S. HRG. 107–542

TITLE IX: BUILDING ON 30 YEARS OF PROGRESS

HEARING

BEFORE THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

EXAMINING THE IMPLEMENTATION AND PROGRESS OF TITLE IX OF THE EDUCATION AMENDMENTS ACT OF 1972, WHICH PROHIBITS SEX DISCRIMINATION IN ALL ASPECTS OF EDUCATION

JUNE 27, 2002

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TITLE IX: BUILDING ON 30 YEARS OF PROGRESS

THURSDAY, JUNE 27, 2002

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, D.C.

The committee met, pursuant to notice, at 2:29 p.m., in room SD–430, Dirksen Senate Office Building, Hon. Edward M. Kennedy (chairman of the committee) presiding.

Present: Senators Kennedy, Dodd, Mikulski, Wellstone, Murray, Clinton, Gregg, and Collins.

OPENING STATEMENT OF SENATOR KENNEDY

The CHAIRMAN. We will come to order.

I would like to comment at the outset on the Supreme Court's voucher decision. I believe that this is a sad day for America's schoolchildren. Just because we can have private school vouchers does not mean that we should.

I think it is wrong to divert scarce education dollars away from public schools into private schools. Ninety percent of our children attend public schools, and we owe it to them to reform our public schools with better teachers, smaller class sizes, and extra help for our children.

I think the administration's policy of diverting public dollars to private schools is wrong for schoolchildren, wrong for parents, wrong for our schools, and wrong for our communities. I know that we will continue to debate this issue, but I wanted to reiterate my views today.

I received today some mail from some 1,600 local PTA organizations, 53 chapters, that have signed letters opposing the voucher policy.

In 1972, fewer than 300,000 high school girls and only 32,000 college women participated in sports. Women comprised only 2 percent of the Nation's college varsity athletes, received only one-half of one percent of schools' athletic budgets, and athletic scholarships were nonexistent.

Today, over 150,000 college women participate in sports and receive one-third of athletic scholarship money. Over 2.5 million high school girls participate in competitive sports.

In 1972, some colleges and universities excluded women from their campuses and required them to have higher SAT scores than men. Financial aid was withheld from women who were pregnant, married or parenting, and women applying for doctoral programs had to explain how they would balance a career and a family.

Today, women comprise 56 percent of college students and are awarded 42 percent of doctoral degrees.

Title IX deserves much of the credit for these important and dramatic changes. In the past 30 years, glass ceilings have been broken, doors have been unlocked, and gender stereotypes torn down.

The "persistent, pernicious discrimination" that Senator Birch Bayh described as perpetuating second-class citizenship for women is steadily being eroded from laws and policies as well as hearts and minds.

There is no question that Title IX made the difference. As Olympic Gold Medalist Cheryl Miller said, "Without Title IX, I would be nowhere."

Nevertheless, Title IX's extraordinary success story does not silence the detractors. Although few are willing to attack Title IX directly, some argue that the three-prong compliance test in the Title IX policy interpretation mandates quotas and requires the elimination of some men's sports. Using misleading facts and figures and outdated stereotypes, they argue that Title IX forces schools to create opportunities for female athletes even though women and girls are simply not interested in playing sports.

It is most troubling that the Bush Administration's position on this important issue is unclear. The administration recently asked the Federal District Court for the District of Columbia to dismiss a lawsuit by the National Wrestling Coaches' Association challenging Title IX, but it did so in a way that does not show strong support for Title IX.

In a recent editorial about the lawsuit, the Wall Street Journal said: "The Justice Department last Wednesday asked a Federal court to dismiss a lawsuit brought by the National Wrestling Coaches' Association. The coaches claim, rightly, that the way Title IX is enforced has transformed a law meant to guarantee opportunities for women into a system that forces universities to eliminate them for men. The political question is what this Justice Department position means. Has the Bush Administration given up trying to change Title IX enforcement rules, or is this just a procedural dodge to avoid being pinned by an unfavorable court ruing? White House sources tell us it is the latter, and that Education Secretary Rod Paige will soon break out a public campaign to restore some common sense to Title IX enforcement."

Many who have supported Title IX for 30 years wonder what changes the administration wants to make in enforcement when the law is already being sensibly enforced. Title IX is already very flexible. Schools are able to prove compliance by meeting any prong of the three-part test in the policy interpretation. In fact, between 1994 and 1998, of the 74 cases involving Title IX's participation requirements, only 21 schools chose the often and unfairly attacked proportionality test as their means of compliance.

Title IX does not require the elimination of men's sports teams. Some schools have decided to eliminate men's sports like gymnastics and wrestling, but many schools use other, more competitive options. GAO found that 72 percent of schools which added teams did so without discontinuing any other teams.

The Federal courts also believe that Title IX is being properly enforced. All eight of the Federal circuit courts asked to review Title

IX have said that the statute and regulations are reasonable. The First Circuit Court of Appeals said: "No aspect of the Title IX regime at issue in this case—inclusive of the statute, the relevant regulation, and the pertinent agency document—mandates gender-based preferences or quotas, or specific timetables for implementing numerical goals. Title IX operates to ensure that the gender-segregated allocation of athletic opportunities does not disadvantage either gender."

Given these facts, I hope the administration does not try to fix what is not broken. Instead, I hope they will work with schools to help them create opportunities for both women and men while complying with the existing Title IX guidelines.

In the past 30 years, America has changed immensely for the better. A great deal remains to be done, but men, women, and girls have more opportunities than ever before, and Title IX deserves great credit for its contribution to this success.

We look forward to the hearing this morning.

I see my friend and colleague Senator Wellstone and welcome any comment he wishes to make.

OPENING STATEMENT OF SENATOR WELLSTONE

Senator WELLSTONE. Thank you, Mr. Chairman, and I will try to be brief.

I want to thank you for holding this critical hearing on Title IX. Senator Bayh, you did really good. Title IX has transformed educational and athletic opportunities for women all over the country for the last 30 years. What an enormous step forward, and it has been an extraordinary success.

I am deeply concerned and hope we will get clarification today about some of the press reports that the administration may take actions that would in any way weaken Title IX, whether it has to do with sports or with single-sex education. I think this would be a terrible mistake.

One perspective I want to bring to this hearing, Mr. Chairman, as a former wrestler and as someone who has coached wrestling as well, I hate seeing what has happened to wrestling and other, quote, "minor" sports, be they men or be they women's sports, on campuses across the country. I know how important wrestling—a sport that I love; it has made all the difference in my life—is to many, and I understand the frustrations of many others who have not been able to participate in sports that they love and believe in.

I think something can and should be done to help, but I firmly believe that putting wrestling or other men's sports against women's sports is not productive, is not fair, is not warranted, and it will not work. I do not think that is the direction in which to go, and I think that if we backtrack on Title IX, that is what could very well happen.

You made reference already, Mr. Chairman, to the 2000 GAO report, so I do not need to do that.

I want to conclude by mentioning something that I think is positive, which is a piece of legislation I introduced that is similar to legislation introduced by Jim Leach over on the House side. It is called "The Olympic Sports Revitalization Act," and I think it really helps. There are a couple of things that we want to do. One, we

want to create some grant programs to revitalize Olympic sports at the community level for boys and girls. The idea behind that is that you would bump up participation so that you would have more participation by the time you get to higher levels. Second, the bill would provide scholarships for college athletes who play Olympic sports. And as a matter of fact, on the House side, Congressman Leach has talked about these as "Hastert scholarships" for college athletes in the, quote, "smaller" sports, be they men or be they women.

The third thing we want to do in this legislation, Mr. Chairman, is to ensure that colleges—and this is really important—give adequate notice and opportunity for appeal to students whose sports face elimination or reduction. Sometimes the decisions are just made in an arbitrary way. Any university or college ought to be able to spell out the numbers and reasons why teams are eliminated, and the athletes have to have an opportunity to know why. I think that would be extremely important.

We also ask the Department of Education to place on the internet in a user-friendly way all the information reported under the Equity in Athletics Disclosure Act so that students can accurately gauge budget trends, and the relative health of the sports when they make a decision to go to a college or university. Both these changes will help ensure that some of these schools who might be cutting teams in an arbitrary way will have second and third thoughts; they will not just be able to go down the path of least political resistance.

Finally, I think these kinds of proposals at least provide us with a more positive, more effective way than playing off women's athletics against men's athletics, which I do not want to do, to try to increase participation and not decrease participation in sports.

I think we need to move forward with these proposals because I do not want us to turn our backs on Title IX. Title IX, Senator Bayh, whether it is in academics or athletics, has brought us much closer together as a Nation and much closer toward making sure that women are given every opportunity to excel, not just in athletics but in education as well. And we ought to be able to figure out how to move this forward in a positive way for all of our athletes, and not move backward.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

The bells indicate the vote on final passage of the defense authorization bill, so I suggest we recess, rather than interrupt the Secretary's testimony.

We will recess, then, and come back in 5 to 7 minutes.

The committee stands in recess.

[Recess.]

OPENING STATEMENT OF SENATOR MURRAY

Senator MURRAY [presiding]. If the committee could come to order, we will get started again.

Thank you very much. Senator Kennedy is on his way back from the floor. I am going to go ahead and give my opening remarks as will as the other Senators who are here, and he should return shortly.

I want to thank Senator Kennedy for convening this extremely important hearing this afternoon to celebrate the accomplishments and highlight the ongoing value of Title IX.

I would also like to thank Secretary Paige and the other witnesses who join us today. Thanks in large part to Senator Bayh, Congress did its job back in 1972 to create more opportunities for women. Now it is a generation later, and Senator Bayh's son and the rest of us are here to carry on that commitment.

Today I am especially eager to hear about the Bush Administration's commitment to enforce Title IX. Before Title IX, the opportunity gap between men and women was dramatic. In the area of higher education, women were barred from participating in school-sponsored activities such as honor societies. They were discouraged from entering certain professions and academic fields including law, medicine, and engineering. And they were denied entrance outright or were subject to tougher admissions standards than men.

Since Title IX, the number of women enrolling in college has skyrocketed. In 1971, only 18 percent of young women completed 4 or more years of college. Today women represent 56 percent of college students. We went from only 9 percent of medical degrees going to women in 1972 to nearly 50 percent today, and from just 7 percent of law degrees going to women to 43 percent today. That is amazing progress.

Before Title IX, for those fortunate enough to enroll in college, opportunities to compete on college-level sports teams were few and far between. At many colleges and universities, women's athletic programs and scholarships did not exist. In 1972, only 25,000 women competed in collegiate athletic programs. Women like Donna DeVarona, winner of two gold medals at the 1964 Olympics, won world competitions on behalf of the United States but were unable to obtain college scholarships.

Progress on college campuses has been impressive. Today, well over 160,000, or 41 percent of all college athletes, are women. Since the early 1980's, the number of women's collegiate teams has increased from 5,600 to nearly 10,000. At this past year's Olympic competition, when our Nation set a record by earning 34 medals, fully one-third of those medals were won by women athletes.

But the added benefits that come with increased numbers of women competing in athletics goes beyond the field. On average student athletes get better grades, have higher graduation rates, are less likely to abuse drugs, and are more physically fit. Cardiovascular disease is the number one killer of women in this country. Opening more doors for women to develop athletic skills can offer a health benefit that will last a lifetime.

Behind these statistics, the lives of many women have been improved because of the changes brought to us by Title IX enforcement. I have seen how Title IX has changed things from experiences of the women in my own family. My mom grew up in Butte, MT, and she loved basketball. She was 5 feet, one inch tall when she stretched, and all her life, she lived and breathed sports. But it was not until after she died that I learned how much, when a woman stopped me—a friend of hers from high school and grade school—to tell me that my mother was the star of their intramural

basketball team, and when she played, they always won. Unfortunately, her opportunity to compete ended in high school.

The situation was not much better when I went to school 30 years ago. I went to Washington State University where I happened to major in physical education and recreation. Back then, I could participate in one sport—gymnastics. How great it was 15 years later to watch my own daughter choose to play soccer, learning how to play on and be part of a team, cheering each other on, and learning how to win and how to lose.

The difference between my daughter's generation and my own could not be more stark. One of my favorite memories is watching my daughter's high school friends compete in high school basketball championships when she was a junior. They won the State championship, and it was a dream come true.

My mom never got the chance to go to college on a sports scholarship, even though I am pretty sure she deserved one. The difference is that some of my daughter's friends have done just that.

Not all girls, like not all boys, will be State champions or Olympic stars, but all of them should have the chance to learn to work together, do their best, fight hard, and be very proud of their own abilities. I believe that that is what America is all about.

There is no doubt that Title IX has opened doors for women between the time when my mom went to school and my daughter went to school. The challenge for all of us today is to make sure those doors of opportunity stay open for our grand-daughters and our great-grand-daughters as well.

Thank you very much, Mr. Chairman, for having this hearing.

The CHAIRMAN. Senator Collins?

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman.

Good afternoon. I too would like to thank the chairman for holding this hearing to commemorate the 30th anniversary of this landmark piece of legislation and to call attention to the positive impact that Title IX has had in ensuring greater access for women in educational programs and activities.

I am very pleased that one of the leaders of the effort to pass Title IX, Senator Birch Bayh, is here with us today. At the time of its passage, Senator Bayh stated that the purpose behind Title IX was to "provide for the women of America something that is rightfully theirs—an equal chance to attend the schools of their choice, to develop the skills that they want."

Since its enactment, important gains have been made for women in higher education in a number of areas. In 1971, the year I graduated from high school, only 18 percent of women completed 4 or more years of college. By 2006, it is projected that women will earn 55 percent of all baccalaureate degrees.

In the University of Maine system, women already make up 60 percent of the student body.

Today, as Senator Murray indicated, far more women are earning advanced degrees. In the year 2000, nearly 46 percent of all law degrees and 43 percent of all medical degrees were earned by women. Women are increasingly selected for faculty positions at

our Nation's best colleges and universities. In fact, nearly one in five colleges or universities is led by a woman president.

Over the past 30 years, women have also benefited from the increased access to school sports programs. When I attended high school, there were no competitive teams for girls except gymnastics—hard to imagine in the world we now live in, where women have a wide variety of both high school and college sports programs in which to participate.

There is also an increasing number of celebrity women athletes, for example, Mia Hamm, to serve as role models for young girls.

In 1971, fewer than 300,000 girls played interscholastic sports. Last year, the number was over 2.8 million. The number of women playing sports at the college level has also increased from fewer than 25,000 in 1971 to over 200,000 today.

In addition to the obvious health benefits for girls from this increased participation in sports, these programs help young women to develop so much more than just athletic ability. It enables them to develop the leadership skills and learn to work as a team—all skills that are necessary and helpful in succeeding later in life. It is no coincidence that nearly 80 percent of female managers of Fortune 500 companies played competitive sports.

As a result of Title IX, women and girls today tend to be better educated and have so many more opportunities than those of just a generation ago. While we must continue to ensure that Title IX's promise is fulfilled, we can celebrate the real accomplishments in improving access for women in education programs and activities.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Mikulski?

OPENING STATEMENT OF SENATOR MIKULSKI

Senator MIKULSKI. Thank you very much, Mr. Chairman, for convening this hearing, and in addition to our distinguished panel, I also want to give a very warm welcome to our former colleague, Senator Bayh, who was the leading architect of this legislation, and then both of you on this committee carried this forward.

You know, you cannot break a glass ceiling unless you have the tools. I believe that Title IX gave women the tools to do many things—not only access to school sports, but to sports scholarships for many women—and it also opened other doors in higher education.

The 1970's was an exciting time. It was the second wave of America's feminist movement. We were talking about breaking new ground in our Constitution and supported an Equal Rights Amendment. We only got so far, and that amendment did not get ratified, but we were told let us do it one law at a time.

Well, we did do it one law at a time. It has taken us a very long time, and Title IX was one of those that really pioneered that effort.

Anyone knows that 4-foot-11 Barb Mikulski was not the star jock. I was the star debater and was also on the drama team. I am that now. My women colleagues call me "the coach." Why do they call me the coach? Because I run empowerment workshops; because we talk about how we can help one another move ahead, how we

can support each other, how we can develop strategies to move legislative agendas forward.

Where did we learn that? I learned that in school. I happened to go to an all women's school, and I believe they have a place in our society, a voluntary place, but it was about learning about teamwork, it was about trying to find the best assets. And it is not only about basketball or soccer or kicking the ball around or twirling on the gymnastic bars—it is really about learning a lot of rules of life.

One of the first rules of life that we need to learn is that the law is for everybody, that the law is not based on one gender, it is not based on one social class, it is not based on one race or one ethnic group. The law is for everybody, and that is what Title IX is. I believe that it opened it up for women. I think it was also particularly helpful for minority women who had access to these school sports and scholarship. And I would hope that we would continue it.

When Title IX was being debated, I heard the naysayers: "Women just are not interested in sports. They do not like it." Well, we now see the data for all the women who are interested in sports. We have soccer teams, we have soccer moms, we have basketball stars, and so on.

Then, they said, "What you are really going after is to kill football," that this is going to kill football. I do not know if you have looked at it lately, but football continues to be the dominant sport on college campuses, and it is often a source of great pride, certainly for us in Maryland to see the Terps go on to the Orange Bowl.

So it was not about killing football; it was about making sure that the dreams of young women were not killed.

I think we need to keep Title IX. We should not use the word "reform" as a code word for ravaging Title IX.

So we look forward to keeping the spirit of the law. We thank one of our founding fathers for being here. Senator Bayh, you would love it. This is why your son loves it. There are now 13 founding mothers to continue the dream.

Thank you very much.

The CHAIRMAN. Thank you, Senator Mikulski.

Senator Clinton?

OPENING STATEMENT OF SENATOR CLINTON

Senator CLINTON. Thank you, Mr. Chairman, and thank you for holding this hearing.

I want to welcome our witnesses, both Secretary Paige as well as Assistant Secretaries Reynolds and Jones.

I also want to applaud the Secretary for creating a blue-ribbon panel—as of today, the announcement was made public—to examine ways to strengthen enforcement, expand opportunity to ensure fairness for all. I believe that that is an appropriate undertaking, and I look forward to hearing about the discussions and recommendations from this panel.

I understand that everything which has been said before about the great success that Title IX has had, particularly as it has opened doors to women, has also raised some questions about fair-

ness and equity for men and men's sports, and I believe there ought to be a way to work that out without turning the clock back or tipping the balance back against women, because as we have just heard from my colleagues, what has happened in 30 years is nothing short of miraculous. This extraordinary commitment to ensuring opportunity in education, and opening up the playing fields is just as important as opening up the schoolhouse doors, and we have accomplished that.

But certainly we want to be sure that we have not had unintended consequences with respect to men's sports.

I also want to thank Senator Bayh for being here, because he started us down this long road. I think he once said that Title IX was the most important advance in women's rights since the 19th Amendment, and I believe that that is not an overstatement. It accurately describes what was accomplished in the last three decades.

I am pleased that we are going to have a panel that includes some very accomplished witnesses in addition to Senator Bayh, with Art Coleman and Nancy Hogshead-Makar.

I would also like to acknowledge one of my interns, Anne Cook, who plays for the Washington Freedom. She has been advising me about this issue, and I am delighted that she could join us.

I will submit my full statement for the record, but I wanted to just make a few points, especially in light of the announcement today about the blue ribbon panel.

I agree that litigation is not the way to resolve what appear to be differences over interpretation and enforcement. And I certainly hope that we are not going to be reopening Title IX and the regulations behind it as we look for ways to try to enforce them more fairly and effectively.

Today, Secretary Reynolds, I have sent a letter in response to two notices filed in the Federal Register with regard to single-sex instruction and the current regulations of Title IX of the Education Amendments of 1972. As I know you are aware, I was the coauthor of the amendment, with my colleague Senator Hutchison from Texas, which enabled us within the No Child Left Behind Act to create opportunities for single-sex education classes in schools. I think there is a role for that, I think there is room for it, as long as it is done in a way that does not lead back to separate but equal or separate and allegedly equal. And I know that you would agree with that.

I am a little concerned, however, because as the coauthor of the amendment, I intended for this provision to instruct the Department to help guide local school districts wishing to use the innovative program funds rather than to suggest that the existing regulations required revision in order to support the use of the funds.

I think we can ensure the strength and force of Title IX and the Equal Protection Clause of the Constitution while simultaneously providing local school districts with the opportunity to experiment with single-sex instruction.

There was an article on the front page of The Washington Post today about what appears to be some significant achievement gains in single-sex classes in one of our Washington public schools.

Clearly, we want to give schools guidance about how best to do this under Title IX and under the Constitution, without upending or leading to the kind of investigation or reconsideration of regulations that would in any way impede full equity or turn us back on the path that we have started down with the help of Title IX.

So I am hoping that the Department will be very thoughtful and careful about how best to support this option as one of the many options that we are trying to provide students in our country, building on the successes of Title IX, doing nothing to undermine its intent, purpose, and implement.

I will also be requesting a GAO investigation to evaluate the educational outcomes that flow from publicly-funded single-sex instructional settings because I do think we need to separate out the effects of small classes, motivated teachers, from whatever effects, if any, are solely because of single-sex placements.

So, Mr. Chairman, I am grateful that we are holding this hearing. It is really a celebration as much as a hearing. We are at a turning point. The announcement of the blue ribbon panel holds great promise, but we will have to consider it very carefully. I am sure the Secretary and the distinguished members, including Donna DeVarona, will take this new charge with great seriousness, because we do not want to do anything that turns the clock back on women and girls. We just want to be sure that all people, men and women alike, boys and girls, have the chance to live up to their God-given potential, and that is what Title IX was designed to do; I think there is a lot of evidence that it has, and we want to make sure that it continues to get the support that it needs.

Thank you, Mr. Chairman.

[The prepared statement and questions from Senator Clinton follows:]

PREPARED STATEMENT OF SENATOR CLINTON

I would like to thank our Chairman, Senator Kennedy, and my esteemed colleague Senator Murray, for holding this hearing this morning to celebrate thirty years of our Federal Government's commitment to providing equal educational opportunities to American boys and girls.

I would like to welcome all our witnesses today, Secretary Paige, who is joined by Assistant Secretaries Gerald Reynolds and Brian Jones. I am delighted that Senator Birch Bayh, Art Coleman and Nancy Hogshead-Makar could all join us today.

Whether it's on the playing field or in the classroom, our county can take pride in the fact that the law of the land is written to ensure that all our children can reach the fullest potential that nature has bestowed.

And we owe a great debt of gratitude to those who worked in this body and beyond, to make sure that we provide the full range of opportunities to all our children and men and women.

I would like to thank one of the pioneers in this struggle, Senator Birch Bayh, who joins us today. As the original sponsor of Title IX of the Education Amendments of 1972, Senator Bayh helped to put in place, what he himself referred to and I would agree is, "the most important thing to happen to women in America since the 19th Amendment." Senator Bayh, your legacy-literally and commit-

ment to providing equal opportunities to all our young citizens continues here in Congress. Yet far more important, your work and that of your colleagues and the voices of all those who helped make Title IX a reality, has changed lives and built futures, that prior to its passage, were just dreams.

Since the passage of Title IX, our country has transformed into one that once provided the chance to pursue every goal to half our population. And what a long way we have come!

Since 1972, the demographics on college campuses have shifted dramatically. Thirty years later, women comprise 56 percent of college students.

And today a woman's personal life choices no longer shut out the possibility of earning a college degree. Prior to the enactment of Title IX, if a woman were pregnant, married or a parent, she could not count on financial aid to help her earn a college diploma.

At one time, earning a Ph.D and raising a family were thought to be mutually exclusive. Yet 30 years later, the percentage of doctoral degrees awarded to women has increased from 16 percent to 42 percent.

Thanks to Title IX, schools opened shop classes to girls and a litany of career training courses providing pathways to careers for women that previously were unthinkable.

Thanks to Title IX, our playing fields look starkly different from the way they appeared before 1972. Before Title I, fewer than 300,000 high school girls played competitive sports. By 2001, that number rose to 2.78 million, representing 42 percent of varsity athletes in high schools and 43 percent of college varsity athletes.

And while girls and young women have flocked to the playing fields, boys and men's participation levels in athletics has increased as well, since Title IX.

Contrary to what Title IX's critics may argue, we know from last year's GAO report, that as colleges and universities have added teams to provide equitable opportunity for women, the vast majority has done so without discontinuing other teams. So let's be clear Title IX has opened opportunities, but not at the expense of others.

To those who still maintain that Title IX has resulted in the unintended consequence of closing doors to other athletes, we must continue to strengthen our commitment to equity.

