Samara Yudof, former deputy press secretary for the U.S. Department of Education, as cited by *Women's Health* magazine in a recent 2006 article,[29] "We've always been successful in getting schools back into compliance without issuing penalties." However, as the article's author, Katherine Ellison warns, "In that kind of system, there's no reason to change until you get caught." When facing penalties such as the withdrawal or withholding of federal funds, or when threatened by lawsuits as costly as the $250,000 awarded in the Dylan Theno case, or the $1 million settled between LSU and four plaintiffs, educational institutions will only then be alert to the consequences of ignoring Title IX. This stark reality presses the need for individuals to recognize the broad scope of Title IX and take action to combat discrimination through legal means–grievance procedures, complaints, lawsuits–to make it known that by law, such discrimination is not and will not be tolerated.

Winning Cases: Past Cases of Successful Title IX Settlements

This section showcases individuals who have suffered from gender discrimination in their educational institutions, filed complaints or lawsuits, and obtained some type of relief. While some cases have resulted in millions of dollars awarded to the persons who were discriminated against or to remedy the situation to prevent further discrimination against others, other cases have been settled for smaller or undisclosed sums. The following cases illustrate the broad coverage of the Title IX regulations and serve as examples of successful outcomes resulting from individuals' legal challenges.

I. High School Athletics
   1. Susie Halbert, cheerleading v. football (2001)
   2. Russell Johnson's daughter, softball (2004)
   3. Roderick Jackson, *Jackson vs. Birmingham (2004),* girl's basketball (2004)
   4. Ron Randolph's daughter, softball (1996)

II. College Athletics
   1. Heather Sue Mercer, Duke football (2002)
   2. LSU, no soccer team despite substantive interest (2001)
   3. Colby College, lack of coaches for women's teams (2003)
   4. West Chester University, removal of gymnastics team (2003)
   5. Brown University, removal of gymnastics and volleyball teams (1996)
   6. Virginia Tech, lack of soccer and lacrosse teams despite substantive interest (1995)

III. Sexual Harassment
   1. William Wagner, anti-gay (1997)
   2. Dylan Theno, anti-gay (2005)
   3. Kathryn Kelly, Yale rape and faculty indifference (2003)
   4. Katy Lyle, sexual graffiti (1989)

[29] "You're Entitled," Katherine Ellison, *Women's Health*, July/August 2006

5. Christy Brzonkala, Virginia Tech rape (2000)

IV. Testing

1. FairTest, gender-biased PSAT (1996)
2. SAT I, sole criterion for Regents scholarships (1989)

V. Pregnant Students

1. Margaret Contreras, banned from graduation (2001)
2. Somer Chipman Hurston and Chasity Glass, *Chipman vs. Grant County SD (1998)*, banned from National Honor Society (1999)

Other areas that might be covered in the future include: faculty sex discrimination (AAUW Report on Tenure denied, potential lawsuits re insufficient female faculty in the sciences).

High School Athletics:

1. **Title IX Reaches a Small County in Texas…**

Susie Halbert's daughter[30], a former high school cheerleader in the Kilgore Independent School District in Texas, first noticed that her school's disciplinary policy discriminated against girls in 1999. The daughter, whose name has been undisclosed, experienced the same type of discrimination in her school district's athletic program, when the ISD acted on its preference for the boy's football team over the female District cheerleaders. After expressing her concerns to her mother, they sought the aid of National Association for Public Interest Law (NAPIL) Fellow and Texas Civil Rights Project (TCRP) attorney Andrea Gunn and decided to file a Title IX lawsuit. They held that the ISD's actions constituted discrimination on the basis of sex and violated Title IX of the Education Amendments of 1972. The Halberts were awarded $13,000 in the 2001 settlement, which also set up a series of steps for the ISD to follow, aimed at obtaining greater compliance with Title IX. In the end, both Gunn and the Halberts were satisfied and hopeful about the fruits of the settlement, which, according to Gunn, was "a great victory for female participants in extracurricular athletic activities." She also commended Kilgore for her "commitment to better informing parents, students, and employees about Title IX grievance procedures, along with increased equity in funding extracurricular athletic activities, sets a wonderful precedent for area schools."

