FINAL TITLE IX
REGULATION IMPLEMENTING
EDUCATION AMENDMENTS
OF 1972
PROHIBITING SEX
DISCRIMINATION
IN EDUCATION

Effective Date: July 21, 1975

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE/Office for Civil Rights
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

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MEMORANDUM FOR COLLEGE AND UNIVERSITY PRESIDENTS,
CHIEF STATE SCHOOL OFFICERS AND LOCAL
SCHOOL SUPERINTENDENTS

The Department has published an implementing Regulation
for Title IX of the Education Amendments of 1972, which
prohibits sex discrimination in Federally-assisted educa-
tion programs. Specifically, Title IX states:

"No person in the United States shall, on
the basis of sex, be excluded from participa-
tion in, be denied the benefits of, or be
subjected to discrimination under any educa-
tion program or activity receiving Federal
financial assistance..."

The enclosed Regulation describes how Title IX will be en-
forced and how it applies to educational institutions. The
effective date of the Regulation is July 21, 1975.

Title IX and the Regulation affect virtually all public
school systems and post-secondary education institutions.
The final Regulation, which will be submitted to the
Congress for 45 days as required by law, takes into account
some 10,000 written comments on the Proposed Regulation
published in June, 1974 and there have been revisions as a
result.

Secretary Weinberger of the Department of Health, Education,
and Welfare has urged that institutions take the requirements
of Title IX as an opportunity to end sex discrimination in
American education. That is the objective of the law and the
Regulation.

Special attention is called to a provision in the Regulation
that each institution evaluate its current policies and
practices and take remedial action where necessary.

If you have any questions regarding Title IX, please feel free
to write to me or to seek the assistance of our regional
offices in Boston, New York City, Philadelphia, Atlanta, Chicago,
Dallas, Kansas City, Denver, San Francisco, and Seattle.

Peter E. Holmes
Director
Office for Civil Rights
We are approaching a landmark point in the Nation's history. On July 21st, Title IX Regulations prohibiting sex discrimination against women in education are scheduled to take effect. This is appropriate in 1975, International Women's Year.

The law underlying these regulations is based on the sound premise that, in a knowledge-based society, equal opportunity in education is fundamental to equality in all other forms of human endeavor.

The President signed the Title IX Regulations on May 27th. I call upon every American to support Title IX, as an affirmation of the principles of equality upon which our Nation was founded. The most effective enforcement of all is a public which supports the law.

Much of the discrimination against women in education today exists unconsciously and through practices long enshrined in tradition. The Regulations require that during the next year those in education begin a searching self-examination to identify any discriminatory policies or practices which may exist within their institutions and to take whatever remedial action is needed.

No other provision of the Regulation has more potential for ending sex discrimination in education than this, and I hope educators charged with carrying out this provision will do so in a spirit that fully embraces the real purposes of the law.

Before turning to the major issues involved in this final Regulation, let me point out that Title IX is indeed far-reaching in its sweep. It forbids sex discrimination in any educational institution receiving Federal assistance. This includes the Nation's 16,000 public school systems and nearly 2,700 post-secondary institutions.
The nearly 10,000 public comments received during the June through October comment period made it amply clear that there was no way to draft regulations for Title IX that will please all of the people all of the time.

Such a broad public reaction is healthy and reflects the fact that we undertook our responsibilities with a commitment to face the difficult and controversial issues inherent in the law. We believe that, by taking on these hard issues at the outset, we have laid a foundation for real progress under the law. This has taken time, but we believe that it is time well spent. It may well save far more time in reaching the goal of full compliance.

The comments we received raised six major issues which I will discuss today. These are not necessarily the most important issues, but they are the points that drew the most comments:

**ISSUE I -- PHYSICAL EDUCATION CLASSES**

The first concerns the requirement to make all physical education classes co-educational, as originally proposed. The final Regulation slightly modifies this position. It allows separation during participation in contact sports and explicitly permits grouping of students by ability. It also allows separation during classes in sex education.

We have allowed varying adjustment periods for schools to realign schedules, alter facilities and replan curricula. Schools will be expected to comply as expeditiously as possible, but some recognition of practical problems and costs appears warranted.

**ISSUE II -- FINANCIAL AID**

Issue Two concerns a proposed provision prohibiting institutions from administering scholarships designating a particular sex in wills and trusts. The final Regulation allows nondiscriminatory "pooling" of these scholarships under a two-step procedure.

Step One requires an institution to select students to be awarded financial aid on the basis of criteria other than a student's sex. Once students have been thus identified, a school's financial aid office would award the aid from both sex-restrictive and non sex-restrictive sources. If not enough aid is then available through non-restrictive sources for members of one sex, the school would then be required either to obtain funds from other sources or award less funds from sex-restricted sources.

**ISSUE III -- FOREIGN SCHOLARSHIPS**

The proposed Regulation exempted from compliance single-sex scholarships, fellowships and other awards given under foreign wills, trusts or similar legal instruments, and the final Regulation continues this exemption.

We have attempted to reconcile the many public comments opposing this exemption with what we construe to be the intent of Congress. We believe that Congress did not intend to cause such programs as the Rhodes scholarships to be discontinued.

The final Regulation therefore permits schools to administer single-sex scholarships and awards for study abroad, provided that the school also makes available reasonable foreign-study opportunities for students of the other sex.

**ISSUE IV -- PENSION BENEFITS**

The proposed Regulation on pension benefits followed the current position of the Department of Labor's Office of Federal Contract Compliance, which allows employers to provide either equal contributions or equal periodic benefits to members of each sex. While we have made no change in the final regulations, this is a most complex area which is further complicated by the fact that at least three Federal agencies administer rules on this subject.

The President has directed the Equal Employment Opportunity Coordinating Council to study this issue further, in consultation with HEW, and to report back to him by October 15th. We expect this study to guide us toward a uniform policy.

Meanwhile, this Regulation maintains consistency between HEW's enforcement of Title IX as to employment and our enforcement of Executive Order 11246 which also applies to employment discrimination by universities and colleges with Federal contracts.

**ISSUE V -- CURRICULUM AND TEXTBOOKS**

The proposed Regulation did not cover sex-stereotyping in textbooks and curricular materials. This produced a good deal of public comment. Nonetheless, the administration remains convinced that this position is correct, and the final Regulation explicitly affirms this position. Textbook and curricular content is, I believe, more properly dealt with at the State and local level. In my opinion, it would be both highly questionable from a constitutional standpoint, and wholly inappropriate for the Federal government to move into this area, and I do not think there is any evidence that the Congress desired such a result.
4.

ISSUE VI -- ATHLETICS

Certainly the most talked about issue was athletics. As you know, Congress attempted to clarify the Department's mandate in this area last summer by passing language in the Education Amendments of 1974 requiring that our Regulation cover intercollegiate sports in some "reasonable" way.

We have modified the proposed Regulation in several respects, but held to the basic requirement that schools must indeed provide equal opportunity for both sexes to participate in intramural, interscholastic and intercollegiate athletics.

We left in the provision allowing separate teams in those sports in which competitive skill is the basis for selecting team members, and we added a provision allowing separate teams in contact sports. This is not a requirement, nor is it a suggestion that colleges can refuse to offer football, basketball or other contact sports to members of each sex separately if there is enough student interest to warrant it.

Many athletic activities do not involve bodily contact--tennis, track, swimming, golf and others. In these sports, if an institution offers a team for one sex and not for the other, and if it has limited the opportunities it has offered to members of the other sex in the past, then members of that sex must be allowed to try out for positions on the team.

In all, I think this Regulation enhances opportunities for women in athletics, but it will also allow schools the flexibility they need to keep competitive sports alive and well.

The Regulation also describes what the Department will look at when it considers whether a school is providing equal opportunity in athletics.

For example, we will look to see whether the sports and levels of competition offered by the school accommodate the interests and abilities of both sexes. We will also see whether there is equity in providing equipment and supplies, scheduling games and practices and in providing coaching.

The Regulations do not demand dollar-for-dollar matching expenditures for each sex. The crucial sentence concerning expenditures reads as follows:

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Director may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of one sex.

5.

I recognize that changes will be necessary to bring athletics offered by some institutions into compliance with the Regulation, and time may be needed to allow for these changes. Therefore, the Regulation gives elementary schools up to a year to comply. Secondary and postsecondary schools, which have greater problems, may have up to three years.

Although these are the most controversial issues, in discussing them it is essential not to lose sight of the basic scope and thrust of Title IX:

---Nondiscrimination in admissions to educational institutions is at the heart of the Regulations; the only exceptions are those in the statute itself. The days of quotas or stiffer standards for female graduate school applicants are over—and should be over.

---The Regulations proscribe sex discrimination in employment at the elementary and secondary level for the first time, in addition to expanding coverage in higher education.

COMPLIANCE

The Title IX Regulation adopts Title VI compliance procedures on an interim basis. There is a reason for this:

Simultaneously with the publication of Title IX Regulations, we are also publishing a proposed regulation that calls for a consolidated enforcement approach to all of the Department's statutory civil rights responsibilities, Title IX, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and other authorities.

This new approach will assure a more balanced and comprehensive effort. Our aim will be to focus HEW's enforcement machinery on the main, systemic forms of discrimination, and give priority attention to these, rather than follow an approach in which priorities are dictated by the morning's mail, and each complaint, whether specious or not, must be fully investigated, just because the complaint has been made. In practice, this means that the limited resources of the Department may be diluted by the need to investigate unsupported complaints, leaving really major forms of discrimination virtually unexamined.

Our new approach does not mean that we are going to stop considering information from individuals or groups that concerns noncompliance. It does mean that this information will be used by our Office for Civil Rights to help us determine enforcement priorities and guide the direction of our compliance review.
We are persuaded that this is a more effective approach. In the area of racial discrimination, for example, where we have used this proposed method of enforcement, we have achieved the following results in elementary and secondary education between July 1973 and February 1975.

- A quarter of a million children were reassigned from racially identifiable classes;
- 26,000 special education students were re-evaluated;
- Over 51,000 students were reassigned from racially identifiable schools;
- Over 1,200 minority teachers and staff were hired;
- And over 2,500 teachers were reassigned from racially identifiable faculties.

One final word: We intend to approach Title IX enforcement in a constructive spirit. We want to achieve the goals of the Title as soon as possible, rather than undergo a series of futile confrontations and endless law suits. We call upon schools and colleges to do their utmost in the same spirit.

To their great credit, many are already moving in good faith to end sex discrimination. For such schools, Title IX, as we propose to administer it, can only help. For those that are not trying in good faith to end discrimination against women, I have one message: We can wait no longer. Equal education opportunity for women is the law of the land—and it will be enforced.