That is why I am delighted to join Senator Wellstone in co-sponsoring S. 1085, the Olympic Sports Revitalization Act which will build on the legislative gains we've made to level the playing field.

In addition to encouraging participation in Olympic sports and providing awards for college athletes, this bill will strengthen the Equity in Athletic Disclosure Act, by requiring institutions to report equity in athletics data. It will require institutions choosing to discontinue or reduce funding for intercollegiate athletics to notify participants and provide an internal review process for the appeal of such decisions.

And as we celebrate our progress in narrowing the divide between boys and girls and men and women, it is important that we also take stock of the progress we still need to make.

Because even now, 30 years after the passage of Title IX, there are still doors that need to be pried open. For example, in the 1999–2000 school year female students represented about 54 per-

cent of the student body at 4-year colleges, yet only 23 percent of all NCAA Division I colleges provided women with athletic opportunities within 5 percentage points of female student enrollment.

And even today, sex segregation still persists in vocational training, with 77 percent of trade and industry courses attended by male students and the vast majority of care-giving jobs being occupied by women at mean salaries of $19,000 per year.

Clearly, we have our work cut out for us. The best tribute to Title IX and to those who fought for it, is our redoubled commitment to tear down the existing barriers and continue to open the path for girls to participate in all the activities and classes that their male peers enjoy, and for women to pursue the careers and get the training and access to those careers that their male counterparts enjoy.

As I said earlier, I am delighted that Secretary Paige is here today along with Assistant Secretaries Gerald Reynolds and Brian Jones.

I would like to take this opportunity to reiterate my strong support for providing parents and students the option of single-sex instruction, consistent with Title IX and the Equal Protection Clause of the Constitution.

As you know, I was proud to co-sponsor, along with Senator Kay Bailey Hutchison, the amendment that led to the inclusion in the "No Child Left Behind Act" to allow local educational agencies (LEAs) to use Innovative Program funds. The provision also instructed the Department to clearly outline how districts can use these funds appropriately.

I want to emphasize now, as we celebrate Title IX and the victories it has won for women and girls, that I intended for this provision to instruct the Department to provide guidance to implement current law, rather than to suggest the existing regulations required revision in order to support the use of funds.

I explain this concern and my recommendations in greater detail in a letter that I have written to Assistant Secretary Reynolds in response to his invitation for public comment.

In addition, I believe there is a lot more we can learn about single-sex instruction. That is why I will be requesting the GAO to investigate and evaluate the educational outcomes and impact on the surrounding districts of existing and previously existing publicly funded single-sex instructional settings.

My support for districts to experiment with reform only bolsters my longstanding and unwavering belief that in order for any innovation to deliver the first-rate outcomes we expect from all our children, we must provide the necessary ingredients that distinguish successful schools: a highly qualified teacher in every classroom, reduced class size, and modern, up-to-date facilities. With these inputs and the flexibility to experiment with creative reforms, we can provide a world-class education to our nation's children.

Mr. Chairman, I ask that I be permitted to submit my full remarks and my questions for the record.

Thank you.

QUESTIONS FROM SENATOR CLINTON ON SECRETARY PAIGE'S ANNOUNCEMENT OF BLUE RIBBON PANEL

We have just learned today of the Secretary's announcement of a commission to examine ways to strengthen enforcement and expand opportunity for all college athletes.

Question 1. To each of the witnesses, I ask, what recommendations would you make to the new panel as it begins its work?

[To Secretary Paige]: The new panel will examine issues surrounding the enforcement of Title IX as it relates to athletics.

Question 2. Will this new panel propose or consider modifications to any of the athletics policy guidances or regulations?

Question 3. What is the process for such consideration of modifications?

Question 4. Secretary Paige, to what extent does the Administration believe that Title IX has diminished men's athletics opportunities?

Question 5. To what extent do you believe the other important provisions of Title IX are enforced adequately?

Question 6. Is the administration satisfied with the current level of enforcement of Title IX with regards to access to higher education, access to all types of career education and training, the participation levels of girls and boys in math and sciences, and the equitable representation of men and women in the education field?

Question 7. Do you plan to establish panels to examine inequity in these areas?

VOCATIONAL EDUCATION

Thirty years after the enactment of Title IX, the patterns of enrollment in vocational and technical programs mirror the sex-segregated patterns that existed prior to passage of the law. Young women remain clustered in "traditionally female" programs that prepare them for low-wage careers and do not provide them with the training or technical skills necessary to enter high-wage jobs that can provide true economic self-sufficiency. This sex segregation in vocational classrooms across the country not only has a deep impact on the earning power and job prospects of the young women who graduate from these programs, but these young women also often receive a substandard education because they are bypassed for opportunities in high-technology programs, such as Cisco Networking Academies, and frequently their traditionally female programs lead to fewer opportunities to take advanced courses in academic subjects such as math and science. On June 6, 2002, the National Women's Law Center filed 12 Petitions for Compliance Review with each of the regional offices of the Office for Civil Rights calling on the Federal Government to conduct full investigation of the sex segregation in vocational programs and remedy the discrimination that has resulted in erecting barriers to full educational opportunity for girls and young women. The information provided to the Department included enrollment data that had been collected directly from the States, as well as examples of discrimination faced by female students in these programs.

Question 8. In response to this information, do you intend to direct the Office for Civil Rights to conduct Title IX investigations in every region of the country to remedy discriminatory policies and practices in vocational and technical programs?

Question 9. Will this effort be coordinated by the headquarters office here in Washington, or will each regional office act independently in determining the best way to conduct its investigation and resolve problems of sex discrimination in these programs?

Question 10. Have any of these investigations begun? Do you have a timeframe for completion of the investigations?

TESTING

In recent years, there has been a dramatic increase in reliance on standardized tests linked to high-stakes educational decisions. Moreover, the Elementary and Secondary Education Act recently signed by the President mandates additional tests for students in grades 3 through 8. Although, these tests are to hold educators ac-

countable for student progress there can be little doubt that States and LEAs will use them is some cases for higher stakes purposes.

A substantial record of disparities in scoring between male and female students on many standardized tests dates from before Title IX's enactment and continue over the last 30 years. These gaps have had a harmful impact on educational and economic opportunities available to women and girls as well as students of color. Under Title IX, tests must be valid predictors of success in the areas being tested and must measure what they purport to measure. If a test does not meet this standard, and if it produces a scoring deficit for one sex, it has a discriminatory impact on the members of that sex and is unlawful.

If tests are to meet the goals of improving educational access and increasing academic achievement, they must be developed in compliance with professional testing standards and civil rights laws. There is a justifiable concern that test misuse will seriously undermine and threaten the gains anticipated from standards-based reform efforts. While little has been done to analyze the gender differentials at the elementary and secondary school level, it is well-documented, for example, that male students continue to do better than female students on high-stakes tests for entry into higher education, such as the SAT. The results from the 2000 SAT show that the gender gap is now 38 points. This gender gap persists within racial and ethnic groups as well: on average, in 2000, African American females scored 12 points less than their male counterparts; Asian American females scored 38 points less than their male counterparts; and Mexican American females scored 44 points less than their male counterparts. The implications of this persistent and widespread gap are great, given that it has been well documented that the SAT under-predicts academic performance for female students.

Just as employment tests that adversely affect minorities and women and that are not valid violates Title VII under the Griggs decision, education tests violate Title VI, Title IX, and section 504 under similar circumstances.

As testing has increased, the Department of Education's Office for Civil Rights has received numerous requests for assistance by educators and policymakers on the fair and appropriate use of tests and has also received a growing number of discrimination complaints, mostly in the K–12 arena.

After extended internal review and consultation with educators, testing experts, policymakers and civil rights groups, in December 2000, the Department of Education released a guide prepared by the Office for Civil Rights, The Use of Tests as Part of High-Stakes Decision-Making for Students: A Resource Guide for Educators and Policy-Makers. This guide is intended to provide information about professional standards and civil rights laws relating to the use of tests. However, that testing guidance has been "archived" by the Administration, leaving schools and school districts with no official guidance from the Office for Civil Rights on complying with our civil rights laws as tests are used.

Question 11. (1) Are there any parts of the guidance that you oppose or disagree with? Which parts? How would you change the guidance?"

Question 12. (2) As Assistant Secretary for Civil Rights, will you urge that this important guidance is removed from the "archives" and put into effect? What are your plans to circulate this guidance to schools, administrators, teachers, Boards of Education, policymakers and others involved in developing and evaluating tests?

Question 13. (3) If a civil rights division under your command fails to reenact the archived testing guidelines, are you planning to find some means of directing State and local school districts that are under increased pressure to develop testing programs under the No Child Left Behind Act? How will you go about developing new guidelines? Whom will you consult? What sort of timeframe do you envision for this process?

Question 14. (4) Do you agree that tests must comply with civil rights laws, including Title IX of the Education Amendments of 1972, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act?

Question 15. (5) Do you plan to regularly review data that will be collected, under the Elementary and Secondary Education Act, to evaluate the impact of tests on female students generally and on female students of color? What will you do if the data do demonstrate such an impact?

The CHAIRMAN. Thank you very much.

I would like to thank Secretary Rod Paige for being here today. Before being confirmed as Secretary of Education in 2001, he was

superintendent of the Houston Independent School District since 1994. In that capacity, Secretary Paige helped to turn around the struggling school district.

I noted recently, Mr. Secretary, that the difference in Houston between Anglos and Hispanics has narrowed to six points above the State average. I would just raise that as an interesting point for people who are looking at our No Child Left Behind Act.

Throughout Secretary Paige's career, he has committed himself to public education and preparation of teachers. Over the last year and half, we have worked closely with Secretary Paige on the No Child Left Behind Act, and we are looking forward to continuing to work with him on other important issues.

We know you have a time constraint, Mr. Secretary, and we are going to have a vote, as I understand, fairly shortly, and I apologize. We are looking forward to your testimony, and we are very appreciative of your patience with us here this afternoon and for the opportunity to work with you. You were typically gracious in calling about the announcement of your blue ribbon committee to give advice on Title IX, and I thank you very much.

We welcome Mr. Reynolds and Mr. Jones as well.

STATEMENT OF HON. RODERICK R. PAIGE, SECRETARY, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, DC, ACCOMPANIED BY GERALD REYNOLDS AND BRIAN JONES, ASSISTANT SECRETARIES

Secretary PAIGE. Thank you, Mr. Chairman, Senator Gregg, members of the committee.

I appreciate the invitation to be here today, because it gives me the opportunity to discuss one of the most important civil rights laws in our Nation's history—Title IX of the Education Amendments of 1972.

As you know, we just celebrated the 30th anniversary of this landmark legislation. Without a doubt, Title IX has opened the doors of opportunity for generations of women and girls to compete, to achieve, and to pursue their American dreams.

Many of the people in this room today are too young to remember what the world was like prior to 1972 when Title IX became the law of the land and prohibited schools that receive Federal funds to discriminate on the basis of sex.

Back then, it was not uncommon for high school girls to be steered to courses that narrowed their future options. High schools routinely excluded girls from classes that stood to give them the skills to compete for higher-paying jobs. Those who overcame these obstacles and proved themselves worthy of college admission often faced new barriers, such as quotas that limited female enrollment.

This held especially true in the professional schools for such disciplines as law and medicine. The stories are legend of women who made it into these schools, even graduated first in their class, yet they still endured shunning and harassment for their efforts.

Thanks to the vigorous enforcement of Title IX as well as our society's greater acceptance of women in the workplace and on the playing field, more women than ever are playing sports, graduating from college, and pursuing their dreams.

For example, we have seen explosive growth in certain girls' and women's sports in high school and college levels. In 1971, before Title IX went into effect, more than 294,000 girls participated in high school sports. Last year, that number exceeded 2.7 million. That is an 847 percent increase.

Between 1981 and 1999, the number of college women's teams rose 66 percent. According to the GAO, colleges created nearly 3,800 new women's sports teams, including 846 soccer teams, 516 cross-country teams, 432 softball teams, 350 volleyball teams, 304 indoor track teams, and 302 basketball teams.

In 1972, when Title IX became law, 44 percent of all bachelor's degrees went to women, as compared to 57 percent in 2000, the most recent year for which data is available.

Today, the majority of college students are women, and many are entering professions that once excluded them.

In 1972, only 9 percent of medical degrees went to women as compared to nearly 43 percent in 2000. In 1972, only one percent of dental degrees went to women, compared to 40 percent in 2000. And in 1972, only 7 percent of law degrees went to women as compared to 46 percent in 2000.

It is no longer unusual to see women in positions of power and influence, including running large corporations, ruling from the bench, or advising the President of the United States. Women fill key leadership positions throughout the administration, including at the U.S. Department of Education.

Clearly, the changes brought about with the help of Title IX have greatly expanded the opportunities for girls and women to achieve their greatest potential. And we at the Department of Education are working to build on these successes.

President Bush put it best when he said "Tremendous advances have been made in the fight for equality. But we must remain diligent in enforcing our Nation's laws. And we still have work to do in this area."

Indeed we do. As U.S. Secretary of Education, I am proud to be a part of implementing the President's vision of a Nation where civil rights laws are enforced fairly and vigorously.

In that regard, the Department of Education works diligently to address complaints of Title IX violations. Let me give you a few recent examples.

The Office for Civil Rights received a complaint from a school district that girls' basketball games were never scheduled during prime playing time, like Friday nights, as the boys' games generally were. We found this not only to be true in that district but also in seven other districts in the same area.

The Office for Civil Rights entered into a commitment with all these districts, and starting with this upcoming school year, all eight districts will provide equal opportunity for boys and girls to play on prime time nights.

In another case, we received a complaint against a school district alleging that the athletic facility for the girls' softball team was inferior to that provided for the boys' baseball team. We found the charge to be true, and the school district agreed to build a comparable girls' softball facility on the high school grounds.

In yet another case, we worked with a State's school board association to help develop a model policy barring harassment of students and staff based on sex, race, national origin or disability.

Last month, the Office for Civil Rights and the school board association issued a letter announcing the model policy. We are now working to help them spread the message to all schools in that State, and we are sharing this model throughout other States.

Finally, after we investigated a number of complaints against one university, the school agreed to significant changes, including: recruiting female athletes from high schools and providing athletic scholarships for them; providing female athletes with the same opportunities to attend summer school as their male counterparts; providing the same benefits for coaches of women's sports teams as are provide for coaches of men's teams; and providing lockers for the women's basketball team, installing lights on the women's soccer field, and renovating the softball field.

These are just a few examples, but each one of them speaks to this administration's commitment to the hopes and dreams of thousands of girls and women in our Nation's schools.

When we say we want no child left behind, we mean it literally—none. Our goal is to bring out the best efforts in all of our young people in our Nation's schools, from kindergarten through college.

We celebrate not only the success but also the spirit of Title IX, which says "Open to all." Listen to the words that are at the heart of Title IX, and I quote: "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."

This administration is committed to those words.

As you know, there are criticisms from a number of quarters about our commitment to access to all athletics. Some say we have gone too far; others say we have not gone far enough.

For example, there are college administrators who say the Department has failed to provide clear guidance on how to comply with Title IX. There are also groups that allege that the Office for Civil Rights has failed to effectively enforce Title IX, causing the elimination of men's teams.

Some would like to settle this in the courts, but we believe the better approach to this is to discuss all these questions openly in a forum where all voices and all points of view are heard.

Earlier today, I announced that we will bring together 15 experts to fund the Committee on Opportunity in Athletics. These are people who are on the front lines facing the difficult issues in athletics every day. I am proud to say that Cynthia Cooper, former head basketball coach—

The CHAIRMAN. Excuse me, Mr. Secretary. They have called for the vote. I know you are only able to stay until 4 o'clock, but Senator Murray will be right back. We very much appreciate it, and I apologize to you for these votes.

Secretary PAIGE. That is quite all right, Senator. I understand, and thank you for your leadership here.

[Recess.]

Senator MURRAY [presiding]. Secretary Paige, I understand that you had not quite finished your statement, and I would like to give

you the opportunity to do that, and then I believe I have time for a couple of questions before you have to leave, and I will also turn to Senator Gregg for questions.

Secretary PAIGE. Yes. Thank you.

I am proud to say that Cynthia Cooper, former head coach of the Phoenix Mercury basketball team, will be our chairperson for this commission. I know you will remember Cynthia as one of the brightest starts in the WNBA, and I am confident that she will be a great leader for this team.

Ted Allen, athletic director at Stanford University, will be a co-chair for the commission.

The rest of the commission includes Percy Bates, a professor and director of programs for educational opportunity at the University of Michigan and faculty representative to the Big 10 Conference in the NCAA; Bob Bowlsby, director of athletics at the University of Iowa; Genee DeFilippo, athletic director at Boston College; Donna DeVarona, chairman of the United States Olympic Committee's Government Relations Committee. Donna twice won Olympic gold medals in swimming and cofounded the Women's Sports Foundation.

Judy Foudy is president of the Women's Sports Foundation and captain of the U.S. national women's soccer team.

Tom Griffith is general counsel at Brigham Young University.

Cary Groth is athletic director at Northern Illinois University.

Lisa Graham Keegan is CEO of the Education Leadership Council and former Arizona superintendent for public instruction.

Muffet McGraw is head coach for women's basketball at the University of Notre Dame.

Mike Slive is commissioner of Conference U.S.A.

Rita Simon is a professor at American University and president of the Women's Freedom Network.

Graham Spanier is president of Penn State University.

And finally, Deborah Yow is director of athletics at the University of Maryland.

As you can see, the Commission on Opportunity in Athletics includes many outstanding professionals. Their mission will be to gather facts, listen to what American people have to say, and report back to me with their recommendations by the end of January.

I know that questions of fairness often generate strong opinions on both sides, and I welcome that debate. I believe that reasonable people can disagree and still find common ground.

I am confident that with the help of the Commission, we can learn how we can do a better job of enforcing a good law that represents hope for so many Americans.

Madam Chairman, I want to thank you and the members of the committee for this opportunity to speak. I look forward to working with you as we go forward, because I know that you share the commitment with the President, who is committed to expanding opportunities for all Americans, girls and boys, women and men, in the classroom and on the playing field.

Thank you very much. We will respond to questions.

Senator MURRAY. Thank you very much, Mr. Secretary, and I apologize for the disruptions this afternoon, but we will try to move forward now.

Secretary PAIGE. We understand. There are a lot of things going on, and we understand that.

Senator MURRAY. Yes, and I understand that you have to leave in just a few minutes, so let me take this opportunity to ask just a few questions.

Secretary Paige, in response to the National Wrestling Coaches' Association lawsuit that questioned Title IX's three-part test, the Department presented procedural arguments in calling for its dismissal. By not addressing the lawsuit's merit, the administration's faith in the three-part test seems questionable to me.

What is your opinion of the three-part test, and can you tell me if the Department is considering a change in its Title IX enforcement policy?

Secretary PAIGE. We are going to rely a good deal on the commission, and what we want to hear is an open discussion of the issue, a public discussion of the issue, and we want to gain information from all parties.

We do know that there are a lot of people now who do question some of the elements of the three-part test, and we are not sure that that has any validity at all, but we do want to have an open discussion of thoughtful and caring people who have had experience operating this law—these athletic directors, for example, Debby Yow, who runs a major athletic program at the University of Maryland, a championship program, can give us a lot of advice.

So as we proceed, we would like to work with you and other members of the Senate.

Senator MURRAY. Do you expect the commission to come back with recommendations for changing Title IX policy?

Secretary PAIGE. I am not sure what they will come back with. I cannot prejudge what the commission might come back with.

Senator MURRAY. Will you adopt whatever they come back to you with?

Secretary PAIGE. We will not automatically adopt what our commission comes back with, but we will certainly take it into consideration.

The commission is built intentionally of independent, thoughtful, caring people, and I am sure they will come back with their own opinion and will not be influenced by what we say. But we want to listen to them, and that is why we empaneled them.

Mr. JONES. Madam Chair, may I respond to the point about the lawsuit?

Senator MURRAY. Yes.

Mr. JONES. As the Department's general counsel, it was my office that assisted the Justice Department in drafting that motion. I have heard the criticism that our focus on the procedural points in the case somehow suggests our view of the law and the merits. I think that that is certainly incorrect. There is a bit of reading between the lines that goes into this, but I think that what we did in that case was really something that is very routine in litigation. The litigation process is a plodding one. What we did in that case, I think, was to make a very strong argument that the case that was filed by the National Wrestling Coaches' Association does have some substantial procedural weaknesses, and I think we are confident that we can actually win that argument and in fact dispose

of the lawsuit. It just simply was not the time in that motion for us to address the merits, and if we get beyond this motion to dismiss, if some of that case survives, then, we are certainly eager to get into the merits, and we will defend the Department's position.

Senator MURRAY. Okay. Let me ask you this. For the past 30 years dating all the way back to 1968, the Department has conducted a survey of schools every 2 years to collect vital information about students that is broken down by race, gender, national origin, disability.

I have a copy of the survey here, and some of the questions it asks include, "Please indicate the number of inter-scholastic athletic teams where only male students are on the team, where only female students are on the team, where male and female students play. Please report the total enrollment for the current school year as well as the number of students in gifted and talented programs, LEP programs, et cetera. If in the previous school year, your school administered a district or State test that students are required to pass or that is used as a significant factor in making promotion decisions for all students, please provide the number of students tested and passed, tested and failed, not tested, alternative assessments."

This is an assessment that the Department has been doing for 30 years. Some of the things this information enables the Department to know is how to enforce the nondiscrimination provisions of Title IX, Title VI, and the Rehabilitation Act. In fact, because this survey is so well-established, the Department was considering adding questions to it for the purposes of collecting the outcome data required under the new education bill.

Can you tell me if it is true that the Department is now considering or already has decided to stop sending out the OCR survey altogether?

Mr. REYNOLDS. Senator, I can assure you that that is not true. We will collect the data—

Senator MURRAY. Through the same survey, that survey?

Mr. REYNOLDS. I do not have a copy of the survey that you have in your hand, but we have not made any significant modifications to the last survey. There may have been a question or two added or subtracted, but the survey will take place.

Senator MURRAY. Well, it is the method of the survey that we are asking about.

Mr. REYNOLDS. Yes, and as I said, there have been no major changes to the survey that was done. I believe the last one was done in 2000.

Senator MURRAY. So you expect to continue to do it as you have for the past 30 years, with the same information requested?

Mr. REYNOLDS. The survey has changed over time, and we have to assess what our concerns are. We have to make adjustments to take into account what is happening out there across the 12 regional offices. But there will not be any radical changes to the—

Senator MURRAY. When do you expect to make a final decision about what it will look like?

Mr. REYNOLDS. The decision has already been made.

Senator MURRAY. Secretary Paige, let me ask you one last question. Thirty years after the enactment of Title IX, the patterns of

enrollment in vocational and technical programs resemble the sex-segregated patterns that existed prior to passage of the law. On June 6, 2002, the National Women's Law Center filed 12 petitions for compliance review with each of the regional offices of the Office for Civil Rights, calling on the Federal Government to conduct a full investigation of the sex segregation in vocational programs and remedy the discrimination that has resulted in erecting barriers to full educational opportunities for girls and young women.

Can you tell this committee how and when you will be moving forward on addressing those petitions?

Mr. REYNOLDS. We recently received the petitions, and we have responded to them by acknowledging receipt of the petitions. We are in the process of reviewing them, and after we have reviewed the data, and also relying on data that we have collected at OCR, we will make a determination as to what the next steps should be.

Secretary PAIGE. Senator, may I apologize now. It is very important that we leave at this moment, but let me promise you that we are interested in your points, and we are open to any discussion or questions that you might have for us if you will just give us a ring or invite us up.

Senator MURRAY. Thank you. I do have some other questions that I will submit for the record.

Let me just ask Senator Gregg if he has any questions before you leave.

Secretary PAIGE. Thank you.

[Questions of Senator Murray with responses were not available at press time.]

Senator GREGG. I appreciate the fact that the Secretary has given us some extra time today.

First, I think your statement was excellent, Mr. Secretary. I think that setting up this commission is a superb idea.

I want to associate myself with the strong support for Title IX. I have two daughters, both of whom are quite athletic and both of whom have been great beneficiaries—in fact, one of my daughters was the only child in her high school who played 12 semesters of varsity sport, including boys, and was captain of three teams. So she took advantage of the program rather aggressively.

It has been a huge success, and it has certainly leveled the playing field to a great degree. But as has been pointed out, there are concerns, there are issues, and they should be looked at, and that is what this commission is set up to do. It has many talented people. I am very impressed with the list of people, and I am sure they are going to give us very blunt and I suspect very substantive input into what we should do if there is something we can do to improve the law, and I look forward to their report.