2. **The 'Angry Dad Phenomenon' Breeds New Defenders of Title IX…**

Although 45-year-old father Russell Johnson[31], of Gadsden, Alabama, never considered himself an advocate of women's athletic rights, he was heartbroken after seeing his high-school daughter play softball on an old, frequently unavailable city park field, after having to change in a run-down shack into an equally shabby uniform. Unlike the boy's baseball team, the girls were given minimal equipment, and if their games were rained out, "[the school district] wouldn't even bother rescheduling them." After approaching Gadsden officials and getting no help,

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[30] "Kilgore ISD Settlement Enhances Opportunities for Female Students," Texas Civil Rights Reporter, Fall 2001; available http://www.texascivilrightsproject.org/newspub/Fall_2001.pdf

[31] "Title IX Trickles Down to Girls of Generation Z," by Bill Pennington, The New York Times, 2004; available http://www.nytimes.com/2004/06/29/sports/othersports/29title.html?ex=1246248000&en=77069fdbd148830a&ei=5088&partner=rssnyt; http://www.athleticsearch.com/bonus6.html

Johnson went on the Internet, and "for the first time, read about Title IX suits." He educated himself about Title IX and filed a suit against the Gadsden school district. According to Tennessee lawyer Sam Schiller, "The fathers tend to get more riled up. [They] have already experienced the benefits of a full high school athletic experience. Then they have a daughter and she goes to high school and they can't believe she isn't being treated like they were." Not only does the new trend involve angry fathers, it comes out of a grassroots level distinct from college athletics. Bob Gardner, the chief officer of the National Federation of State High School Associations, contends, "High school is where the Title IX action is. The colleges get all the attention, but Title IX isn't about the nation's elite college athletes. It's about providing a grass-roots gateway to sports that benefit millions." On May 1, 2004, a settlement was reached, in which Gadsden public schools agreed to reserve a city field exclusively for high school softball, establish a location for the girls to change, order new uniforms and equipment, hire additional coaches for softball as well as basketball, and most importantly, ensure that the new high school to be completed in 2006 would have "equivalent state-of-the-art facilities for boys and girls."

3. **Title IX to Protect Whistle Blowers in Addition to Direct Victims…**

Since 1999, Roderick Jackson[32] had worked as a physical education teacher and girls basketball coach at Ensley High School in Birmingham, Alabama. While serving this position, he came across the reality of sex discrimination in the school's treatment of the girl's team, as opposed to the boy's team. In particular, he noticed that the girls' team received far less funding and access to facilities and equipment. However, after complaining about these violations of Title IX to his supervisor and eventually to higher officials in the school district, he received negative work evaluations and was fired from his coaching position in 2001. In June of that year, Jackson filed a lawsuit alleging retaliation under Title IX. After dismissal by the District Court and the Eleventh Circuit Court of Appeals, he appealed to the United States Supreme Court, which granted certiorari in June of 2004. At issue was whether or not Jackson has a private right of action under Title IX to challenge the retaliation against him. In a 5-4 decision, the Court ruled that Jackson does in fact have a private right of action to challenge retaliation, as such retaliation itself constitutes intentional discrimination on the basis of sex, thus violating Title IX. Justice Sandra Day O'Connor wrote for the majority opinion, "Without protection from retaliation, individuals who witness discrimination would likely not report it, indifference claims would be short-circuited, and the underlying discrimination would go unremedied." This 2004 decision played a great role in strengthening Title IX, granting whistle-blowers[33] protection under Federal law.

4. **Owasso, Oklahoma: The First of Several High School Suits under Title IX**

Like 'angry dad' Russell Johnson of Gadsden, Alabama, 48-year-old father Ron Randolph[34] did not consider himself a feminist and had never heard of Title IX, nor does he

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[32] *Jackson vs. Birmingham Board of Education* (2004); http://www.aauw.org/print_page.cfml?Path_Info=F:%5Cweb%5Caauw%5Claf%5Ccases%5Cjackson.cfm; Legal Document: http://www.supremecourtus.gov/opinions/04pdf/02-1672.pdf

[33] Title IX Coordinators are too protected under this ruling.