Now to your questions.

In June 1972, the Congress passed Title IX of the Education Amendments, a law which affects virtually every educational institution in the country. The law prohibits discrimination by sex in educational programs that receive Federal money.

The spirit of the law is reflected in this opening statement: Under Title IX, "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 . . .”

The law was originally introduced in 1971 as an amendment to the Civil Rights Act of 1964. Following Congressional debate and changes, the law, signed on June 23, 1972, emerged as Title IX of the Education Amendments of 1972, a broad-scale bill covering a range of Federal assistance programs.

During the deliberations on the new law, individuals and organizations testified to existing conditions which they believed made the passage of such a law essential.

Examples:

- Testimony indicated that girls were frequently denied the opportunity to enroll in traditionally male courses such as industrial arts and boys the opportunity to enroll in courses such as home economics because of overtly discriminatory secondary school policies. Even if such course enrollment restrictions were not present and a student interest existed, boys and girls would be counseled to enroll in traditionally male and female career development courses.

- Evidence concerning physical education activities indicated that women and girls were shortchanged. A school in a Midwestern district, for example, operated a program for girls that was substantially inferior to that operated for boys. In another case, rules in one State forced a high school to deny its best tennis player both coaching and a chance to compete on the school's tennis team because that athlete was female.
--A national survey conducted in 1970-71 by the National Education Association showed that while women constituted 67 percent of all public school teachers, they accounted for only 15 percent of the principals and 0.6 percent of the superintendents. Most of the women holding administrative positions were confined to the elementary school level. Specifically, women represented 19 percent of the nation's elementary school principals; but, only 3.5 percent of the junior high principals and three percent at the senior high level.

--A study by the National Center for Educational Statistics revealed that as of 1973, women college faculty members received average salaries almost $2,500 less than those of their male counterparts. The study also showed that 9.7 percent of female faculty members had achieved the rank of professor, contrasted with 25.5 percent of males.

DEVELOPMENT OF REGULATIONS

This was the setting under which DHEW's Office for Civil Rights drew up the proposed regulation to carry out the nondiscrimination principles of Title IX. It applied, with a few specific exceptions, to all aspects of education programs or activities carried on by federally assisted school districts, institutions of higher learning, or others receiving Federal financial aid. Generally, it covered admissions, treatment of students and employment.

On June 20, 1974, a proposed regulation was published in the Federal Register and public comment was invited. To assist the public in understanding the proposed regulations, representatives from the Office for Civil Rights conducted extensive briefings in 12 major cities throughout the country.

From the publication of the proposed regulations in June to the close of the comment period in October, HEW received nearly 10,000 public comments. The heaviest volume of comment came in six areas on the following issues:

--sex discrimination in sports and athletic programs,
--coeducational physical education classes,
--sex stereotyping in textbooks,
--the possible impact of the law on fraternities and sororities,
--scholarships, and
--employment issues.

Drafted on the basis of the proposed regulation issued in June of 1974 and reflecting a number of changes suggested by concerned citizens, organizations and institutions, the final regulation has been signed by the President as required by the statute. Effective July 21, 1975, the final regulation prohibits, with certain exceptions, sex discrimination in education programs or activities which receive Federal financial assistance.

The regulation will be administered by the Office of Civil Rights of the U.S. Department of Health, Education and Welfare.

45 C.F.R. PART 86:

SUBSTANTIVE PROVISIONS

The final regulation covers the following areas with respect to recipients of Federal financial assistance for educational programs or activities:

Coverage;
Admission of students;
Treatment of students;
Employment; and
Procedures.

COVERAGE

Except for the specific limited exemptions set forth below, the final regulation applies to all aspects of all education programs or activities of a school district, institution of higher education, or other entity which receives Federal funds for any of those programs.

With respect to admissions to educational institutions, the final regulation applies only to: vocational, professional and graduate schools and to institutions of public undergraduate education (except those few public undergraduate schools which have been traditionally and continually single sex).

The final regulation does not cover admission to: recipient pre-schools, elementary, and secondary schools (except to vocational schools), private undergraduate institutions and, as noted above, to those few public undergraduate educational institutions that have been traditionally and continually single sex.

Even institutions whose admissions are exempt from coverage must treat all students nondiscriminately once they have admitted members of both sexes.
Military institutions at both the secondary and higher education level are entirely exempt from coverage under Title IX. Practices in schools run by religious organizations also are exempt to the extent compliance would be inconsistent with religious tenets. Thus, for example, if a religious tenet relates only to employment, the institution would still be prohibited from discrimination against students.

**ADMISSIONS**

The final regulation covers recruitment as well as all admissions policies and practices of those recipients not exempt as to admissions. It includes specific prohibitions of sex discrimination through separate ranking of applicants, application of sex-based quotas, administration of sex-biased tests or selection criteria, and granting of preference to applicants based on their attendance at particular institutions if the preference results in sex discrimination. The final regulation also forbids application in a discriminatory manner of rules concerning marital or parental status, and prohibits discrimination on the basis of pregnancy and related conditions, providing that recipients shall treat pregnancy and disabilities related to pregnancy in the same way as any other temporary disability or physical condition.

Generally, comparable efforts must be made by recipients to recruit members of each sex. Where discrimination previously existed, additional recruitment efforts directed primarily toward members of one sex must be undertaken to remedy the effects of the past discrimination.

**EXAMPLES -- ADMISSIONS**

--An institution whose admissions are covered by the regulation may not set quotas on the number of men or women who will be admitted. Thus, a medical school may not set such quotas, although a private undergraduate school may do so.

--An institution whose admissions are covered may not set different standards of admission for one sex than for the other. Thus, a graduate school may not require a lower grade point average for men than for women, although a private undergraduate school may do so.

--An institution of graduate, professional or vocational education which prior to enactment of Title IX had limited its admissions primarily to members of one sex must undertake special efforts to notify and recruit members of the sex previously barred or restricted in order to overcome the effects of past discrimination. Thus, a professional school which previously purposely limited the proportion of females in each entering class to approximately 15% would be required to initiate special recruitment efforts to attract qualified female students. A similar institution whose admissions had not been subject to such a quota arrangement, but had admitted students without discrimination on the basis of sex, would be required only to make comparable efforts to attract members of each sex.

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**TREATMENT**

As stated before, although some schools are exempt from Title IX with regard to admissions, all schools must treat their admitted students without discrimination on the basis of sex. With regard to treatment of students, therefore, the final regulation applies to recipient pre-schools, elementary and secondary schools, vocational schools, colleges, and universities at the undergraduate, graduate and professional levels, as well as to other agencies, organizations and persons which receive Federal funds for educational programs and activities.

Specifically, the treatment sections of the regulation cover the following areas:

1. Access to and participation in course offerings and extracurricular activities, including campus organizations and competitive athletics;
2. Eligibility for and receipt or enjoyment of benefits, services, and financial aid;
3. Use of facilities, and comparability of, availability of, and rules concerning housing (except that single-sex housing is permissible).

The final regulation incorporates a Congressional exemption enacted into law in 1974, for the membership practices of social fraternities and sororities at the postsecondary level, the Boy Scouts, Girl Scouts, Campfire Girls, Y.W.C.A., Y.M.C.A., and certain voluntary youth services organizations. Thus, a recipient educational institution may provide assistance to such specifically exempted single-sex organizations without violating the non-discrimination requirements of the statute.

Classes in health education, if offered, may not be conducted
separately on the basis of sex, but the final regulation allows separate sessions for boys and girls at the elementary and secondary school level during times when the materials and discussion deal exclusively with human sexuality. There is, of course, nothing in the law or the final regulation requiring schools to conduct sex education classes. This is a matter for local determination.

Physical Education

While generally prohibiting sex segregated physical education classes, the final regulations do allow separation by sex in physical education classes during competition in wrestling, boxing, basketball, football, and other sports involving bodily contact. Schools must comply fully with the regulation with respect to physical education as soon as possible. In the case of physical education classes elementary schools must be in full compliance no later than one year from the effective date of the regulation. In the case of physical education classes at the secondary and postsecondary level, schools must be in compliance no later than three years from the effective date of the regulation. During these periods, while making necessary adjustments, any physical education classes or activities which are separate, must be comparable for each sex.

Athletics

Where selection is based on competitive skill or the activity involved is a contact sport, athletics may be provided through separate teams for males and females or through a single team open to both sexes. If separate teams are offered, a recipient institution may not discriminate on the basis of sex in provision of necessary equipment or supplies, or in any other way, but equal aggregate expenditures are not required. The goal of the final regulation in the area of athletics is to secure equal opportunity for males and females while allowing schools and colleges flexibility in determining how best to provide such opportunity.

In determining whether equal opportunities are available, such factors as these will be considered:

--whether the sports selected reflect the interests and abilities of both sexes;
--provision of supplies and equipment;
--game and practice schedules;
--travel and per diem allowances;
--coaching and academic tutoring opportunities and the assignment and pay of the coaches and tutors;
--locker rooms, practice and competitive facilities;
--medical and training services;
--housing and dining facilities and services;
--publicity.

Where a team in a non-contact sport, the membership of which is based on skill, is offered for members of one sex and not for members of the other sex, and athletic opportunities for the sex for whom no team is available have previously been limited, individuals of that sex must be allowed to compete for the team offered. For example, if tennis is offered for men and not for women and a woman wishes to play on the tennis team, if women's sports have previously been limited at the institution in question, that woman may compete for a place on the men's team. However, this provision does not alter the responsibility which a recipient has with regard to the provision of equal opportunity. Recipients are requested to "select sports and levels of competition which effectively accommodate the interests and abilities of members of both sexes." Thus, an institution would be required to provide separate teams for men and women, in situations where the provision of only one team would not "accommodate the interests and abilities of members of both sexes." This provision applies whether sports are contact or noncontact.

In the case of athletics, like physical education, elementary schools will have up to a year from the effective date of the regulations to comply, and secondary and postsecondary schools will have up to three years.

Organizations

Generally, a recipient may not, in connection with its education program or activity, provide significant assistance to any organization, agency or person which discriminates on the basis of sex. Such forms of assistance to discriminatory groups as faculty sponsors, facilities, administrative staff, etc., may, on a case-by-case basis, be determined to be significant enough to render the organization subject to the non-discrimination requirements of the regulation. As noted, previously, the final regulation incorporates an exemption for the membership practices of social fraternities and sororities at the postsecondary level, the Boy Scouts, Girl Scouts, Campfire Girls, Y.W.C.A., Y.M.C.A., and certain voluntary youth service organizations. However, recipients continue to be prohibited from providing significant assistance to professional or honorary fraternal organizations.