Thank you for taking the time to testify today.

Secretary PAIGE. Thank you, Senator.

Senator MURRAY. Thank you very much, Mr. Secretary, Mr. Reynolds, Mr. Jones.

Secretary PAIGE. Thank you for this opportunity, Senator.

I would like to just make this last statement, that as we celebrate not only the success but also the spirit of Title IX, which says "Open to all," we continue to look forward to working with you on this.

Thank you.

Senator MURRAY. Excellent. Thank you very much, Mr. Secretary.

If our second panel would come forward, I will go ahead and make the introductions as you are moving into place.

As our second panel comes forward, let me apologize again for the disruptions this afternoon. I think we have lost some of our committee members; some of them expect to come back. But we really do appreciate all three of you joining us here this afternoon.

We are honored to have Senator Birch Bayh with us. He is the father of the Title IX legislation. Senator Bayh served his home State of Indiana in the United States Senate for three terms from 1962 to 1980. Throughout his time in the Senate, Senator Bayh was a key figure in the historic legislation affecting the American Presidency and the individual rights of women, minorities and youth.

Currently, Senator Bayh is a partner in the Washington, DC law firm of Venable, Baetjer, Howard, and Civiletti. I am pleased to have Senator Bayh join us today to discuss the implementation and progress of Title IX.

I am also pleased to have with us today Nancy Hogshead-Makar, a triple gold medalist in the Olympics for swimming. Since retiring from swimming, Ms. Hogshead-Makar has been a high-profile advocate of gender equity in sports. She is one of the Nation's foremost experts on Title IX, particularly within the context of intercollegiate sports.

She is also a former president of the Women's Sports Foundation. Today she is a professor of law at the Florida Coastal School of Law, where she teaches tort and sport law. In addition, she is the director of the Legal Advocacy Center for Women in Sports.

I would also like to welcome Mr. Art Coleman, who is currently counsel at Nixon Peabody, LLP in Washington, DC, where he provides policy and advocacy services to educators and policymakers. Mr. Coleman also served in the Clinton Administration as deputy assistant secretary of the U.S. Department of Education's Office of Civil Rights from 1997 to 2000. Prior to his appointment, he was senior policy advisor for the assistant secretary for civil rights.

Mr. Coleman's focus at the Department of Education included issues related to standards reform and test use, students with disabilities, affirmative action, sexual and racial harassment, and gender equity in athletics.

I would invite our witnesses to submit their full testimony for the record and address anything that you have heard in the prior panel as well.

Senator Bayh, we will begin with you.

STATEMENTS OF HON. BIRCH BAYH, FORMER U.S. SENATOR, PARTNER, VENABLE, BAETJER, HOWARD AND CIVILETTI, LLP, WASHINGTON, DC; NANCY HOGSHEAD-MAKAR, PROFESSOR, FLORIDA COASTAL SCHOOL OF LAW, JACKSONVILLE, FL; AND ARTHUR L. COLEMAN, NIXON PEABODY LLP, WASHINGTON, DC

Mr. BAYH. Thank you, Madam Chairman, Senator Wellstone. I appreciate the thoughtful comments that you and your colleagues have directed my way.

I must say that I think there were many fathers and probably even more mothers of Title IX, and I consider myself fortunate to have been there at the time that this matter was before us.

My interest in Title IX has been something that has been near and dear to my heart for a good number of years.

If the committee will permit me to emphasize one personal note, I fell in love with the 19-year-old daughter of a wheat farmer in Eden, OK who was a straight-A student, president of the student body, and was elected president of Girls' Nation. Her first goal in life was to the have the opportunity to get a degree from the University of Virginia. Unfortunately, the admissions director had a sign on the door: "Girls Need Not Apply."

So I had a full appreciation for the next 26½ years of the importance of having women treated equally across the board.

Title IX has one goal and just one goal—I think I can speak for all the sponsors; Senator Kennedy was one of them, and Senator Mikulski was there when we were wrestling with it. Our interest really started with the passage of the ERA through the Congress, and unfortunately, we were three votes short of getting it ratified, but in the process, the evidence was absolutely unequivocal that the way in which young and not so young women were treated on our college and university campuses was really unconscionable. But the one goal was to ensure equality of education for all of our students throughout the Nation's school system.

I think it is important in some of the furor that has been raised about certain aspects of Title IX to equate this goal in personal terms. Our goal is to see that our daughters will have the same opportunities as our sons. And it seems to me that when you state it that way, the argument sort of disappears, because I do not know of any set of parents who would not want to see their sons and their daughters treated equally.

With the emphasis having been placed more recently on the athletic accomplishments of Title IX, which are significant, I think that in the debate, we tended to overlook what I feel is an even more important accomplishment, and that is the academic accomplishments. Only a small percentage of a student body will have the good fortune to participate in athletics. All of them are there to get a good education, and that will go with them long after they have the opportunity to participate in sports.

As my colleague here looks at her three gold medals, I think she has to be just as proud as, certainly, the practical aspects of being able to be a professor of law at one of our fine institutions of higher education.

When we first started—and 30 years seems like a long time ago—but when we first started, statistics have been bandied

around, but when you look right at it, one percent of the athletes were women, 2 percent of the budget. We have had a recitation of what has happened in the interim, where we have gone from about 32,000 to 150,000, a fivefold increase, and it has been eightfold, going from 300,000 to 2.7 million in our high schools, which I think is a sign of the times. In fact, I think the real sign of the times is to know the around the athletic field where I jog on Saturday and Sunday, there are equal numbers of little girls and little boys out there kicking the soccer ball.

I think that that is where we are going. We are changing the stereotype of the, quote, "traditional" role of women. And I think that Title IX has played a part in that, and I share the pride of others who were involved in that.

I would like to emphasize one figure that has already been mentioned, but I do not think we can overlook the fact. First of all, there are no quotas intended by anybody who was implicated in the passage of Title IX. The courts have already said that, but all you have to do is read the language of the one-sentence amendment. There are no quotas involved at all. And as far as taking opportunities away from men, the Title IX sponsors did not want to take away from men—they wanted to give more to women—and that is the way to equalize opportunity, not by detracting from opportunities for men, but by giving more opportunities to women.

Art Coleman will be able to recite in some detail, since he had responsibility for implementing it, the various opportunities that are available that show that there are no quotas, and there are other ways of reaching the goal that we are all after, namely, equality.

So the criticisms are quotas, denying men, and the third one is that little girls are not interested. Well, when you have an 800 percent increase in high schools in this period of time, do not tell me that young women are not interested. It is very much like "Field of Dreams" which, as an incorrigible optimist and a sentimentalist at heart, I can still hear Kevin Costner responding to the voice: "Build it, and they shall come." Title IX builds it, and women have been coming and coming and coming, and they will continue to come as long as they have the opportunity to do so.

The last criticism of the four basic criticisms is that nobody likes to watch little girls play anyway. Well, let me tell you, anybody who has any relationship with universities like Connecticut or Tennessee, like Maryland or Virginia, like my Boilermakers—

Senator MURRAY. University of Washington.

Mr. BAYH [continuing]. Well, I was saving Washington for later, but I will say Washington—but you could not buy a ticket to Mackie Fieldhouse when the women's teams were there. They are now on television, and people are watching them on television.

I wanted to particularly cite the ingenuity of Washington State. All the concern with the number of football scholarships going to men, and there can be no denying the number of scholarships and the amount of resources that go into football—it is my understanding that the athletic department at Washington State has been creative enough to develop a rowing program where they have exactly the same number of women rowers on the water as they have men playing on the turf on the football field.

That is the kind of ingenuity that I think it takes to bring up the tide that will help women without detracting from men.

I have already spoken longer than I intended, but the benefits attendant to playing athletics have already been cited. Some of us have been fortunate enough to have had that opportunity as men. Now it is good to see that women have that same opportunity to develop the lifestyle characteristics that will serve them and their families well for the generations to come.

We still have some unfinished business out there despite all the progress that has been made. I think the last survey of Division I schools showed that 53 percent of the undergraduates were women, and only 41 percent of them are athletes; 36 percent of the budget goes to men's sports.

We have had major improvements where, before Title IX, 18 percent of the faculty were women. That has risen to 37 percent, but that is still short of equality, and some of the nuances of how you get to be a professor are very difficult for women, and they need to be addressed.

Let me conclude my remarks on a personal note just as I started. Several years before I met this young daughter of a wheat farmer, I was sitting in my home out here between Rockville and Bethesda. My father had coached four sports at Indiana State, and he had been asked to come over and be director of physical education in the public school system. He announced at dinner to my mother and my sister and me that the next day, he was going to testify before Congress. Well, that was pretty tall stuff. We asked him, "What in the world are you going to say?"

He said, "Well, I am going to tell them that it is long overdue appropriating money for physical education for girls, and I am going to tell them that little girls need strong bodies to carry their minds around just like little boys." And, Madam Chairman, they still do.

Thank you for your courtesy.

[The prepared statement of Mr. Bayh follows:]

PREPARED STATEMENT OF MR. BIRCH BAYH

Mr. Chairman and members of the committee: I want to thank you for your invitation to testify this afternoon on the implementation and progress of Title IX. As you know, June 23 marked the 30th anniversary of Title IX which prohibits sex discrimination in all aspects of education. As the chief sponsor of this legislation, I think we can all be proud of the fact that, in my judgment, it is the most significant contribution to equality for women since the 19th Amendment to the Constitution, which gave women the right to vote. However, despite the doors of opportunity Title IX has opened for women and girls, today it is under serious attack.

Opponents declare that Title IX requires "quotas" for women, particularly in athletics. President Bush, his Secretary of Education, Roderick Paige, and his recess appointment to the DOE's Office of Civil Rights, Gerald Reynolds, have all made this assertion. A principal aide to Attorney General John Ashcroft, whose Justice Department must defend Title IX in court, purports a "relentless political agenda" by those she defines as "turning the grant of opportunity for women guaranteed under Title IX into a grant of "preference." Some editorials describe supporters of Title IX as "zealots who threaten any college or university that fails to conform to their notions of gender and racial equality."

Much of this opposition results from a lack of knowledge concerning what Title IX does and does not do. Let's look at the facts. Nothing in Title IX requires quotas, as each of the eight federal courts of appeals that has considered the issue has held. In fact, a school can comply with Title IX by showing simply that it is making progress in expanding opportunities for female athletes or that it is accommodating

the interests of female students at the school, whatever the number of opportunities it provides.

Much of the recent furor is due to the misperception that Title IX forces schools to terminate men's teams, like wrestling. Let me make the record clear. The proponents of Title IX had no intention of taking away opportunities from young men. Our goal was to provide more opportunities for young women. In most instances that has been the result. The law's detractors ignore the fact that 72 percent of our colleges and universities have added teams for women without cutting any teams for men. Men's budgets and participation opportunities in sports have increased overall. There has been an enormous growth of other men's teams, such as baseball, which existed in 642 NCAA member schools in 1982, and exists in 857 schools today. It's not female athletes who are crowding out wrestlers; it's the more popular men's programs that continue to dominate sports budgets, leaving women's and other men's teams with only a small share of the pie. Fortunately, many dedicated and creative school administrators have established programs which, like football for men, create many slots for women. Washington State, for example, now offers rowing for women. They field as many women on the water as they do men on the turf. New teams for women have been created and, in many instances, women's teams have become profit centers when properly promoted. In addition, alumni and other sources of support have been developed.

A flashback to the pre-Title IX era shows what is at stake. Prior to Title IX, young women were only one percent of varsity college-level athletes, they got a meager two percent of overall athletic budgets, and scholarships were almost nonexistent. Today, the number of college-level women playing sports has ballooned from less than 32,000 in 1972 to over 150,000 today (and from about 300,000 to 2.78 million at the high school level). Along with their male peers, women now enjoy the attendant benefits of increased health, self-esteem, academic performance, and leadership skills, as well as decreased drug use, smoking, and teen pregnancy.

On the world stage, we have taken pride in the medals won by our female Olympians and in our World Cup soccer champions. At home, we see banner sports coverage of our women's NCAA basketball teams. And, contrary to conventional wisdom that "no one will pay to see women play," they are packing them in at schools like Purdue, Tennessee, Connecticut and others where women's basketball is taken seriously.

But despite the progress, Title IX's mission is far from complete. Women are 53 percent of the student body at Division I colleges, but are only 41 percent of the athletes and receive only 36 percent of athletic operating budgets. Hundreds of schools fail to provide women with their fair share of athletic scholarships. The same disparity exists at the high school level.

Tragically, the attacks on Title IX divert attention from the law's dramatic improvement in academic opportunities for women students.

Prior to Title IX, many of our nation's colleges and universities simply excluded women outright; many had quotas (most medical and law schools limited the number of women to 15 or fewer per school); and many required women applicants to have significantly higher grades and SAT scores. Women students received only half the number of scholarships as their male counterparts, with the value of those scholarships averaging 50 percent less than those of men. Women students were denied outright other important financial assistance, such as the Rhodes program. Only 18 percent of the faculty in higher education were comprised of women.

Thirty years later, women students represent over half of all undergraduates. They compete for financial aid whether they be single, married, parents or part-time students. And, women constitute 37 percent of all faculty.

We must not underestimate the tremendous strides that women and girls have made in education. At the same time, we must not allow a mistakenly-drawn debate to threaten the progress that still needs to be achieved to reach true equality in our nation's classrooms and playing fields. The key question is do we wish less opportunity for our daughters than our sons? The answer speaks for itself. Therein lies the success of Title IX.

Senator MURRAY. Thank you very much, Senator. We really appreciate you coming today and for all the work that you have done on behalf of so many of us who followed you.

Senator MURRAY. Professor Hogshead-Makar.

Ms. HOGSHEAD-MAKAR. I would like to thank you for this opportunity to talk about Title IX.

I come to you wearing two hats. With the one hat that I wear as an Olympic champion, my life has been affected by Title IX in the most personal way that you can imagine. My first year being world-ranked was 1977, and there was an article in the paper, and I said, don't women usually peak physically at around the age of 18, and wouldn't that be perfect for the 1980 Olympics. In my mind, women's athletic careers, like Donna DeVarona's, stopped when they graduated from high school; there was no place else for them to go.

In around 1979, 1980, when I graduated from high school, women started getting scholarships. I had not planned on swimming, but if I could get a college scholarship, I was more than ready to go.

For people who were just 2 or 3 years older than I was, it did not matter that they had the same athletic credentials that I had. They were not going to get a college scholarship, and they were not even going to get an opportunity to participate in college. Without this legislation, it did not matter that I was going to get up at 4:45 in the morning and swim for 2 hours, an hour and a half during school PE, running and lifting weights, and two and a half more hours after school—none of that would have mattered for people just a few years older than I was. It was because of this legislation.

I feel very proud that I earned a college scholarship, and if you ever have any doubt about whether your public service here makes a difference in the individual lives of citizens, you need look no further than my life.

As I come today talking with the hat of an attorney and someone who works in this field, I have been a long-time advocate. Donna DeVarona came and talked to us at the 1984 Olympics after competing in college, and she told us there was something called the Grove City decision, which was a Supreme Court decision that essentially gutted Title IX. And Senator Bayh and others had to come back and get it put back. But that sort of put the fire under me to make sure that other women had the same opportunities that I was able to enjoy, to make sure that those opportunities were protected by law.

That summer, I became an intern at the Women's Sports Foundation and eventually went on to become their president, and now am able to operate a Legal Advocacy Center for Women in Sports at Florida Coastal School of Law.

Where all of this comes from is my profound belief and respect for the strength of a sports experience for all of our children, for boys and girls. Having had that experience is as important as math class. It is where you learn valuable life lessons that it is difficult to learn in the classroom.

I have a young son—and I will be happy to show you a briefcase full of pictures if you are interested—and I know that making sure that he finds a successful sports experience is one of the best parental decisions that I will ever make for him.

We have a lot of reasons to celebrate Title IX today, but recently, those who oppose Title IX have become more vocal. For example, Jessica Gavora, who serves as a top aide to Attorney General John Ashcroft, has written a misleading book titled, "Tilting the Playing Field," that is critical of the regulations implementing Title IX.

And, as has been mentioned here, the National Wrestling Coaches' Association has filed suit against the Department of Education claiming reverse discrimination that Title IX imposes quotas and requires cuts in men's teams.

In both cases, the anti-Title IX rhetoric does not reflect reality. In particular, the following long-discredited arguments used against Title IX have reappeared: (1) that Title IX is a quota law; (2) that these quotas force schools to cut men's teams; and (3) that women's opportunities are inflated—that is, they do not even desire these opportunities in sports because of a purported inherent lack of interest in athletics.

All of these claims are factually insupportable and have been resoundingly rejected by the courts and by society in general. Instead, Title IX protects both boys and girls from discrimination. It has shepherded new opportunities for boys and girls to play sports and ensures that educational decisions are not based on overly broad generalizations or stereotypes for boys and girls.

Some of those misleading statements have already been addressed here, so I am just going to focus on the myth that Title IX is hurting men's athletics.

The law and regulations do not require that schools cut teams. In the 1950's, Congress passed desegregation laws that made it impermissible to operate racially-segregated public facilities like parks and swimming pools. Some communities chose to come into compliance with this by closing those public facilities, by closing the swimming pools or the parks.

Similarly here, what the Supreme Court said was that that is okay as long as it is equally bad for everyone.

The same thing is happening with schools making those individual choices to cut men's teams. But unlike the desegregation laws, where we put the blame where it appropriately should have been—we said that that is a morally bankrupt decision for you to close that pool rather than desegregate it—nobody was trying to weaken the law or say that there was something wrong with desegregation. But that is what is happening here. They want to reduce the opportunities and protections that women have in sports rather than do something to help men's athletics and men's opportunities in sports.

The real issue here is the athletic department's financial responsibilities, not weakening effective civil rights laws. I am very familiar with Jessica Gavora's book; I have read it and have debated her many times, so if you have many questions, I will be happy to answer them.

I am out of time, but I just want to say that we have so many reasons to celebrate 30 years and what has happened with Title IX, and I would hate to see all of those gains lost at this critical time right now.

Thank you very much for having me here.

Senator MURRAY. Thank you very much for an excellent statement.

[The prepared statement of Ms. Hogshead-Makar follows:]

PREPARED STATEMENT OF NANCY HOGSHEAD-MAKAR

Mr. Chairman and Members of the Committee: Thank you for providing me with the opportunity to testify today regarding Title IX of the Education Amendments of 1972, a landmark civil rights law passed 30 years ago to eliminate sex discrimination in American education.

During my testimony today I speak with two voices: one as a female athlete who was personally and directly affected by Title IX. I proudly earned a full athletic scholarship to Duke University unlike the swimmers just a few years my senior who had equivalent credentials. That scholarship kept me in swimming beyond my high school days, and I went on to become an Olympic champion at what was then considered the practically geriatric age of 22. I know hard work and dedication were indispensable in becoming a champion, but the law was equally essential in giving me an opportunity to share with male athletes in a profound educational experience that continues to be a foundation for and shape my life experience today. Without Title IX, a number one world ranking wouldn't have been enough to earn an athletic scholarship. Without Title IX, getting up at 4:45 in the morning for a two hour workout before class, year in and year out, and an undefeated high school career wouldn't have been enough to qualify for a college scholarship. If you ever question whether your public service in passing a law makes a difference in the individual lives of citizens, look no further than the impact Title IX has had on my life.

I also speak as a long-time advocate for women in sports. In 1984, Donna DeVarona spoke to the United States Olympic Team about the infamous Grove City decision, and how our college athletic opportunities were no longer protected by law. I knew how much my athletic career had shaped me and like Donna, I wanted to make sure that other women had access to this important piece of an education. The next summer I interned at the Women's Sports Foundation, and I eventually became its President. I am currently an attorney and law school professor at the Florida Coastal School of Law in Jacksonville Florida with significant experience in legal advocacy for women in sports.

My long-term advocacy comes from a profound respect for the strength of a sports experience for all our children. Research consistently demonstrates the significant health, academic, and emotional benefits, including promoting responsible social behavior for all our children who participate in sports programs. I am now the mother of a young son, Aaron, and I know that providing him with a successful sports experience will be one of the best parental actions that I can take.

While we have ample reason to celebrate the 30th Anniversary of this historic legislation, recently those who oppose Title IX have become more vocal. For example, Jessica Gavora, who serves as a top aide to Attorney General John Ashcroft, has written a misleading book, Tilting the Playing Field, critical of the regulations implementing Title IX, and the National Wrestling Coaches Association has filed suit against the Department of Education, claiming reverse discrimination—that Title IX imposes quotas and requires cuts in men's teams. In both instances, the anti-Title IX rhetoric does not reflect reality. In particular, the following long-discredited arguments used against Title IX have reappeared:

(1) that Title IX is a quota law;

(2) that these quotas force schools to cut men's teams; and

(3) that women's opportunities are inflated—that is, they do not desire opportunities in sports because of a purported inherent lack of interest in athletics.

All of these claims are factually insupportable and have been resoundingly rejected by the courts and society generally. Instead, Title IX protects both girls and boys from discrimination, has shepherded new opportunities for boys and girls to play sports, and ensures that educational decisions are not based on overbroad generalizations or stereotypes about boys and girls.

1. MYTH: TITLE IX MANDATES QUOTAS

Nine out of our twelve Federal circuit courts who have ruled on the 20 year old three-part test are all in agreement: Title IX and its implementing regulations and policies are lawful and entitled to deference. They do not impose quotas. To use the word "quota" when discussing Title IX is simply wrong.

The policies interpreting Title IX give schools broad flexibility to chose between three wholly independent ways to show that they provide non-discriminatory sports participation opportunities. Schools can either show that the athletic department's gender mix matches its general student body population, OR that the institution has a history and continuing practice of expansion for women's athletics, OR that it is meeting the interests and abilities of the female athletes on campus. If a school can meet any one of these tests, it complies with Title IX's participation requirements.

The current regulations are a fair and principled way of measuring whether a school is or is not discriminating against the under-represented sex. Without them, a wanna-be softball team would be left without solid benchmarks to make their case to the athletic department that opportunities are lacking. If a school is not providing women with opportunities matching their student-body enrollment, if it does not have a history and practice of improving opportunities for women, AND if the school has unmet demand among its female athletes, then surely this inability to meet any of the three tests is a clear indication that the school is discriminating against these potential-softball players when it denies them the resources to be able to participate in this important educational program.

Comparing men's and women's participation rates is appropriate in the unique sex-segregated world of athletics, as opposed to the medical school or law school, where admission is gender-blind. Because of this sex-segregation, schools decide—in the first instance—how many teams they will sponsor and how many slots they will allocate for female, as compared to male, students. As a result, "determining whether discrimination exists in athletic programs requires gender-conscious, group-wide comparisons." Title IX simply requires that schools allocate these school-created slots in a nondiscriminatory manner.

Title IX does not require "proportionality" or any other mathematical test, as some are alleging. There are many schools that are conducting athletic programs that are in compliance with Title IX with athletic program male/female participation numbers that are not proportional to the percentages of men and women in their general student bodies. For example, the Office for Civil Rights reviewed 74 cases involving the three-part participation test between 1994 to 1998. Only 21 of these schools—less than one third—were held in compliance under the proportionality prong of the three part test. The other 53 schools complied under Title IX's other two tests. The regulations provide a meaningful way to measure whether or not a school is providing opportunities between the sexes fairly; they are flexible and allow schools to find the answers that best serve their needs.

2. MYTH: WOMEN ARE NOT INTERESTED IN SPORTS OR ATHLETICS PARTICIPATION

I find this assertion to be not only dangerously stereotypical and flawed, but also insulting to all women. Thirty years ago, when just one out of every 27 high school girls played a sport, girls heard the same argument—that they weren't as interested in sports. Today one out of every 2.5 high school girls plays a sport and more girls are playing all the time, yet this assertion is made with a straight face. I don't want my son to hear that "boys are more interested in sports than girls", "boys are better or more interested in math and science than girls" or "girls are more interested in dance than boys" because these statements become self-fulfilling prophecies if we say them enough to our children. Just a short while ago, our daughters heard that professions like science and the law were for our boys, yet today women account for 50 percent of medical school students and law school students. To accept the notion that women are less interested in sports than men would simply maintain existing discrimination and curtail opportunities at artificially limited levels.