[34] Ron Randolph suit, 1996, from July/August "Women's Health" magazine; http://www.aasa.org/publications/saarticledetail.cfm?ItemNumber=4581&snItemNumber=950&tnItemNumber=1995

believe that boys and girls should play sports together. However, he believes that, "as a question of fairness," girls should have the same athletic opportunities as boys, and thus he was angered at the blatant sex discrimination that his daughter Mimi's softball team faced at Owasso High School in Owasso, Oklahoma. As his daughter observed, "Our guys' team has three sets of uniforms while all of ours total is less than they have in one." Shortly after, Randolph learned about Title IX in a University of Tulsa seminar taught by a professor with expertise in sports law. After he and other parents asked the Owasso Independent School District to remodel the girl's softball field, and the ISD declined, they took it to court, filing a lawsuit in 1996 under Title IX. The school district settled with the Randolphs, agreeing to construct a $275,000 state-of-the-art softball facility for girls. The school district had until 1999 to be in full compliance. Randolph notes that it is the school district's loss; while "they could have gotten out for $35,000 if they had remodeled the field in the first place," the Owasso school district came out of the settlement paying nearly eight times that cost. This case set a promising precedent. Between 1996 and 1998, seven other Title IX lawsuits already have been filed in other Oklahoma districts. Herb Dempsey of Washington State, who too started out as an "angry father," has filed numerous Title IX OCR complaints targeting unequal athletic facilities. On Randolph's case, Dempsey says, "I loved what [Randolph] said when he was trying to get a softball field. He said that if he gave 10 dollars of his tax money to the schools and it went for athletics, then five should go to his son and five should go to his daughter. Very simple. Very clean."

College Athletics:

1. **Title IX Binds Leading Athletic University…**

When place kicker Heather Sue Mercer[35] was cut from the Duke football team in 1997, she knew that the reason behind the decision was purely discriminatory. Unfortunately for Mercer, the discrimination had begun long before her cut. A highly qualified athlete who had kicked for her New York State champion high school team, she was told by Duke Head Coach Fred Goldsmith to try out for a beauty pageant and to sit in the stands with her boyfriend. Soon after the cut, she filed suit against the university, claiming that the Duke coaches acted on the grounds that she was a female. In allowing the Coach to treat her differently from the other players who had made the team, she argued, the University violated Title IX.

In 2000, a federal jury ruled in favor of Mercer and awarded her $2 million in punitive damages, as the University had actual knowledge of the Title IX violations and acted with deliberate indifference to them. But after Duke appealed the trial court's decision to the 4th Circuit Court of Appeals, the Supreme Court ruled in *Barnes v. Gorman* (2002) that punitive damages were not allowed under Title VI of the Civil Rights Act because the Americans with Disabilities Act expressly incorporates its remedies. The 4th Circuit interpreted the *Barnes* decision to foreclose punitive damages under civil rights statutes more broadly, and on this basis vacated Mercer's punitive damages award under Title IX.[36] Despite the revoking of Mercer's

[35] "Jury Awards Mercer $2 Million in Discrimination Suit," by Geoffrey Mock, Duke University News & Communications, October 20, 2000; available http://www.dukenews.duke.edu/2000/10/heathersueo20.html; "Outside the Lines: Heather Sue Mercer Suit," ESPN interview, anchored by Bob Ley, October 15, 2000; available http://sports.espn.go.com/page2/tvlistings/show29transcript.html; Legal Opinion available at http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=4th&navby=case&no=991014p.

[36] http://www.centralohio.com/ohiostate/stories/20021116/football/384037.html

punitive damages award, her case is still one of major significance for the cause of gender equity. In the end, the decision confirmed that the contact sport exception to Title IX, under which schools do not have to allow female athletes to try out for contact sports, does *not* mean that schools can discriminate based on sex if they allow female athletes to try out for a contact sport, as Duke had argued. Instead, it is now clear that once a school allows a female athlete to try out for a contact sport and she becomes a member of the team, she must be treated equally relative to her male teammates. The 4th Circuit Court of Appeals became "the first Court in United States history to recognize such a cause of action."[37]

