

Hope and a Tool: The History of Title IX of the Education Amendments of 1972

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Twenty-one years ago Congress passed the first legislation ever to prohibit sex discrimination in public education. Title IX of the Education Amendments of 1972 banned sex discrimination in all schools that receive federal funds. As a result of Title IX, the number and proportion of women enrolled in postsecondary institutions increased, and educational and employment opportunities for females became more equitable. In spite of the significance of this legislation, historians largely have ignored Title IX. When Title IX is discussed at all, it usually is solely in terms of athletics. This paper is an attempt to fill in this gap. The paper discusses how Congress passed Title IX, legislative efforts to weaken the law, and the Office for Civil Rights' enforcement of Title IX. Finally, the paper assesses changes in schools and in female educational experiences as a result of this legislation and weighs those changes against how far we still need to go to achieve gender equity in education.

Before Title IX, differential admission, treatment, and hiring of students, staff and faculty was commonplace. Vocational education programs were segregated by gender, and schools allowed girls entry into only a few programs. Programs open to girls included training for low-paying occupations in clerical fields and in homemaking programs that did not train students for wage-earning occupations at all. Girls often were excluded from science and math courses and clubs. Guidance counselors routinely gave students interest inventories that were color-coded; a boy and girl with similar interests were directed into gender-specific careers. Schools had sex-segregated water fountains, lunch tables, closets, toys, and even reading lists. School sports, at both the secondary and postsecondary levels, offered few if any programs and opportunities for girls and

women. As late as 1975 in high schools across the country, the average budget for boys' sports was five times more than that for girls'. At the college level, the proportion rose to 30 times more money for men's athletics than for women's.¹

Scholarships to colleges could be awarded only to men, and financial aid, including loans, could be denied to women who were married, pregnant, or had children. Colleges and universities had quota systems limiting the number of women who could attend and had different standards for admission. For example, in the 1970s Cornell admitted women only if they had SAT scores 30-40 points higher than the male average, and at Pennsylvania State University men were five times more likely to be admitted than women. High schools and colleges expelled pregnant students, married or not, and elementary and secondary school systems fired pregnant teachers, including married ones. School systems routinely invested less in pension programs for women employees than for men.² Clearly, discrimination against girls and women was rampant in school systems and institutions of higher education. The need for protective legislation was great.

Congress Passes Title IX

During the 1950s and 60s Congress passed a number of laws providing financial aid to institutions of higher education and their students. Many of these laws were set to expire in 1971, so in 1970 members of Congress introduced various bills to extend and expand these programs. Several key events led Congress to discuss legislation prohibiting sex discrimination in education in conjunction with the extension of these financial aid laws.

¹ "Sex Discrimination Regulations," Hearings before the Subcommittee on Postsecondary Education of the Committee on Education and Labor. (Washington, DC: House of Representatives Committee on Education and Labor) 1975, 155, 74.

² National Advisory Council on Women's Educational Programs, "Title IX: The Half Full, Half Empty Glass," (Washington, DC: U.S. Department of Education) 1981, 12, 15, 19, 21, 11.

In 1963 the U.S. Commission on the Status of Women issued a report documenting the secondary status of women in the U.S., with a special focus on women's economic disadvantages. One of the results of this study was the Equal Pay Act of 1963. The Federation of Business and Professional Women worked quickly to establish state-level commissions on the status of women that would parallel the U.S. Commission. This created a network of women and men on the state level who researched and documented discrimination against women across the country, and therefore helped to build grassroots support for legislation aimed at gender equity.³

In 1970 the Women's Equity Action League (WEAL) filed a class action administrative complaint against hundreds of colleges and universities that had contracts with the federal government and charged them with violating Executive Order 11246 prohibiting sex discrimination in federal contracts. Also in 1970, a presidential task force on women's rights and responsibilities issued its report that documented the existence of sex bias in American society and recommended legislative changes to ban sex discrimination in education and other areas.⁴

When various education bills were up for extension in 1970, Representative Edith Green agreed to sponsor a bill to outlaw sex discrimination in education if the need for such a bill could be documented. Such documentation was not hard to find, and at the hearings held by Green in June and July of 1970, 75 different statements documenting the problems related to sex role stereotyping and discrimination in education were made by educators and various women's groups. These hearings were not well attended, however,

³ Constance Threinen and Alice Weck, "Ten Years of Title IX" (Madison, WI: Wisconsin Department of Public Instruction) 1983, 2.

⁴ Andrew Fishel and Janice Pottker, National Politics and Sex Discrimination in Education (Lexington, MA: Lexington Books) 1977, 95; and Threinen and Weck, 6.

and the bill Green proposed never went further than the hearing stage.⁵

In August, 1971, Senators Birch Bayh and George McGovern introduced amendments to ban sex discrimination in higher education. Altogether, five amendments were introduced, including amendments to the Civil Rights Acts of 1957 and Titles IV, VI and VII of the Civil Rights Act of 1964. Opponents disliked both the content of the proposals, and the federal power these amendments would give over states' operation of higher education. Through parliamentary maneuvering, Strom Thurmond managed to get the Senate to approve unanimously the higher education bill without considering the sex discrimination amendments.⁶

At the same time the House was working on its own omnibus higher education bill. The subcommittee, headed by Edith Green, included a special provision banning sex discrimination, modeled on Title VI of the Civil Rights Act. Various members wanted the prohibition of sex discrimination to have limited coverage of admissions policies; finally they agreed to exempt all undergraduate college admissions policies from coverage. The bill next went to the Education and Labor Committee, where Green, with help from women's groups, lobbied to have that exemption deleted and replaced with one that would exempt schools that were 90 percent or more of one sex. That version passed the committee and was sent to the House, with an attached note from nine Republican members who objected to the sex discrimination policy. The stated basis of their objection was federal restrictions and controls of higher education.⁷

When the bill was sent to the House, once again the amendment exempting all undergraduate admissions was introduced, and passed. The House inserted this language in the Senate's bill and sent it back. In November 1971, with the bill in the Senate's Committee on Labor and Public Welfare, Bayh introduced an amended version of his earlier

⁵ Threinen and Weck, 7; Fishel and Pottker, 96.

⁶ Fishel and Pottker, 97-99.

⁷ Fishel and Pottker, 100-101.

proposal. Broader than the House version, it would exempt religious schools and predominantly one-sex schools. The Committee sent the bill to the full Senate in February 1972, still without a sex discrimination provision. Now Bayh proposed a new amendment; it required protection against sex discrimination in services available to students within an institution or in employment within an institution; in the area of admissions, it exempted academic elementary and secondary schools, military and religious schools, and private undergraduate colleges. This amendment was passed and sent to Senate-House conference.⁸

The conference committee took three months to resolve all the differences between the bills-250 in all, only eleven of which dealt with sex discrimination. Most of the higher education community spent their time trying to influence the outcome of other sections of the bill that they considered more important. Without any organized opposition, the Conference Committee adopted Title IX "without giving much consideration to its eventual impact."⁹ President Nixon signed the Education Amendments of 1972 in June, and they became effective July 1, 1972. The law simply says:

No person in the United States 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.

Although Congress did not pass Title IX easily or enthusiastically, there was relatively little debate about it. Court-ordered busing was both more visible and more controversial than banning sex discrimination in schools. To a large extent, Title IX did not garner attention from the media, the public, or from Congress until it already was law. Once members of Congress realized what they had done, they

immediately began efforts to weaken the impact of Title IX.¹⁰

Legislative Efforts to Weaken Title IX

Hot debates over busing may have overshadowed Title IX initially, but soon opponents of Title IX created sensationalistic press coverage of their own. The main targets of criticism were coeducational physical education classes, intercollegiate athletics, and traditional single sex organizations such as fraternities and sororities.