While at Duke University in 1981, women comprised just 27.8 percent of the collegiate-athlete population. Concluding that year that this was a "natural" percentage differential would have tragically limited female college scholarship athletes, preventing hundreds of thousands of women from engaging in this important educational experience. Furthermore, locking in a "natural" 60 percent male 40 percent female sports participation, as some foes of Title IX suggest, would be patently unconstitutional. Sex-based classifications are impermissible on the basis of just this sort of gender-based stereotype.

Development of women's interest in sports since the enactment of Title IX shows irrefutably that interest reflects opportunity. While fewer than 30,000 women participated in college sports before Title IX, today that number exceeds 150,000—five times the pre-Title IX rate. Girls in high school now are participating at a rate of 2.8 million per year—an 800 percent increase from pre-Title IX participation rates. Women's participation continues to be hampered by schools not sponsoring teams based on unfounded un-provable stereotypes.

Demand for sports participation by both boys and girls far exceeds our schools' resources. There are more than six million boys and girls playing high school sports today who are vying for fewer than 400,000 college athletic participation slots. With 2.8 million girls playing high school sports, it is inconceivable that schools cannot find women to play on the teams they create. That's akin to the National Football League claiming that it can't find enough football players to play (and be financially rewarded) in its league, when each year they draft less than two hundred players and there are currently 60,000 football players in the NCAA.

Finally, if it is true—as Title IX foes suggest—that women do not desire the sports participation opportunities that are foisted upon them, then a school will be deemed legally in compliance under the third prong of Title IX's participation test. If a school does not have unmet demand, if it is providing opportunities for the women athletes who attend the school, have the ability to play and want to play, then the school will be in compliance with Title IX.

Interest in positive-lifestyle activities—reading, science or sports occurs in our children because three things are in place: (1) adult leaders understand the importance of these skills and inspire and teach children to do these things, (2) children have the opportunity to access what is necessary to participate: books, science games or teams, fields and athletic programs and (3) the activity is structured to ensure that children have a fun and successful experience so they want to come back and do it again.

As Congress and the courts have consistently recognized, this stereotype is belied by the lessons taught by Title IX and by its very purpose. Everyone knows that sport gives considerable gifts to all our children: confidence, strength, courage and resilience. Everyone knows how important team sports are to success in the working world. Everyone knows the life-long health benefits of sports. Stereotypes shouldn't be—indeed, cannot legally be—used to justify discrimination.

3. MYTH: TITLE IX IS HURTING MEN'S ATHLETICS

The law and the regulations do not require schools to cut men's teams.

In the 1950s, Congress passed desegregation laws that made it impermissible to operate racially segregated public facilities like parks and swimming pools. Some communities chose to close those facilities rather than desegregate. The Supreme Court held that the community's actions were Constitutionally permissible, that communities could come into compliance by closing these public facilities. Similarly here, courts have held that schools have the choice to cut men's teams to come into compliance with non-discrimination statutes. But unlike the reaction to Title IX today, no one in the 1950s blamed the law for the community's morally bankrupt decision to close swimming pools. No one argued that the law should be weakened so that public swimming pools could remain all white. The blame for the loss of the pool went where it belonged—on the individual community's decision.

Rather than jettisoning a successful 30 year old federal law, the NCAA, school districts or local communities may wish to consider a rule that would prohibit this possible choice—a rule that would flatly prohibit schools from coming into Title IX compliance by simply cutting a men's sport. This solution offers a local, membership-based response to any perceived losses in men's sports, rather than endanger the gains that women continue to make on the athletic field.

Athletic Department financial responsibilities are the issues, not weakening effective civil-rights laws. Schools can afford to maintain all of our existing sports programs and add new women's sports if schools exercise fiscal responsibility and support each sport with a smaller piece of the budgetary pie. I mentioned earlier that our family includes our son, Aaron. All of our time and resources are currently directed towards Aaron. When a daughter arrives, the Hogshead-Makar family budget—like those of colleges and universities—will have to adjust to provide equitable sports opportunities for her, too. It wouldn't be fair or equitable to deny her educational opportunities just because our son was born first.

The facts do not suggest that women or Title IX are hurting men's athletics. In fact, men's sports participation in high school and college has increased since the law's inception 30 years ago. Schools themselves report that when they are deciding to add or discontinue a men's or women's team, the level of student interest in the particular sport was the most often cited factor. More important, two-thirds of the schools that have added women's sports to comply with Title IX did not eliminate any men's sports. And men's athletics expenditures continues to far out-pace women's expenditures—in Division I in the year 2000, for every dollar spent on women's sports, almost two dollars were spent on men's sports. We simply cannot believe rhetoric claiming that our daughters having an equal chance to play is causing men to suffer.

CONCLUSION

Mr. Chairman, we have many reasons to celebrate this 30th Anniversary of Title IX, but as I listen to those who oppose Title IX, I worry that all the hard work will be for nothing. It is imperative that we continue to work together around the shared goals embodied in Title IX to ensure that our daughters and our sons will have as many educational opportunities open to them in the future. Thank you.

Senator MURRAY. Mr. Coleman.

Mr. COLEMAN. Madam Chairman, thank you for inviting me to testify today about the law, Title IX, and its enforcement in the Department of Education. It is an honor to be here with the father of Title IX and someone who has lived its promise so vividly and so well.

Equal opportunity is at its core about giving all of our students an opportunity to fulfill their potential—to become another Sally Ride in space or another Mia Hamm on the soccer field or another Senator Murray sitting in this chamber as you are today.

This principle has particular resonance for me, not just because I am a former Federal official, and not because now I am a counselor to college and universities and States, working to help them comply with Federal laws—but also because I am the proud father of a 6-year-old girl and a year-and-a-half-old boy.

It was not too long ago that I had a conversation with my 6-year-old, and we were talking about what she wanted to be when she grew up. She said she wanted to be a nurse. We talked about how wonderful that could be and what good things she could do for people. And in passing, as we were ending the conversation, I said, "And maybe you will even decide that you want to be a doctor."

And she said, "Oh, no, I could never do that. Boys are doctors, girls are nurses."

After I picked myself up off the floor, she and I had a slightly longer conversation about the fact that boys and girls can be anything they want to be if they put their minds to it.

So when I am not doing my most important job of being a parent, I am an attorney who counsels colleges and universities, and I believe today, wearing that hat, just as I believe for my 6 years at the Department of Education, that understanding Federal legal requirements means that you understand this—at the end of the day, it is about reaching and affirming sound educational judgments.

There is a fundamental alignment between what Federal civil rights law requires and what good educational common sense means.

Today I want to address in the context of Title IX athletics, specifically the existing common ground that frequently gets overlooked as this debate becomes polarized and heated, and I think quite unfortunately so.

Title IX is one Federal law that has enjoyed bipartisan support for 30 years. In both Republican and Democrat administrations, on both sides of the aisle in Congress, and in the overwhelming majority of Federal court opinions, we have seen a repeated reaffirmation of the existing standards of what the Department of Education enforces today.

During my tenure with the Office for Civil Rights, we very intentionally did not change the law or change the standards that govern Title IX athletics enforcement. After hearing from colleges and universities and other interested parties, what we discovered was that there were real issues about consistency in enforcement across the country, and there were issues about clarity and confusion. So we worked to develop guidance that would develop those core concerns that we were hearing from the college and university community.

I should say as well, I think echoing Senator Clinton's comments, that I too welcome the dialogue that the Secretary of Education has announced today. I am a big believer in the robust exchange of ideas. But I want to be clear. We have had an open discussion for 30 years. From 1979 until at least 1997, the Department received literally thousands of written comments and emails regarding Title IX standards, comments that we took to heart as we continued to work to ensure that colleges and universities and girls and boys were getting the needed guidance and support they needed.

We also met with dozens of focus groups during my tenure to bring in all points of view to see what kinds of issues we could air and surface and identify for common ground. And I must say—and I am sorry that he is not here—that I even did yeoman's duty—I went to Minnesota with Senator Wellstone in February to meet with college wrestling coaches and talk with them about ways that we might find common ground and to understand the reality of Title IX.

The reality of Title IX is this: One, the standards in the area of athletics do not mandate quotas or statistical parity. The Department of Education has said as recently as this year in its brief filed in the lawsuit that was discussed earlier that there are three different avenues of compliance, and institutions have flexibility in providing nondiscriminatory participation opportunities to their students. The Department is clear and has been clear—OCR does not require quotas.

Second, Federal courts on multiple occasions have affirmed the Department policies. Numerous—in fact every circuit court opinion of record has affirmed the wisdom of the Department's athletic standards, and when the question has been raised about illegal quotas, they have rejected that claim.

Third, actions—actions which frequently speak louder than words—prove that proportionality and quotas and statistical parity are not the driving force of Title IX enforcement. I will tell you that as a Federal official, I got very tired of hearing the "He said, she said." So one day, we brought in staff and said let us do our homework; let us uncover exactly what colleges and universities are doing when complaints are filed with the Office for Civil Rights.

Much of this data has been published in subsequent GAO reports, but what it tells you is this—over 70 percent of the schools that have been the subject of OCR athletics complaint investigations or compliance reviews have chosen prongs 2 or 3 to come into compliance, not prong 1, the one that we hear it is all about. So rhetoric aside, the facts show and the GAO has reported on two separate occasions that reality.

Finally, I would like to make the point that Federal law across the board and certainly in this context conforms to the goal of providing significant flexibility to institutions that must address their Federal legal obligations. OCR and the courts have demonstrated a keen understanding of the complexities sometimes involved in achieving compliance and have allowed a wide range of choices with reasonable time frames to help institutions do their job.

Thus, both in substance and as a matter of process, reasonable and practical standards guide the enforcement of Title IX.

We have much to celebrate today as Title IX is 30 years old, but as I learned first-hand from my 6-year-old, there is still much work to do. It is imperative that we continue to work together around shared goals and common ground to ensure that the promise of Title IX is a reality for everyone.

Thank you.

[The prepared statement of Mr. Coleman follows:]

PREPARED STATEMENT OF ARTHUR L. COLEMAN

Mr. Chairman and members of the committee: Thank you for providing me with the opportunity to testify today regarding Title IX of the Education Amendments of 1972, which is a landmark civil rights law that was passed by Congress 30 years ago to eliminate sex discrimination in all aspects of American education—in the classroom, in the hallways, and on the athletic fields. Protecting both girls and boys from discrimination, this law operates to ensure that we do not make decisions in any facet of education based on overbroad generalizations or stereotypes. Equal opportunity in education is, at its core, about giving all of our students the tools and the range of choices that they deserve so that they can chart their own course—to become another Sally Ride in space or Mia Hamm on the soccer field.

This principle has particular resonance with me—not just because I am a former Federal official and now counselor to education institutions, but also because I am the proud father of a six-year old girl and year-and-a-half old little boy. It was not too long ago that I was talking with my daughter Kate about what she wanted to be when she grew up, and she quickly informed me that she wanted to be a nurse. We talked about what an important job that was and how she could do many good things for people as a nurse. I then, almost in passing, asked about whether she had thought about becoming a doctor. Without hesitation, she advised, "Of course not." I was quickly told that "girls are nurses and boys are doctors." Needless to say, we talked a bit further about how girls—and boys—could be anything they wanted to be, if they just made the effort.

When I am not doing my most important job of being a parent, I am an attorney with Nixon Peabody LLP here in Washington, D.C., where I work with States, colleges and universities, school districts, and other educational providers to help them understand Federal legal requirements in the context of their educational objectives and to structure policies and programs that are most likely to comply with Federal laws—improving educational outcomes for all students along the way. I continue to believe now—as I did when I served as Deputy Assistant Secretary for Civil Rights in the Department of Education [the Department] under the leadership of Education Secretary Richard Riley—that the Federal nondiscrimination laws, properly understood, are grounded in sound educational practice. As a consequence, there is seldom any one cookie-cutter way to achieve compliance. Under Title IX, as elsewhere, schools should be and are given a range of choices about methods for achieving legal compliance that make sense in their particular context and setting. The only choice that they are not given is whether to comply. On this point, Title IX is clear: "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."

In my over six years of service in the Department, I focused a significant amount of my policy and enforcement responsibilities on issues related to Title IX, and developed a very keen awareness of the successes for which we should all be grateful, and the challenges that lie ahead as we work to eliminate discrimination in all of its forms from our schools. In the context of the achievements and the unfinished work to be done, there are some very clear—indisputable—foundations that must be understood in order to have any meaningful discussion about or accurate understanding of Title IX. I want to focus my testimony on those foundations because, simply stated, we should be clear about the facts before we begin evaluating the record of Title IX. (This is especially true where the rhetoric surrounding Title IX often does not match reality.)

WHAT WE KNOW ABOUT TITLE IX

1. Title IX Covers All Aspects of Education: Title IX's Coverage Extends to the Classroom, the Hallways and the Athletic Fields of Our Schools that Receive Federal Funding.

As we celebrate the 30th Anniversary of this historic legislation, some in the media and elsewhere have tended to describe Title IX as an athletics law. And while

it surely plays a role with respect to athletics, it is important that we not lose sight of the critical role that it plays in other areas of education. We no longer see education gaps in many areas, as a result of this law. From the course-taking patterns of high school girls in upper level math and science to the college completion rates of young women, we've witnessed major progress regarding student achievement, and have reversed patterns that were once driven by prevalent and different expectations for men and women. We've seen major strides in defeating stereotypes about what women can achieve in "men's occupations," with dramatic increases in the numbers of women entering the medical profession, the legal profession, and certain Ph.D. programs. By the same token, doors have opened to men in professions that were once considered "female professions" as a result of efforts tied to Title IX enforcement and related laws. Moreover, without Title IX, we wouldn't have the kind of focus and enforcement of principles that prohibit sexual harassment of students and teachers in schools. The issue of sexual harassment is a very real one—for girls and boys. It is one on which there has been substantial focus and progress, but as in so many other areas, there is still much work to do.

2. There is Substantial Common Ground: Title IX Standards Have Stood the Test of Time, Having Enjoyed Bi-partisan and Widespread Federal Court Support for Decades.

Title IX is one Federal law that has enjoyed bipartisan support for three decades. In both Republican and Democratic Administrations, on both sides of the aisle in Congress, and in the overwhelming majority of Federal court opinions on the subject, we have seen a repeated reaffirmation of the principles that guide the Department. Sen. Hatch once observed that there were few, if any, Senators who did not want "Title IX implemented so as to continue to encourage women throughout America to develop into Olympic athletes, to develop in educational activities or in any other way within our schools of higher education." I would venture that it is likely that that sentiment is as true today as it was when he made the statement in 1984 on the Senate floor.

Corresponding to this long-standing commitment to equal opportunity are the long-standing requirements that both guide the work of the Office for Civil Rights and help shape the opinions of the Federal courts, which will in appropriate cases look to the interpretations of the Department for guidance. Guided by a law passed in 1972, and upon regulations signed by President Ford in 1975, which were reviewed and approved by Congress, OCR has addressed the requirements of Title IX in particular contexts—from admissions to counseling, from athletics to sexual harassment. I would like to briefly address the latter two areas, in which the Department has invested significant effort to help institutions ensure that the promise of Title IX is a reality for all students today.

First, with regard to gender equity in athletics, the Department has published several letters of guidance and clarification regarding the application of Title IX—to help explain and describe the implementation of the standards that have been in place since the late 1970s. During my tenure with the Office for Civil Rights, we very intentionally did not seek to revise or modify long-standing requirements. After hearing from colleges and universities that inconsistency in enforcement and clarity was the issue, we worked to provide the assistance requested. Instead of re-writing a 1979 policy on Title IX and intercollegiate athletics (which had followed a review of more than 700 comments on a previous draft), we determined that if it wasn't broken, there was no need to fix it.

From some quarters, we heard then—as we are hearing yet again—that the "three part test" that comprises one part of the Title IX standard in athletics is merely a quota law, that it requires strict proportionality between men and women on campus, and that, in the words of one news analyst this past Sunday morning, it requires "dogmatic statistical parity." My response to those claims is simple: Before we attack a law, we should do our homework. In this case, the facts are these:

Department policies are clear: Title IX standards in the area of athletics do not mandate quotas or statistical parity at any institution. The Department has for years made this point, and in its most recent policy clarification said: "There are three different avenues of compliance," and "institutions have flexibility in providing nondiscriminatory participation opportunities to their students, and OCR does not require quotas."

Federal courts have consistently affirmed Department policies. In multiple Federal circuits, Federal appellate judges have affirmed the wisdom of the Departments athletics standards, and have consistently rejected claims that they imposed illegal quotas.

Actions by colleges and universities prove that proportionality is not the driving force of Title IX enforcement, as it is not the avenue that most schools choose when deciding how to comply with Title IX. While at the Department, I directed a study

to determine, in fact, the actual choices that were being made by schools when faced with complaints of discrimination and when further work was needed. The results of that study—published in a 1996 GAO report—show that (in cases where schools had made compliance decisions) approximately seventy-five percent (75 percent) of the schools coming into compliance with Title IX pursuant to work with OCR were not electing the proportionality prong, but rather were choosing one of the two other avenues to achieve success—with a good faith expansion of opportunities to meet the needs of the underrepresented sex, or by effectively accommodating the interests and abilities of the underrepresented sex.

In fact, another report issued by the GAO (in 2001) found that while complying with Title IX was often one reason behind institutions' decisions to offer or not offer different athletic opportunities for men or women, the most often cited factor was the level of interest in the particular sport.

Second, in the area of sexual harassment, and in the wake of incidents where it was clear that schools were overreacting to claims of harassment just as they were at times not paying enough attention to the issue, the Department published guidance to conform with existing Federal court legal standards, to help explain those standards, and to describe the steps that schools should take on the front end to help avoid problems. In an effort to closely track the consensus among Federal courts, and to adhere to Supreme Court precedent in the area, the Department published in 1997 and then again in 2001 (in the wake of new Supreme Court decisions) policy guidance for schools, which are obligated under Title IX to address issues of harassment on their campuses. This is one of several areas where we at the Department recognized that the old adage fully applies: "An ounce of prevention is worth a pound of cure." As a consequence, the Department's Office for Civil Rights partnered with schools, states, and organizations like the National Association of Attorneys General to provide, in writing and in person, technical assistance designed to assist schools in their efforts to ensure that they comply with Federal law, while at the same time helping promote the kind of learning environment in which all students are welcome and can fully participate.

3. Sound Educational Results: Reasonable, Practical Avenues for Meeting the Requirements of Title IX Are In Place.

The final point that I would like to make expressly is one that is implicit in my review of OCR's work above. Namely, Federal law and OCR's practices conform to the goal of providing significant flexibility to institutions that must address their Federal legal obligations. OCR and the courts have demonstrated a keen understanding of the complexities sometimes involved in achieving compliance, and have allowed a wide range of choices with reasonable time frames for implementing those choices. Thus, both in substance and as a matter of process, reasonable and practical standards guide the enforcement of Title IX.

I would also like to add, at this point, that it was my distinct privilege to work with the hundreds of career employees in the Office for Civil Rights and in the Department during my tenure at the Department. What I found as I came to know them was that they were a group of individuals committed to the principles of equal opportunity for all students, regardless of background, and that they had a healthy respect for the range of legitimate institutional interests that must be considered and valued as we all work together to achieve the goals of our nondiscrimination laws.

Those staff worked diligently to improve services, identify problems and correct them as they surfaced, and to find ways to partner with educational institutions to create a better understanding of the common ground and common sense solutions that, in fact, exist with respect to Title IX and other federal laws.

CONCLUSION

Mr. Chairman, we have much to celebrate on this 30th Anniversary of Title IX, but as I learned first-hand from my six-year-old daughter, our work is not done. It is imperative that we continue to work together around the shared goals embodied in Title IX to ensure that our daughters and our sons will have as many doors as possible open to them in the future—in the classroom and on the athletics field.

Thank you.

Senator MURRAY. Thank you very much, Mr. Coleman.

Thank you all for your excellent statements. Unfortunately, we only have time for a couple of questions.

Mr. Coleman, you have spent a great deal of time looking at Title IX. You said you had study groups and did a lot of research and

talked to a lot of people and even went to Senator Wellstone's State in February, which you should receive a lot of credit for.

Do you think that the administration's decision to appoint this new commission will bring about any new information?

Mr. COLEMAN. I think there is always the potential that you can uncover issues that have not surfaced in the past, although I think the record is quite clear and full of information about where we are. My hope would be, frankly, as a matter of process that maybe we can move away from the polarizing rhetoric which sometimes does not have a basis in fact and actually get to common ground.

I think one of the interesting points when we hear that Title IX is causing the cuts in men's sports—if you look at recent GAO reports, they will tell you point-blank that in one instance, two-thirds of the schools surveyed that have added women's sports in the decade of the nineties have been able to do so without cutting men's teams.

The important point here is prongs 2 and 3, where virtually two-thirds or more of schools are choosing to come into compliance, cutting a men's sport would not help you comply. If you understand the law, you need to know that that avenue will not help you come into compliance with Title IX.

Senator MURRAY. How can we assure that the commission that has been appointed will look to that question?

Mr. COLEMAN. I would hope they would be able to take the case law, the OCR investigations, the decisions that have been made, as well as the published reports on the issue, and ensure they see what the facts are.

Senator MURRAY. Senator Bayh, what is your opinion of the new commission that has just been appointed?

Senator BAYH. Madam Chairman, as I said earlier, I am an incorrigible optimist, and I am hopeful that this commission will be able to find some innovative ways, that they will not tinker with what the goal is—you and Congress are the ones who determine when that goal is changed, not some commission that has been appointed—you do a pretty good job of studying the issues as well. So I am hopeful that the personal experiences that are brought there will provide some new opportunities for others who might not have thought of the opportunities, like the folks out at Washington State did.

I would like to mention one other thing if I might. During the period of time when all this discussion was taking place about the fact that wrestling programs had been terminated—and frankly, I think that that is most unfortunate; I would be very angry if I were a wrestler—but instead of suing the Department of Education, I would sue the institution that discriminated against my sport. But during all that time in which a handful of men's sports opportunities were terminated, there must have been several hundred schools that established new men's teams like baseball. So the math is that a lot more men's sports were being created at the very time when some of them were being denied.

Ms. HOGSHEAD-MAKAR. Not only are more men's teams being created, but spending is actually increasing at a faster rate for men than it is for women; so for every $2 that goes into men's sports, you have $1 going into women's sports.

Senator MURRAY. Professor, is it your experience, or do you think it is necessary to change the three-part test that governs Title IX?

Ms. HOGSHEAD-MAKAR. I cannot imagine why. Let us say there is a junior varsity softball team that wants to become varsity. They need to have some kind of benchmark to be able to point to to be able to tell their athletic director here is why you are not giving us opportunities, based on gender, based on sex.

You cannot just look at tea leaves and say I think women should have more opportunities or should not have more opportunities. You need to have three different ways, or something that a school can look to to see whether or not they are in compliance. If you do not have some way of measuring compliance, then, the law is basically meaningless—it becomes a nice sentiment—well, we should not discriminate against women. Someone can then say 10 percent of opportunities are for women, and that is fine.

Senator MURRAY. Mr. Coleman, do you want to comment on that?

Mr. COLEMAN. Simply that one of the reasons why Title IX athletics gets perhaps an undue share of the headlines around the difficulties and the frequent polarization is because it is one of the very few areas where we say "separate and equal." On many occasions, you are comparing apples and kiwis. You are not comparing identical things. You do not have girls and boys in the same classroom, doing the same things, so the issue are different.

So I think the three-part test, with its multiple ways of allowing institutions to come into compliance, makes sense. There is no absolute perfect way. There is a logic behind each of them, and I think that flexibility that is inherent in Title IX enforcement is quite appropriate in this context.

Senator BAYH. And the decision is made back home, at the institution.

Mr. COLEMAN. Precisely. It is at the institutional level. And I should also say that if, as some advocate, you eliminate prong 1, what have you done? You have just taken away a choice that a university may make. And I believe in providing, consistent with the broad parameters of civil rights laws, the maximum flexibility to let institutions and other entities comply.

Senator MURRAY. Well, I appreciate all of you being here today, and Mr. Coleman, I truly enjoyed your story about your 6-year-old daughter. I used to teach preschool, and I took a large group of 5-year-olds to a fire station one day, and we went through and saw where they slept and where they cooked dinner and where they kept the fire trucks. When we were all done, a 5-year-old girl turned to me and said, "I cannot be a fireman."

I asked, "Why not?"

She said, "Because I do not want to cook for all those guys."

[Laughter.]

So you never know where children's assumptions are going to come from.

We do have progress to make, but we have made a tremendous amount of progress, and I want to particularly thank all three of you for the tremendous efforts you have made. For my daughter and some future grand-daughter that I may have, it has made a tremendous difference, and we want to make sure that that stays there.