Benefits, Services, and Financial Aid

Generally, a recipient subject to the regulation is prohibited
from discriminating in making available, in connection with its educational program or activity, any benefits, services, or financial aid although "pooling" of certain sex-restrictive scholarships is permitted. Benefits and services include medical and insurance policies and services for students, counseling, and assistance in obtaining employment. Financial aid includes scholarships, loans, grants-in-aid and work-study programs.

Facilities

Generally, all facilities must be available without discrimination on the basis of sex. As provided in the statute, however, the regulation permits separate housing based on sex as well as separate locker rooms, toilets and showers. A recipient may not make available to members of one sex locker rooms, toilets and showers which are not comparable to those provided to members of the other sex. With respect to housing, the regulation requires comparability as to the facilities themselves and nondiscrimination as to their availability and as to the rules under which they are operated, including fees, hours, and requirements for off-campus housing.

Curricular Materials

The final regulation includes a provision which states that "nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials." As noted in the Preamble to the final regulation, the Department recognizes that sex stereotyping in curricula is a serious matter, but notes that the imposition of restrictions in this area would inevitably limit communication and would thrust the Department into the role of Federal censor. The Department assumes that recipients will deal with this problem in the exercise of their general authority and control over curricula and course content. For its part, the Department will increase its efforts, through the Office of Education, to provide research, assistance, and guidance to local educational agencies in eliminating sex bias from curricula and educational material.

EXAMPLES—TREATMENT

--A recipient school district may not require boys to take shop and girls to take home economics, exclude girls from shop and boys from home economics, or operate separate home economics or shop classes for boys and girls.

--A recipient vocational or other educational institution may not state in its catalog or elsewhere that a course is solely or primarily for persons of one sex.

--Male and female students shall not be discriminated against on the basis of sex in counseling. Generally, a counselor may not use different materials in testing or guidance based on the student's sex unless this is essential in eliminating bias. If a school, provided the materials cover the same occupations and interest areas. Also, if a school finds that a class contains a disproportionate number of students of one sex, it must be sure that this disproportion is not the result of sex-biased counseling or materials.

--A recipient school district may not require segregation of boys into one health, physical education, or other class, and segregation of girls into another such class.

--Where men are afforded opportunities for athletic scholarships, the final regulation requires that women also be afforded these opportunities.

Specifically, the regulation provides: "To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics."

--Locker rooms, showers, and other facilities provided for women must be comparable to those provided for men.

--A recipient educational institution would be prohibited from providing financial support for an all-female hiking club, an all-male language club, or a single-sex honorary society. However, a non-exempt organization whose membership is restricted to members of one sex could adhere to its restrictive policies, and operate on the campus of a recipient university, if it received no assistance from the university.

--Male and female students must be eligible for benefits, services and financial aid without discrimination on the basis of sex. Where colleges administer scholarships designated exclusively for one sex or the other, the scholarship recipients should initially be chosen without regard to sex. Then when the time comes to award the money, sex may be taken into consideration in matching available monies to the students chosen. No person may be denied financial aid merely because no aid for his or her sex is available. Prizes, awards and scholarships not established under a will or trust must be administered without regard to sex.

--An institution which has one swimming pool must provide for use by members of both sexes on a non-discriminatory basis.

--An institution which lists off-campus housing for its students must ensure that, in the aggregate, comparable off-campus housing is available in equal proportion to those members of each sex expressing an interest in it.
Administration by a recipient institution of different rules based on sex regarding eligibility for living off-campus, curfews, availability of cleaning and janitorial assistance, etc. would violate the regulation.

EMPLOYMENT

All employees in all institutions are covered, both full- and part-time, except those in military schools, and in religious schools, to the extent compliance would be inconsistent with the controlling religious tenets. Employment coverage under the proposed regulation generally follows the policies of the Equal Employment Opportunity Commission and the Department of Labor's Office of Federal Contract Compliance. Specifically, the proposal covers:

(a) employment criteria
(b) recruitment
(c) compensation
(d) job classification and structure
(e) fringe benefits
(f) marital or parental status
(g) effect of state or local law or other requirements
(h) advertising
(i) pre-employment inquiries
(j) sex as a bona fide occupational qualification.

As to fringe benefits, employers must provide either equal contributions to or equal benefits under pension plans for male and female employees; as to pregnancy, leave and fringe benefits to pregnant employees must be offered in the same manner as are leave and benefits to temporarily disabled employees.

EXAMPLES--EMPLOYMENT

--A recipient employer may not recruit and hire employees solely from discriminatory sources in connection with its educational program or activity.

--A recipient employer must provide equal pay to male and female employees performing the same work in connection with its educational program or activity.

--A recipient employer may not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy or related conditions.

ENFORCEMENT PROCEDURE

The final regulation incorporates by reference a procedural section which includes among other things, compliance reviews, access to information, administrative termination procedures (hearings), decision, administrative and judicial review and post-termination proceedings.

Should a violation of the statute occur, the Department is obligated to seek voluntary compliance. If attempts to secure voluntary compliance fail, enforcement action may be taken:

(1) by administrative proceedings to terminate Federal financial assistance until the institution ceases its discriminatory conduct; or

(2) by other means authorized by law, including referral of the matter to the Department of Justice with a recommendation for initiation of court proceedings. Under the latter mode of enforcement, the recipient's Federal funds are not jeopardized.
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office for Civil Rights
Washington, D.C. 20201

JUNE 1975

TITLE IX QUESTIONS AND ANSWERS

QUESTION: What is Title IX?

ANSWER: Title IX is that portion of the Education Amendments of 1972 which forbids discrimination on the basis of sex in educational programs or activities which receive Federal funds.

QUESTION: Who is covered by Title IX?

ANSWER: Virtually every college, university, elementary and secondary school and preschool is covered by some portion of the law. Many clubs and other organizations receive Federal funds for educational programs and activities and likewise are covered by Title IX in some manner.

QUESTION: Who is exempt from Title IX's provisions?

ANSWER: Congress has specifically exempted all military schools and has exempted religious schools to the extent that the provisions of Title IX would be inconsistent with the basic religious tenets of the school.

Not included with regard to admission requirements ONLY are private undergraduate colleges, nonvocational elementary and secondary schools and those public undergraduate schools which have been traditionally and continuously single-sex since their establishment.

However, even institutions whose admissions are exempt from coverage must treat all students without discrimination once they have admitted members of both sexes.

QUESTION: Does the law cover social sororities and fraternities?

ANSWER: Congress has exempted the membership practices of social fraternities and sororities at the postsecondary level, the Boy Scouts, Girl Scouts, Camp Fire Girls, Y.W.C.A., Y.M.C.A., and certain voluntary youth services organizations. However,
if any of these organizations conduct educational programs which receive Federal funds open to nonmembers, those programs must be operated in a nondiscriminatory manner.

**QUESTION:**
May a vocational school limit enrollment of members of one sex because of limited availability of job opportunities for members of that sex?

**ANSWER:**
No. Further, a school may not assist a discriminatory employer by referral of students or any other manner.

**QUESTION:**
In athletics, what is equal opportunity?

**ANSWER:**
In determining whether equal opportunities are available, such factors as these will be considered:
- whether the sports selected reflect the interests and abilities of both sexes;
- provision of supplies and equipment;
- game and practice schedules;
- travel and per diem allowances;
- coaching and academic tutoring opportunities and the assignment and pay of the coaches and tutors;
- locker rooms, practice and competitive facilities;
- medical and training services;
- housing and dining facilities and services;
- publicity.

**QUESTION:**
Must an institution provide equal opportunities in each of these categories?

**ANSWER:**
Yes. However, equal expenditures in each category are not required.

**QUESTION:**
What sports does the term "athletics" encompass?

**ANSWER:**
The term "athletics" encompasses sports which are a part of interscholastic, intercollegiate, club or intramural programs.

**QUESTION:**
When are separate teams for men and women allowed?

**ANSWER:**
When selection is based on competitive skill or the activity involved is a contact sport, separate teams may be provided for males and females, or a single team may be provided which is open to both sexes. If separate teams are offered, a recipient institution may not discriminate on the basis of sex in providing equipment or supplies or in any other manner.

Moreover, the institution must assure that the sports offered effectively accommodate the interest and abilities of members of both sexes.

**QUESTION:**
If there are sufficient numbers of women interested in basketball to form a viable women's basketball team, is an institution which fields a men's basketball team required to provide such a team for women?

**ANSWER:**
One of the factors to be considered by the Director in determining whether equal opportunities are provided is whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes. Therefore, if a school offers basketball for men and the only way in which the institution can accommodate the interests and abilities of women is by offering a separate basketball team for women, such a team must be provided.

**QUESTION:**
If there are insufficient women interested in participating on a women's track team, must the institution allow an interested woman to compete for a slot on the men's track team?

**ANSWER:**
If athletic opportunities have previously been limited for women at that school, it must allow women to compete for the men's team if the sport is a noncontact sport such as track. The school may preclude women from participating on a men's team in a contact sport. A school may preclude men or women from participating on teams for the other sex if athletic opportunities have not been limited in the past for them, regardless of whether the sport is contact or noncontact.
QUESTION:
Can a school be exempt from Title IX if its athletic conference forbids men and women on the same noncontact team?

ANSWER:
No. Title IX preempts all state or local laws or other requirements which conflict with Title IX.

QUESTION:
How can a school athletics department be covered by Title IX if the department itself receives no direct Federal aid?

ANSWER:
Section 844 of the Education Amendments of 1974 specifically states that: "The Secretary shall prepare and publish...proposed regulations implementing the provisions of Title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in Federally-assisted education programs which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports."

In addition, athletics constitutes an integral part of the educational processes of schools and colleges and, thus, are fully subject to the requirements of Title IX, even in absence of Federal funds going directly to the athletic programs.

The courts have consistently considered athletics sponsored by an educational institution to be an integral part of the institution's education program and, therefore, have required institutions to provide equal opportunity.

QUESTION:
Does a school have to provide athletic scholarships for women?

ANSWER:
Specifically, the regulation provides: "To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics."

QUESTION:
How can schools and colleges interested in a positive approach to Title IX deal with its provisions?

ANSWER:
To encourage each school and college to look at its policies in light of the law, the final regulation now includes a self-evaluation provision. This requires that during the next year the educational institution look at its policies and modify them to comply with the law as expressed by the regulation. This includes remedying the effects of any past discrimination.

QUESTION:
Does Title IX cover textbooks?

ANSWER:
No. While the Department recognizes that sex stereotyping in curricula and educational material is a serious matter, it is of the view that any specific regulatory requirement in this area raises constitutional questions under the First Amendment. The Department believes that local education agencies must deal with this problem in the exercise of their traditional authority and control over curriculum and course content.