In 1974 Congress passed amendments that limited Title IX by excluding from coverage social fraternities and sororities, Boy Scouts, Girl Scouts, YMCA, YWCA, Camp Fire Girls and other voluntary youth service organizations. In 1976 Congress passed several other amendments limiting Title IX. These amendments allowed scholarships to be awarded as prizes for beauty contests, and allowed single-sex events, such as Boys' State and Girls' State programs and father-son and mother-daughter events, to continue to be sponsored by schools.¹¹

The National Collegiate Athletic Association (NCAA) conducted the biggest lobbying campaign against Title IX. The NCAA argued that if colleges had to fund women's athletics more than they already did, implementation of Title IX would "destroy major college football and basketball programs."¹² The NCAA continued to make this argument even after Congress passed the Javits Amendment in 1974, which stipulated, not that there should be immediate or total equality of expenditures in athletics (Title IX never called for such a plan), but simply that there should be "reasonable provisions" concerning participation in intercollegiate athletic activities.¹³ While the NCAA was worrying about the destruction of football and basketball, women's athletics were in sorry shape. In 1975, three years after Title IX

¹⁰ Rosemary C. Salomone, Equal Education Under Law (NY: St. Martin's Press) 1986, 124.

¹¹ Salomone, 125; Fishel, 126.

¹² "Sex Discrimination Regulations," 101.

¹³ Fishel and Pottker, 113, 114.

⁸ Fishel and Pottker, 102-103.

⁹ Fishel and Pottker, 103.

became law, women's programs accounted for about two percent of total collegiate athletic budgets.¹⁴

Another effort to limit the impact of Title IX was one proposed by Rep. Marjorie Holt. Her proposed amendment to a supplemental appropriations bill for the Departments of Labor and the Department of Health, Education and Welfare (HEW) would prevent HEW from gathering any information about sex and race discrimination in educational institutions, thereby effectively keeping HEW from enforcing Title IX and Title VI. This passed in the House in October 1974, but was deleted by the Senate Appropriations Committee. In November the amendment came up again in Conference Committee. The committee deleted the section that would have prohibited HEW from cutting off federal aid to schools that refused to maintain records on the sex and race of teachers and students, but approved the section prohibiting HEW from cutting off aid to schools that refused to carry out HEW orders concerning the assignment of teachers or students on the basis of sex or race. In December the House again passed the amendment. In response, Senators Mansfield and Scott cosponsored an alternative amendment that provided that no part of the Holt amendment would stop HEW from withholding aid when such a move was necessary to enforce antidiscrimination laws--making the Holt proposal meaningless. This passed the Senate in December 1974. The House was anxious to pass the appropriations bill before its winter recess to ensure that the President, who opposed it because the spending level was too high, could not pocket veto the bill while Congress was out of session. For this reason, the House finally gave in and approved the appropriation bill with the Mansfield-Scott amendment.¹⁵

In 1981, Senator Orrin Hatch introduced a bill to narrow the scope and coverage of Title IX. Citing the old controversy regarding federal intrusion into education, Hatch said his bill would be "a limited but significant start in restoring restraint" on the part of the federal

government. Hatch's bill would limit the scope of Title IX to those specific programs receiving direct federal aid, rather than covering the entire institution. The proposed bill also limited admissions coverage; under the new bill, sex discrimination in admissions would be covered only in the specific programs or activities that receive federal money. Essentially, this meant that schools could go back to having quotas limiting the number of female students, prohibiting married women from attending, or requiring higher qualifications for admission from women. Finally, Hatch's bill would omit Title IX's coverage of employment for staff and faculty, although it would continue to cover student employees.¹⁶ Although Congress did not pass this bill, the U.S. Supreme Court in 1984 limited Title IX's coverage in exactly these ways in its Grove City decision. This will be discussed in more detail later.

The Regulations

Once Congress passed Title IX, the next step was for HEW to write the regulations. In late July of 1972 Office for Civil Rights (OCR) staff and lawyers from HEW's General Counsel's office began discussing the regulations. In August 1972 a letter was sent to all institutions affected by Title IX. The memo merely stated the law, offering no guidance on what would be required of schools. As a result, few schools or colleges initiated policy changes.¹⁷

In November 1972, OCR and General Counsel staff circulated a first draft of the regulations to various offices within HEW for review and comment. The regulations were criticized for being extremely general and vague. HEW wanted the regulations to be specific in order to avoid enforcement disputes. OCR and the General Counsel staffs went back to work. Because there was little legislative history, Congress' intention was unclear. In addition, there was a limited amount of case law on sex

¹⁴ "Sex Discrimination Regulations," 70.

¹⁵ Fishel and Pottker, 114-117.

¹⁶ Bernice Resnick Sandler. "Summary of Proposed Amendment to Title IX: Impact on Postsecondary Institutions" (Washington, DC: Project on the Status and Education of Women, Association of American Colleges), Fall 1981.

¹⁷ Fishel and Pottker, 106.

discrimination in education from which legal precedents could be drawn. The staff turned to precedents established in enforcing Title VI, which prohibits discrimination on the basis of race, color and national origin in public schools.¹⁸

HEW did not make drafting the regulations a high priority. Only two lawyers in the General Counsel's office were assigned to work on Title IX, and this assignment was given to them in addition to their other on-going responsibilities.¹⁹ During early 1973 there was no permanent director of OCR. The OCR and General Counsel staff working on Title IX were unsure who had the real decision-making authority. As a result, issues of policy and procedure often were left unraised and unresolved for long periods of time. Since Title IX had been passed with, and subsequently received, little congressional or public attention, little pressure was placed on HEW to act more quickly in developing the regulations.²⁰

In August, 1973 OCR submitted another draft of the proposed regulations to the Secretary's office for approval. The regulations had been developed almost entirely by OCR in collaboration with the General Counsel's office. Other offices in HEW, including the offices of the Assistant Secretary for Planning and Evaluation and the Assistant Secretary for Education, clearly resented that they had not been involved in the drafting process, and they objected to numerous provisions. In response, the Secretary's executive office decided not to submit the draft regulations to the Secretary at all, and instead sent it back to OCR for more work with the instructions that other HEW offices must be involved. Extended discussions and negotiations then were held, often resulting in "shouting matches between the tense participants."²¹

In June, 1974 HEW released the proposed regulations, two years after Title IX became

law. The regulations covered three general areas: admissions, treatment, and employment. Regarding admissions, the regulations covered vocational education schools, professional education institutions, graduate schools of higher education, and public undergraduate colleges and universities. The regulations required that comparable efforts be made to recruit students of each sex, and that people not be treated differently because of sex in the admissions process.

Regarding treatment, the regulations covered access to and participation in courses and extracurriculars, including athletics; eligibility and receipt of benefits, services and financial aid; use of school facilities; and rules governing student housing. Essentially, the regulations required that once admitted to school, all students should be treated in a nondiscriminatory manner.

Finally, the regulations stated that Title IX covered all full- and part-time employees. Title IX prohibited discrimination in recruiting, hiring, promotion, tenure, termination, pay, job assignments, granting of leaves, fringe benefits, selection and support for training, sabbaticals, leaves of absence, employer-sponsored activities, and all other terms and conditions of employment.²²

HEW Secretary Weinberger allowed public comments on the regulations to be submitted for four months, rather than the more standard 30 days, in order to provide ample time for public consideration of the issues. By October, 1974 the four-month comment period was over. Also over was the invisibility of Title IX. Individuals and representatives of various organizations submitted an unprecedented 10,000 written comments to HEW. There was no consensus. Organizations representing women's, teachers', students', and civil rights groups advocated stronger national policies than did organizations representing elementary, secondary and higher education administrators and officials. As Weinberger would later say, there was "no way" to draft the regulations "that will please

¹⁸ Fishel and Pottker, 106, 107.

¹⁹ Fishel and Pottker, 107.

²⁰ Fishel and Pottker, 109.

²¹ Fishel and Pottker, 110, 111.