Thank you very much. I will leave the record open for 5 days for further questions.

Senator Bayh, you have a final comment.

Senator BAYH. Madam Chair, may I offer three documents that I think the committee will find very helpful—one is entitled, "Title IX at 30: A Report of the National Coalition of Women and Girls in Education"; second, compiled by the National Women's Law Center, "The Battle for Gender Equity in Athletics" and "Equal Opportunity for Vocational and Technical Education: A Promise Still Owed to the Nation's Young Women."

It starts at a very early age where girls are put in one channel and boys are put in another, and we are living in an entirely different world now.

Senator MURRAY. Those will be put in the record. I thank you very much, Senator Bayh.

[Documents can be found in additional material.]

Senator MURRAY. I thank all of you.

The committee is adjourned subject to call of the chair.

[Additional material follows.]

ADDITIONAL MATERIAL

PREPARED STATEMENT OF RODERICK PAIGE

Mr. Chairman, Senator Gregg, and members of the Committee, I appreciate your invitation to join you today, because it gives me the opportunity to discuss one of the most important civil rights laws in our nation's history: Title IX of the Education Amendments of 1972.

As you know, we just celebrated the 30th anniversary of this landmark legislation. Without a doubt, Title IX has opened the doors of opportunity for generations of women and girls to compete, to achieve, and to pursue their American dreams.

Many of the people in this room today are too young to remember what the world was like prior to 1972 when Title IX became the law of the land and prohibited schools that receive federal funds from discriminating on the basis of sex.

Back then, it was not uncommon for high school girls to be "steered" to courses that narrowed their future options. High schools routinely excluded girls from classes that stood to give them the skills to compete for higher paying jobs.

Those who overcame these obstacles and proved themselves worthy of college admission often faced new barriers, such as quotas that limited female enrollment.

This held especially true in the professional schools for such disciplines as law and medicine. The stories are legion of women who made it into the schools—even graduated first in their classes—yet they still endured shunning and harassment for their efforts.

Thanks to the vigorous enforcement of Title IX, as well as society's greater acceptance of women in the workplace and on the playing field, more women than ever are playing sports, graduating from college, and pursuing their dreams.

For example, we have seen explosive growth in certain girl's and women's sports at the high school and college levels.

In 1971, before Title IX went into effect, more than 294,000 girls participated in high school sports. Last year, that number exceeded 2.7 million—an 847 percent increase.

Between 1981 and 1999, the number of college women's teams rose 66 percent. According to the General Accounting Office, colleges created nearly 3,800 new women's sports teams, including 846 soccer teams, 516 cross-country teams, 432 softball teams, 350 volleyball teams, 304 indoor track teams, and 302 basketball teams.

In 1972, when Title IX became law, 44 percent of all bachelor's degrees went to women—as compared to 57 percent in 2000, the most recent year data was published.

Today, the majority of college students are women. And many are entering professions that once eluded them.

In 1972, only 9 percent of medical degrees went to women—as compared to nearly 43 percent in 2000. In 1972, only 1 percent of dental degrees went to women—as compared to 40 percent in 2000. And in 1972, only 7 percent of law degrees went to women—as compared to nearly 46 percent in 2000.

It is no longer unusual to see women in positions of power and influence—including running large companies, ruling from the bench, or advising the President of the United States. Women fill key leadership positions throughout the Administration, including at the Department of Education.

Clearly, the changes brought about with the help of Title IX have greatly expanded the opportunities for girls and women to achieve their greatest potential. And we at the Department of Education are working to build on these successes.

President Bush put it best when he said: "Tremendous advances have been made in the fight for equality. But we must remain diligent in enforcing our nation's laws. And we still have work to do in this area."

Indeed we do. And as the U.S. Secretary of Education, I am proud to be a part of implementing the President's vision of a nation where civil rights laws are enforced fairly and vigorously.

In that regard, the Department of Education is working diligently to address complaints of Title IX violations. Let me give you some recent examples.

The Office for Civil Rights received a complaint from a school district that girls' basketball games were never scheduled during prime playing time—like Friday nights—as the boys' games were.

We found this not only to be true in that district, but in seven other districts in the same area. The Office for Civil Rights entered into commitments with all the districts, and, starting with this upcoming school year, all eight districts will provide equal opportunity for boys and girls to play on prime time nights.

In another case, we received a complaint against a school district alleging that the athletic facility for the girls' softball team was inferior to that provided for the

boys' baseball team. We found the charge to be true, and the school district agreed to build a comparable girls' softball facility on the high school grounds.

In yet another case, we worked with a state's school board association to help develop a model policy barring harassment of students and staff based on sex, race, national origin, and disability. Last month, the Office for Civil Rights and the school board association issued a letter announcing the model policy. We are now working to help them spread the message to all the schools in that state. And we are sharing this model with other states.

And, finally, after we investigated a number of complaints against one university, the school agreed to significant changes, including:

Recruiting female athletes from high schools and providing athletic scholarships; Providing female athletes with the same opportunities to attend summer school as their male counterparts; Providing the same benefits for the coaches of the women's teams as is provided for the coaches of the men's teams; and Providing lockers for the women's basketball team, installing lights on the women's soccer field, and renovating the softball field.

These are just a few examples. But each one speaks of this Administration's commitment to the hopes and dreams of thousands of girls and women in our nation's schools.

When we say we want no child left behind, we mean it. Our goal is to bring out the best efforts of all our young people in our nation's schools—from kindergarten through college.

We celebrate not only the success but also the spirit of Title IX that says, 'Open to all.' Listen to the words that are the heart of 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."

This Administration is committed to those words.

Mr. Chairman, I want to thank you and the members of this Committee again for letting me come speak today.

I look forward to working with you, because I know you share my commitment and the President's commitment to expanding opportunities for all young Americans—girls and boys, women and men—in the classroom and on the playing field.

I'll be happy to take your questions.

THE BATTLE FOR GENDER EQUITY IN ATHLETICS: TITLE IX AT THIRTY

A Report of the
National Women's Law Center

June, 2002

SUMMARY

Title IX of the Education Amendments of 1972 is the primary federal law barring sex discrimination in all facets of education, including sports programs. Title IX requires that members of both sexes have equal opportunities to participate in sports and receive the benefits of competitive athletics. It also requires that athletic scholarships be allocated equitably and that men and women be treated fairly in all aspects of sports programming.

Since its passage thirty years ago, Title IX has led to greater opportunities for girls and women to play sports, receive scholarships, and obtain other important benefits that flow from sports participation. When Congress passed Title IX in 1972, fewer than 32,000 women competed in intercollegiate athletics. Women received only 2% of schools' athletic budgets, and athletic scholarships for women were nonexistent. Today, the number of college women participating in competitive athletics is nearly five times the pre-Title IX rate. Title IX has had tremendous impact on female athletic opportunities at the high school level as well. Before Title IX, fewer than 300,000 high school girls played competitive sports. By 2001, the number had climbed to 2.78 million.

These advances in athletic opportunities have created significant health, emotional, and academic benefits for women and girls, and have promoted responsible social behaviors, greater success in school, and enhanced personal skills. Title IX -- the law responsible for these advances -- has been widely heralded, and its implementing policies have been consistently supported by Congress and uniformly upheld by the nation's federal appellate courts.

But more remains to be done. While the doors to competitive athletics have been opening to American women and girls, Title IX's goal of equal opportunity in sports has yet to be realized. Although women are over half the undergraduates in our colleges and universities, female athletes are still just 42% of college varsity athletes nationwide. In fact, female participation in intercollegiate sports remains *below* pre-Title IX male participation: while 170,384 men played college sports in 1971-72, only 150,916 women played college sports in 2000-01. Furthermore, women in Division I colleges, while representing 53% of the student body, receive only 41% of the participation opportunities, 43% of the total athletic scholarship dollars, 32% of recruiting dollars, and 36% of operating budgets.

These facts make clear the continued importance of vigorous enforcement of Title IX and its implementing policies. Unfortunately, however, there is a long history of opposition to Title IX that has only mounted in recent months. Opponents of Title IX make three interrelated claims: (a) that Title IX requires quotas; (b) that these quotas are premised on inflated opportunities for women that they do not want because of a purported inherent lack of interest in athletics and (c) that these quotas force cuts in men's teams. As explained in this report, all of these claims are factually insupportable and have been resoundingly rejected by the courts.

This report demonstrates that it is critical to preserve Title IX athletics policies because of their effectiveness in dismantling pervasive discrimination against women in athletics, as well as the

continuing need to remove remaining barriers and discrimination that prevent young women from receiving their fair share of the benefits accruing from sports participation.

I. A BASIC GUIDE TO TITLE IX AND ATHLETICS

Title IX prohibits federally funded education programs and activities from engaging in sex discrimination. It says simply:

> *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.*
> 20 U.S.C. § 1681.

Title IX's prohibition against sex discrimination is very broad, applying to most elementary and secondary schools, colleges and universities. The law applies to every aspect of a federally funded education program or activity, including athletics.

Title IX requires institutions to offer male and female students equal opportunities to participate in sports, to allocate scholarship dollars equitably, and to treat male and female students fairly in all aspects of athletics.

A. Schools Must Provide Women and Men Equal Opportunities To Participate in Athletics

There are three wholly independent ways schools can show that students of both genders have equal opportunities to participate in sports. Schools can show that:

- the percentage of male and female athletes is about the same as the percentage of male and female students enrolled in the school, **OR**;
- the school has a history and a continuing practice of expanding opportunities for female students, since they are the gender that usually has been excluded from sports, **OR**;
- the school is fully and effectively meeting its female students' interests and abilities to participate in sports.

If a school can meet any *one* of these tests, it will be found to be in compliance with Title IX's participation requirements. This three-part test has been in effect for more than two decades and has been upheld by every one of the eight federal appeals courts that has considered it.[1]

As a general matter, institutions do not have to offer any particular sport; neither men nor women have a right to play on particular teams. As long as a school provides equal participation opportunities to men and women overall, it has the flexibility to decide how those opportunities should be allocated among sports or teams.[2]

B. Schools Must Equitably Allocate Athletic Scholarships

Colleges and universities also must ensure that the overall share of athletic financial aid going to female athletes is about the same as the percentage of female athletes participating in the athletic program. Specifically, the percentage of total athletic aid awarded to female athletes must be within 1%, or one scholarship (whichever is greater), of the percentage of female athletes, unless there are legitimate nondiscriminatory reasons to justify a larger disparity. For example, if 42% of a school's athletes are women, the school will be in compliance with Title IX if it provides between 41% and 43% of its total athletic scholarship dollars to those athletes.

C. Schools Must Treat Men and Women Equally in All Aspects of Sports Programming

Educational institutions must also ensure that male and female athletes are treated equally throughout their athletic programs, including with regard to:

- equipment and supplies;
- scheduling of games and practices;
- financial support for travel and expenses;
- assignment and compensation of coaches;
- opportunities to get tutoring, where necessary; and
- locker rooms, playing fields, and practice areas.

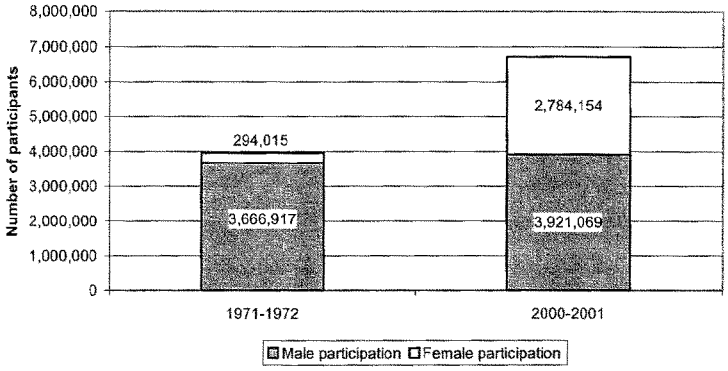
Schools need not provide the exact same benefits and opportunities to men's and women's teams, as long as their treatment of male and female athletes is equal overall.

II. TITLE IX HAS PROMOTED GREAT ADVANCES IN ATHLETIC OPPORTUNITIES FOR WOMEN AND GIRLS

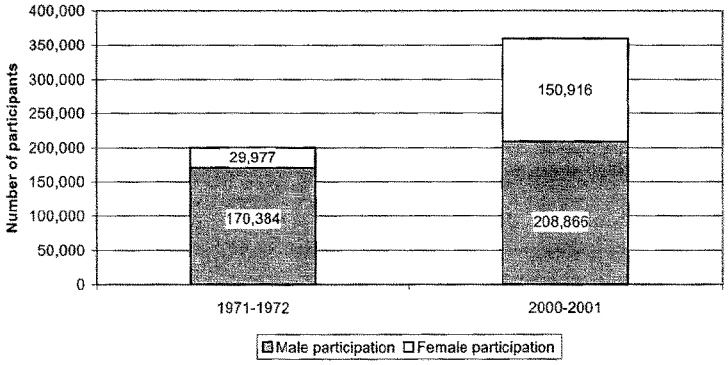
A. Participation Has Grown, Particularly at the High School Level

Title IX has opened the door for millions of women and girls to participate in sports. While fewer than 32,000 women participated in college sports prior to the enactment of Title IX,[3] today that number has expanded nearly five-fold -- or 400% -- to more than 150,000 women.[4] Moreover, there is no shortage of interest by women and girls in improving these numbers. Since 1972, when Title IX first opened opportunities for female athletes, female participation in high school athletics has skyrocketed by more than 800%.[5]

Female Participation in High School Athletics Has Increased by 800% Over the Past 30 Years



Female Participation in Intercollegiate Athletics Has Increased by 400% Over the Past 30 Years



These overall increases in participation by female athletes have been accompanied by increases in particular women's sports. For example, women's crew (rowing) and soccer programs have experienced some of the biggest gains in female athletic programs since Title IX was enacted. According to the National Collegiate Athletic Association (NCAA), the number of women's crew teams, nation-wide, increased from 12 teams in 1991 to129 teams in 2000. Women's soccer

teams increased from 318 NCAA teams in 1991 to 811 teams in 1997.[6] Moreover, a recent study by the Soccer Industry Council of America found that 1/3 of the 18 million soccer players in America are girls under age 18.[7] As was recognized in an article in 1999, "U.S. women's soccer owes its pre-eminence to the gender-equity reforms visited upon colleges by Congress [30]-odd years ago."[8]

Largely as a result of the opportunities made available to female athletes by Title IX, women won a record 19 Olympic medals in the 1996 Summer Olympic Games. These successes in team sports in particular, including gold medals in basketball, soccer, softball, and gymnastics, as well as the women's ice hockey gold in the 1998 Winter Olympics, are a tribute to the impact of Title IX. In 2002, the first African-American ever to win a gold medal in the Winter Olympics was a woman.

B. Fans are Flocking to Women's Games

Increased participation by women in high school and college sports has led to a new generation of athletes and fans who pack stadiums and spend a growing amount of consumer dollars on women's sports. The following statistics tell the story:

- In 1989, the University of Connecticut's women's basketball team played before just 287 fans in the front half of a doubleheader shared with the men. In 2002, an NCAA-record 24,611 fans attended the mid-season game between Connecticut and Tennessee.[9]

- Attendance at women's NCAA basketball games has been increasing steadily. An all-time high of more than 8.8 million fans attended games in 2000-01, up from 7 million fans in 1997-98.[10]

- ESPN's coverage of the 2002 NCAA Women's National Basketball Championship game drew 3.49 million households, the highest audience for an ESPN college game broadcast, beating the previous record held by the Princeton-Arkansas men's game in 1990 at 3.44 million.[11]

- In soccer, the 1999 Women's World Cup, held in the United States, broke attendance records for a women's sports event. The opening match between the United States and Denmark drew a record-breaking crowd of 78,972 fans.[12] The final, between the United States and China, brought a crowd of 90,185 to the Rose Bowl, the largest crowd ever to witness a women's athletic event.[13]

C. Women's Teams are Making Money

Women's sports are also bringing in money for their schools. For example, a 1999 study shows that 12 women's programs in Division I-A brought in more money than they spent, with an average profit of $1.3 million; in 1997, only 2 women's programs in Division I-A had a net profit, which averaged $900,000.[14] What's more, these teams have become successful without large recruiting budgets or years of publicity and tradition standing behind them.

III. ADVANCES IN ATHLETIC OPPORTUNITIES HAVE CREATED SIGNIFICANT BENEFITS FOR WOMEN AND GIRLS

These increases in women's participation in sports have brought corresponding and wide-ranging benefits to a new generation of female athletes. These benefits have long been documented: competitive athletics promotes responsible social behaviors, greater academic success, and increased personal skills.[15] Athletes are less likely to smoke[16] or use drugs.[17] Adolescent female athletes have lower rates of both sexual activity and pregnancy.[18] Female student-athletes have higher grades, are less likely to drop out, and have higher graduation rates[19] than their non-athletic peers.[20] They learn important life skills, including the ability to work with a team, to perform under pressure, to set goals and to take criticism. In addition, playing sports helps young women develop self-confidence, perseverance, dedication and a competitive edge.

The health benefits of the regular and rigorous physical exercise provided by sports are extensive. Sports participation decreases a young woman's chance of developing heart disease, osteoporosis, breast cancer, and other health problems.[21] Increased fitness levels can contribute to better posture, the reduction of back pain and the development of adequate strength and flexibility -- qualities that allow girls to participate fully in their daily activities, both vocational and recreational.[22] There are psychological benefits too: young women who play sports have a higher level of self-esteem, a lower incidence of depression[23] and a more positive body image.[24]

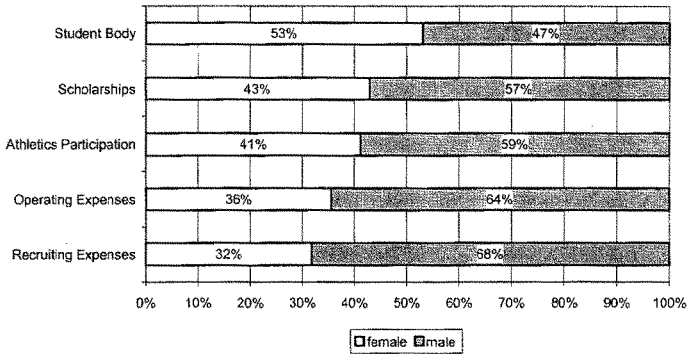
Title IX's mandate of equality in sports is especially important for minority women and girls. Minority female athletes experience higher levels of self-esteem, are more likely to be involved in extracurricular activities, and are more likely to become leaders in their communities than minority women who don't play sports.[25] Minority female athletes also get better grades than their non-athletic peers.[26] In particular, black female athletes are 15% more likely to graduate from college.[27] Because minority girls are more likely to participate in sports through their schools than through private organizations, it is critical that they have equal access to school-sponsored athletics.[28]

IV. DESPITE IMPORTANT ADVANCES MADE UNDER TITLE IX, THE PLAYING FIELD IS FAR FROM LEVEL

Despite Title IX's considerable successes, women are still second-class citizens on the playing field. For example, although women in Division I colleges comprise 53% of the student body, they receive only:

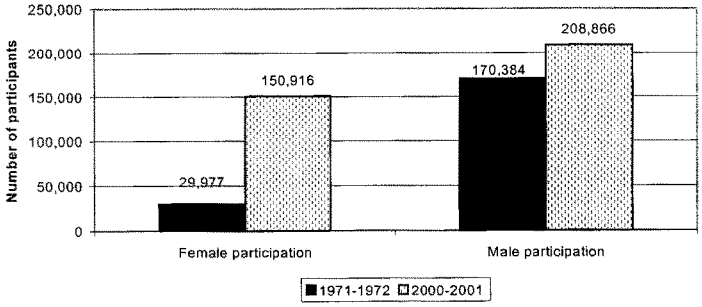
- 41% of the opportunities to play intercollegiate sports;
- 43% of athletic scholarship dollars;
- 36% of athletic operating budgets; and
- 32% of the dollars spent to recruit new athletes.[29]

Women Are Still Second-Class Citizens on the Playing Field
(1999-00, Average per Institution for Division I Schools)



In Division I in 2000, for every dollar spent on women's sports, two dollars were spent on men's sports.[30] In fact, female participation in intercollegiate sports remains *below pre-Title IX male participation*. While 170,384 men played college sports in 1971-72 (the year Title IX was enacted), only 150,916 women played college sports in 2000-01.[31] Men's participation, meanwhile, has continued to increase, with 208,866 men participating during the 2000-01 season.[32]

Female Participation in Intercollegiate Sports Remains Below Pre-Title IX Male Participation



Disparities also persist at the high school level, where female athletes have only 42% of the school-sponsored opportunities to play varsity sports.[33] Although national data on expenditures on boys' and girls' sports do not exist at the high school level, anecdotal evidence and court cases strongly suggest that male and female athletes are not treated equally.[34]

These inequalities extend to the scholarship arena as well. The availability of athletic scholarships dramatically increases young women's ability to pursue a college education and to choose from a wider range of schools. However, in 2000, male athletes received the access and opportunities that athletic scholarships provide nearly *one and a half times as often* as their female counterparts. The difference amounted to $133 million dollars more per year in athletic scholarships for male athletes than female athletes.[35] In fact, on the 30th anniversary of Title IX, the National Women's Law Center has identified 30 of the hundreds of colleges and universities that remain out of compliance with Title IX requirements for fair allocation of athletic scholarships, and has taken steps to secure these schools' prompt remedy of their scholarship inequalities.

From limited opportunities to participate and fewer scholarship dollars, to inferior athletic equipment and facilities, the playing field for female athletes is far from level. Title IX is just as important as ever to remove the barriers to young women's participation in sports.

V. ARGUMENTS MADE BY OPPONENTS OF TITLE IX HAVE NO BASIS IN EITHER LAW OR FACT

Since the enactment of Title IX 30 years ago, critics of enhanced opportunities for women and girls have argued that the law's non-discrimination mandate is unnecessary for women and unfair to men. In particular, opponents argue that Title IX's implementing policies have caused schools to drop certain men's teams, such as wrestling, based on three interconnected -- but fundamentally indefensible -- links: (1) that the three-part participation test, measuring whether schools provide equal participation opportunities, amounts to a "quota;" (2) that this quota is premised upon the provision of inflated opportunities for women that they do not want because of a purported inherent lack of interest in participating in athletics; and (3) that to achieve this supposed quota, schools must cut men's teams. As explained below, each of these claims is entirely meritless.

A. The Three-Part Participation Test Does Not Create Quotas or Preferential Treatment

Opponents first allege that the three-part participation test constitutes a gender-based "quota" system in violation of Title IX and the Equal Protection Clause of the United States Constitution. This claim is palpably incorrect. First, the three-part test imposes no numerical requirement even remotely analogous to quotas. Moreover, in the unique sex-segregated world of athletics, where schools explicitly establish separate athletic opportunities for male and female students, the concept of quotas is particularly misplaced.

Title IX's three-part participation test is well-named; as noted above, it offers three *wholly independent* ways for schools to show that they provide non-discriminatory participation opportunities, belying the notion that the test is rigid and inflexible. Of course, schools may provide – and, fortunately, an increasing number have provided -- athletic opportunities to male and female students generally in proportion to their representation in the student body, recognizing that their female students, like their male students, benefit from athletic opportunities in many important ways. However, the third part of the test explicitly states that schools need not meet the proportionality prong if they are otherwise accommodating the interests of their female athletes. The second prong of the test also permits schools to comply with Title IX by showing only that they are making steady progress to increase participation opportunities for women -- even if, 30 years after enactment of the law, they have not yet reached full equality of opportunity. Thus, the first, or proportionality, prong of the three-part test is merely a safe harbor for institutions that can satisfy it. Courts have repeatedly recognized that the three-part test in no way creates quotas.[36]

Operation of the three-part test in practice has underscored the vitality of each of the three prongs and disproves any claim that schools are only able to comply under prong one. From 1994 through 1998, for example, the Office for Civil Rights at the U.S. Department of Education

reviewed 74 cases that involved Title IX's participation requirements. In these, only 21 schools -- or less than one-third – were held in compliance under prong one of the three-part test; the rest of the schools complied under prongs two or three.[37]

Additionally, the quota charge is particularly inapplicable in the athletics context. Athletic teams are gender-segregated, and individual educational institutions decide how many athletic opportunities they will allocate to each sex and how they will do so. As a result, "determining whether discrimination exists in athletic programs *requires* gender-conscious, group-wide comparisons."[38] Because women are barred by schools from participating on men's teams and vice-versa, schools make a gender conscious allocation of opportunities in the first instance. Far from imposing quotas, therefore, the three-part test is merely a means of determining whether schools distribute sex-segregated participation opportunities fairly.