QUESTION:
Many universities administer substantial sums of scholarship money created by wills and trusts which are restricted to one sex. If the will or trust cannot be changed to remove the restriction, must the universities cease administration of the scholarship?

ANSWER:
Where colleges administer domestic or foreign scholarships designated by a will, trust or similar legal instrument, exclusively for one sex or the other, the scholarship recipients should initially be chosen without regard to sex. Then, when the time comes to award the money, sex may be taken into consideration in matching available money with students to be awarded the money. Scholarships, awards or prizes which are not created by a will, trust, or similar legal instrument, may not be sex-restricted.
QUESTION: What are the Title IX requirements for counseling in schools and colleges?

ANSWER: An institution using testing or other materials for counseling may not use different materials for males and females, nor may it use materials which lead to different treatment of students on the basis of sex.

If there is a class or course of study which has a disproportionate number of members of one sex, the school is required to assure that the disproportion does not stem from discrimination by counselors or materials.

QUESTION: May a college administer or assist in the administration of sex-restrictive scholarships, such as the Rhodes, which provide opportunities for students to study abroad?

ANSWER: Yes, if (1) The scholarship was created by a will, trust, or similar legal instrument, or by an act of foreign government, and (2) The institution otherwise makes available reasonable opportunities for similar studies abroad by members of the other sex. Such opportunities may be derived from either domestic or foreign sources.
This regulation has been signed by the Secretary of Health, Education, and Welfare, and will be transmitted to Congress pursuant to section 433(d) (1) of the General Education Provisions Act, as amended (20 U.S.C. 1221g-1). The regulation will become effective upon the date of enactment of title IX (i.e., by 20 U.S.C. 1681 et seq.), except for Paragraph 86.2(a), which is effective 90 days after publication in the Federal Register, and Paragraphs 86.6(a) and 86.9, which are effective upon publication in the Federal Register.

This Subpart C (§§ 86.21 through 86.23) sets forth the general and particular prohibitions with respect to recruitment of students. The requirements concerning recruitment of students and the admission provisions which are covered by the regulation, as well as the requirements concerning admissions to the undergraduate college at all Federal financial assistance programs, are exempt under Section C.

Section 15-The section on discriminatory practices by educational and non-educational institutions is comprised of three paragraphs: (a) describes the scope of the regulation; (b) defines certain terms used in the regulation; and (c) requires that the Director an assurance that each of the recipient's education programs and activities shall conform with Executive Order 11246.

In the proposed rule, § 86.3 was intended to require recipients to notify all their students and employees, including those who are not students or employees, of the availability of the Director's complaint procedure. In the final rule, this section is amended to require the recipient to notify all its students and employees, including those who are not students or employees, of the availability of the Director's complaint procedure. Paragraph (c) of this section has been amended to require the recipient to notify all its students and employees, including those who are not students or employees, of the availability of the Director's complaint procedure. Paragraph (d) of this section has been amended to require the recipient to notify all its students and employees, including those who are not students or employees, of the availability of the Director's complaint procedure.

Section 16-The general description of the final regulation is set forth in the following paragraphs: (a) describes the scope of the regulation; (b) defines certain terms used in the regulation; and (c) requires that the Director an assurance that each of the recipient's education programs and activities shall conform with Executive Order 11246.

The regulation leaves up to the recipient the choice of having one central office or having one or more offices for the purposes of complying with the provisions of this action. The regulation also includes provisions for the submission of grievances under Executive Order 11246.

The regulation provides that the Director shall consider a complaint alleging any action which would be prohibited by this Part.

The regulation requires that the recipient shall notify all its students and employees of the availability of the Director's complaint procedure. Paragraph (c) of this section has been amended to require the recipient to notify all its students and employees, including those who are not students or employees, of the availability of the Director's complaint procedure.

The regulation requires that the recipient shall notify all its students and employees of the availability of the Director's complaint procedure. Paragraph (c) of this section has been amended to require the recipient to notify all its students and employees, including those who are not students or employees, of the availability of the Director's complaint procedure.
Changes were made in Subpart B of which two might be considered substantive: The procedure for obtaining an exemption from the coverage of title IX because of conflict between the statutory requirements and the religious tenets of a recipient or its controlling organization. As before, they have been modified and simplified. An exempt recipient now only needs to submit a statement by its highest ranking official certifying the provisions of the regulation which conflict with the religious organization involved. The most notable substantive omission affecting the provisions of this regulation is the elimination of a new § 86.14 which essentially exempts from this regulation the membership policies and practices of religious organizations. The statute covers admissions in only certain institutions: vocational, professional, graduate, and public under­graduate institutions which are controlled by such religious organizations as are recipients of Federal financial assistance. Whether secondary or post-secondary, religious institutions are exempt unless it is determined that the statute is being evaded. If so, then the institution is not exempt. Neither the statute nor the regulation have any application to United States merchant marine academies since these are Federal entities. This fact was pointed out in the preamble to the proposed regulation. The preamble to the proposed regulation. That section is further amended by enlisting the words "success in education classes which do not adversely affect relatively few institutions.

Specific provisions in Subpart C also further limit the prohibitions based on sex relating to such practices as ranking of applicants, application of quotas, and administration of tests or selection criteria. Use of tests for admission which are shown to have a disparate impact on the basis of sex or from assisting outside organizations or persons which so discriminate in providing assistance, and to students or employees.

Paragraphs 86.36(b) (1) and (2) are amended by deleting the words "successful completion of" and inserting the words "success in

Paragraph (c) is redesignated as subparagraph 86.37(a) (2). Subparagraph 86.37(a) (3) is amended by deleting the word "students" in line 8 of the second sentence of the proposed regulation to read as follows:

Paragraphs 86.38(a) and 86.39(c) are redesignated as 86.38 and 86.39 respectively.

Paragraphs 86.35(c) and 86.38(b) are redesignated as paragraphs 86.35(c) (2) and 86.38(b) (2). Paragraph 86.35(c) (2) is redesignated as paragraph 86.35(c) (3). Paragraph 86.38(b) (2) is redesignated as paragraph 86.38(b) (3). Subparagraph 86.38(b) (3) is amended by deleting the word "students" in line 9 of the second sentence of the proposed regulation to read as follows:

Paragraph (c) is redesignated as subparagraph 86.38(c) (2). Paragraph 86.38(c) (2) is further amended by adding the subparagraph containing language:

(a) Providing adjustment periods with respect to classes and activities in physical education;

(b) Allowing grouping of students in physical education classes and activities by ability;

(c) Allowing separation of students by sex within physical education classes and activities during participation in contact sports;

(d) Requiring use of standards for measuring skill or progress in physical education classes which do not adversely affect members of one sex.

Paragraph 86.38(b) is redesignated as 86.38(b) b. Paragraph 86.38(b) b. is further amended by deleting the words "including eligibility for in-time fees and tuition.

Paragraphs 86.21 (b), 86.24, 86.25, 86.26, 86.27, 86.28, 86.29, and 86.30 are redesignated as paragraphs 86.21(b), 86.24, 86.25, 86.26, 86.27, 86.28, 86.29, and 86.30 respectively.

Paragraph (c) is redesignated as paragraph 86.26(a). Paragraph 86.26(a) is further amended by deleting the words "successful completion of" and inserting the words "success in

Paragraph 86.35(c) is redesignated as paragraph 86.35(c) (3).

Paragraphs 86.34(a) and 86.34(b) are redesignated as paragraphs 86.34(a) and 86.34(b) respectively.

Paragraph (c) is redesignated as paragraph 86.34(c). Paragraph 86.34(c) is further amended by deleting the words "successful completion of" and inserting the words "success in

Paragraph (b) is redesignated as subparagraph 86.34(b) (2). Paragraph 86.34(b) (2) is further amended by adding the subparagraph containing language:

(a) Allowing separation of classes composed of members of one sex from those composed of members of the other sex.

Paragraph (c) is redesignated as paragraph 86.34(c) (2). Paragraph 86.34(c) (2) is further amended by adding the subparagraph containing language:

Paragraph 86.35 is redesignated as 86.35.

Paragraphs 86.35(c) and 86.36 are redesignated as paragraphs 86.35(c) (2) and 86.36 respectively.

Paragraph (c) is redesignated as paragraph 86.36(a). Paragraph 86.36(a) is further amended by deleting the words "successful completion of" and inserting the words "success in

Paragraphs 86.34(a) and 86.34(b) are redesignated as paragraphs 86.34(a) and 86.34(b) respectively.

Paragraph (c) is redesignated as paragraph 86.34(c). Paragraph 86.34(c) is further amended by deleting the words "successful completion of" and inserting the words "success in

Paragraph 86.35 is redesignated as 86.35.

Paragraphs 86.35(c) and 86.36 are redesignated as paragraphs 86.35(c) (2) and 86.36 respectively.

Paragraph (c) is redesignated as paragraph 86.36(a). Paragraph 86.36(a) is further amended by deleting the words "successful completion of" and inserting the words "success in

Paragraphs 86.34(a) and 86.34(b) are redesignated as paragraphs 86.34(a) and 86.34(b) respectively.

Paragraph (c) is redesignated as paragraph 86.34(c). Paragraph 86.34(c) is further amended by deleting the words "successful completion of" and inserting the words "success in

Paragraph 86.35 is redesignated as 86.35.

Paragraphs 86.35(c) and 86.36 are redesignated as paragraphs 86.35(c) (2) and 86.36 respectively.

Paragraph (c) is redesignated as paragraph 86.36(a). Paragraph 86.36(a) is further amended by deleting the words "successful completion of" and inserting the words "success in

Paragraphs 86.34(a) and 86.34(b) are redesignated as paragraphs 86.34(a) and 86.34(b) respectively.

Paragraph (c) is redesignated as paragraph 86.34(c). Paragraph 86.34(c) is further amended by deleting the words "successful completion of" and inserting the words "success in

Paragraph 86.35 is redesignated as 86.35.

Paragraphs 86.35(c) and 86.36 are redesignated as paragraphs 86.35(c) (2) and 86.36 respectively.

Paragraph (c) is redesignated as paragraph 86.36(a). Paragraph 86.36(a) is further amended by deleting the words "successful completion of" and inserting the words "success in

Paragraphs 86.34(a) and 86.34(b) are redesignated as paragraphs 86.34(a) and 86.34(b) respectively.
for other physical or emotional condi-
tions, the competent authority has the
eright to assign the recipients who are
voluntary and have provided such instruc-
tions to the Department of Education for
pregnant students; students who have
declared their voices and who would
suffer at the age of 16 to 18, the
right to leave the school. The
right to leave the school does not
mean that the student would
be transferred to another school,
but that the student would
be permitted to participate in the
school's extracurricular activities
and would be permitted to
participate in the school's
teaching staff until the
student leaves the school.