2. Paternalistic and "Unintentional Violation" Defenses Dismissed, Plaintiffs Receive Over $1 Million…

For most of the 1990s, Louisiana State University had neither women's soccer nor softball teams.[38] In 1994, three female soccer players, Beth Pederson, Lisa Ollar, and Samantha Clark, along with two softball players, initiated a lawsuit against the University. However, these women were either pushed aside–as the University contended that there was not enough interest or ability to add the teams, or mocked–when the athletic director called one of the plaintiffs "sweetie," "honey," and "cutie," and said that he would be in favor of adding women's soccer because "[female soccer players] would look cute running around in their soccer shorts." Additionally, while LSU's student population was 49% female, women constituted only 29% of its student athletes. It was not until six years later, in 2000, that the 5th U.S. Circuit Court of Appeals unanimously found LSU to be biased and in possession of a "highly discriminatory" athletics system, and a federal judge ordered both parties to mediate a settlement. When LSU attempted to justify this discrimination by arguing that women lack interest in sports and athletic ability, the judge dismissed it as "stereotypical" and "paternalistic." LSU also contended that even if it had violated Title IX, any such violation was unintentional. But the Fifth Circuit did not let LSU off the hook, reasoning that to be liable under Title IX, LSU "need not have intended to violate Title IX, but need only have intended to treat women differently." In 2001, a settlement was reached: LSU paid $37,000 to each of four plaintiffs and $1 million to two law firms. In addition to the substantial monetary awards, the settlement required the University to add the two women's teams and pledge to provide gender equity in facilities and equipment, scholarships, coaching, medical and support stags, travel arrangements, and marketing and publicity opportunities.

3. **Two Head Coaches For Four Women's Varsity Sports: A Title IX Atrocity…**

As of 2003 at Colby College[39] in Waterville, Maine, Jen Holsten was coaching both women's soccer and women's ice hockey, and Heidi Godomsky was coaching both women's field hockey and women's lacrosse. Coaching duties were not similarly shared among men's teams. Frustrated with this inequity, five female student athletes filed a Title IX lawsuit against

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[37] http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=4th&navby=case&no=991014p

[38] "LSU Settles 7-Year-Old Title IX Suit," by David Burkey, Sportslaw News, 2001; available http://www.sportslawnews.com/archive/Articles%202001/LSUsettlement.htm; "REAL CASES > ATHLETICS," I EXercise My Rights, 2005; available http://www.titleix.info/content.jsp?content_KEY=321; http://204.11.208.101/cgi-bin/site.pl?2130&pageID=495#1

[39] "Settlement Reached in Title IX Suit," Colby College Magazine, Spring 2004; available http://www.colby.edu/colby.mag/issues/current/articles.php?issueid=16&articleid=137&dept=news

the college in June of that year. The two parties settled out of court, in order to avoid a likely drawn-out court review. In the settlement, Colby agreed to adjust and implement practices, policies and systems to achieve equal programs and opportunities between male and female athletic teams. In particular, the college adjusted the dual coaching assignments, remodeled the women's locker rooms, and expanded the room's shower facilities. Pleased with the results, Shenna Bellows, Executive Director of the Maine Civil Liberties Union, stated, "We in Maine have seen [Title IX's] effect, and women across the country have experienced the benefits it generates."

4. **University Removal of Gymnastics Team Fails Title IX Three-Prong Test…**

In 2003, West Chester University (WCU)[40] decided to cut the gymnastics team from its athletics program in response to a budget crisis. When the all-female team decided to take action, its members sought the help of Trial Lawyers for Public Justice (TLPJ) and the Hangley Aronchich Segal & Pudlin law firm in Philadelphia, who sued the Pennsylvania university later that year. They charged that its decision to eliminate the gymnastics team violated Title IX of the Education Amendments of 1972, as the cut left WCU out of compliance with all of the three alternative means for satisfying Title IX (the three-prong test). First, the ratio of male to female participation in athletic programs, less than 45%, was disproportionate to the ratio of male to female students enrolled, nearly 61%. Second, the school had not demonstrated a "history and continuing pattern of program expansion for the underrepresented sex," as it had not even added a women's team in over a decade and decided to cut one of the few existing women's teams. Third, the University did not "effectively accommodate the interests and abilities of students of the underrepresented sex," cutting a team of female athletes who were "ready, willing, and able to compete." At first WCU decided to appeal the district court's decision and order to reinstate the team, but later decided to settle. As part of the settlement, WCU reinstated the team, provided full funding, facilities, coaching, and equipment, and agreed to a list of other provisions. According to co-counsel William Hangley of the Philadelphia law firm, "This extraordinarily favorable settlement reflects the strength of our claims against WCU. The school finally realized the error of its ways, and has given these wonderful athletes the opportunity to compete that they were promised."