²² Fishel and Pottker, 112, 113.

all of the people all of the time."²³ With no consensus, HEW policymakers felt free to decide the issues themselves.²⁴

The most controversial issues were sent to the Secretary. Weinberger modified the requirement of coeducational physical education to exclude contact sports and to allow for separation during sex education classes. In athletics, the final regulations deleted the requirement to take affirmative recruitment efforts for women in traditionally male sports and vice versa. The regulations also added a provision that elementary and secondary schools could have a year to come into compliance in the areas of physical education and athletics, and postsecondary institutions could have three years. The final regulations concurred with the proposed regulations that curriculum and textbooks are not covered in Title IX due to First Amendment issues. The proposed regulations exempted from compliance single-sex scholarships; the final regulations permitted schools to administer single-sex scholarships if the school made similar opportunities available for the other sex.²⁵ Most often the position the Secretary took was the most conservative. The final regulations were considerably weaker than the proposed regulations.²⁶

On February 28, 1975 Weinberger sent the final draft of the regulations to President Ford for his approval. The regulations were supposed to be secret at this point, but someone leaked a copy to a women's group leader, who distributed copies to other leaders. The women's groups were distressed with what they considered to be weakened regulations. In particular, they were upset by a requirement that individuals complaining about sex discrimination use an internal grievance procedure established by a school before HEW would act on a complaint. This had not been in the proposed regulations, and

²³ "Final Title IX Regulation Implementing Education Amendments of 1972 Prohibiting Sex Discrimination in Education," June 1975, 2.

²⁴ Fishel and Pottker, 113-115.

²⁵ "Final Title IX Regulation..." 22-28.

²⁶ Fishel and Pottker, 116.

the women's groups had not been aware that HEW was even considering such a requirement. They immediately sent a telegram to the President asking to meet with him, with no response. After numerous other efforts to reach the President, the White House finally told them to contact a member of the President's Domestic Council. Efforts to meet with that staff member also were unsuccessful. The women met with prominent Republicans who were interested in women's rights, asking them to use their influence to help arrange a meeting. Finally the Domestic Council staff agreed to meet with the women's groups.²⁷

Most of the meeting was devoted to the grievance procedure issue, but regulations regarding athletics and scholarships also were discussed. The women's groups proposed that schools be required to make a self-evaluation of their policies to determine the existence of sex discrimination. When the meeting ended, the women's group leaders had no idea what, if any, changes would be made. At the end of April the Domestic Council prepared material to brief the President. The Domestic Council and HEW staff met first, and HEW agreed to go along with the self-evaluation requirement. HEW also was convinced to drop the requirement that internal grievance procedures be used prior to filing a complaint, although they decided that the regulation would require schools to establish an internal grievance process. The Domestic Council staff and HEW disagreed on whether foreign scholarships should be covered; this was left to the President to resolve, who sided with HEW to allow schools to continue to nominate only male students for Rhodes scholarships. In a compromise, the final regulations required that schools participating in the Rhodes program had to provide comparable scholarships for women.²⁸

On May 27, 1975 the President signed the final regulations and forwarded it to Congress for review. Congress had 45 days to review the regulations, at the end of which it could pass a resolution by a majority vote of both Houses

²⁷ Fishel and Pottker, 118, 119.

²⁸ Fishel and Pottker, 119, 120.

disapproving the regulations and ordering HEW to redraft. Women's groups were dissatisfied with regulations they saw as being too weak and flawed to be effective, and considered supporting a congressional resolution disapproving the regulations. In the end they chose not to oppose the regulations for fear that rewritten regulations might be even weaker. They also were concerned that school and college administrators would interpret a congressional rejection of the regulations as a sign that schools could continue to discriminate. They began a massive lobbying effort to keep Congress from voting to disapprove the regulations or to amend the law.²⁹

Representative James O'Hara, who chaired the House Postsecondary Education Subcommittee, held hearings on the final regulations in June, 1975. The most vocal opponents of the regulations were members of the NCAA. The major concern expressed related to intercollegiate sports. Spokesmen for the NCAA (and they were always male) requested Congress to "declare a moratorium" on any application of Title IX to intercollegiate athletics, and require HEW to study the impact of Title IX on collegiate athletics before rewriting those provisions.³⁰

In July, 1975, O'Hara announced plans to introduce two proposals. One was an NCAA-endorsed amendment that would allow sports to use their profits to support their own activities before having these profits used to support other teams (men's or women's), and would allow sex-segregated physical education classes. The second proposal was a resolution to direct HEW to rewrite the regulations eliminating requirements for a self-evaluation of schools, the designation of an employee to coordinate compliance efforts, and establishment of an internal grievance procedure for resolving complaints. O'Hara argued that these requirements went beyond the authority granted to HEW. The Subcommittee approved these proposals.³¹

On July 9 the Education and Labor Committee met. Gus Hawkins moved to send the resolution to rewrite the regulations to the Equal Opportunities Subcommittee for further study. O'Hara argued that this would in effect kill the resolution since the regulations were scheduled to go into effect in less than two weeks. But Hawkins' motion passed, thereby retaining the provisions for school self-evaluation, coordinated compliance efforts, and internal grievance procedures. The Committee then voted to send the NCAA-endorsed athletics amendment back to the subcommittee for hearings. On July 14, Hawkins' subcommittee voted unanimously against the resolution. The defeat of these proposals came as a surprise to the women's groups.³² Finally, on July 21, 1975, the regulations became effective.

Enforcement

OCR could and should have begun enforcing Title IX immediately after Congress voted it into law in 1972. OCR did not begin immediately, using the lack of regulations as an excuse for the first three years. While there was some justification for not pursuing complaints of subtle bias without having the regulations, there was no justification for not pursuing complaints of overt bias and discrimination.

Annoyed that so much time had passed without any apparent effort on the part of OCR to enforce Title IX, several women's groups banded together to file suit. In November, 1974 the Women's Equity Action League (WEAL) and four other groups charged that HEW and the Department of Labor (DOL) had failed to enforce anti-sex discrimination laws. The suit (originally referred to as *WEAL v Weinberger*, it later became part of a larger case known as the *Adams* case) asked the U.S. District Court in D.C. to order HEW and DOL to begin concentrated enforcement programs. The suit also asked that the Departments cut off federal funds from institutions that refused to come into compliance with Title IX. The suit specifically charged that HEW had failed to

²⁹ Fishel and Pottker, 120-122.

³⁰ "Sex Discrimination Regulations," 102.

³¹ Fishel and Pottker, 123.

³² Fishel and Pottker, 124, 125.

take even initial steps to begin enforcing Title IX.³³

Certainly, OCR had plenty of complaints to investigate. In the calendar year of 1974, individuals and groups filed 127 higher education Title IX complaints with OCR. Of these, OCR resolved only 20. As of April, 1975, 250 student and employment complaints in higher education were filed under Title IX. During FY 75, OCR conducted only 38 compliance reviews in higher education institutions. In elementary and secondary education, individuals and groups filed 154 complaints in FY 74, and 196 in FY 75. During FY 75, OCR conducted only two Title IX on-site investigations; Title IX was included in 31 other investigations that primarily focused on Title VI.³⁴

Officially, OCR listed Title IX as a low priority in its plans for FY 76. OCR ranked Title IX complaints eighth, Title IX investigations ninth, and combined Title VI and IX investigations twelfth out of twelve established priorities. OCR acknowledged that some regions would be able to deal only with the first three priorities, effectively ruling out any enforcement or investigation of sex discrimination in those regions.³⁵

On May 27, 1975 HEW published a notice of a new plan to consolidate the enforcement of all statutory civil rights responsibilities, including Title IX. The stated purpose was to allow HEW to focus on systemic forms of discrimination rather than individual complaints.³⁶ The primary reason HEW gave for not addressing individual complaints was lack of staff. Yet OCR had vacancies in 58 existing positions, and had requested no new positions for its elementary-secondary staff for the previous two fiscal years.³⁷

³³ Fishel and Pottker, 118.

³⁴ Norma K. Raffel, "The Enforcement of Federal Laws and Regulations Prohibiting Sex Discrimination in Education" (Washington, DC: Women's Equity Action League), 1975, 63, 64.

³⁵ Raffel, 64, 65, 67.

³⁶ Fishel and Pottker, 121.