5. Where a recipient does not
maintain a temporary disability policy for
the purpose of providing for the
requirement of an uncomplicated
childbirth, childbirth, false pregnancy,
termination of pregnancy, or the
removal of a fetus from the body
from any other temporary disability.

6. Where a recipient does not
maintain a temporary disability policy for
the purpose of providing for the
requirement of an uncomplicated
childbirth, childbirth, false pregnancy,
termination of pregnancy, or the
removal of a fetus from the body
from any other temporary disability.

The regulation prohibits recipients from
providing beneficiaries with
benefits that would be
attributable to the
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prohibiting competition between men and women in high school athletics as being have challenged state and local rules VI, the court's have consistently consid­

eration, Charlotte-Mecklenburg Board of Educa­

Paragraph 86.41(a) provides that ath­

editions of the proposed regulations.

Paragraph 86.41(b) (1) is amended to be added paragraph 86.41(b) (1) is added pro­

substantive changes in relationship to the Departments findings from the proposed regulations. Comments opposing coverage were also

Finally, paragraph 86.41 (b) (2) (a) as amended to be added after the word "competition" the words "application of antidiscrimination policy," paragraph 86.41(b) (2) (a) is amended to delete the words "pregnancy leave" and to substitute therefor the words "leave for pregnancy, childbirth, false pregnancy, termination of pregnancy.

The last substantive change in Sub­

Part 86 is the addition of specific exemp­

Paragraph 86.41(c) is amended to be added paragraph 86.41(c) is added provide

§ 86.41(a) (1) and (2) Requiring treatment of pregnancy, child­

Subpart A (Title VII of Civil Rights Act of 1964, which prohibits employment discrimination, and the OEO is responsible for the coordination and implementation of Executive Order 11246, as amended, which prohibits employment discrimination by Federal contractors who are educational institutions. In view of the area of fringe benefits, where Subpart E of the Title IX regulation differs from the Title IX of the Civil Rights Act of 1972, ... discrimination will generally be interpreted to be evaluated under the guidelines, which have been formalized in the regulations.

Accordingly, subparagraphs 86.41(b) (1) and (2) as it appears in the Subpart B (Title VI of the Civil Rights Act of 1964, as amended) and the Subpart C (Title IX of the Education Amendments of 1972) provisions provide for equal periodic benefits and for comparable contributions by the employer for mem­

Subpart C (Title IX of the Education Amendments of 1972) provides for equal periodic benefits and for comparable contributions by the employer for mem­

Subpart D (Title VI of the Civil Rights Act of 1964, as amended) provides for equal periodic benefits and for comparable contributions by the employer for mem­

Subpart E (Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. The OEO is responsible for the coordination and implementation of Executive Order 11246, as amended, which prohibits employment discrimination by Federal contractors who are educational institutions, pursuant to the OEO regulations, of the Executive Order as to Federal contractors who are educational institutions. Subpart E at the area of fringe benefits, where Subpart E of the Title IX regulation differs from the Title IX of the Civil Rights Act of 1972, ... discrimination will generally be interpreted to be evaluated under the guidelines, which have been formalized in the regulations.

Accordingly, subparagraphs 86.41(b) (1) and (2) as it appears in the Subpart B (Title VI of the Civil Rights Act of 1964, as amended) and the Subpart C (Title IX of the Education Amendments of 1972) provisions provide for equal periodic benefits and for comparable contributions by the employer for mem­
In response to the public commerce, all employers of political parties have been simplified over the language appropria tely prohibiting a recipient from enrolling in a pregnancy, childbirth, false pregnancy, or any temporary disabilities resulting from pregnancy as any other temporary disability for all job-related costs.

Finally, 862.57, permits consideration of sex in making employment decisions where sex is a bona fide occupational qualification. The requirement to make the final regulation to make the title IX regulations consistent with the Civil Rights Act of 1964 and the Equal Pay Act of 1963, Pub. L. 88-38, 29 U.S.C. 206.21, and will enable the Director to rely on the case law established under the Equal Pay Act of 1938.

Paragraph 862.57, (b), (c) and (d) have been slightly modified from the earlier version to make it clear that a recipient cannot discriminate on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery from such termination, and that a recipient cannot discriminate on the basis of sex.

Paragraph 862.63(b) in the proposed final regulation provided that a recipient could not be required to commence leave in order to comply with the term of a contract of employment or a grant of Federal financial assistance, including any subunit, unless the contract or grant required that the recipient provide such leave. The term "leave" is defined as a period of time used by an employee for the purpose of giving birth, recovery from the effects of the pregnancy, or adoption and is interpreted to exclude any periods of time awarded under the Family Medical Leave Act of 1993, 29 U.S.C. 2601 et seq.
or degrees and whether or not it offers a field, whether or not the school or has gained admission.

**Education Amendments of 1972**, under (See § 901, 902, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682; § 86.7 Discrimination of policy.

**RULES AND REGULATIONS**

(1) Each recipient shall make the initial notification required by paragraph (a) of this section with the effective date of this part of or the program or activity which would not be consistent with the religious organization.

(2) Each recipient shall negotiate compensation to provide personal services or for an extension program or activity.

(3) In any case of Federal financial assistance extended to provide personal services, such assistance shall obligate the recipient for the period during which the recipient retains ownership of the property which resulted in limited participation therewith by persons of one sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(4) Self-evaluation. Each recipient education institution shall, within one year of the effective date of this part,

(a) Evaluate, in terms of the requirements and practices and the effects limited enrollment consisting of students, graduates, of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity; and

(b) Modify any of these policies and practices which do not or may not meet the requirements of this part, and

(c) Take appropriate remedial steps for the elimination of the unfair effect of such conditions which resulted in limited participation therewith by persons of one sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(5) Publish the Policy. Except as provided in paragraph (b) of this section, notices shall include publication in:

(a) At least one employee to coordinate its efforts concerning the enforcement of this part or of the Equal Pay Act.

(b) Exempt labor organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in its employment practices or on the basis of sex in hiring, discharge, and promotion, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in its employment practices or on the basis of sex in hiring, discharge, and promotion.

(c) Except as provided in paragraph (b) of this section, notices shall include publication in:

(1) Local newspapers;

(2) Community newspapers and bulletins, and other publications.

(3) The recipient shall notify all its employees of its obligations under this part.

(4) The obligations imposed by this part are not affected by Executive Order 11246; the obligation to notify all recipients of such a finding as the Director deems necessary to apprise such person of the requirements of the religious organization.

(5) The obligation to notify the Director of such finding as the Director deems necessary to apprise such person of the requirements of the religious organization.

(6) (See art. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682) § 86.8 Necessity for existence of program.

(a) General. Every application for Federal financial assistance for any education program or activity operated by a recipient and which is controlled by a religious organization, shall be accompanied by a statement of its need and purpose and the manner in which it is operated in accordance with the standards of such religious organization. The standards of such religious organization shall be consistent with the requirements of the Federal financial assistance.

(b) Necessity for State or local or other requirements. The obligation to provide any services or resources which are not otherwise. Such notification shall include publication in:

(1) Local newspapers;

(2) Community newspapers and bulletins, and other publications.

(3) The recipient shall notify all its employees of its obligations under this part.

(4) The obligations imposed by this part are not affected by Executive Order 11246; the obligation to notify all recipients of such a finding as the Director deems necessary to apprise such person of the requirements of the religious organization.

(5) The obligation to notify the Director of such finding as the Director deems necessary to apprise such person of the requirements of the religious organization.

(6) (See art. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682) § 86.11 Amendments.

(b) Except as provided in this subpart, the recipient shall notify all its employees of such a finding as the Director deems necessary to apprise such person of the requirements of the religious organization.

(c) Except as provided in paragraph (b) of this section, the recipient shall not discriminate on the basis of sex in admission or recruitment policies or procedures of such religious organization.

(d) Exceptions. An educational institution controlled by a religious organization shall be permitted to engage in the operation of an educational program or activity operated by such organization if such program or activity is not necessary to discriminate in education programs or activities operated by such religious organization.

(2) Each recipient shall notify all its students and employees of such a finding as the Director deems necessary to apprise such person of the requirements of the religious organization.

(3) Each recipient shall notify all its employees of such a finding as the Director deems necessary to apprise such person of the requirements of the religious organization.

(4) Each recipient shall notify all its employees of such a finding as the Director deems necessary to apprise such person of the requirements of the religious organization.
§ 86.16 Educational institutions eligible for transition plans.
(a) Application. This section applies to any educational institution to which Subpart C applies which would prohibit such recipient from assuming
(b) Provision for transition plans. An educational institution in which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C unless it is carrying out a transition plan approved by the United States Commissioner of Education as described in § 86.29, which shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply to such institution. Such steps shall include investigating recruitment programs and other commitments to enrolling students of the sex previously excluded.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment

§ 86.21 Admission.
(a) General. No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in § 86.18 and 86.27.
(b) Specific prohibitions.
(1) In determining whether a person satisfies any policy or criterion which discriminates on the basis of sex, existing sex-related practices of the recipient shall be considered in determining whether such practices deprive or tend to deprive any individual of the opportunities or benefits of education available to others.

Subpart D—Discrimination on the Basis of Sex in Facilities

§ 86.31 Education programs and activities operated by such recipient, in discrimination.

§ 86.32 Housing.
(a) General. A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.
(b) Housing provided by a recipient. (1) A recipient may provide separate housing on the basis of sex.

Subpart E—Discrimination in Counseling

§ 86.62 Counseling.
(a) General. A recipient shall not, on the basis of sex, administer different policies or practices concerning counseling.

Subpart F—Discrimination in Employment

§ 86.33 Compareable facilities.
(a) A recipient may provide separate, similar to those facilities provided for students of the other sex.
(b) Program or service operated by a recipient which receive or benefit from the Federal financial assistance which are designed primarily with an educational purpose, whether or not located within the boundaries of the educational institution, shall not discriminate on the basis of sex in the admission of such students.