B. The Notion that Women Are Inherently Less Interested Than Men in Participating in Athletics Is Stereotypical and Flawed

The second claim made by Title IX opponents is that women are inherently less interested in athletics than men, and that therefore the three-part test requires schools to provide inflated opportunities for women. However, as Congress and the courts have consistently recognized, this stereotype is belied by the lessons taught by Title IX and by its very purpose.

As the principal Senate sponsor of Title IX, Senator Birch Bayh, explained, Title IX was intended to be "a strong and comprehensive measure [that would] provide women with solid legal protection from the persistent, pernicious discrimination which is serving to perpetuate second-class citizenship for American women."[39] At the heart of the debate over how best to combat sex discrimination in intercollegiate athletics was Congress' understanding that when athletic opportunities for women are opened, their athletic interests will be demonstrated.[40] Congress has, in fact, repeatedly rejected attempts to limit Title IX's application to athletics.[41]

The courts too have emphatically rejected arguments premised on women's lack of interest in athletics. In Pederson v. Louisiana State University, for example, the United States Court of Appeals for the Fifth Circuit recognized the connection between the quota argument and the purported lack of women's interest in athletics, stating:

> [The University's] hubris in advancing [the argument that women are less interested in sports than men] is remarkable, since of course fewer women participate in sports, given the voluminous evidence that [the University] has discriminated against women in refusing to offer them comparable athletic opportunities to those it offers its male students.[42]

In Cohen v. Brown University, after a thorough analysis of the policies challenged by opponents of Title IX, the United States Court of Appeals for the First Circuit stated:

> To assert that Title IX permits institutions to provide fewer athletics participation opportunities for women than for men, based upon the premise that women are less interested in sports than men, is . . . to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's interests and abilities. Interest and ability rarely develop in a vacuum; they evolve as a function of opportunity and experience. . . . [W]omen's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports.[43]

Moreover, the "tremendous growth in women's participation in sports since Title IX was enacted disproves [the] argument that women are less interested in sports for reasons unrelated to lack of opportunity."[44] The dramatic increases in the number of female athletes over the last 30 years – with close to three million girls playing sports in high school today – is alone sufficient to demonstrate that the argument that women are not interested in athletics is simply an attempt to continue an outmoded stereotype. In fact, women's participation in sports continues to be hampered by discriminatory barriers today; to accept that women are less interested in sports than men would simply freeze into place existing discrimination and curtail opportunities at artificially limited levels.

C. Title IX Has Not Caused Cuts in Men's Opportunities

Opponents are simply incorrect in asserting that Title IX's three-part test forces schools to cut men's lower profile teams. Courts have consistently recognized that Title IX in no way requires schools to limit men's opportunities, through cutting teams or otherwise. Moreover, the overwhelming evidence shows that schools can -- and do -- comply with the three-part test by adding women's opportunities rather than cutting men's opportunities.

1. Opportunities for women <u>and</u> men have improved over the last 30 years

The operation of the three-part test has demonstrated that the great majority of schools have expanded opportunities for men as well as women in complying with its requirements. While the rate of increase for women has been greater, given the low point from which they began, recent studies show that men's athletic opportunities have in fact increased, both in terms of the absolute number of male athletes and the number of men's teams. The facts show, for example, that:

- Men's intercollegiate athletic participation rose from 169,800 in 1981-82 to 208,866 in 2000-01.[45]
- The number of men's teams increased from 1981-82 to 1998-99.[46]

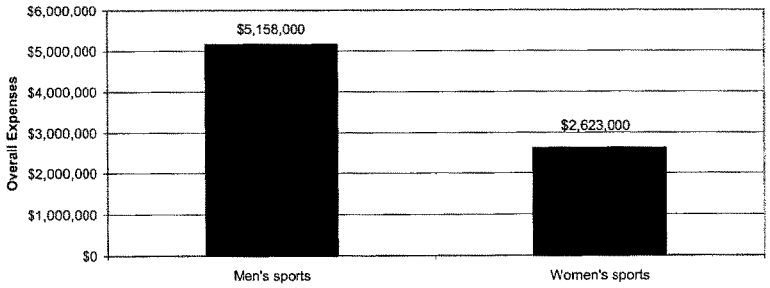
- Of the 948 schools that added one or more women's teams between 1992 and 2000, 72% did so without discontinuing any other men's or women's teams.[47]

While certain men's sports may have declined in recent years, other men's teams have increased. For example:

- Since 1981-82, men's participation has increased in baseball, crew, football, lacrosse, squash, track and volleyball.
- Baseball, which was sponsored by 642 NCAA members schools in 1982, was sponsored by 857 in 2000.
- Men's basketball, sponsored by 741 NCAA member schools in 1982, was sponsored by 989 in 2000.
- The number of NCAA member institutions sponsoring men's cross-country, indoor and outdoor track, football, golf, lacrosse, rowing, squash, tennis, volleyball and soccer has also increased since 1982.[48]

Spending for male sports has also consistently dominated spending for women's sports. In Division I, in 2000, for every dollar spent on women's sports, almost two dollars were spent on men's sports.[49] Similarly, women received less than one-third of the dollars spent by these schools to recruit new athletes, and only slightly more than one-third of athletic operating budgets. The record thus shows that far from being victims of the increases in women's participation in athletics over three decades, men's sports have more than kept pace and have increased over the same time period.[50]

Schools Spend $2 on Men's Sports for Every $1 They Spend on Women's Sports (1999-00, Overall Expenses for Division I Schools)

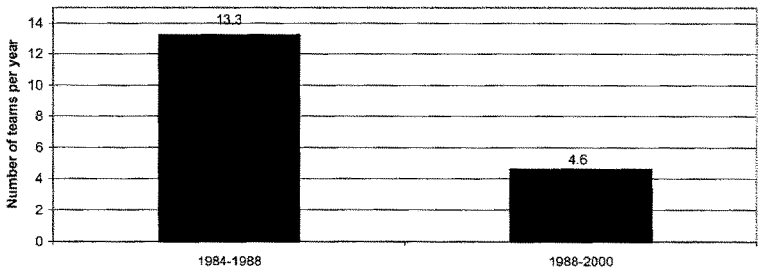


2. Certain male sports have declined for reasons unrelated to Title IX

There are numerous reasons that schools choose to eliminate or reduce particular sports opportunities, including declining interest in specific sports, liability considerations, and choices about how to allocate budget resources among the sports teams the school wishes to sponsor. Any attempt to blame Title IX for a decline in some men's lower-profile teams at certain schools must be rejected.

Any claim that the decline in men's wrestling teams is due to Title IX's policies is especially unfounded. During the period from 1984-1988, Title IX's application to intercollegiate athletics was suspended due to the Supreme Court's decision in Grove City College v. Bell, which held that only parts of schools directly receiving earmarked federal funds (which intercollegiate athletics do not) were covered by Title IX.[51] In that four-year period, when the three-part test was not in effect, colleges and universities cut wrestling teams at a rate *almost three times as high* as the rate of decline during the 12 years after Title IX's application to intercollegiate athletic programs was firmly reestablished through the Civil Rights Restoration Act of 1987. From 1984 to 1988, the number of NCAA institutions sponsoring men's wrestling teams dropped by 53, from 342 to 289. During the 12 years from 1988 to 2000, the number dropped by 55, from 289 to 234. Men's overall participation also dropped during the years that Title IX was not being enforced, declining from 201,063 in 1984-85 to 178,941 in 1987-88.[52]

When Title IX Was Not Enforced (1984-88), Schools Cut Wrestling Teams at a Rate Almost Threes Times Higher Than During the Subsequent 12 Years When Title IX Was Enforced (1988-2000)



Furthermore, a number of women's sports have declined since Title IX was enacted. Yet it can

hardly be said that Title IX, which has resulted in tremendous growth overall in women's athletics, is the cause of the decline of these women's teams.

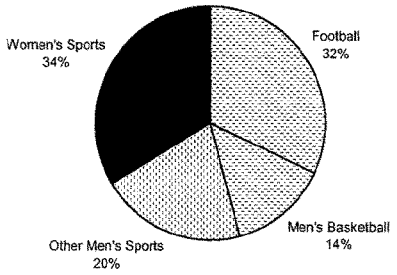
For example, the number of women's field hockey teams sponsored by NCAA member institutions dropped from 268 in 1982 to 239 in 2000; while 34% of NCAA member schools sponsored women's field hockey in 1982, only 23% of them sponsored the sport in 2000. Women's gymnastics is another sport that has experienced a significant decline in recent years. The number of NCAA member schools sponsoring women's gymnastics dropped from 179 in 1982 to 90 in 2000 -- a decline of about 50%.[53]

VI. CONTINUED EXPANSION OF BOTH MEN'S AND WOMEN'S ATHLETIC OPPORTUNITIES IS BOTH POSSIBLE AND PRACTICAL

Despite the overheated rhetoric of Title IX's opponents, there are ways that schools can increase, and have increased, women's and men's opportunities – even without finding additional resources to devote to athletics. Schools can find savings by cutting needless expenditures, particularly for football and men's basketball.

The resources male athletes receive are unevenly distributed, with football and men's basketball consuming 72% of the total men's athletic operating budget at Division I-A institutions.[54] Of the $3.57 million average increase in expenditures for men's Division I-A sports programs from 1998-2000, 68% percent of this increase, $2.46 million, went to football. This increase exceeds the entire operating budget for women's Division I sports in 2000 by over $1.69 million.[55]

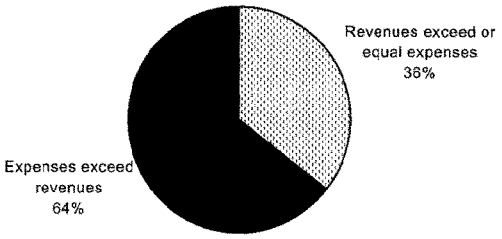
Women's Sports Receive Only One-Third of the Overall Athletics Budgets in Division I Schools



At the vast majority of universities, and at NCAA Division I institutions in particular, cost-cutting can be accomplished without hurting the competitiveness or revenue production of the football programs. Schools could stop funding hotel rooms for football players on nights before home games or order new uniforms less frequently. Universities could also control spiraling coaching salaries and decline to pay for luxuries unrelated to a team's ability to compete – such as mahogany paneling in coaches' offices. Athletic conferences also could adopt cost reductions to assist schools in saving funds and ensuring a level playing field by, for example, limiting travel squad size. None of these measures would reduce the quality of the experience for students, hurt the competitiveness of the programs, or restrict their ability to generate revenue.

The ability to generate revenue does not, of course, mean that sports programs are profitable. To the extent that the substantial funds devoted to football in particular are claimed to be justified by the revenue the sport produces, the facts do not support this assertion – 64% of Division I and II football programs do not generate enough revenue to pay for themselves, much less any other sports. In 1999, these programs reported annual deficits averaging $1 million (Division I-A), $630,000 (Division I-AA), and $300,000 (Division II).[56] It is thus simply incorrect to suggest that the great majority of schools actually fund intercollegiate athletic programs from any profits generated by football.

Almost Two-Thirds of Division I and II Football Teams Run Deficits



CONCLUSION

Congress enacted Title IX in 1972 to address widespread sex discrimination against women in athletics and all other aspects of their education. After 30 years of Title IX, women and girls now have greater opportunities to play sports, receive scholarships, and obtain other important benefits that flow from sports participation.

But much work remains to achieve gender equity in athletics programs. The evidence shows that women still lag in participation opportunities, scholarships, budgets, and other aspects of sports programming. The National Women's Law Center is committed to vigorous enforcement of Title IX and will fight to ensure that women and girls receive their fair share of athletic opportunities.

ENDNOTES

[1] See Chalenor v. University of North Dakota, No. 00-3379ND (8th Cir. May 30, 2002); Pederson v. Louisiana State University, 213 F.3d 858, 879 (5th Cir. 2000); Neal v. Board of Trustees of The California State Universities, 198 F.3d 763, 770 (9th Cir. 1999); Horner v. Kentucky High School Athletic Association, 43 F.3d 265, 274-75 (6th Cir. 1994); Kelley v. Board of Trustees, University of Illinois, 35 F.3d 265, 270 (7th Cir. 1994), cert. denied, 513 U.S. 1128 (1995); Cohen v. Brown University, 991 F. 2d 888 (1st Cir. 1993) (Cohen I), and 101 F.3d 155, 170 (1st Cir. 1996), cert. denied, 520 U.S. 1186 (1997) (this case was before the First Circuit twice, first on Brown University's appeal of a preliminary injunction granted by the district court (Cohen I), and the second time after a trial on the merits (Cohen II)); Roberts v. Colorado State Board of Agriculture, 998 F.2d 824, 828 (10th Cir. 1993), cert. denied, 510 U.S. 1004 (1993); Williams v. School District of Bethlehem, 998 F.2d 168, 171 (3d Cir. 1993).

[2] Horner v. Kentucky High School Athletic Association, 43 F.3d 265, 275 (6th Cir. 1994); Roberts v. Colorado State Board of Agriculture, 998 F.2d 824. 829 (10th Cir. 1993), cert. denied, 510 U.S. 1004 (1993).

[3] See Department of Health, Education, and Welfare, Policy Interpretation, 44 Fed. Reg. at 71419 (1979).

[4] National Collegiate Athletic Association, Participation Statistics Report: 1982-2001 and 2000-01 Participation Rates.

[5] National Federation of State High School Associations (NFHS), 2001 High School Athletics Participation Survey.

[6] NCAA, Participation Statistics Report: 1982-2001 and 2000-01 Participation Rates.

[7] Steven Goff, "Its Popularity Growing, Women's Game is Ready to Shine," Washington Post, June 18, 1999, p. D11.

[8] Frederick C. Klein, "Goals for Women's Soccer," The Wall Street Journal, April, 16, 1999, p. W7. See also Amy Shipley, "Bearing Down, Catching Up," Washington Post, June 13, 1999, p. D1.

[9] Mike Terry, "Women's Basketball: L.A. Needs Showcase Event," Los Angeles Times, Feb. 7, 2002, p. D7.

[10] NCAA News, June 4, 2001.

[11] ESPN, "Nearly 3.5 Million Households Tune In" (April 6, 2002), available at http://sports.espn.go.com/ncaa/wbasketball/ncaatourney02/.

[12] Amy Shipley, "U.S. Rolls in Cup Opener," Washington Post, June 20, 1999, p. D1.

[13] William Gildea, "U.S. Takes One for the Team; Collective Selfishness Culminates in Title at Women's World Cup," Washington Post, July 11, 1999, p. A1.

[14] Daniel L. Fulks, Revenues and Expenses of Divisions I and II Intercollegiate Athletics Programs: Financial Trends and Relationships – 1999 (NCAA 2000).

[15] Carnegie Corporation, The Role of Sports in Youth Development (March 1996).

[16] Twenty-five percent of high school athletes, versus 40% of nonathletic high school students, smoke cigarettes. Wyoming High School Activities Association, Student Activities Survey (1998).

[17] Ninety-two percent of high school athletes do not use drugs. NFHS, The Case for High School Activities (visited May 26, 1999) <http://www.nfhs.org/case.html>.

[18] D. Sabo et al., The Women's Sports Foundation Report: Sport and Teen Pregnancy (1998). See also The President's Council on Physical Fitness and Sports Report, Physical Activity & Sports in the Lives of Girls (Spring 1997).

[19] The Women's Sports Foundation, "Table 8," Minorities in Sports: The Effect of Varsity Sports Participation on the Social, Educational and Career Mobility of Minority Students 27 (Aug. 15, 1989). See also "NCAA Study on Graduation Rates," NCAA News (June 28, 1995).

[20] A state-wide, three-year study by the North Carolina High School Athletic Association found that athletes had higher GPAs (2.86 vs. 1.96), lower dropout rates (.7% vs. 8.98%) and higher high school graduation rates (99.56% vs. 94.66%), than their nonathletic peers. The Case for High School Activities, *supra* note 17.

[21] Donna A. Lopiano, Testimony before the United States Subcommittee on Consumer Affairs, Foreign Commerce and Tourism, Oct. 18, 1995; see also Teegarden, Proulx, et al., Medicine and Science in Sports and Exercise, Vol. 28 (1996) p. 105-13; Leslie Bernstein, et al., "Physical Exercise and Reduced Risk of Breast Cancer in Young Women," Journal of the National Cancer Institute, Vol.86, No.18 (Sept. 21, 1994); Menopause, Vol. 3, No. 3 (1996) pp. 172-80.

[22] The President's Council on Physical Fitness and Sports Report, Physical Activity & Sports in the Lives of Girls (Spring 1997).

[23] Colton and Gore, Risk, Resiliency, and Resistance: Current Research on Adolescent Girls, Ms. Foundation (1991).

[24] Women's Sports Foundation, Miller Lite Report 3 (Dec. 1985).

[25] Minorities in Sports, supra note 19, at 4.

[26] Id.

[27] Steve Wieberg, "NCAA Graduation-Rate Study: Women First," USA Today, June 30, 1995 p. 3C.

[28] Women's Sports Foundation, The Wilson Report: Moms, Dads, Daughters and Sports 5 (June 7, 1988).

[29] NCAA, Gender-Equity Study (2000).

[30] Id.

[31] NCAA, 1982-2001 Sports Sponsorship and Participation Statistics Report.

[32] Id.

[33] National Federation of State High School Associations (NFHS), 2001 High School Athletics Participation Survey (2001).

[34] See, e.g., Communities for Equity v. Michigan High School Athletic Association, 178 F. Supp. 2d 805 (W.D. Mich. Dec. 17, 2001) (holding that association's scheduling of six girls' sports, but no boys' sports, in nontraditional or disadvantageous seasons discriminates against girls in violation of Title IX, the Fourteenth Amendment, and state law); Nanette Asimov, "Washington Girls: Softball Diamonds in the Rough," The San Francisco Chronicle, May 26, 2000, at 2 (Of 62 girls' softball diamonds in San Francisco, not one has a regulation dirt infield, staked bases and lined field.).

[35] NCAA, Gender-Equity Study (2000).

[36] See e.g., Cohen v. Brown University, 101 F.3d 155, 170 (1st Cir. 1996) ("No aspect of the Title IX regime at issue in this case – inclusive of the statute, the relevant regulation, and the pertinent agency document – mandates gender-based preferences or quotas, or specific timetables for implementing numerical goals....").

[37] United States General Accounting Office ("GAO"), No. 01-128 Gender Equity: Men's and Women's Participation in Higher Education, December 2000, at 40.

[38] Neal v. Board of Trustees of The California State Universities, 198 F.3d 763, 770 (9th Cir. 1999) (emphasis added).

[39] 118 Cong. Rec. 5804 (February 28, 1972).

[40] See, e.g., Sex Discrimination Regulations: Hearings Before the Subcommittee on Postsecondary Education of the Committee on Education and Labor, 94th Cong., 1st Sess. 63 (1975) (remarks of Rep. Esch) "The question I would ask is how and to what degree, can you encourage or open up the participation? If women have more encouragement to participate, more of them will participate."); id. at 66 (remarks of Rep. Chisholm) (" The fact of the matter is that women never have really had an opportunity. When you think of the Olympic gold medalist, Donna DeVarona, and the fact that there

TITLE IX AND EQUAL OPPORTUNITY IN VOCATIONAL AND TECHNICAL EDUCATION: A PROMISE STILL OWED TO THE NATION'S YOUNG WOMEN

A Report By

The National Women's Law Center

June, 2002

SUMMARY

This June 23 marks 30 years since the passage of Title IX of the Education Amendments of 1972, the federal law that prohibits sex discrimination in all aspects of federally funded education programs. When Title IX was passed, many colleges and professional schools had quotas limiting the number of women they would accept. Some schools labeled their buildings as for boys only; others were similarly restricted to girls. Many high schools prohibited boys from taking home economics and girls from taking shop or auto mechanics. To help high school students make career choices, schools across the country routinely used blue forms for boys – asking if the boys wanted to become President of the United States -- and pink forms for girls, asking if they wanted to become First Lady.

Substantial progress has been made in opening important educational opportunities for women, and Title IX has relegated the era of pink and blue forms – and these explicit types of discrimination against girls – to the history books. But in the area of vocational and technical education, women and girls have, sadly, been left behind. Thirty years after enactment of Title IX, the patterns of enrollment in vocational and technical programs look shockingly similar to the patterns that existed prior to passage of the law. Biased counseling, the provision of incomplete information to students on the consequences of their career training choices, sexual harassment of girls who enroll in non-traditional classes, and other forms of discrimination conspire today to create a vocational system characterized by pervasive sex segregation. Young women remain clustered in "traditionally female" programs that prepare them for low-wage careers and do not provide them with the training or technical skills necessary to enter high-wage jobs. Young men, on the other hand, fill the vast majority of slots in programs leading to higher-wage careers that can provide true economic self-sufficiency.

This sex segregation in the nation's vocational classrooms -- and the relegation of girls to traditionally female programs -- has deep impact on the earning power and job prospects of the young women who graduate from these programs. Moreover, these young women often receive a substandard education in the predominantly female programs into which they are placed. While school districts are updating their vocational course offerings, providing more advanced classes, and adding high-technology programs such as Cisco Networking Academies, girls are too often bypassed for these opportunities. Where enrollment in a traditionally female program leads to fewer chances to take advanced courses or to master the technology that is so important in the information age, girls are doubly harmed.

Because the stakes for expanding vocational and technical education opportunities for young women are enormous, the National Women's Law Center undertook a nationwide investigation of the extent of sex segregation in vocational and technical programs at the high school level. The findings of that investigation are presented below, along with the Center's conclusions and recommendations. Accompanying this Report, the Center is also filing 12 Petitions for Compliance Review with each of the regional offices of the Office for Civil Rights of the United States Department of Education. The Center calls on those federal offices to conduct full investigations of the sex segregation in vocational and technical programs in specific states within, as well as throughout, their regions and to remedy the discrimination that has

resulted in these unacceptable barriers to full educational opportunity for girls and women. Thirty years after enactment of Title IX, the country owes a debt to the young women who have been left behind, and whose educational and economic prospects have significantly suffered as a result.

FINDINGS

- ***There is pervasive sex segregation in vocational and technical programs at the high school level in schools across the country.***

The Center's investigation conclusively demonstrates that pervasive sex segregation in vocational and technical programs – with girls predominantly enrolled in "traditionally female" programs and boys primarily participating in "traditionally male" courses – exists nationwide. The Center sought data from every state and the District of Columbia and examined in depth the enrollment patterns in vocational programs in 12 states – one for each of the 12 regions where the Department of Education has a civil rights enforcement office. The Center thus evaluated data on the gender breakdown of students in vocational programs in **Arizona; California; Florida; Illinois; Maryland; Massachusetts; Michigan; Mississippi; Missouri; New Jersey; North Carolina; and Washington.**

Data from each of these states revealed the same pattern of sex segregation across the board. For example, these data demonstrate that female students make up 96% of the students enrolled in Cosmetology, 87% of the students enrolled in Child Care courses, and 86% of the students enrolled in courses that prepare them to be Health Assistants in every region in the country. Male students, on the other hand, comprise 94% of the student body in training programs for plumbers and electricians, 93% of the students studying to be welders or carpenters, and 92% of those studying automotive technologies. *See* Attachment A.

The pattern of sex segregation is even worse in some states than these statistics would suggest. In Florida, for example, 99% of the students in Cosmetology are women, while *100%* of the students taking Plumbing are men. Males comprise 97% of welding classes in Michigan; the same percentage of the Heating, Air Conditioning, and Refrigeration classes in Mississippi; and the same percentage of the students taking Electrician classes in Missouri. In Arizona, Florida, Maryland and North Carolina, females comprise upwards of 98% of the students enrolled in Cosmetology. *See* Attachment B.

- ***This sex segregation results in substantial disparities in the wages earned by female and male graduates of vocational and technical programs.***

The pervasive sex segregation of female students into traditionally female programs has a serious adverse impact on their economic well-being. For example, students entering Child Care fields will earn only a median salary of $7.43 per hour, and Cosmetologists will earn a median salary of $8.49 per hour. By contrast, the median salary for students who become Plumbers and Pipefitters is $18.19 per hour, and the top 10% of workers in that field will make $30.06 per hour. Similarly, Electricians have a median salary of $19.29, and are eligible to earn up to

$31.71 while progressing in the career tracks created in their field. In no case, moreover, does the amount earned by the top 10% of workers in the predominantly female fields of cosmetology, child care, or medical assistant even begin to approach the *median* wages earned by those employed in predominantly male occupations. While the top 10 percent of Child Care workers earn $10.71 per hour, for example, that is 41% *lower* than the median amount earned by mechanical drafters. *See* Attachment C. The differences are stark, and the consequences for these students and their families enormous.