³⁷ National Foundation for the Improvement of Education, Resource Center on Sex Roles in

The announcement of this new consolidated procedure took women's and civil rights groups by surprise. Members of these groups were angered both by the content and the process of the announcement. In terms of content, the groups strongly opposed the idea that individuals no longer would be guaranteed the right to have their complaints investigated by OCR. Up until this point, OCR had investigated very few complaints, but at least there was the tacit admission that individuals had a right to have their complaints investigated. Now even the hope of an investigation was being taken away from individuals. The way in which HEW announced the change angered women's and civil rights groups, as well. No one from any of these groups had been consulted about or even informed of the change. The fact that HEW could develop a major change in its civil rights enforcement procedure "in total isolation from all the groups effected by it amazed and angered" the civil rights and women's groups.³⁸

Protest succeeded against this plan of consolidated enforcement, and in May of 1976 HEW Secretary Mathews withdrew the plan. Citing "overwhelmingly negative" responses from "every organized civil rights group [and] other organizations representing every point on the political spectrum," Mathews announced that OCR would continue to review individual complaints. He added, however, that OCR had a tremendous backlog and would like those who opposed the consolidation plan to suggest other ways of prioritizing and dealing with the complaints.³⁹ In short, although individuals continued to be guaranteed the right to have their complaints investigated by OCR, in reality few complaints by individuals or groups were investigated at all.

Only one out of five Title IX complaints filed against elementary and secondary schools

Education: Research Action Notes, 4, No. 1, July 4, 1976, 4.

³⁸ Fishel and Pottker, 121.

³⁹ National Foundation for the Improvement of Education, 4.

between June 1972 and October 1976 were resolved by OCR. Ninety-six percent of complaints filed in 1973 were still pending in 1976 without either findings or negotiated remedies. Cases that were resolved took an average of 14 months.⁴⁰

In 1976 the National Coalition for Women and Girls in Education charged that HEW had minimized the impact of Title IX in two major ways. First, HEW failed to take any "highly visible, aggressive enforcement action" that might "lend credibility to the threat of aid cutoff." Without such a threat, schools could choose not to obey the regulations without suffering any consequences. Second, the Coalition charged that HEW had contributed to negative views of Title IX by drawing publicity to unpopular and largely irrelevant issues, such as father/son banquets. They argued that because there had been only limited publicity covering Title IX's impact on more important issues, Title IX "has become a symbol of bureaucratic intrusion" into "frivolous and purely local concerns." Schools saw that OCR was not likely to cut off funds, and public sentiment regarding Title IX was not positive due to unfavorable publicity. Therefore, the likelihood of schools and institutions coming into voluntary compliance was extremely low.⁴¹

Reports issued by the Office of Education in 1978 and 1979 concluded that schools had not done much to comply with Title IX. One study found that efforts to increase enrollment of students in programs nontraditional for their gender had been "slow" or "mixed," and that while some states and schools had made progress, some "seem to have moved not at all." A second study concluded that most schools were not in compliance and "were exerting only minimal efforts to comply." In part, schools were not complying because administrators didn't have enough

information; but where administrators were aware of the law, they saw sanctions for noncompliance as "no serious threat."⁴²

In the area of athletics, which garnered the most media attention, change was slow. The regulations, which were not published until three years after the law passed, allowed a three-year transition period for postsecondary institutions to comply with Title IX. Specific regulations and policy clarifications on intercollegiate athletics were not published until the end of 1979, another full year beyond the close of the transition period.⁴³

In 1977, the American Friends Service Committee (AFSC) published a report on implementation and enforcement of Title IX regulations in six southern states. The Committee had done similar monitoring in these states regarding racial desegregation, and hoped that "the years of delay, evasion and defiance" experienced in regard to racial desegregation would not be repeated with Title IX. They concluded, however, that "identical patterns are being set and reinforced."⁴⁴ The AFSC conducted its study one year after the final Title IX regulations were published, four years after Title IX became law. What they found caused them to issue a formal complaint to OCR and to request an immediate compliance review of each district in the six states.

The AFSC charged HEW with failure to disseminate clear regulations for Title IX. Even when school district administrators wanted to obey the law, they did not know how to do so. For instance, the city schools in Oxford, Mississippi had not taken any initial steps toward compliance because the superintendent had "no idea" what the law required.⁴⁵ Sometimes administrators

⁴⁰ Salomone, 127; "Stalled at the Start: Government Action on Sex Bias in the Schools," (Washington, DC: Project on Equal Education Rights, 1977.

⁴¹ Margaret Dunkle and Cecile Richards, Sex Discrimination in Education: A Policy Handbook (Washington, DC: National Coalition for Women and Girls in Education), 1977, 3, 4.

⁴² "Enforcing Title IX," (Washington, DC: U.S. Commission on Civil Rights), October 1980, 2, 28.

⁴³ "Enforcing Title IX," 22.

⁴⁴ Southeastern Public Education Program (SPEP) of the American Friends Service Committee, Almost As Fairly: The First Year of Title IX Implementation in Six Southern States (Atlanta, GA: Author), 1977, i.

⁴⁵ SPEP, 10.

conducted the required self-evaluation without remedying--or even seeing--existing problems. A guidance counselor in a Sumter, South Carolina middle school reported that the principal said the self evaluation had "not produced any vestiges of sex discrimination," yet parents told monitors that they had to fight to get their daughters enrolled in certain vocational education classes. At the high school in that same city, the principal said that as a result of the self evaluation, the school added two sports for girls. He was not concerned that the athletic director requested more funds for boys' football equipment alone than for the entire girls' athletic budget.⁴⁶

More often than ignorance, however, the AFSC monitors found administrators who simply refused to follow the law. The superintendent of a Fairview, Arkansas school district declared that he would not meet the Title IX regulations until "the last minute of the last day." A Title IX coordinator in South Carolina saw no need to conduct a Title IX evaluation, even though it was required by law; he felt that failure to conduct the evaluation posed "no danger" to the school from HEW.⁴⁷ An attorney for the Starkville, Mississippi school board told board members that they didn't need to do anything about Title IX "until people in the community got wind of it," adding that the board should take no steps to inform the community. In the same district, a teacher who read an article about Title IX in a National Education Association publication asked a school official about its application to her school. She was told, "It really doesn't make any difference here. We have our laws and they [the NEA] have their laws."⁴⁸

In the area of employment, AFSC monitors found many problems. The Oxford, Mississippi school district included in its published criteria for employment the notice that men would be considered over women for all jobs.⁴⁹ Once hired, the Sumter, South

Carolina school district helped male teachers financially to earn their M.A.'s; women who requested such help were refused.⁵⁰ In Greenville, South Carolina, male teachers were given supplemental pay for the extra duties assigned to them, such as coaching. Female teachers were not paid for the extra duties assigned to them, which included drama coach, yearbook advisor, department chair, cheerleader coach, and class sponsors.⁵¹ In Arkansas, an elementary school principal stated that there were no women principals because "we need big tough men to deal with older students." He added that if women were hired on an equal basis with men, "spouses would have to be considered" and that such employment "might strain a home relationship."⁵² As late as 1976, teachers and secretaries in South Carolina were required to quit their jobs when their pregnancy became visible.⁵³

School system refusal to comply with Title IX continued well into the 1980s. As late as 1981 an OCR survey showed that there were still 86 all-male high schools, most of which were vocational-technical.⁵⁴ Not until 1983 was the Philadelphia school district obligated by a court decision to admit girls to its prestigious Central High School. The school district argued that it offered comparable education at Girls High. However, when the schools were compared on the basis of campus size in proportion to student body, size of school library, faculty members with PhDs, course offerings in mathematics, and extracurricular programs, Girls High clearly came up short.⁵⁵

A 1980 survey in one state concluded that 99 percent of the local education agencies in that state were not in compliance with Title IX. The

⁴⁶ SPEP, 12.

⁴⁷ SPEP, 10.

⁴⁸ SPEP, 15.

⁴⁹ SPEP, 70.

⁵⁰ SPEP, 73.

⁵¹ SPEP, 74.

⁵² SPEP, 76.

⁵³ SPEP, 85.

⁵⁴ Salomone, 231, f. 38.