5. **"Effective Accommodation" Affirmed, Stereotype of Female Disinterest Laid to Rest…**

During the 1991-1992 school year, Brown University[41] decided to stop funding its women's gymnastics and volleyball teams. In response, student Amy Cohen and others filed a class action lawsuit with Trial Lawyers for Public Justice, holding that Brown University violated Title IX. The third prong of the three-prong test of compliance requires that an institution meets the abilities and interests of its female students even where there are disproportionately fewer females than males participating in sports. In December of that year,

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[40] "TJPJ Achieves Settlement in Sex Discrimination Lawsuit Against West Chester University for Violating Title IX," Trial Lawyers For Public Justice, 2004; available http://www.tlpj.org/pr/wcu_settlement_2004.htm

[41] "Brown University Agrees to Guarantee Participation Rates for Women Athletes and Funding for Contested Women's Teams." Trial Lawyers for Public Justice Press Release, 1998. Available http://www.tlpj.org/pr/brow2pr.htm; Legal Document: http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=1st&navby=case&no=952205

Trial Lawyers for Public Justice won a preliminary injunction that ordered Brown to reinstate the teams. In 1996, after a series of court affirmations and appeals, the First Circuit Court once and for all affirmed the injunction and ruled that Brown indeed failed the "effective accommodation" test, rejecting the University's argument that women are less interested in sports than men are as stereotypical and merely perpetuating the discrimination, and specifying that "an institution that offers women a smaller number of athletic opportunities than the statute requires may not rectify that violation simply by lavishing more resources on those women or achieving equivalents in other respects." After *Cohen*, it is clear "that equal opportunity can be afforded by colleges and universities through a broad array of teams that reflect the relative interests and abilities of both sexes." According to TLPJ Executive Director Arthur H. Bryant, who personally negotiated the settlement, the suit was "a tremendous victory for women athletes and potential athletes at Brown, as well as everyone in the nation who cares about equality. We are delighted that women at Brown are finally going to get the intercollegiate athletic opportunities and treatment that they deserve."

6. **Lack of Women's Teams and Funding in Violation, Prompts Compliance Plan**

Until 1995, Virginia Tech[42] had neither a women's soccer nor women's lacrosse team. In 1992, concerned female students filed a complaint under Title IX, alleging that the University was not allocating funding and resources equitably between women and men. In 1995, Virginia Tech settled with the plaintiffs for a total of $50,000, yet denied all of the charges in their complaint. Tech decided to settle due to the high cost to defend its case in court. According to President Paul Torgensen, "It is in the best interests of all parties to settle and get on with the more important tasks of expanding sports opportunities for women at Virginia Tech." In addition to the $50,000 settlement, the University added the two women's teams, upgraded the salaries of women's sports coaches, improved facilities and increased the total operating budget. In the order issued by the U.S. District Court in Roanoke, both parties settled the complaint based on Women's Intercollegiate Sports Expansion Plan, under which Tech would recruit and prepare for a 3% increase in participation in women's sports by the next year, and increase the percentage of financial aid for these women to be in accordance with the overall female share of full-time undergraduate enrollment.

Sexual Harassment:

1. **William Wagner: The First Anti-Gay Title IX Settlement…**

Openly gay high school student William Wagner[43] suffered from various instances of sexual harassment from both fellow students and school administrators in his Arkansas school district. For two years, he was called names like "fucking faggot," had crude drawings of him passed around, and was taunted about wanting sex with other boys. Unfortunately, Wagner found no refuge with the adults; in fact, one of his teachers and the principal reacted by saying that he made a "bad choice" to be gay. Later, a group of boys jumped out of a pickup truck during the students' lunch hour and attacked Wagner as he was about to leave, repeatedly