Subpart G—Other Prohibited Discriminations

§ 86.34 Access to comparable mid-year courses and programs.
(a) Counseling. A recipient shall not discriminate on the basis of sex in counseling or guidance services.
(b) Use of sex-participation criteria. A recipient which receive or benefit from the Federal financial assistance shall not discriminate on the basis of sex in its counseling or guidance services, in some cases, or program or service operated by a recipient which receive or benefit from Federal financial assistance which are designed primarily with an educational purpose, whether or not located within the boundaries of the educational institution, shall not discriminate on the basis of sex in the admission of such students.
use of a counseling test or other instru-
ment results in a substantially disparag-
ifying result in regard to an applicant in a
particular course of study or clas-
sification of employment, such use is not
necessary to assure itself that such dis-
proportion is not the result of discrimi-
nation on the basis of sex in counseling or
appaisal material or by counseling.
§ 86.37 Financial assistance.
(a) General. Except as provided in par-
grahs (b), (c) and (d) of this sec-
tion, no person shall, on the basis of
sex, be excluded from participation in, be
 denied the benefit of, or be subjected to
a disadvantage under any education pro-
gram or activity which receives Federal
financial assistance on the basis of non-
preservice or postservice, sex.
(b) Financial aid established by cor-
nor or public educational institutions or
recipients may administer or assist in the
administration of scholarships, fellowships,
or other forms of financial assistance estab-
lished pursuant to Federal education laws.
(c) When fellowship or grants are
awarded, trust, bequests, or similar legal
instruments or acts of a foreign govern-
ment are made to members of a particular
sex, the award or grant shall be made
without regard to sex.
(d) To ensure nondiscriminatory practices in
administration of awards under subpar-
graph (a) of this paragraph, a recipient
shall not discriminate on the basis of
sex in any part of its education program or
activity operated by a recipient which
receives Federal financial assistance, nor
shall it discriminate on the basis of
sex in any part of its employment prac-
tices.
§ 86.38 Employment assistance to stu-
dents.
(a) Assistance in finding employment avail-
able outside the school. A recipient
which assists any agency, organiza-
tion or person in making employment
available to any of its students:
(1) Shall ensure itself that such em-
ployment is made available without dis-
rimination on the basis of sex; and
(2) Shall not render to such services to
any agency, organization or person which
discriminates on the basis of sex in
its employment practices.
(b) Employment of students by recipi-
ents. A recipient shall not discriminate
against students of one sex with respect
to employment by recipients; or
against students of one sex in the same
manner and under the same politis as any other temporary disability in
with respect to any medical or hospital
benefit, service, plan or policy which
such recipient administers, operates,
sponsors, or participates in with respect
to students admitted to the recipient's
educational program or activity.
(c) In the case of a recipient which
does not maintain a leave policy for its
students, the term "leave policy" shall
mean a written policy which: (1) ad

cussion thereby as a justification for
measur. Transfer, biff, or other such
policies in one sex is deemed medically
necessary, (2) return from leave, and
reinsertion of which shall be performed
without discrimination on the basis of
sex when the leave began.
§ 86.39 Health and insurance bene-
fits; diagnostic and curative serv-
ices.
In providing a medical, hospital, ac-
ceptance, or life insurance benefit, service,
policy, or plan to any of its students, a
recipient shall not discriminate on the
basis of sex, or be provided such benefit,
service, policy, or plan which would
violate subpart E of this part were it to
provide it to employees of the recipient.
This section shall not prohibit a recipient
from providing such benefits, ser-
vices, policies, or plans which would
violate subpart E of this part were it to
providing the same benefit, service,
policy, or plan to employees of the
recipient.
(a) General. No person shall, on the
basis of sex, be discriminated against
in, be denied the benefit of, or be subjected to
a disadvantage under any education pro-
gram or activity which receives Federal
financial assistance on the basis of non-
preservice or postservice, sex.
(b) Pregnancy and related condi-
tions. Nothing in this subpart shall be
taken to apply any rule concerning a student's
ability to continue in educational prog-
ram or activity or in the employment of
an employee which is based upon the preg-
nancy, termination of pregnancy, recovery from pregnancy, unless the student requests voluntarily to participate in a
program or activity of the recipient.
§ 86.40 Maternal or parental status.
(a) Status conferred on persons who have
(1) spring or childbirth shall not apply any rule concerning a student's
ability to continue in educational prog-
ram or activity or in the employment of
an employee which is based upon the preg-
nancy, termination of pregnancy, recovery from pregnancy, unless a student requests voluntarily to participate in a
program or activity of the recipient.
(b) Pregnancy and related conditions.
(1) A recipient shall not discriminate against any student, or exclude any stu-
ent from the educational program or curricular activity, on the basis of the
student's pregnancy, termination of pregnancy, recovery from pregnancy, or if
such a student requests the right to participate in a program or activity of the
recipient.
(c) Childbirth and related conditions.
(1) A recipient shall not discriminate against any student, or exclude any stu-
ent from the educational program or curricular activity, on the basis of the
student's childbirth, postpartum period, or recovery from childbirth, unless a
student requests the right to participate in a program or activity of the recipient.
(d) General. (1) No person shall, on
the basis of sex, be excluded from participa-
tion in, be denied the benefits of, or be subjected to discrimination in any educa-
tional program or activity operated by
a recipient, on the basis of sex.
§ 86.40-65 (Reserved)
Subpart C—Discretion on the Basis of Sex in Education Pro-
grams and Activities Prohibited
(a) General. (1) A recipient shall not
administer or op-
set, or any other legal or administrative
following any provision of this subpart, which are
interpreted as requiring or prohibiting or
impeding in any way the use of partic-
funds for financing programs or activities.
(b) Financial assistance may be awarded to
eligibility for such assistance which is of
any particular type or source, apply dif-
ferent criteria, or otherwise discriminate;
(3) Through solicitation, listing, appli-
cation, provision of facilities or other
services, assist any foundation, trust, agency,
or person which provides assistance to
any of such recipients in a manner which dis-
riminates on the basis of sex. The
recipient shall take such action as is
necessary to assure itself that such dis-
proportion is not the result of discrimi-
nation on the basis of sex in counseling or
appaisal material or by counseling.
§ 86.52 Employment criteria.
(a) Negotiations and negotiations,
awards of membership or benefits to
any particular type or source, apply dif-
ferent criteria, or otherwise discriminate;
(3) Through solicitation, listing, appli-
cation, provision of facilities or other
services, assist any foundation, trust, agency,
or person which provides assistance to
any of such recipients in a manner which dis-
riminates on the basis of sex. The
recipient shall take such action as is
necessary to assure itself that such dis-
proportion is not the result of discrimi-
nation on the basis of sex in counseling or
appaisal material or by counseling.
§ 86.53 Recruitment.
(a) A recipient shall not discri-
ninate on the basis of sex in the recrui-
ting or hiring of employees. Where a
recipient has been found to be discri-
minating, it will be required to recruit
members of one sex and to discriminate
against the other, including family planning
services.
(b) A recipient shall treat pregnancy,
termination of pregnancy and related
conditions, family planning, and curricu-
lar and academic tutoring, as a
condition of employment, subject to
such regulations as it deems necessary
to assure that the instructional program in
which the student is physically
healthy, and thus able to perform
the separate program is comparable to
that offered to non-pregnant students.
§ 86.58 Employment assistance to stu-
dents.
(b) Financial aid established by cor-
nor or public educational institutions or
recipients may administer or assist in the
administration of scholarships, fellowships,
or other forms of financial assistance estab-
lished pursuant to Federal education laws.
(c) When fellowship or grants are
awarded, trust, bequests, or similar legal
instruments or acts of a foreign govern-
ment are made to members of a particular
sex, the award or grant shall be made
without regard to sex.
(d) To ensure nondiscriminatory practices in
administration of awards under subpar-
graph (a) of this paragraph, a recipient
shall not discriminate on the basis of
sex in any part of its education program or
activity operated by a recipient which
receives Federal financial assistance, nor
shall it discriminate on the basis of
sex in any part of its employment prac-
tices.
§ 86.59 Health and insurance bene-
fits; diagnostic and curative serv-
ices.
In providing a medical, hospital, ac-
ceptance, or life insurance benefit, service,
policy, or plan to any of its students, a
recipient shall not discriminate on the
basis of sex, or be provided such benefit,
service, policy, or plan which would
violate subpart E of this part were it to
provide it to employees of the recipient.
This section shall not prohibit a recipient
from providing such benefits, ser-
vices, policies, or plans which would
violate subpart E of this part were it to
providing the same benefit, service,
policy, or plan to employees of the
recipient.
(a) General. No person shall, on the
basis of sex, be discriminated against
in, be denied the benefit of, or be subjected to
a disadvantage under any education pro-
gram or activity which receives Federal
financial assistance on the basis of non-
preservice or postservice, sex.
(b) Pregnancy and related condi-
tions. Nothing in this subpart shall be
taken to apply any rule concerning a student's
ability to continue in educational prog-
ram or activity or in the employment of
an employee which is based upon the preg-
nancy, termination of pregnancy, recovery from pregnancy, unless a student requests voluntarily to participate in a
program or activity of the recipient.
§ 86.60 Maternal or parental status.
(a) Status conferred on persons who have
(1) spring or childbirth shall not apply any rule concerning a student's
ability to continue in educational prog-
ram or activity or in the employment of
an employee which is based upon the preg-
nancy, termination of pregnancy, recovery from pregnancy, unless a student requests voluntarily to participate in a
program or activity of the recipient.
(b) Pregnancy and related conditions.
(1) A recipient shall not discriminate against any student, or exclude any stu-
ent from the educational program or curricular activity, on the basis of the
student's pregnancy, termination of pregnancy, recovery from pregnancy, or
if a student requests the right to participate in a program or activity of the
recipient.
(c) Childbirth and related conditions.
(1) A recipient shall not discriminate against any student, or exclude any stu-
ent from the educational program or curricular activity, on the basis of the
student's childbirth, postpartum period, or recovery from childbirth, unless a
student requests the right to participate in a program or activity of the recipient.
(d) General. (1) No person shall, on
the basis of sex, be excluded from participa-
tion in, be denied the benefits of, or be subjected to discrimination in any educa-
tional program or activity operated by
a recipient, on the basis of sex.
or service of employment or subject to the provision of § 6.54.

(1) Discriminate on the basis of sex with respect to access to available to employees or make fringe benefits which deprive employees of the benefits of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation to members of each sex; or

(3) Administer, operate, offer, or participate in a retirement or pension plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(b) Requirement for adoption. The policy or practice of a recipient for members of each sex; or

(2) Make, administer, operate, offer, or participate in a plan to which an employee's sex in relation to employment any employee or applicant for employment which treats applicants of both sexes and if the results shall prevent a recipient from considering an employee's sex in relation to or adjustment period, [78]; 86.41(d)

§ 86.61 Job classification and structure, § 86.62

(1) Prohibitory requirements. The obligation to comply with this subpart is not to be affected or impaired by any action which may be required to meet the obligations of the Civil Rights Act of 1964 and thereby to secure the full benefits of the Act.