⁵⁵ Salomone, 120, 121.

same survey found 39 instances of course catalogs that listed sex-restricted courses.⁵⁶

OCR was not the only governmental office dragging its feet on enforcing Title IX. In 1980, Judith Lichtman, executive director of the Women's Legal Defense Fund, testified before a House Subcommittee regarding the Civil Rights Division of the Department of Justice. She argued that even though the Attorney General has authority to file suit against a school not in compliance, the Civil Rights Division had not initiated a single sex discrimination case under Title IX.⁵⁷ In fact, the Department of Justice did not take on its first sex discrimination case under Title IX until early 1980, and then it took on two cases at the postsecondary level.⁵⁸ In the eight years since Title IX became law, there had not been a single instance of funds being cut off from schools. Lichtman commented that "by and large, Title IX is a joke. No school district or institution of higher education can possibly take Title IX enforcement seriously. As of today, they should not, because there is no real threat of termination."⁵⁹ At the same time, the Civil Rights Division actually requested a decrease in resources for its sex discrimination task force.⁶⁰

In addition to the Department of Justice and HEW, twenty other Federal agencies had programs subject to Title IX in 1977. These programs accounted for \$9.6 billion spent on education and training programs. Yet, of those agencies covered solely by Title IX, none of

⁵⁶ Council of Chief State School Officers, Facing the Future: Education and Equity for Females and Males (Washington, DC: CCSSO), 1980, 26.

⁵⁷ "Authorization Request of the Civil Rights Division of the Department of Justice," Hearings before the Subcommittee on Civil and

Constitutional Rights of the Committee on the Judiciary, House of Representatives. Serial No. 85, March 14, 1979, Part 2, 30, 31.

⁵⁸ "Department of Justice Moves to Enforce Title IX Compliance," On Campus with Women, 26, Spring 1980, 1, 3.

⁵⁹ "Authorization Request of the Civil Rights Division," Part 2, 46.

⁶⁰ "Authorization Request of the Civil Rights Division," Part 1, 25.

them had published regulations by January, 1978. Of those agencies covered by Title IX and Title VI, most were not aware that Title IX applied to them.⁶¹

Meanwhile, the WEAL court case for lack of Title IX enforcement against HEW continued. In 1977 the U.S. District Court for the District of Columbia issued an order setting time frames for processing complaints and eliminating the backlog of complaints. In June of 1979 the Director of OCR, Califano, admitted that HEW's Title IX enforcement had not been "very widespread or energetic," and had left "a legacy of public ignorance about the law and about the severity of unequal treatment."⁶² In spite of Califano's public assurances that enforcement would be stepped up, in FY 1979, OCR still took an average of 515 days to close a complaint, compared to the court-ordered 225 days.⁶³ OCR continued to close Title IX cases despite evidence of probable violations; OCR officials acknowledged that the closures were improper.⁶⁴

HEW found that compliance reviews--independent of a complaint--were more effective than complaint investigations. Compliance reviews resulted in change twice as often, and affected an average of six times as many people as complaint investigations. Yet in 1978, OCR planned only 14 Title IX compliance reviews and completed only five. In 1979, OCR planned 77 reviews and completed only 24.⁶⁵ The U.S. Commission on Civil Rights found that when both the OCR staff and educational institutions knew that sanctions would not be imposed, OCR staff settled for compromise positions rather than full compliance.⁶⁶

⁶¹ Nancy J. Balles, The Unenforced Law: Title IX Activity by Federal Agencies Other Than HEW, (Washington, DC: National Advisory Council on Women's Educational Programs), 1978, 6, 7.

⁶² "Enforcing Title IX," 4, 5.

⁶³ "Enforcing Title IX," 19.

⁶⁴ "Enforcing Title IX," 21.

⁶⁵ "Enforcing Title IX," 25.

⁶⁶ "Enforcing Title IX," 28.

In spite of evidence that administrators did not have enough information to comply voluntarily with the law, through 1980 OCR budgeted no money for technical assistance. In 1978 OCR acknowledged that it had failed to inform administrators adequately. The Director promised to publish interpretations and guidelines and send them to administrators. Instead, OCR published small digests of case memoranda, and did so only for two months. OCR sent these digests to 700 addresses, only 3.5 percent of the possible 20,000 institutions receiving federal funds.⁶⁷

In its contempt of court motion against the Department of Education in 1982 in the ongoing *WEAL v Bell* litigation (later renamed *Adams*), WEAL charged that the Department of Education had failed to issue letters of findings on time in 60% of the complaints handled between October 1980 and April 1981. In regard to compliance reviews, within the first four months of 1981, the Department had failed to issue any investigatory findings within the court-mandated 90 days. In fiscal year 1979, an average of one year and five months elapsed between receipt and closure of a Title IX complaint. Sixty percent of cases pending at the beginning of the following fiscal year had been in the agency for more than one year.⁶⁸ In response, the Reagan Administration told the Court that its orders were no longer necessary or appropriate.⁶⁹

In spite of a court order to address charges of civil rights violations, the Reagan Administration proposed a \$2.8 million cut in the budget for OCR for FY 1984. The U.S. Civil Rights Commission determined that proposed reductions in the FY 1983 budget would "restrict monitoring and so aggravate deficiencies" that OCR would face a possible contempt ruling in the *Adams* case. The FY 1983 budget would give OCR only about 64 percent of the staff that it said it needed to come into compliance with *Adams*. Further

decreasing the budget in FY 1984, of course, made compliance that much less likely.⁷⁰

The Reagan Administration slowed even further any enforcement of Title IX. The Administration sought to narrow the definition of "federal financial assistance," change the definition of discrimination, and restrict the definition of "program and activity." The Civil Rights Leadership Conference Fund documented the Administration's dislike of Title IX in a 1983 report, "An Oath Betrayed." The Fund's report quoted Secretary of Education Terrel Bell as saying, "It seems that we have some laws we should not have and my obligation to enforce them is against my own philosophy...."⁷¹

Beginning at least as early as the spring of 1982, the Department's General Counsel and Secretary Bell sought exemptions from civil rights compliance (including Title VI, Title IX and Section 504) for educational institutions that received federal aid only in the form of student loans. Even though the Civil Rights Division of the Justice Department determined that this position could not be legally defended, the General Counsel advised Secretary Bell to appeal directly to the Attorney General, arguing that their job was "to curtail the interference of the federal government."⁷²

The Reagan Administration worked to make it harder to prove a violation of civil rights. Previously, a claimant needed only to prove that an action had a discriminatory effect or result. Under Reagan, however, the definition of discrimination changed so that a claimant had to prove that the institution intended to discriminate.⁷³

Finally, the Administration used the "pinpoint" theory to limit the coverage of civil rights laws. Under this theory, enforcement would apply only to the specific programs or activities receiving federal funds, and not to

⁶⁷ "Enforcing Title IX," 31, 33.

⁶⁸ Salomone, 127.

⁶⁹ "An Oath Betrayed: The Reagan Administration's Civil Rights Enforcement Record in Education," (Washington, DC: Civil Rights Leadership Conference Fund), October 1983, 18.

⁷⁰ "An Oath Betrayed," 34.

⁷¹ "An Oath Betrayed," 1.

⁷² "An Oath Betrayed," 9.

⁷³ "An Oath Betrayed," 2.

the entire institution. In 1984 the U.S. Supreme Court upheld this position in the Grove City College v. Bell case.