[42] http://scholar.lib.vt.edu/vtpubs/spectrum/sp950223/1a.html
[43] "School District Agrees to Deter Harassment," by Peter Freiberg, The Washington Blade, June 1998; available http://www.youth.org/loco/PERSONProject/Alerts/States/Arkansas/decision2.html

kicking him, bruising a kidney and breaking his nose. Though he never fought back physically, the school principal would not even allow him to respond verbally in what he referred to as "reverse harassment." In January of 1997, the Wagners, represented by David Buckel, an attorney with Lambda Legal Defense and Education Fund, filed a complaint with the Office for Civil Rights (OCR) and charged that the Fayetteville school district violated Title IX. In 1997, the OCR had for the first time explicitly clarified that unlawful sexual harassment under Title IX included sexual harassment "directed at Gay or Lesbian students." As a result of the settlement, Fayetteville public schools agreed to institute a variety of reforms, including conducting training for faculty and staff to handle harassment, and opening an information-and-discussion session for students on sexual harassment. Buckel praised the case as "the first in the nation under the new Title IX guidelines' explicit coverage of sexual harassment directed at Gay students." William's mother, Carolyn Wagner, saw it as "a very powerful tool to help parents just like us ensure a safe school environment for our children. A mother has certain dreams for her children, and they always include that they be happy, healthy, and safe. Now parents of Gay and Lesbian students have some kind of recourse."

2. **8 Years after Wagner: Theno's Anti-Gay Settlement Still 'Groundbreaking'**

When Dylan Theno[44] began his five-year ordeal of sexual harassment in the 7th grade, he must have been assured by his parents that the calls of "fag" and "masturbator boy" would end so long as they maintained a log of the incidents and communicated with school officials—including the junior high and high school principals, the superintendent, and school board members—about the abuse. Despite their efforts, the officials paid little attention to their child's suffering and the abuse persisted until Theno dropped out of school in his junior year. In 2005, at the age of 18, Theno sued the Tonganoxie school district on the grounds that he was denied access to the education afforded to him by Title IX. Theno won a $250,000 settlement. This reaffirmed the 1999 Supreme Court ruling *Davis v. Monroe Country Board of Education*, which held that schools may be held liable under Title IX if one of its students sexually harasses a fellow student. While "Title IX traditionally is applied to overt discrimination," Benson stated that, "this is more subtle. But it is something that is common in our public schools. Kids can be mean to each other. ... This verdict should be a warning to all school districts across the country to put them on notice."

3. **Sexual Assault at Yale; An Inadequate Response and the Need for Coordinators…**

Yale Divinity School student Kathryn Kelly[45] was sexually assaulted by classmate Robert Nolan in the fall semester of 1999. After Kelly reported the assault, not only did the University fail to take adequate action, but the Divinity School's Dean, Richard J. Wood, defamed her in an open forum, where he claimed that Kelly's experience was "not legal rape." Kelly then filed a lawsuit against the University. While U.S. District Court Judge Janet C. Hall granted Yale

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[44] "Federal Jury Awards $250,000 to Former Tonganoxie Student," by Caroline Trowbridge, "The Tonganoxie Mirror," August 11, 2005; available http://www.tonganoxiemirror.com/section/breaking_news/story/8135

[45] "Yale Settled Suit With Alleged Harassment Victim," by Dan Feder, The Yale Herald, October 10, 2003; http://www.yaleherald.com/article-p.php?Article=2428.

summary judgment in some of the minor claims, she denied the University summary judgment on the more serious Title IX violations and defamation claims. This made it in Yale's favor to settle with Kelly, for if it did not, the case would have gone to trial before a jury. Central to Kelly's claims were the allegations that Yale's indifference to her harassment resulted in both "decreased educational opportunity" and a "hostile environment," the former of which was a decisive factor in 1999's *Davis v. Monroe Country Board of Education*, and the latter of which, according to 1992's *Franklin v. Gwinnett County Public Schools*, also qualifies a victim for Title IX damages. In holding the University liable for its inaction, these key decisions allowed Kelly to file her sexual harassment lawsuit under Title IX, and win monetary damages in 2003. The sum of Kelly's settlement is undisclosed.