- ***This sex segregation results in inferior educational opportunities for women and girls enrolled in "traditionally female" programs.***

The Center's investigations have also revealed that young women enrolled in traditionally female programs often have fewer opportunities to take advanced level classes, particularly in math and science; fewer chances to enroll in high-technology programs such as Cisco Networking Academies; and inferior instruction in the classes that they do take. Once again, the disparities in treatment are substantial and disturbing.

In New York City, for example, 13 of the 18 Career and Technical Education schools are highly sex segregated -- four have student bodies that are more than 70% female and nine have student bodies that are more than 70% male, including three schools that are more than 90% male. The schools that are 70% or more male offer, on average, 3.89 Advanced Placement courses per school, while the vocational schools that are 70% or more female average only 1.75 courses per school. None of the four predominantly female vocational schools offers any AP classes in Calculus, Statistics, Biology, Chemistry, Physics, or Computer Science -- including those schools that purport to prepare their students for careers in the health field or the business world. However, six of the predominantly male schools offer AP Calculus; four offer AP Biology; two offer AP Chemistry; two offer AP Computer Science; one offers AP Physics; and one offers AP Statistics. Similarly, the New York City Board of Education has implemented Cisco Networking Academies, which lead to industry certification in computer networking, at five vocational high schools – all of which are more than 55% male, and three of which are more than 70% male.

In Virginia, moreover, an observer reported that the extent of the educational activities of the solely female Cosmetology class consisted of curling the same strand of hair over and over again. The only "technological" opportunity provided in this class was a computer program that permitted the students to view a person's image with several different hairstyles. Young women in Virginia have also reported that schools are not informing them about opportunities to take technology-related courses, that counselors have steered females away from advanced computer courses, and that the few females who do enroll in technology-related courses are subjected to a hostile environment.

- ***This sex segregation results from discrimination in violation of Title IX.***

Contrary to the claims sometimes made by critics of Title IX, these stark patterns of extreme sex segregation are not the product of independent choices made by young women

alone. In fact, the evidence and the historical record make resoundingly clear that these patterns result from -- and manifest – enduring sex discrimination.

In 1979, the then Department of Health, Education and Welfare found "that male and female students were concentrated in programs traditionally identified as intended for them." Commenting on patterns of sex segregation that are virtually identical to those identified in the Center's investigation, the Department stated that the patterns resulted from "unlawfully discriminatory practices" by educational institutions. Vocational Education Programs Guidelines For Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap, 44 Fed. Reg.17,162 (1979).

The data uncovered by the Center demonstrate that these discriminatory practices have not been adequately dismantled, and are, in fact, continuing to limit equal opportunity for women. The data show that schools have not adequately fulfilled their responsibilities to monitor and address the various forms of discrimination that can limit girls' access to non-traditional vocational programs, whether through career counseling that relies on gender stereotypes, recruitment focused on the gender traditionally enrolled at the school, or failure to correct classroom conditions that undermine equal opportunity for girls.

Among other findings, the Center uncovered the following recent examples of discrimination perpetuated in the nation's vocational schools:

- In Los Angeles, California, young women are frequently steered into Cosmetology courses by their guidance counselors, who are reported to have consistently lower expectations of female students.

- In Massachusetts, a teacher at a Boston vocational high school has steered young women toward Cosmetology and away from vocational programs in the trades, based on sex stereotypes. Another teacher instructed a female student not to choose a vocational program in the trades because she would be taking a boy's spot.

- In New York City, a vocational school that is 83% male displayed a large banner over its recruiting table stating that the school "Builds Mechanical Men," sending the message that its mission is to educate male students in mechanical fields.

- Young women in one Chicago high school vocational shop reported that their teacher encouraged male students to "learn by doing," while telling the female students to sit and study their textbooks.

Moreover, the Center has determined that half of the states across the country have not met their legal obligation to designate a Title IX coordinator who will oversee the state's efforts to comply with and carry out its responsibilities under Title IX. This is an independent violation of the law, and the absence of an official specifically designated to monitor the state's compliance with Title IX means that discriminatory patterns in the state's vocational programs

will likely go unnoticed and unremedied. The following states lack a Title IX coordinator: **Alabama, Arizona, Colorado, Delaware, District of Columbia, Indiana, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Idaho, Montana, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Vermont and Virginia.**

- ***The scope of the sex segregation and discrimination in vocational and technical education has been largely ignored in the 30 years since enactment of Title IX.***

The patterns of sex segregation identified in the Center's investigation demonstrate the inadequacy of the attention that has been paid to uncovering and remedying the underlying discrimination. In fact, numerous states lack even basic data to help them to monitor sex segregation in their vocational programs. Delaware, Georgia, Louisiana, Minnesota, Oregon, Virginia and the District of Columbia, for example, reported to the Center that they either did not collect enrollment data for vocational courses or did not collect the data broken down by sex. Alabama, Alaska, Colorado, Hawaii, Idaho, Indiana, Maine, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Rhode Island, Utah, Vermont and Wyoming did not respond in any way to the Center's request, and the information is not otherwise publicly available or accessible.

These state failures reflect the absence of any requirement that data related to vocational and technical programs be maintained on a systematic -- and, across the states, uniform -- basis. The Department of Education collects only limited data on vocational education that are insufficient to permit even a basic analysis of the type undertaken by the Center in the course of this investigation.

RECOMMENDATIONS

- ***The Center calls on the Office for Civil Rights of the United States Department of Education to undertake compliance reviews of high-school level vocational and technical programs.***

The Center is today filing 12 Petitions for Compliance Review – one in each regional office of the Department of Education's Office for Civil Rights (OCR). These Petitions call on OCR to investigate, identify and remedy the discriminatory practices that have perpetuated the pervasive sex segregation uncovered through the Center's investigation. Among other issues, the Center calls on OCR to determine:

- whether counseling of students considering vocational and technical options is non-discriminatory and provides full information on the consequences of career choices, or whether counselors steer girls away from non-traditional training based on gender stereotypes or other concerns;

- whether recruitment practices for vocational and technical programs are non-discriminatory, including whether promotional activities for the programs portray

women engaged in, and welcome women to enter, non-traditional training programs;

- whether admissions criteria for vocational and technical programs unfairly screen out, or otherwise discriminate against, girls and women;
- whether there is sexual harassment in vocational and technical programs, or other conduct that limits girls' access to opportunities to pursue non-traditional training; and
- whether sex segregation in the underlying vocational and technical programs has limited girls' access to technology-related programs and advanced courses.

- ***The Center calls on the United States Department of Education to begin collecting data on enrollment in high-school level vocational and technical courses, broken down by sex by race, ethnicity, and disability status, or for Congress to respond by requiring such data collection.***

The Department of Education has the authority to mandate data collection by states and other recipients of federal funds. The data currently collected by the Department to evaluate gender equity in vocational and technical programs is collected in occupational categories that are so broad they mask the sex segregation that the Center's investigation has shown is pervasive across the country. These data collection efforts, for example, do not show enrollment patterns for specific courses such as Cosmetology, Child Care, or Carpentry.

The Center thus calls on the Department of Education to collect the data necessary for OCR to conduct its Compliance Reviews, and to require for the future regular collection and submission of systematic data on enrollment patterns in each high-school level vocational and technical course. These data should be disaggregated by sex, and by race and ethnicity and disability status for each gender, to enable OCR to monitor and address any patterns of sex segregation that remain following its Compliance Reviews.

Should OCR fail to require the data collection necessary to monitor and assess equality of opportunity in high-school level vocational and technical programs, the Center calls on Congress to enact legislation mandating collection and submission of such data on an annual basis.

- ***The Center calls on states without Title IX coordinators to immediately designate an official responsible for investigating and remedying barriers to equal educational opportunity.***

The failure of states to designate a Title IX coordinator has adverse effects on equality of opportunity in high-school level vocational and technical schools. The Center calls on states to immediately rectify this situation, and to charge each Title IX coordinator with the responsibility to monitor and address sex segregation in vocational and technical programs.

- ***The Center calls on states to adopt compliance programs to prevent, identify and remedy sex discrimination in vocational and technical programs.***

OCR's Guidelines for equality of opportunity in vocational programs make clear that states are required to adopt such compliance programs, which should include collection and analysis of relevant data and information and the conducting of periodic compliance reviews. Vocational Education Guidelines at 17,165. This state-level enforcement obligation supplements, and does not supplant, the federal government's investigative responsibilities under Title IX and its implementing regulations, but can enhance efforts to promote voluntary compliance with the law.

- ***The Center calls on school districts and local education agencies to fulfill their own responsibilities under Title IX and relevant state laws to investigate, identify and remedy the discrimination that is leading to pervasive sex segregation in vocational and technical programs.***

Independent of OCR, school districts and local education agencies, as recipients of federal funds, have the obligation to investigate whether they are providing sex-segregated course offerings -- and, if so, to take the steps necessary to remedy the discriminatory practices leading to such sex segregation. The Center calls on schools districts and local education agencies to immediately fulfill these obligations.

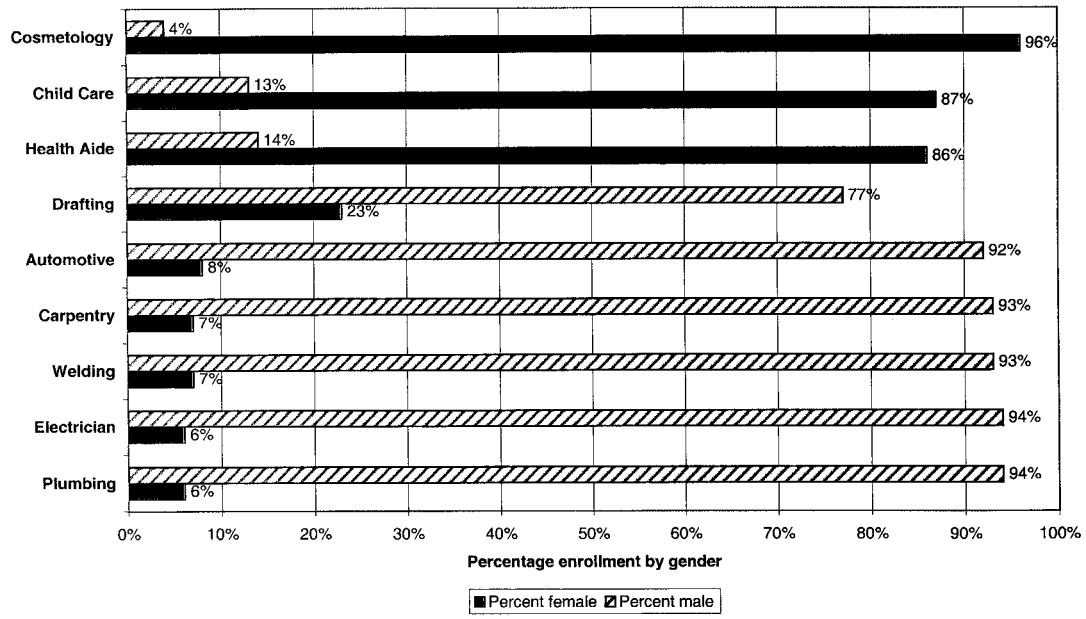
- ***The Center calls on the business community to exercise leadership, in partnership with the schools, to promote non-traditional training for women.***

Such partnerships can enhance prospects for young women to receive training and, ultimately, jobs in non-traditional fields. The business community can play a vital role in these efforts by partnering with individual vocational and technical programs; offering apprenticeships or other internships for students pursuing non-traditional training; providing high-technology options for traditionally female programs; and the like. Businesses should also take steps to ensure that their contributions to the schools are not steered away from use by female students.

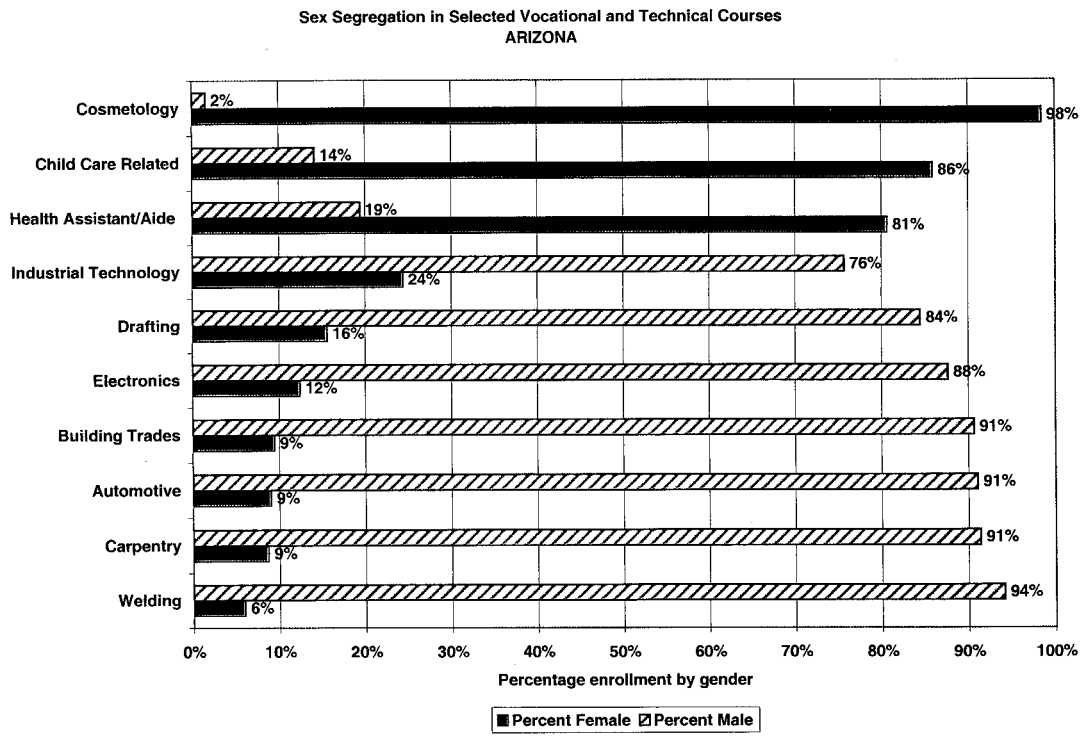
CONCLUSION

The pervasive sex segregation in vocational and technical courses compromises the educational opportunities of, and economic prospects for, girls and women relegated to traditionally female training programs. The evidence points to sex discrimination as a major cause of the rampant sex segregation and the disadvantage that results from it, in violation of Title IX. These violations must be remedied without delay. The Center calls on OCR, the states, the business community, and the schools themselves to immediately take the necessary steps to ensure that young women in vocational and technical programs are provided with truly equal educational opportunities.

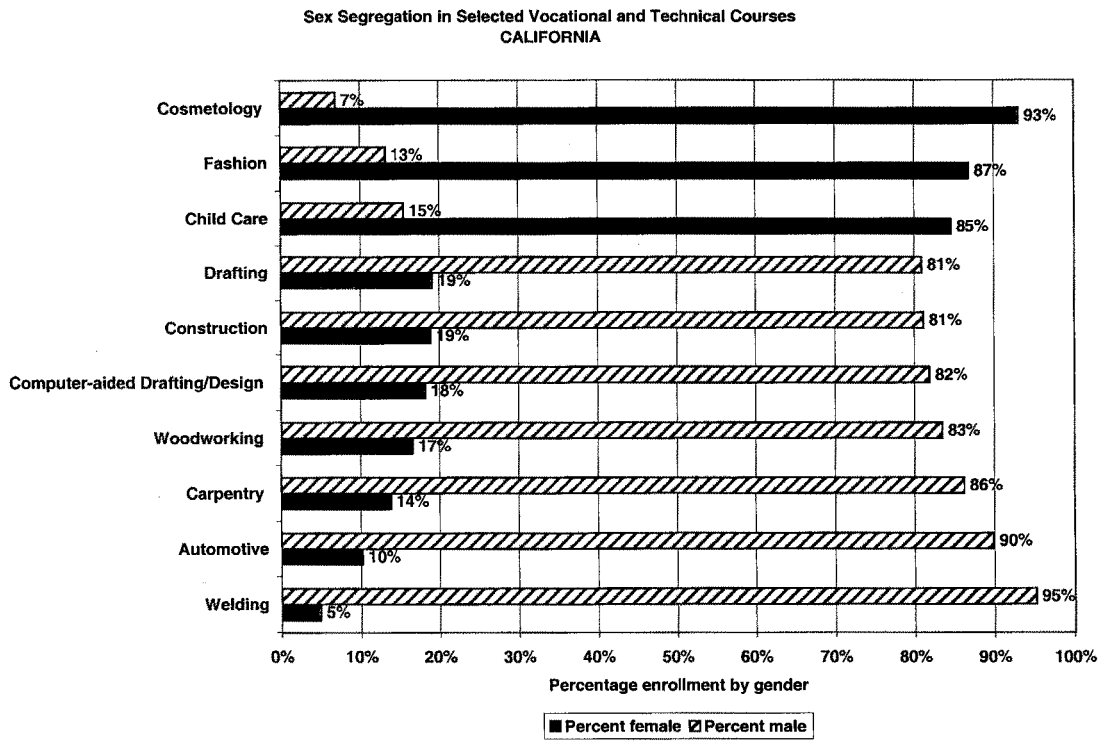
National Patterns of Sex Segregation in Selected Vocational and Technical Courses Based on Data in 12 Regions



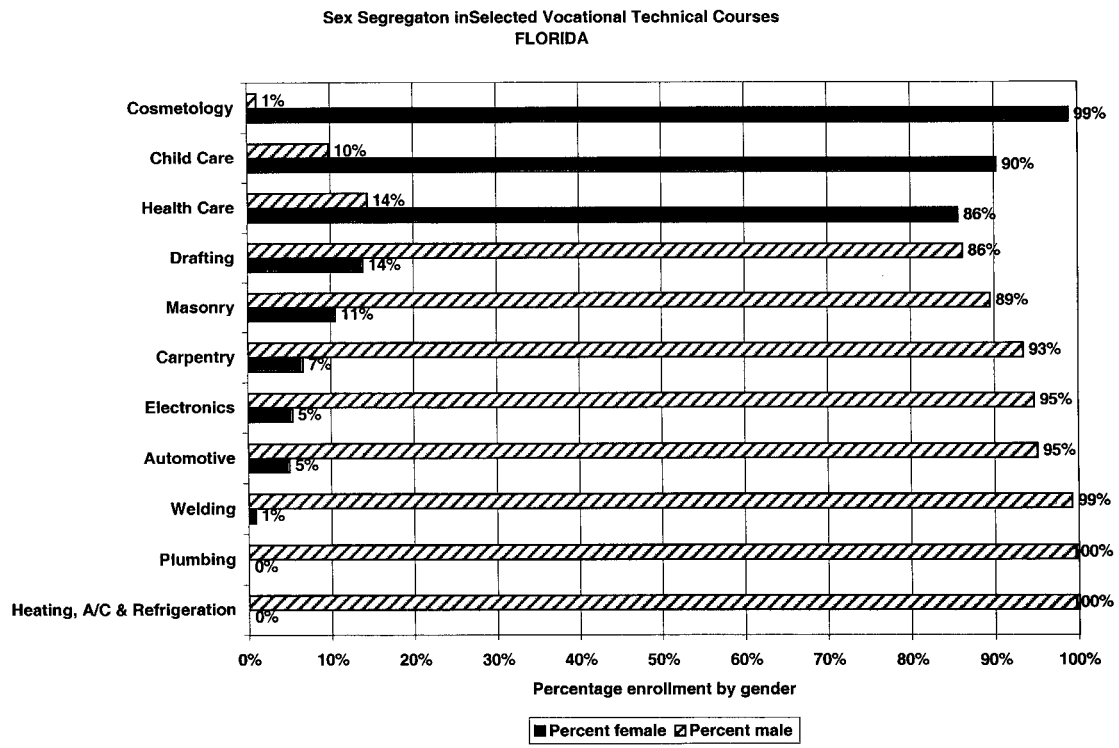
Source: National Women's Law Center analysis based on data from the Departments of Education in Arizona, California, Florida, Illinois, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, North Carolina and Washington.



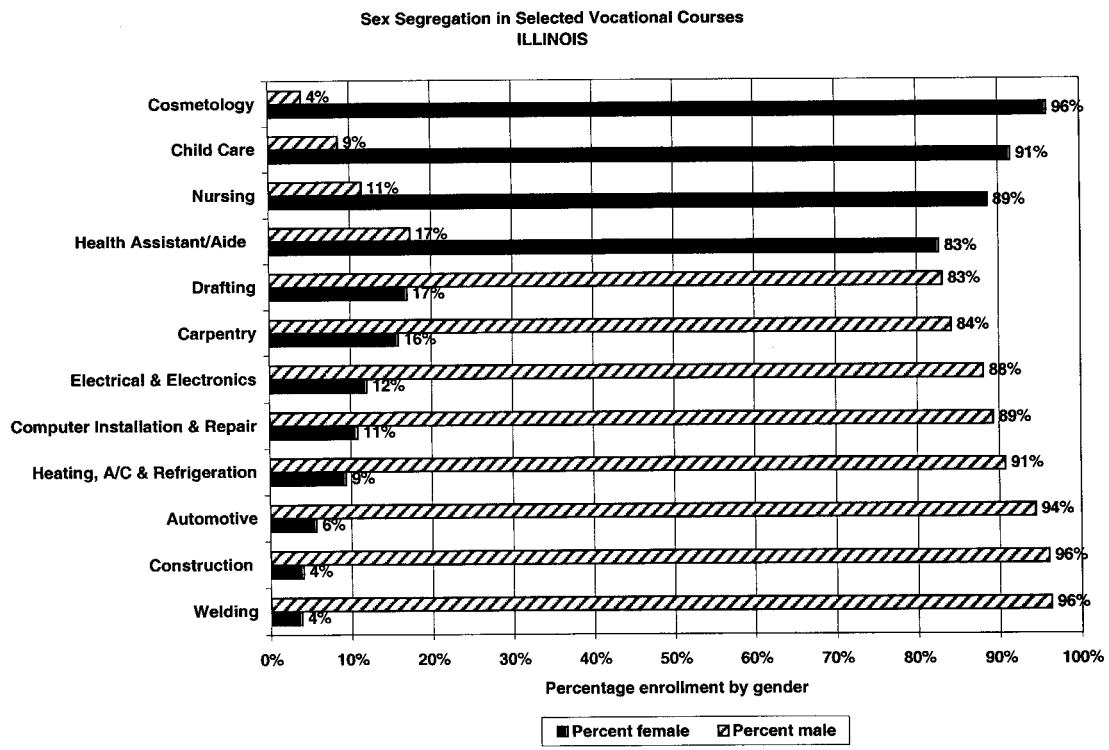
Source: Arizona Department of Education



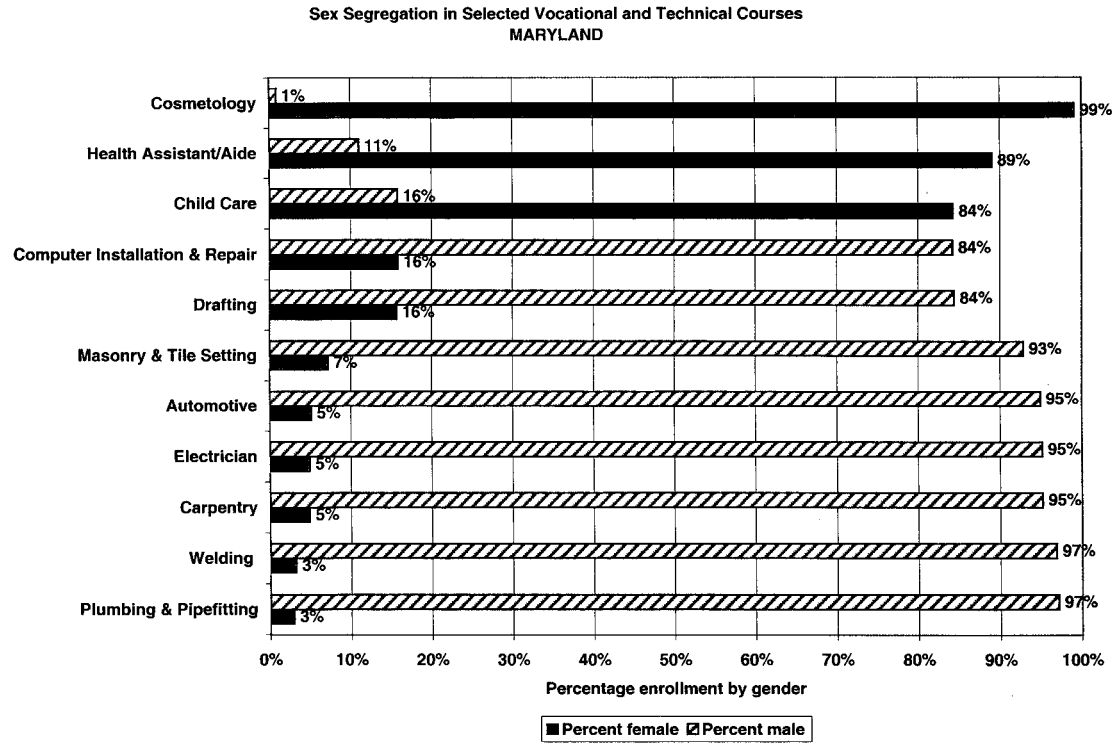
Source: California Department of Education