The Grove City Supreme Court decision dramatically limited the impact of Title IX. The case began in 1977 when Grove City College refused to sign the assurance of compliance form, arguing that it received no direct federal aid and therefore was not subject to Title IX. When threatened with termination of federal student aid funds, the college sued HEW. The Third Circuit, in August, 1982, ruled that private educational institutions such as Grove City College are covered as a whole when they or any of their students receive federal scholarship loans or grants.⁷⁴

When the Grove City case came before the Supreme Court in 1984, the Court ruled that "program or activity" could be defined narrowly: only the particular program receiving money must comply. This decision permitted institutions to discriminate in athletics, admissions and academic programs as long as they did not discriminate in financial aid programs.⁷⁵ Within days, the Assistant Attorney General for Civil Rights told reporters that the Administration would apply this "program specific" standard not only to Title IX, but to Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, as well.⁷⁶ Within a year, the Department of Education had closed, limited or suspended at least sixty-three discrimination cases: forty-four Title IX, five Title VI and fourteen Section 504, based on the Grove City decision.⁷⁷

In April, 1984 Senators Edward Kennedy and Paul Simon introduced the Civil Rights Act of 1984, replacing Title IX's phrase "program or activity" with the term "recipient." This passed overwhelmingly in the House, but Orrin Hatch argued that "recipient" was overly broad and beyond the scope of the law's

original intent. The bill died in the Senate. In the next session, Kennedy and Gus Hawkins introduced the Civil Rights Restoration Act of 1985, amending Title IX, Title VI, 504, and the 1975 Age Discrimination Act to include an interpretation of "program or activity" that expressly covered all operations. Fund termination, however, would be limited to the specific program or activity that was discriminatory. Opposition to this was strong and swift. The Assistant Attorney General for Civil Rights called it "one of the most far-reaching legislative efforts in memory to stretch the tentacles of the federal government to every crevice of public and private-sector activity."⁷⁸

In response, Senator Robert Dole introduced a more narrow version, restoring the institution-wide scope of the four civil rights laws but only as they relate to education. The Reagan Administration did not like this version any better than it liked the Kennedy-Hawkins bill. The U.S. Commission on Civil Rights issued a statement criticizing both bills and asserting that America does not want "a society standardized by the federal bureaucracy, turning out men and women fashioned by a government shaped cookie-cutter."⁷⁹ Neither bill passed.

In March of 1988 Congress voted in favor of the Civil Rights Restoration Act of 1987, passing it into law over President Reagan's veto. Since that point, Title IX once again applies to the entire institution receiving federal funds in any program or activity.⁸⁰

Title IX has been a weak law for most of its history. From 1972-1975 there were no regulations for compliance with the law. In some areas, primarily athletics, OCR gave schools three more years, from 1975-1978 to come into compliance with the regulations. Beginning in 1980 the Reagan Administration worked to limit the scope of Title IX,

⁷⁸ Salomone, 132, 133.

⁷⁹ Salomone, 133.

⁸⁰ Project on the Status and Education of Women, "The Restoration of Title IX: Implications for Higher Education," (Washington, DC: Association of American Colleges), 1989, 1.

⁷⁴ Salomone, 234, f. 89.

⁷⁵ Salomone, 130.

⁷⁶ Salomone, 131.

⁷⁷ Salomone, 132.

eventually succeeding in 1984 with the Grove City decision. Even before that decision, between 1980-1984, OCR's already limited enforcement of Title IX slacked off even further. Congress did not restore the broader interpretation of Title IX until 1988. Therefore, for most of the twenty years of Title IX's existence, OCR and several White House Administrations either did not enforce it or deliberately rendered it unenforceable.

How Far Have We Come, and How Far Is There To Go?

Title IX has had an enormous impact on elementary, secondary and postsecondary educational and employment opportunities for girls and women. This is true in spite of the fact that OCR placed Title IX as a very low priority on their list of responsibilities, and that for much of its twenty-year history Title IX was rendered ineffectual. Title IX's greatest contributions may have been twofold: the law gave girls and women a right to seek change, and advocates of equity used Title IX as a wedge in the door for further change.

Supporters of educational equity did not stop working once Congress passed Title IX. Inspired by Title IX, advocates of equity worked to pass two other key pieces of legislation in the years immediately following Title IX. The Women's Educational Equity Act (WEEA) of 1974 established federal funding for the development of programs to help women overcome educational barriers. The Vocational Education Act of 1976 included provisions related to sex equity, most notably the requirement that each state appoint a full-time vocational equity coordinator.

What do we know about gender equity in today's schools? Unfortunately, not a lot. Several studies and evaluations were conducted by research organizations in the late 1970s and early 1980s, primarily funded through WEEA. Along with curtailing enforcement of Title IX, however, the Reagan and Bush administrations sharply cut funding to WEEA. As a result, few studies of gender equity in schools have been done since the early 1980s. Many of the studies that do exist primarily focus on athletics.

There is some data, however, and from it emerges a mixed picture. The Department of Education spent \$28 million on sex equity in fiscal year 1979. This sounds like a lot of money until it is compared to other expenditures. For instance, the total amount spent on sex equity was only .2 percent of the education budget. While the Department spent \$28 million on sex equity, it spent \$259 million on the educational needs of language and ethnic minorities, \$294 million on racial desegregation, and \$2.162 billion on special education for the handicapped.⁸¹

Elementary/Secondary Education

Vocational Education. Because a large part of the impetus for gender equity in education came because of the realization that girls and women were disadvantaged economically, a key place to look for change is in the area of vocational education. There are signs of positive change, but by no means has there been a revolution. One major hindrance to assessing change in vocational education is the lack of recent data.

A 1977-78 HEW study found that 35 percent of all women enrolled in vocational education were in home economics, a traditionally female area and one that does not prepare students for paid employment. Of women enrolled in vocational education programs that do prepare them for jobs, almost half were in office occupations.⁸² In 1979, half of all vocational education programs continued to be totally segregated by sex. In 1978, 72 percent of all women in vocational education were in clerical or home economics programs. Only 1.2 percent were in technical programs. Even though that is a small percentage, it does represent an increase: in 1972, women were only ten percent of students enrolled in

⁸¹ Jeana Wirtenberg, Susan Klein, Barbara Richardson, and Veronica Thomas, "Sex Equity in American Education," Educational Leadership, January 1981, 311.

⁸² Council of Chief State School Officers, 15.

technical programs; in 1979, women were eighteen percent of those students.⁸³

A 1978 OCR survey showed that 24 percent of schools still offered sex segregated home economics and industrial arts courses.⁸⁴ Even where courses have been integrated, the work continues to be sex segregated. For instance, in an auto mechanics class, instructors allowed boys to do more difficult work, such as fixing brakes, while allowing girls only to do simple work, such as changing headlights.⁸⁵

This pattern of sex segregated vocational education is reflected in employment statistics. In 1988 only two percent of all employed women were in the skilled trades--the same proportion as in 1983. About nine percent of employed women were in other manual jobs, such as operators, fabricators and laborers, down from ten percent in 1983.⁸⁶

Athletics. In the area of athletics, the percentage of high school varsity athletes who were female rose from 7 percent in 1972 to 35 percent in 1979. The percentage of the school athletic budget that went to women's programs rose from 2 percent in 1972 to 16.4 percent in 1980.⁸⁷ This indicates a dramatic rise in female participation in athletics in the early years of Title IX. However, female participation did not continue to increase at the same rate. By 1992, only 39 percent of high school athletes were female, not much of a gain at all from the 35 percent in 1979.⁸⁸

The Title IX requirement of coeducational physical education is ignored by many teachers and schools. Anecdotal evidence

from students in a class on Education and Sex Role Socialization at the University of Wisconsin-Madison in the fall of 1993 indicates widespread noncompliance. Several schools offer two physical education courses each semester. Although theoretically any student can take either course, the courses are so sex-stereotyped that they might as well be segregated officially. For instance, in one of the schools, one semester students could choose either wrestling or gymnastics. In a second school, the choice was wrestling or aerobics; in a third school, the choice was weightlifting or aerobics. In another school's "coed" gym class, everyone played softball at the same time, but the teacher required the boys to play together on the diamond, and the girls to play together in a grassy field.

Attitudes. In some ways there has been little change in administrators' attitudes toward gender equity since the American Friends' Service Committee monitored six southern states in 1976. A 1990 study of 25 school districts in 21 states found that well over a third (37 percent) of the district administrators saw no Title IX compliance issues in their districts. Some administrators thought it "stupid" or "frivolous" to be concerned about equal educational opportunities for girls and boys.⁸⁹ A 1993 Wisconsin study showed that there is a gender gap in administrators' perceptions of gender equity in their districts. Fifty percent of male administrators, but only 32 percent of female administrators, feel that administrators help provide a bias-free environment for students. Sixty percent of male administrators, but less than 40 percent of female administrators, feel that class scheduling encourages sex fair enrollment patterns.⁹⁰ This indicates that female administrators see more of a continuing problem. Male administrators, who are the majority of all administrators, are less likely to

⁸³ National Coalition for Women and Girls in Education, "Ten Years of Good News," (Washington, DC: NCWGE), 1981, factsheets.