4. **Sexual Graffiti and Crude Gestures Violate Title IX…**

15-year-old Katy Lyle[46] was unaware of the sexual graffiti about her displayed in the boy's bathroom of her high school until her brother saw it and told her in the spring of 1988. The graffiti was bold and explicitly crude, as "Katy Lyle is a slut" constituted the least offensive insult. Despite her mother's repeated complaints to school officials and their promises to remove it, the sexual graffiti remained on the bathroom walls for nearly two years. Not only did the graffiti stay put, its offensiveness escalated, with accusations of sexual relations between Katy and her brother and references to dogs. The other students' audacity too intensified; they sent her notes demanding sex, placed obscene drawings on her desk, and yelled expletives directly in her face. The principal refused to take any other measures, later stating that he "felt it would make her a stronger woman." After her parents visited the principal for the sixteenth time, they decided to take legal action. In what was one of the first student-on-student sexual harassments cases in the nation in 1989, the Lyles filed a complaint with the Minnesota Department of Human Rights under Title IX. After finding that Lyle was denied the full benefits of an educational experience due to the harassment and inaction, the Commission awarded her a monetary sum of $15,000.

5. **Gender-Biased Handling of Rape Case Violates Title IX…**

In October of 1994, former Virginia Tech student Christy Brzonkala[47] was raped by two students in her dorm room. After reporting the rape, college officials turned the case over to a campus judiciary panel, which dropped one of the suspects from charges and found Virginia Tech football player Antonio Morrison guilty of sexual assault in 1995. Morrison was suspended for two semesters. However, after two appeals, college officials decided instead to find him guilty of using abusive language and allowed him to return. Outraged, Brzonkala filed a lawsuit against Virginia Tech under Title IX, contending that the school treated her rape complaint with indifference (1) "to protect the football players" and (2) "because she is a woman." Both parts of her claim relate to Title IX because of the University's gender-biased treatment of both Bronzkala and the men's football team. She also filed her suit under the Violence Against Women Act, and was the first female plaintiff to do so. Five years later,

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[46] C. Gorny, "Teaching Johnny the Appropriate Way to Flirt." *New York Times Magazine*, June 13, 1999, available http://www.users.muohio.edu/shermalw/SEX_HARRASSMENT-NYT6-99.HTML; http://www.vanmechelen.net/microsoft/kinds.html

[47] http://www.sportslawnews.com/archive/Articles%202000/BrzonkakaVaTech.htm

February of 2000, Virginia Tech settled the Title IX portion of the lawsuit with Brzonkala for $75,000.

Testing:

1. **Title IX Applies to Gender-Biased National Merit Examination…**

In 1996, the U.S. Department of Education's Office for Civil Rights reached a settlement between FairTest[48] (The National Center for Fair and Open Testing) and the College Board and Educational Testing Service (ETS). Since both the College Board and ETS receive federal funding, they are obligated to follow the Title IX regulations of the Education Amendments of 1972. In its complaint, FairTest, represented by the ACLU Women's Rights Project, had charged the two organizations with creating a gender biased exam that would be used as the sole criterion to determine National Merit Scholarship semifinalists: the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT). It held that because males score higher on the exam, they are more likely to obtain National Merit Scholarships; however, although the object of the exam is to predict college achievement, "even the test-makers' own research admits that the test underpredicts the performance of females and over-predicts the performance of males." To avoid losing federal funding, both the College Board and ETS had agreed to revise the test in the next year, adding a multiple-choice "writing" component to the exam. Although many argue that this is not a sufficient remedy, the fact that the two organizations agreed, after years of ignoring the requests of women's and civil rights activists, to reform the exam, signaled their admission to FairTest's charges of creating gender bias and violating Title IX. This case further inspired reform of the SAT and GRE, exams also found to underpredict female performance. As a result, millions more dollars in scholarships have been awarded to women. For more information, go to http://www.fairtest.org.

2. **Reliance on Standardized Testing for Scholarships Fails Title IX…**

In 1988, girls won only 43% of Regents Scholarships in New York[49]. At the time, New York State relied solely on SAT scores as the determinant of scholarship recipients, and clearly, males scored consistently higher than females on this standardized test. Taking notice of this fact, New York high school student Khadijah Sharif, along with nine other students and two organizational plaintiffs, the Girls Clubs of America and NOW, filed a complaint against the New York State Education Department and the Commissioner of Education, Thomas Sobol. They contended that New York's exclusive reliance on the SAT to award these scholarships discriminated against female students, violating both the equal protection clause of the Fourteenth Amendment, and Title IX of the Education Amendments. The following year, a federal court ruled in Sharif's favor, holding that the state of New York could no longer rely solely on SAT to determine Regents scholarship recipients. It found that while white males

[48] "Test-Makers to Revise National Merit Exam to Address Gender Bias," FairTest Examiner, Fall 1996; available http://www.fairtest.org/examarts/fall96/natmerit.htm

[49] *Sharif v. New York State Education Department* (1989); "Standardized Testing," I EXercise My Rights, Available http://www.titleix.info/index.js. Legal Document: http://www.faculty.piercelaw.edu/redfield/library/case-sharif.htm

made up 47% of the scholarship competitors, they received up to 72% of the scholarships. As a remedy, the state added high school grades to the qualifying criteria, and notably, in the following year, girls ended up winning 51% of the scholarships.