(c) Determining factors. 86.41(c)

(2) Determining factors, 86.41(c)

§ 86.62 Advertising.

(a) General. A recipient shall not publish any advertising related to employment which treats applicants of both sexes and if the results shall provide the same compensation, service, or benefit to members of the other sex.

(b) Determining factors, 86.41(c)

§ 86.58 Effect of State or local law or other regulations.

(b) Prohibitory requirements. The obligation to comply with this subpart is not to be affected or impaired by any action which may be required to meet the obligations of any State or local law, or other regulations which impose on the employees of a recipient which imposes a mandatory requirement on the part of the recipient or which establishes any other requirement which is not included in the rules and regulations of the Commission.

§ 86.62-Procedures

§ 86.64 (Reserved)

§ 86.65 Advertising.

§ 86.59 Advertising.

(a) General. The recipient shall not publish any advertising related to employment which treats applicants of both sexes and if the results shall provide the same compensation, service, or benefit to members of the other sex.

§ 86.61 Sex as a bona-fide occupational qualification.

(b) Recipient's decision. A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that comparison of sex with regard to such action is essential to successful operation of the employment function.

§ 86.66 Exemption.

(a) General. 80 U.S.C. 4-40-11

§ 86.57 (Reserved)

§ 86.57 Marschall parental status.

(a) General. A recipient shall not employ or allow any employee or applicant for employment which treats applicants of both sexes and if the results shall provide the same compensation, service, or benefit to members of the other sex.

(b) Determining factors, 86.41(c)

§ 86.63 (Reserved)
MEMORANDUM FOR: JAMES CANNON  
FROM: RODERICK HILLS RH  
SUBJECT: Title IX and Intercollegiate Sports  

I did not propose any changes in the regulation. I propose, however, that we closely monitor the HEW implementation of the regulation as it applies particularly to athletic scholarships.  

The focus at HEW, at least at the lower levels, is on a supposed need to equalize financial support being given to women involved in athletic activity with that given to men. Given that focus, HEW understandably has established a quota system which would allot scholarships to women on a ratio of the number of women interested in intercollegiate activities to the number of men so "interested."  

I would change the focus. The issue as I see it is whether the university in question is making the same effort to provide athletic activity for women as it is making for men. There is no reasonable possibility and, indeed, there is no reasonable desirability of creating an intercollegiate sports activity comparable to NCAA football. Accordingly, no school should be penalized for failing to do so. However, a school should be required to encourage intercollegiate activities for women where feasible. Thus, tennis, swimming and track, as examples, are areas where a school should make reasonable efforts to promote women's competition.  

The regulations should be interpreted as requiring a school to describe its entire athletic program for women, to compare it to men, and to develop an affirmative action program to increase women's activities. Relevant criteria would be:  

1. The caliber of coaches (including the salaries paid).  
2. The quality of facilities.  
3. The furnishing of uniforms.  
4. The availability of athletic scholarships.
If a school has scholarships for a men's tennis team and an active intercollegiate tennis competition, there obviously should be an affirmative action program to promote the same type of program for women. If five scholarships are made available to the men's tennis team to recruit top ranked talent, then a comparable number of scholarships should be available to attract top ranked women. Indeed, an affirmative action program for a given sport might cost more money to be spent initially on a women's sport than on a men's sport of the same nature that is well established.

Practically speaking, my suggestion is that an HEW audit team evaluate the overall sports program for men against the existing overall sport program for women plus the affirmative action program. A determination of whether a given school is in compliance or not would require findings as to what a school is or is not doing for women that it could reasonably do.

My complaint about the present posture of HEW is with the effort to provide equality in a number of relatively unimportant details, such as athletic scholarships, rather than looking to the overall question of relative equality of opportunity in athletic activity.

More specifically, the issue should not be whether as many women as men get athletic scholarships, but whether the athletic opportunities as a whole are roughly comparable for men and women.
THE WHITE HOUSE  
WASHINGTON  
July 18, 1975  

MEETING ON TITLE IX  
Friday, July 18, 1975  
2:00 p.m. (30 minutes)  
The Oval Office  

From: Jim Cannon

I. PURPOSE  
To review the current status of where we are on Title IX and the Congressional review of HEW's proposed regulations.

II. BACKGROUND, PARTICIPANTS AND PRESS PLAN  
A. Background: This is one in a series of recent meetings you have had on Title IX.

B. Participants:
Jim Lynn, Phil Buchen, Jack Marsh, Max Friedersdorf, Jim Cannon and Dick Parsons. (Secretary Weinberger is in Salt Lake City, and will be unable to attend.)

C. Press Plan: To be handled as a staff meeting.

III. AGENDA  
1. Can the regulations currently before the Congress be amended by executive action to accommodate the athletic coaches' concerns, and with what result?

2. Does the O'Hara bill constitute a viable approach to the problem?

3. What other options, if any, are there?

NOTE: A paper with further information is attached.
MEMORANDUM FOR THE PRESIDENT
FROM: Jim Cannon
SUBJECT: Title IX and Intercollegiate Sports

This memorandum sets forth your options regarding application of HEW's Title IX Regulation to intercollegiate sports programs.

Option 1. Amend the Regulation so as to Exempt from Coverage Intercollegiate Sports.

The Regulation could be amended either to exempt intercollegiate sports altogether or simply to exempt sports-generated revenues from allocation in accordance with requirements of the Regulation. To do this, the Secretary of HEW could either withdraw the Regulation currently before Congress, amend it and resubmit it, or allow the Regulation currently before Congress to become effective and submit a specific amendment thereto.

There are two major problems with this approach:

- It is highly visible, and places the President out in front on an issue which is very sensitive with women's groups. The great likelihood is that we would displease many more people than we would please.
- Counsel generally agree that, as a matter of law, Title IX covers intercollegiate sports. Therefore, amendment of the Regulation to exempt intercollegiate sports, or even revenue-producing sports, would only engender litigation, the result of which would probably be judicial imposition and administration of the Regulation with respect to college sports programs.

Option 2. Support Legislation Exempting Revenue-Producing Sports from Coverage under the Law.

Representative James O'Hara has introduced a bill which would, in part, amend Title IX as follows:
"The provisions of this title shall not apply to the expenditure of revenues derived from a particular sport or team, to the extent such revenues are devoted to the support and maintenance (including student scholarships and grants-in-aid) of that sport or team."

As you know, the college football coaches believe that this kind of exemption is essential to the continuation of intercollegiate sports programs. They point out that most college sports programs are funded out of the revenues generated by one or two sports, usually football and/or basketball. These revenue-producing sports must, they argue, have a superior right to available funds, since, without them, a school's entire athletic program is jeopardized.

On the other hand, many, including Cap Weinberger, believe that the level of competition in intercollegiate sports can remain sufficiently high to attract fans and produce revenue, even if less is spent on men's programs and more is spent on women's programs. They argue that exemption of revenue-producing sports from Title IX will merely perpetuate a discriminatory system under which colleges and universities spend millions on men's programs and only a few thousands on sports programs for women. Finally, some argue that the approach embodied in the O'Hara bill would be held unconstitutional under the Fourteenth Amendment.

Your support of the O'Hara bill (or some similar bill) would, I am informed, greatly facilitate its passage.

If your desire is to make certain that the level and quality of intercollegiate sports programs will not be adversely affected by Title IX, this would appear to be the more promising approach.


Of course, you always have the option of maintaining your current position, which, in this case, may be the most politically desirable.

Attached for further reference are: a copy of the O'Hara bill (Tab A); and a copy of a memorandum on this subject from Rod Hills (Tab B).
A BILL

To amend title IX of the Education Amendments of 1972, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 That title IX of the Education Amendments of 1972 is
4 amended by adding at the end thereof new sections as fol-
5 lows:
6
"ATHLETICS"
7 "Sec. 908. The provisions of this title shall not apply to
8 the expenditure of revenues derived from a particular sport
9 or team, to the extent such revenues are devoted to the sup-
port and maintenance (including student scholarships and grants-in-aid) of that sport or team.

"PHYSICAL EDUCATION

"Sec. 909c Nothing in this title shall be construed to prohibit separation of students by sex in physical education classes conducted by a recipient institution if equal facilities, instruction, equipment, and (taking into account student interest) equal opportunity for instruction and participation are provided for students of each sex."
MEMORANDUM FOR: JAMES CANNON
FROM: RODERICK HILLS RH.
SUBJECT: Title IX and Intercollegiate Sports

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The focus at HEW, at least at the lower levels, is on a supposed need to equalize financial support being given to women involved in athletic activity with that given to men. Given that focus, HEW understandably has established a quota system which would allot scholarships to women on a ratio of the number of women "interested" in intercollegiate activities to the number of men so "interested."

I would change the focus. The issue as I see it is whether the university in question is making the same effort to provide athletic activity for women as it is making for men. There is no reasonable possibility and, indeed, there is no reasonable desirability of creating an intercollegiate sports activity comparable to NCAA football. Accordingly, a school should be penalized for failing to do so. However, a school should be required to encourage intercollegiate activities for women where feasible. Thus, tennis, swimming and track, as examples, are areas where a school should make reasonable efforts to promote women’s competition.

The regulations should be interpreted as requiring a school to describe its entire athletic program for women, to compare it to men, and to develop an affirmative action program to increase women’s activities. Relevant criteria would be:

1. The caliber of coaches (including the salaries paid).
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Practically speaking, my suggestion is that an HEW audit team evaluate the overall sports program for men against the existing overall sport program for women plus the affirmative action program. A determination of whether a given school is in compliance or not would require findings as to what a school is or is not doing for women that it could reasonably do.

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More specifically, the issue should not be whether as many women as men get athletic scholarships, but whether the athletic opportunities as a whole are roughly comparable for men and women.
MEMORANDUM FOR: ROD HILLS
FROM: JIM CANNON
SUBJECT: Title IX and Intercollegiate Sports

July 17, 1973

In light of our discussion at the 8:00 a.m. staff meeting, I would appreciate having a brief summary of your differences with EPA on the Title IX Regulation as it applies and may be applied to intercollegiate sports.

Could you also note how you would propose that Paragraph C of Section 85.37 and Paragraphs A, B, and C of Section 86.41 of the Regulation be changed to reflect the law that Congress passed?

I would appreciate your comments as quickly as possible. We may have the meeting tomorrow.

cc: Dick Parsons
NOTES ON TELEPHONE CALL WITH CAP WEINBERGER

Friday, July 18, 1975

(1) Can the regulations currently before the Congress be amended by executive order?