⁸⁴ Wirtenberg, *et al.*, 317.

⁸⁵ Wirtenberg, *et al.*, 316.

⁸⁶ "Facts on Working Women," U.S. Department of Labor Women's Bureau, No. 90-5, January 1991, 1.

⁸⁷ National Coalition for Women and Girls in Education, 1981, factsheet.

⁸⁸ Sue M. Durrant, "Title IX--Its Power and Its Limitations," *Journal of Physical Education, Recreation and Dance*, March 1992, 61.

⁸⁹ American Association of University Women (AAUW), "How Schools Shortchange Girls," (Washington, DC: AAUW), 1992, 8.

⁹⁰ Linda L. Riley, "Wisconsin Model for Sex Equity in Career and Vocational Education: Composite Report, Wisconsin Equity Surveys, 1989-1992," (Menomonie, WI: University of Wisconsin-Stout), 1993, 4.

see problems related to gender equity and therefore are less likely to work toward positive change.

Today's school children have widely divergent expectations for girls and for boys. For example, one study showed that among middle school children (fifth through seventh grades), nearly 60 percent of the boys believe it is important for boys to learn to be leaders, but only 31 percent of the boys believe it is important for girls to learn to be leaders. Interestingly, girls assign equal value to girls' and boys' leadership.⁹¹

Male and female students continue to have unrealistic ideas of women's place in the workforce. Among high school students, over 75 percent of males and 67 percent of females believe that men work because they need the income, but only 37 percent of males and 40 percent of females believe that women work out of economic necessity. Students continue to hold traditional ideas about gender division in the labor force. This is especially true for boys. Sixty-three percent of elementary school boys, compared to 86 percent of girls, believe that girls can do any job that boys can.⁹²

A 1992 survey of student attitudes of 3,363 students in 26 schools in Wisconsin documented student perceptions of gender differences. At all grade levels both males and females thought that job opportunities were different depending on gender, and that males had more opportunities than females. Students perceived limited opportunities for women in professional sports, political office, carpentry, auto mechanics, the military, or as police officers and scientists.⁹³ When asked how their lives would be different if they woke up the other gender, boys responded

with violent revulsion. They said such things as, "I would commit suicide...so I wouldn't have to be a girl"; it would be "my worst nightmare"; "being a boy is more than being a girl"; and, "I think I'd kill myself because I like the power that comes with manhood." When girls were asked about being boys, they responded with optimism: "My life would be awesome. I would have...more choices."⁹⁴

In addition to believing that their professional opportunities are different from boys', girls must try to learn in an environment that clearly is hostile to them. A 1993 study of 1,600 public school students showed that 85 percent of girls have experienced unwanted and unwelcome sexual behavior in school. One quarter of those girls were harassed by school employees.⁹⁵

Postsecondary Education

At the postsecondary level, too, women have experienced great gains, but also are limited by "chilly campus climates."⁹⁶ Twenty years after Title IX opened access to higher education for women, women now earn the majority of associate and bachelor degrees (57.4 and 52.5 percent, respectively). However, men still earn a disproportionate number of doctorate degrees (63.5 percent).⁹⁷ Women continue to earn their doctorates in fields considered to be traditionally female, low status and with lower salaries, such as foreign languages, home economics and library science.⁹⁸

⁹¹ Riley, 15, 16.

⁹² Riley, 21, 22.

⁹³ Linda L. Riley, Lorayne Baldus, Orville Nelson, Barbara Schuler and Melissa Keyes, "'My Worst Nightmare...': Wisconsin Students' Perceptions of Being the Other Gender: A Statewide Study to Document Current Gender Perceptions of Wisconsin Students," (Menomonie, WI: Center for Vocational, Technical and Adult Education, University of Wisconsin-Stout), 1993, 8.

⁹⁴ Riley, *et al.*, 12, 13.

⁹⁵ American Association of University Women Educational Foundation, "Hostile Hallways: The AAUW Survey on Sexual Harassment in America's Schools," (Washington, DC: AAUW), 1993, 3.

⁹⁶ Project on the Status and Education of Women, "The Classroom Climate: A Chilly One for Women?" (Washington, DC: Association of American Colleges), 1982.

⁹⁷ National Center for Education Statistics, Digest of Education Statistics, 1991 (Washington, DC: U.S. Department of Education, Office of Educational Research and Improvement), 1992, 234.

⁹⁸ Glen Harvey, "Finding Reality Among the Myths: Why What You Thought About Sex Equity in Education Isn't So," Phi Delta Kappan, March 1986, 511; and Jean Stockard, "Education and

Between 1972 and 1980, the percentages of women students in various professional schools rose dramatically and has continued to rise. In medical school, the percentage rose from eleven to twenty-six; in law schools, from ten to thirty-four; in dental schools, from two to seventeen; and in veterinary schools, from twelve to thirty-nine.⁹⁹ In 1989, women earned thirty-three percent of medical school degrees, forty-one percent of law degrees, twenty-six percent of dental, and fifty-five percent of veterinary degrees.¹⁰⁰

Sexual harassment contributes greatly to the unwelcoming atmosphere for women at most colleges and universities. In 1986, Cornell University surveyed women students and found that 78 percent had experienced sexist comments; that same year, a study at the Massachusetts Institute of Technology found that 92 percent of women students there had experienced unwanted sexual attention; in 1980 a study at the University of Rhode Island found that 70 percent of women students reported being sexually insulted.¹⁰¹

Despite increased funding for women in higher education, women still receive disproportionately less than men. Women as a group have a greater need for student aid because they are more likely to enroll as independent or part-time students and because they are more likely to have primary responsibility for child care. Yet women receive less financial aid than comparable males.¹⁰²

Gender Equality: A Critical View," Sociology of Education and Socialization, 5, 1985, 315.

⁹⁹ National Coalition for Women and Girls in Education, 1981, factsheet.

¹⁰⁰ National Center for Education Statistics, 273.

¹⁰¹ Project on the Status and Education of Women, "Peer Harassment: Hassles for Women on Campus," (Washington, DC: Association of American Colleges), 1988, 2.

¹⁰² Mary Moran, Student Financial Aid and Women: Equity Dilemma (Washington, DC: Association for the Study of Higher Education), 1986.

In 1971 there were no athletic scholarships for women. In 1982, there were 10,000.¹⁰³ Athletic budgets, programs and intercollegiate opportunities have increased for women. Yet in other ways, change in athletics has hurt women rather than helped them. As women's intercollegiate athletics were awarded more money, the coaching positions began to be taken over by men. In 1972, 90 percent of women's athletic teams were coached by women; in 1990, just 47 percent of women's teams had female coaches.¹⁰⁴ Women athletes have far fewer opportunities than their male counterparts to become professional athletes after college. Now that so many coaching jobs also are being filled by men, women athletes have even fewer opportunities to use their skills.

Teacher Training

From grade school to graduate school, teachers interact more with male students than with females. Teachers respond to, encourage, criticize, and provide more opportunities to boys than girls.¹⁰⁵ Teachers must be trained to be aware of their own potentially differential treatment of males and females. Yet teacher education programs typically have "not provided the scholarship, leadership, direction, or impetus for change toward equity;" in fact, "schools and departments of education have generally been impervious to the need for reform."¹⁰⁶ A

¹⁰³ National Coalition for Women and Girls in Education, 1981, factsheet.

¹⁰⁴ R. Vivian Acosta and Linda Jean Carpenter, "As the Years Go By--Coaching Opportunities in the 1990s," Journal of Physical Education, Recreation and Dance, March 1992, 37.