Pregnant Students:

1. **Title IX Reaches Pregnant Female Students…**

19-year-old Margaret Contreras[50] kept quiet about her pregnancy during the first five months, for fear of experiencing what her older sister had gone through two years prior in the Independent School District of Luling, Texas. After school officials had found out that she was pregnant, they forced her out of school. Despite fears that administrators would kick her out as well, Contreras had hope that she would be able to stay, after hearing that other schools offered services for pregnant students. But after approaching the principal for such services, he told her that not only did the school *not* offer pregnancy services, but she would have to leave her regular classes. In order to graduate, the only option for Contreras was to take a GED class at night, "so her fellow students wouldn't see her swelling belly." In 2001, Contreras and another pregnant student, Celia Leon, filed suit against the Luling ISD, alleging that it had denied them an education, by ordering them to leave school and refusing to provide homebound or other educational services while pregnant. In discriminating based on gender so that it decreased a student's educational opportunity, the LISD violated Title IX. The next year, the Luling ISD (LISD) Board of Trustees reached a settlement that allowed the girls to re-enroll in school, granted them a monetary award, and provided for many reforms of the LISD's Pregnancy Related Services (PRS) Program. The girls' attorney, Andrea Gunn of the Texas Civil Rights Project, stated that "as a result of this lawsuit, pregnant and parenting students in the Luling ISD can finally be ensured they will be provided with equitable educational resources and opportunities. This is a great victory in the struggle against pregnancy discrimination and the egregious effects of such discrimination, including increasing high school drop-out rates."

2. **"Disparate Impact" Acknowledged in Discrimination Against Honor Pregnant Students…**

When Grant County High School students Somer Chipman Hurston and Chasity Glass[51] were denied membership in the National Honor Society due to their statuses as pregnant mothers, they sought the help of the ACLU, which defended them in their complaint against their Convington, Kentucky school in 1998. They held that it discriminated against them based on gender, violating Title IX, the state and federal Constitutions, and the Kentucky Civil Rights Act. In spite of their pregnant statuses, both Chipman and Glass had top grades and past records of high achievement. Still, they were the only two students eligible for membership to be excluded

[50] "Settlement Reached In Case Against Luling ISD For Title IX Violations in Provision of Pregnancy Services," Texas Civil Rights Project Press Release, August 14, 2002; available http://www.texascivilrightsproject.org/newspub/TITLE%20IX%20PRESS%20RELEASES.htm; "De-Schooling By Luling," by Rachel Proctor, The Texas Observer, 2002; available http://www.texasobserver.org/showArticle.asp?ArticleID=830

[51] *Chipman vs. Grant County School District*, 30 F. Supp. 2d 975 (E.D. Ky. 1998); http://www.commondreams.org/pressreleases/Dec98/123098c.htm

from the Honor Society induction. While the school argued that it did not base its decision on pregnancy, but on "non-marital sexual relations," the presiding Judge Bertelsman dismissed this reasoning; while the school district's policy excluded 100% of young women who had become pregnant from premarital sexual relations, it excluded 0% of young men who had premarital sexual relations. Moreover, it was reported in affidavits submitted to the court that "more than a dozen Grant County High School students who were admitted to NHS testified that no one connected with the society or the school had asked them whether they engaged in non-marital sex." Foremost, Judge Bertelsman based his decision on the policy's "disparate impact on young women such as [Chipman and Glass]." Ruling in the girls' favor, he issued a preliminary injunction ordering the school board to admit them into the honor society for rest of the year, while waiting for the trial. The successful ruling, which held Grant County School District in violation of Title IX, came one year after Title IX's 25th anniversary, in 1999.