No, they can't be amended by executive order to the best of my knowledge. It's perfectly simple to amend them. You publish new regulations or you publish amendatory regulations any time you want—a piece of paper which says "Amendment such-and-such"—but that piece of paper is also a regulation and has to run through the whole process, perhaps 30-day comment period in this case, because the Congress has demanded it. You go through the Congress and wait 30 days for them to review in whole or in part the amendment—exactly the same process we went through with the Title IX regulations.

At the moment we are in a position where we have gone down the middle, and while there has been some sniping on the sides we haven't gone completely overboard. The athletic groups are saying incorrectly that equal expenditures are necessary, and they are not. But you would invite a law suit.

Congress has made a lot of noise but aren't going to do anything and as a result the rules will go into effect Monday.

(2) Are equal expenditures required?

Absolutely not. They are specifically stated not to be required. I got that statement in there after great pain and suffering. Most women's teams don't want equal expenditures—they just want more than they're now getting.

(3) What do you suggest to be the basis in the law Congress passed for applying the regulation to intercollegiate sports?

This is the legal point we thrashed around for months. In the original Title IX the application of the court decisions to the language required that you cover all education programs run by institutions receiving federal funds, and there are court decisions in the civil rights law which say athletic programs
are indeed programs run by the institution getting the federal funds. Then last year after the regulations had first been published, the Congress passed the Javits Amendment, a substitute for the Tower Amendment. In the application of the regulation to intercollegiate athletics, reasonable provision shall be made for some kind of sports. The purpose was to assure that athletics were covered. If they weren't before—and I think they were—they are covered now.

(4) Have you had a chance to look at Jim O'Hara's bill?

I took the basic position that we would do whatever Congress told us. My personal feeling was that they would have a hard time sustaining the constitutionality where you have revenue-producing sports. If that's what Congress wants to do, we would pass regulations that way. But it gets you into accounting problems.

Another thing that may come up is the business of quotas. The Athletic scholarship simply says you can give athletic scholarships to men all you want and if you do you should try to allocate a reasonable portion to women. That could easily be changed in an amended regulation.
Washington

July 18, 1975

MEMORANDUM FOR THE RECORD

FROM: JIM CANNON

SUBJECT: President's Comments on Title IX

He wants a letter to go up on Monday with these elements:

1. After looking at the debate on Title IX and the law, it is clear that it was the intent of Congress under any reason of interpretation to include athletics.

2. He thinks there are some unique situations, especially in the sports of college football, which requires special considerations in the application of Title IX. He could endorse some concept that relieves that situation (avoid mention of Tower or O'Hara). He believes that Congress should hold hearings promptly and consider the athletic situation in colleges, including setting the solid information out on the table about what colleges are now spending on men sports and women sports.

3. In the meantime, the Administration will do what it can under the law to establish guidelines to preserve the broadest possible intercollegiate athletic programs.

At some point in the letter, possibly the beginning, the President would want to remind the addressees about long and extensive process of hearings that was involved in the drafting and publication of the regulations.

The letter should go to the chairmen of the appropriate House and Senate committees, with copies to the ranking minority members.
NOTE: John Rhinelander from HEW said the guidelines could be available in three weeks.

NOTE: The press plan should be to send a letter up on Monday, make it public on Tuesday, and have Cap brief the press and answer questions.

cc: Jim Cavanaugh
Dick Parsons
MEMORANDUM FOR THE PRESIDENT

FROM: Jim Cannon

SUBJECT: Title IX and Intercollegiate Sports

This memorandum sets forth your options regarding application of HEW's Title IX Regulation to intercollegiate sports programs.

Option 1. Amend the Regulation so as to Exempt from Coverage Intercollegiate Sports.

The Regulation could be amended either to exempt intercollegiate sports altogether or simply to exempt sports-generated revenues from allocation in accordance with requirements of the Regulation. To do this, the Secretary of HEW could either withdraw the Regulation currently before Congress, amend it and resubmit it, or allow the Regulation currently before Congress to become effective and submit a specific amendment thereto.

There are two major problems with this approach:

- It is highly visible, and places the President out in front on an issue which is very sensitive with women's groups. The great likelihood is that we would displease many more people than we would please.

- Counsel generally agree that, as a matter of law, Title IX covers intercollegiate sports. Therefore, amendment of the Regulation to exempt intercollegiate sports, or even revenue-producing sports, would only engender litigation, the result of which would probably be judicial imposition and administration of the Regulation with respect to college sports programs.

Option 2. Support Legislation Exempting Revenue-Producing Sports from Coverage under the Law.

Representative James O'Hara has introduced a bill which would, in part, amend Title IX as follows:
"The provisions of this title shall not apply to the expenditure of revenues derived from a particular sport or team, to the extent such revenues are devoted to the support and maintenance (including student scholarships and grants-in-aid) of that sport or team."

As you know, the college football coaches believe that this kind of exemption is essential to the continuation of intercollegiate sports programs. They point out that most college sports programs are funded out of the revenues generated by one or two sports, usually football and/or basketball. These revenue-producing sports must, they argue, have a superior right to available funds, since, without them, a school's entire athletic program is jeopardized.

On the other hand, many, including Cap Weinberger, believe that the level of competition in intercollegiate sports can remain sufficiently high to attract fans and produce revenue, even if less is spent on men's programs and more is spent on women's programs. They argue that exemption of revenue-producing sports from Title IX will merely perpetuate a discriminatory system under which colleges and universities spend millions on men's programs and only a few thousands on sports programs for women. Finally, some argue that the approach embodied in the O'Hara bill would be held unconstitutional under the Fourteenth Amendment.

Your support of the O'Hara bill (or some similar bill) would, I am informed, greatly facilitate its passage.

If your desire is to make certain that the level and quality of intercollegiate sports programs will not be adversely affected by Title IX, this would appear to be the more promising approach.


Of course, you always have the option of maintaining your current position, which, in this case, may be the most politically desirable.

Attached for further reference are: a copy of the O'Hara bill (Tab A); and a copy of a memorandum on this subject from Rod Hills (Tab B).
A BILL

To amend title IX of the Education Amendments of 1972, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 That title IX of the Education Amendments of 1972 is amended by adding at the end thereof new sections as follows:

6 "ATHLETICS

7 "Sec. 908. The provisions of this title shall not apply to

8 the expenditure of revenues derived from a particular sport

9 or team, to the extent such revenues are devoted to the sup-
1. port and maintenance (including student scholarships and

2. grants-in-aid) of that sport or team.

3. "PHYSICAL EDUCATION

4. "SEC. 906. Nothing in this title shall be construed to

5. prohibit separation of students by sex in physical education

6. classes conducted by a recipient institution if equal facilities,

7. instruction, equipment, and (taking into account student in-

8. terest) equal opportunity for instruction and participation

9. are provided for students of each sex."
MEMORANDUM FOR: JAMES CANNON
FROM: RODERICK HILLS RH.
SUBJECT: Title IX and Intercollegiate Sports.

I did not propose any changes in the regulation. I propose, however, that we closely monitor the HEW implementation of the regulation as it applies particularly to athletic scholarships.

The focus at HEW, at least at the lower levels, is on a supposed need to equalize financial support being given to women involved in athletic activity with that given to men. Given that focus, HEW understandably has established a quota system which would allot scholarships to women on a ratio of the number of women "interested" in intercollegiate activities to the number of men so "interested."

I would change the focus. The issue as I see it is whether the university in question is making the same effort to provide athletic activity for women as it is making for men. There is no reasonable possibility and, indeed, there is no reasonable desirability of creating an intercollegiate sports activity comparable to NCAA football. Accordingly, no school should be penalized for failing to do so. However, a school should be required to encourage intercollegiate activities for women where feasible. Thus, tennis, swimming and track, as examples, are areas where a school should make reasonable efforts to promote women's competition.

The regulations should be interpreted as requiring a school to describe its entire athletic program for women, to compare it to men, and to develop an affirmative action program to increase women's activities. Relevant criteria would be:

1. The caliber of coaches (including the salaries paid).
2. The quality of facilities.
3. The furnishing of uniforms.
4. The availability of athletic scholarships.
If a school has scholarships for a men's tennis team and an active intercollegiate tennis competition, there obviously should be an affirmative action program to promote the same type of program for women. If five scholarships are made available to the men's tennis team to recruit top ranked talent, then a comparable number of scholarships should be available to attract top ranked women. Indeed, an affirmative action program for a given sport might cost more money to be spent initially on a women's sport than on a men's sport of the same nature that is well established.

Practically speaking, my suggestion is that an HEW audit team evaluate the overall sports program for men against the existing overall sport program for women plus the affirmative action program. A determination of whether a given school is in compliance or not would require findings as to what a school is or is not doing for women that it could reasonably do.

My complaint about the present posture of HEW is with the effort to provide equality in a number of relatively unimportant details, such as athletic scholarships, rather than looking to the overall question of relative equality of opportunity in athletic activity.

More specifically, the issue should not be whether as many women as men get athletic scholarships, but whether the athletic opportunities as a whole are roughly comparable for men and women.
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If your desire is to make certain that the level and quality of intercollegiate sports programs will not be adversely affected by Title IX, this would appear to be the more promising approach.

**Option 3. Maintain Current Position.**

Of course, you always have the option of maintaining your current position, which, in this case, may be the most politically desirable.

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IN THE HOUSE OF REPRESENTATIVES

JULY 8, 1975

Mr. O'HARA (for himself, Mr. Simon, Mr. Mott, Mr. Hale, Mr. Quie, Mr. Emlemore, Mr. Esch, Mr. Emileman, Mr. Buchanan, Mrs. Smith of Nebraska, and Mr. Blum) introduced the following bill; which was referred to the Committee on Education and Labor

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"PHYSICAL EDUCATION"

"Sec. 909. Nothing in this title shall be construed to prohibit separation of students by sex in physical education classes conducted by a recipient institution if equal facilities, instruction, equipment, and (taking into account student interest) equal opportunity for instruction and participation are provided for students of each sex."
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WASHINGTON
July 18, 1975

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cc: Jim Cavanaugh
    Dick Parsons
How quickly guidelines
3 weeks

Recommend:

1. Add wording at debate
   intention of Cognac
   when any consensus
   interpretation includes
   athletes

2. We push them on
   new weapon outbreaks
   competing for donor
other to try to

clay - lay on back

3. Do nothing
to do what
we can undo

on law, use
your civic courage
to

let us - House vote 42

efforts - efforts
I got up Monday

up to head hacks

endose come
concept that
relieves the
situation

at Boggs second
fears of process
Get back

up pressure on

student

athletic

program

John. Get with who out on table -

Stamps thru piano -

wrote
We're willing to work on some of the components. To begin with, later on.

Options A, B, or C. Which one?