¹⁰⁵ Myra Sadker and David Sadker, "Sexism in the Classroom: From Grade School to Graduate School," Phi Delta Kappan, March 1986; and Lee Anne Bell and Jacqueline Jordan Irvine, "A Qualitative and Quantitative Analysis of the Devaluation of Girls in School: Perspectives from the Student and Teacher Role," paper prepared for the American Educational Research Association Annual Meeting, March 1989, 6.

¹⁰⁶ David M. Sadker and Myra P. Sadker, "The Treatment of Sex Equity in Teacher Education," in S.S. Klein (Ed.), Handbook for Achieving Sex

study of teacher education texts published between 1973-1978 found that twenty-three of the twenty-four texts spent less than one percent of the text on gender issues; the twenty-fourth text spent less than two percent.¹⁰⁷ A 1981 analysis of teacher education texts revealed that a third of them did not even mention the topic of sexism, and none of them included material on nonsexist teaching techniques. In texts for "foundations" courses in the history and philosophy of education, five times as much space was devoted to men as to women, despite the historical predominance of women in the field.¹⁰⁸

A 1993 survey of 38,699 students in Wisconsin showed that gender inequity in schools continues. Less than half of the students believe teachers treat girls and boys the same in the classroom. Only 65 percent of students believe that teachers expect the same achievement levels from girls and boys. One-third of students think there are classes in the school that clearly are for boys only or for girls only.¹⁰⁹

Again, anecdotal evidence from a class of college students at the University of Wisconsin-Madison echoes these statistics. One young woman's high school chemistry teacher told the girls not to conduct the experiments because they might become messy and dirty; rather, the girls should watch the boys' skills in conducting the experiments and take notes. Another woman reported that her algebra teacher announced on the first day of class that the boys would do better than the girls. Still another woman told of a guidance counselor who met with a small group of students who were prevented by a scheduling error from taking advanced mathematics. The counselor agreed to correct the problem for the boys, but not for the girls.

Equity Through Education (Baltimore: Johns Hopkins Press), 1985, 150.

¹⁰⁷ Council of Chief State School Officers, 26.

¹⁰⁸ Kathy Vandell and Scott B. Dempsey, "Stalled Agenda: Gender Equity and the Training of Educators." (Washington, DC: American Association of University Women), 1991, 2.

¹⁰⁹ Riley, 14.

In a similar incident at another school, the boys were allowed to rearrange their schedules to take physics while the girls who wanted to do so were required to take typing instead. This type of differential treatment of girls and boys, especially regarding math and science, has been well documented in the literature.¹¹⁰

All of these are current examples of the failure of teacher education programs to dispel myths and stereotypes about gender, and of inadequate leadership on the part of administrators. Nor does this seem likely to improve in the immediate future. An analysis of 138 articles on educational reform published in professional journals from 1983 to 1987 showed that only one percent of the article content pertained to gender equity.¹¹¹ From 1985 through 1989, thirty-five special commissions and task forces issued reports on education reform. Women comprise less than twenty percent of the members of these groups. One task force included no women at all, and four others had five percent or fewer women members. Only two had as many as half women members.¹¹²

Employment

In 1980 women comprised seventy percent of all classroom teachers, but women headed only one percent of schools and were only one percent of school superintendents. Women were less likely to be elementary school principals in 1978 than they were fifty years earlier: the percentages fell from fifty-five percent in 1928 to eighteen percent in 1978.¹¹³

¹¹⁰ Leonie Rennie and Lesley Parker, "Detecting and Accounting for Gender Differences in Mixed-Sex and Single-Sex Grouping in Science Lessons," Educational Review 39, 1987, 66-75, and Kathy Vandell and Lauren Fishbein, "Equitable Treatment of Girls and Boys in the Classroom," (Washington, DC: American Association of University Women), 1989.

¹¹¹ Myra Sadker, David Sadker, and Sharon Steindam, "Gender Equity and Educational Reform," Educational Leadership, March 1989, 44.

¹¹² American Association of University Women, 1992, 90, 91.

¹¹³ National Coalition for Women and Girls in Education, 1981, factsheet.

By 1980 women were only eleven percent of elementary school principals and four percent of high school principals.¹¹⁴ In 1988, women were twenty-five percent of all principals of public elementary and secondary schools.¹¹⁵ In 1991 women were nine of the fifty chief state school officers.¹¹⁶

Higher education continues to be dominated by men in faculty and administrative positions. In 1980 more than 90 percent of college students attended institutions where all three of the top administrative positions--president, chief academic officer, and dean--were held by men. Only 6.8 percent of college presidents were female, and most of them were at women's colleges. The salaries of female faculty continued to be lower than those of males, even when women had comparable training and experience. This was true at every age, every degree level, every field and every type of institution. Although there were more female assistant professors in 1980 than in 1970, there was no comparable gain in tenured female faculty during that decade.¹¹⁷ Between 1972 and 1990 the wage gap actually increased. The gap between men's and women's average salaries for faculty at all ranks in 1972 was \$7,386; in 1990 that gap increased to \$8,693 (both figures are in constant 1990 dollars).¹¹⁸

Conclusion

The movement toward gender equity in education has not been a clear linear progression. Federal legislation prohibiting sex discrimination in education was necessary as a foundation for change, but in itself the legislation ensured very little. Immediately after passing Title IX, Congress began numerous initiatives to whittle away at Title IX's scope of coverage. HEW failed to issue

regulations and guidelines for implementation for three years. Once the regulations were in place, lack of enforcement on the part of OCR rendered Title IX little more than a paper tiger. Even court intervention and court-ordered timelines for complaint investigations made little dent in the backlog of complaints of sex discrimination. Because the federal government would not withhold funds for noncompliance, schools and higher education institutions had little incentive to comply.

Yet educational institutions have changed, and Title IX played an essential role in those changes. Title IX provided "hope and a tool." Students, faculty and staff for the first time had the means to amend or abolish discriminatory practices and policies. Change did not occur because of federal investigations or the threat of funds being cut off. Less than one percent of the nation's schools and colleges have ever seen--or are likely to see--a federal investigator.¹¹⁹ This means, then, that institutions have become more gender fair for other reasons. Changing economic conditions, an increased public awareness of sexism, the state-level work of equity advocates funded through the Vocational Education Act and Title IV of the Civil Rights Act of 1964, pressure from individuals and advocacy groups, and the impact of research demonstrating the harmful effects of gender discrimination also influenced gender issues in the schools.

Not all of the changes toward equity in education have come from the federal level. In response to pressure from women's groups, twelve state legislatures have passed specific laws promoting sex equity in education. Eleven more states have included statements in other equity laws that specifically bar sex discrimination in education.¹²⁰

Title IX has not brought about complete gender equity in education. Recognizing the need for further change, in the fall of 1993 Senators Barbara Mikulski, Paul Simon, Carol

¹¹⁴ Council of Chief State School Officers, 19.

¹¹⁵ National Center for Education Statistics, 1992, 91.

¹¹⁶ American Association of University Women, 1992, 7.

¹¹⁷ Bernice Sandler, "Women on Campus: A Ten-Year Retrospect," On Campus with Women, 26, Spring 1980, 2.

¹¹⁸ National Center for Education Statistics, 224.

¹¹⁹ Bernice Resnick Sandler, "Happy Birthday Title IX!" On Campus with Women, 12, Summer 1981, 1,2.

¹²⁰ Salomone, 231, f. 43.

Moseley-Braun, Tom Harkin and Edward Kennedy introduced new federal gender equity in education legislative initiatives. Part of the reauthorization of the Elementary and Secondary Education Act, the bill includes the creation of a Gender Equity Office with a full-time coordinator in the Department of Education, expansion of gender equity research and training in all areas of education, additional resources set aside for gender equity in mathematics and science, sexual harassment prevention and elimination training programs, and disclosure of data related to equity in athletics.¹²¹ Opponents of the bill are working hard for its defeat. Should it pass, the bill will send a strong message that this country values its girls as much as its boys. How strong that message is depends on more than Congress making this bill law. Change also depends on adequate funding, dissemination of information, and enforcement.

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¹²¹ "Federal 'Gender Equity in Education' Legislation," NCSEE News, 93-94, Fall 1993, 14.

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