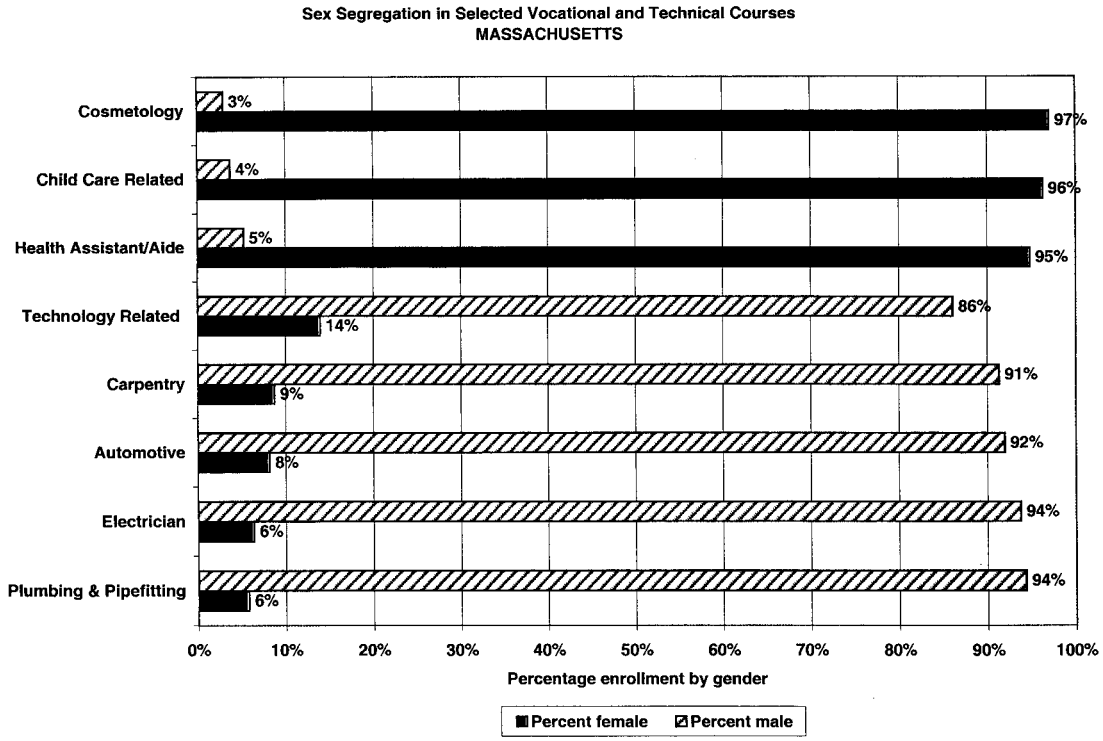
Source: Florida Department of Education



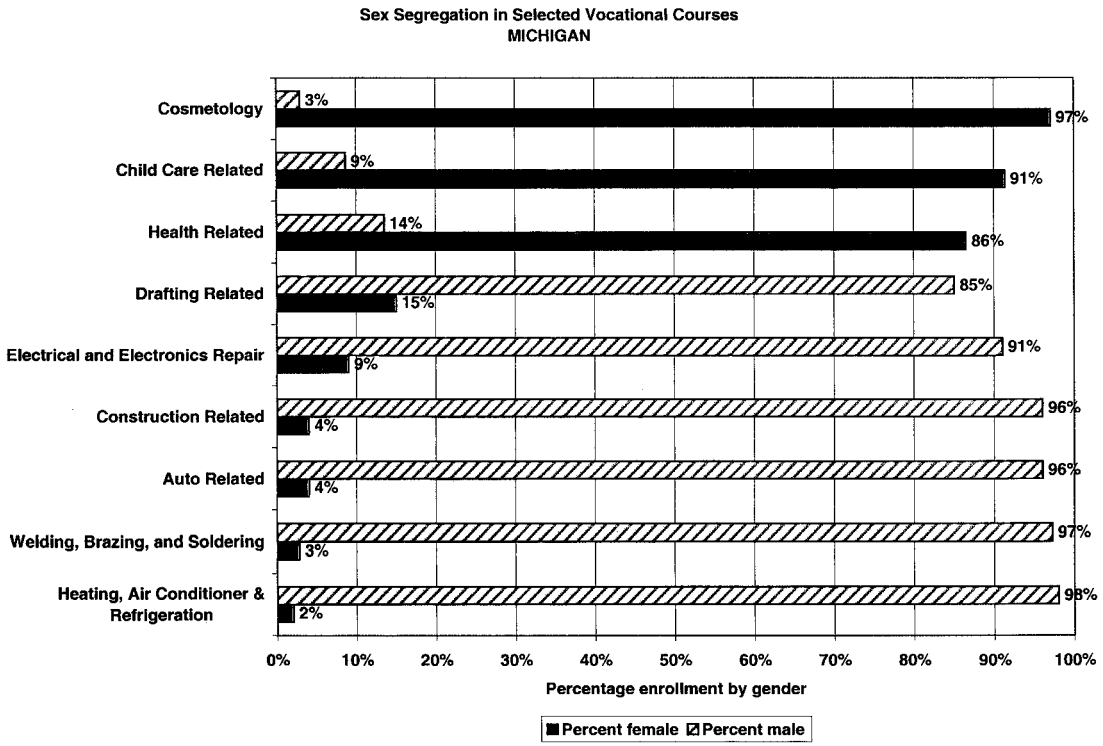
Source: Illinois Department of Education



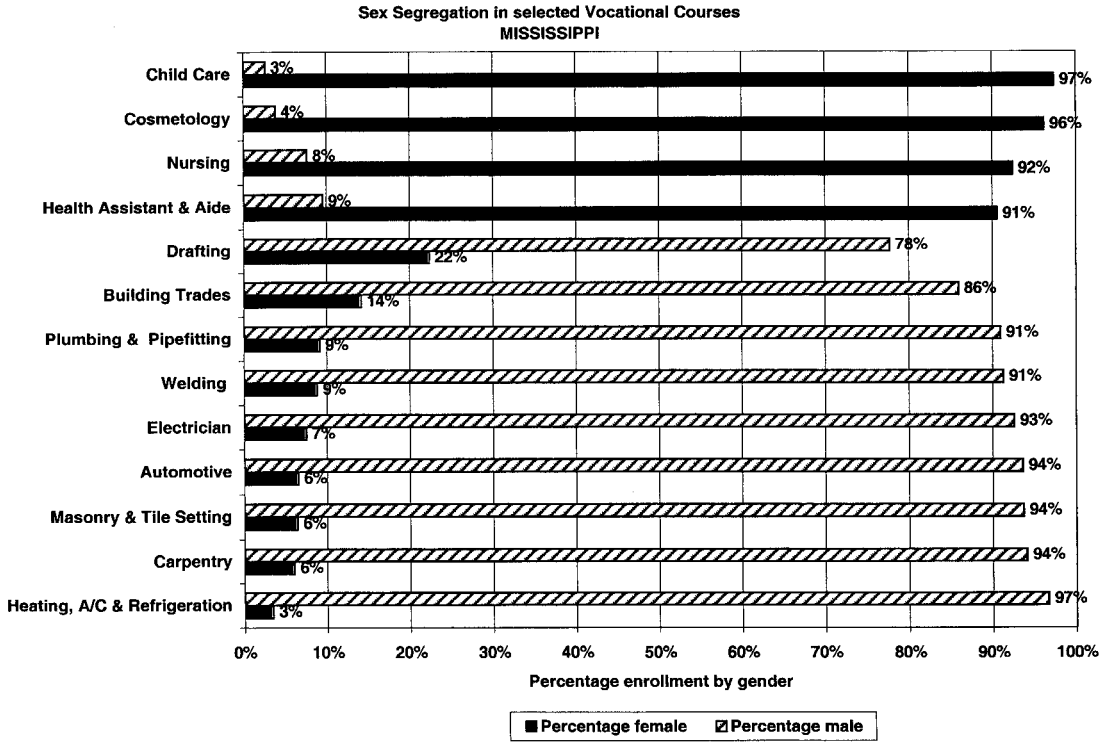
Source: Maryland Department of Education



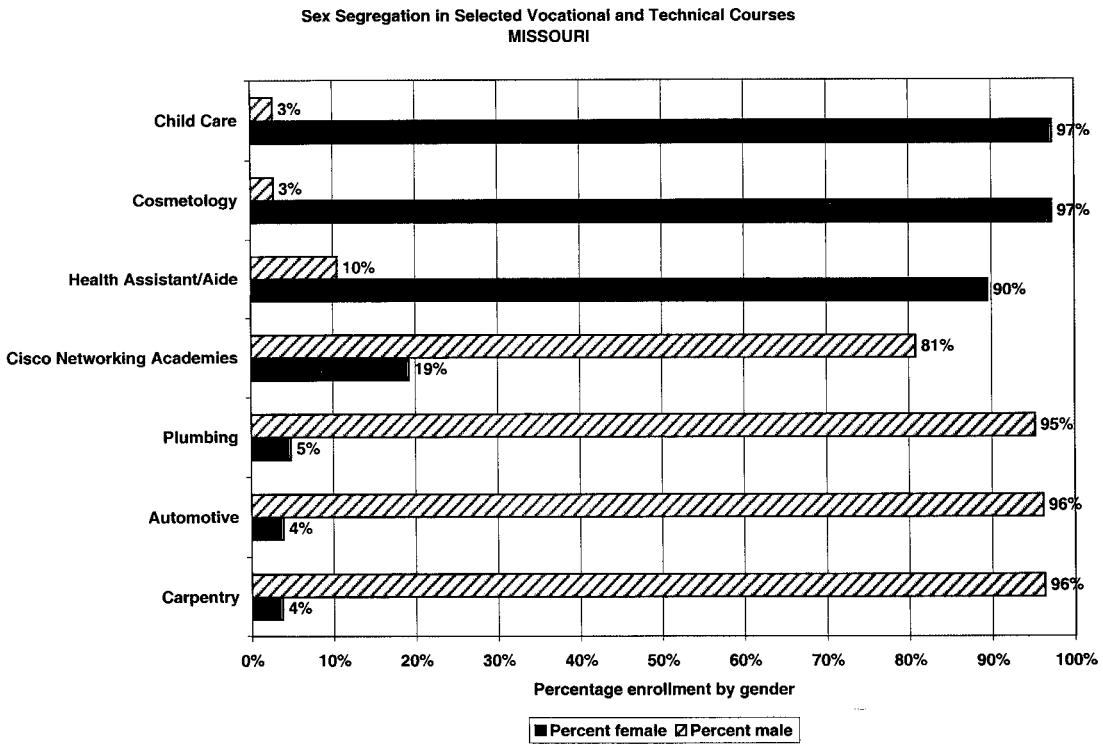
Source: Massachusetts Department of Education



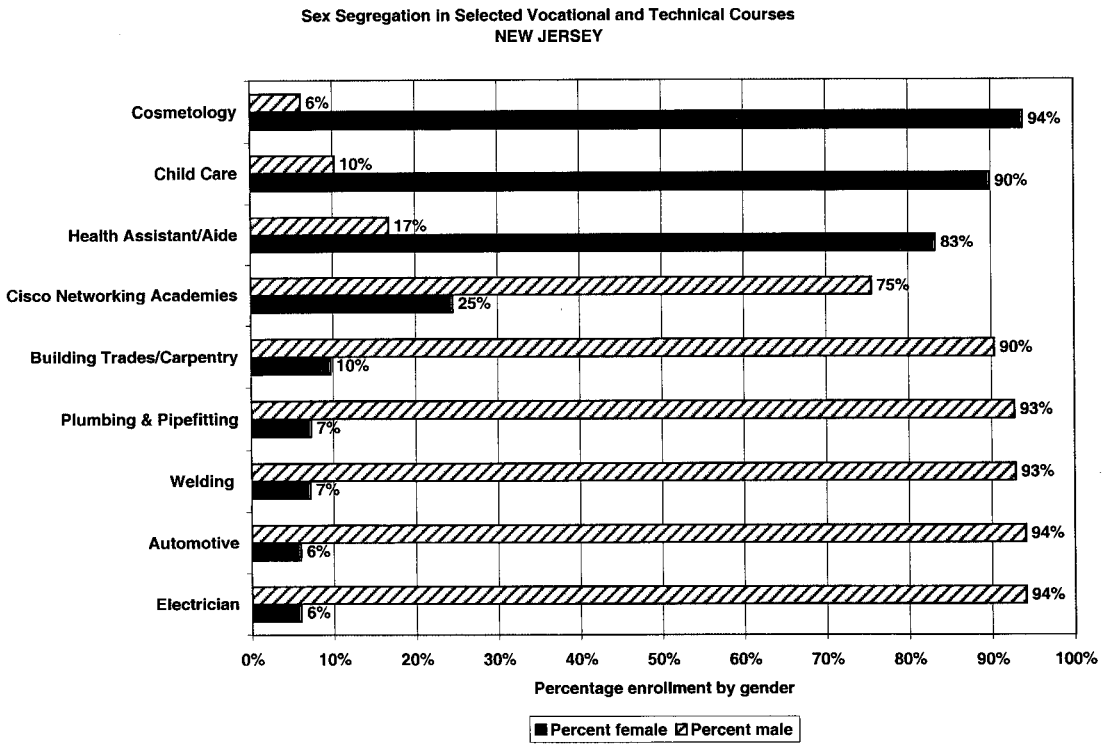
Source: Michigan Department of Education



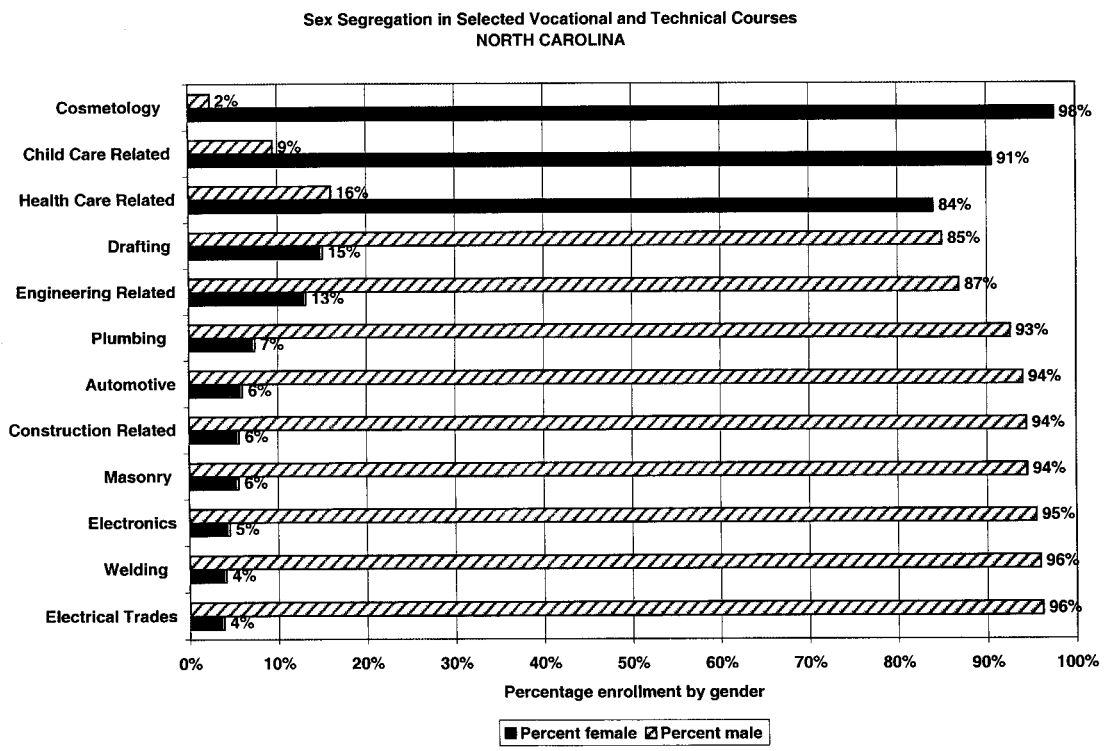
Source: Mississippi Department of Education



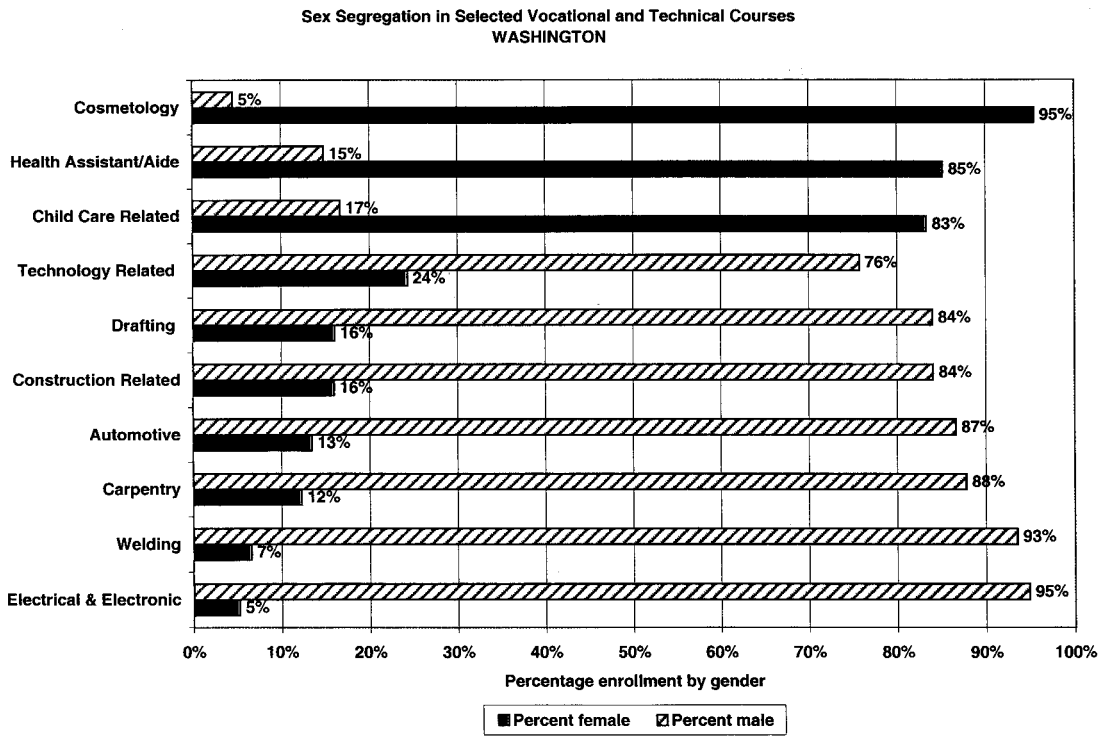
Source: Missouri Department of Education



Source: New Jersey Department of Education

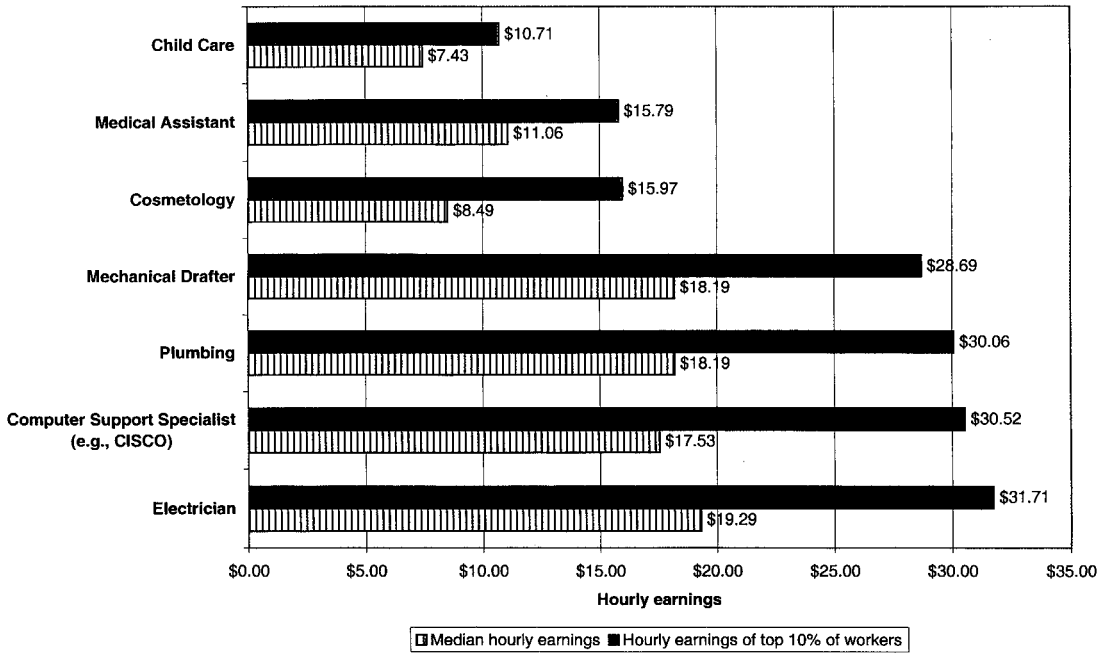


Source: North Carolina Department of Education



Source: Washington Department of Education

Predominantly Female Occupations Produce Lower Earnings Than Predominantly Male Occupations



Source: Bureau of Labor Statistics

Title IX at 30

Report Card on Gender Equity

SUBJECT	GRADE
ACCESS TO HIGHER EDUCATION	B
ATHLETICS	C+
CAREER EDUCATION	D
EMPLOYMENT	C–
LEARNING ENVIRONMENT	C–
MATH AND SCIENCE	B–
SEXUAL HARASSMENT	C
STANDARDIZED TESTING	C
TECHNOLOGY	D+
TREATMENT OF PREGNANT AND PARENTING STUDENTS	C+

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

June 2002

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INTRODUCTION

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.
20 U.S.C. § 1681

In passing Title IX of the Education Amendments in 1972, Congress intended to give girls and women opportunities equal to those offered boys and men in all education programs receiving taxpayer dollars. As we celebrate Title IX's 30th anniversary, girls and women do enjoy more opportunities. Indeed, as the federal mandate against sex discrimination in education, Title IX is key to achieving the goal to "leave no child behind." But despite the progress, barriers remain and more must be done to make Title IX the vehicle for equity it was intended to be.

Before Title IX, schools at all levels limited the participation of women and girls. Many colleges and professional schools had quotas limiting the number of women who could attend. Female athletics programming generally consisted of cheerleading. With the exception of historically black colleges and universities, virtually no college offered women athletic scholarships. Many high schools prohibited boys from taking home economics and girls from taking vocational classes such as auto mechanics. Female elementary and secondary school teachers often had to leave their jobs when they married or became pregnant, and pregnant and parenting students frequently were forced to drop out.

Title IX was designed to be a strong and comprehensive measure that would tackle all those forms of discrimination and more. The law addresses every aspect of education—from admissions and tracking to glass ceilings that have kept women from reaching the highest ranks of academia. In so doing, Title IX was meant to open the doors to educational opportunities formerly closed to women and girls, providing

avenues for enhancing their economic futures. Title IX was the nation's promise for ensuring that the talents of half its citizens—women—no longer would be constricted by discrimination.

Every federal agency that funds educational programs or activities must enforce Title IX. The U.S. Department of Education's Office for Civil Rights (OCR) is recognized as the primary agency charged with making Title IX's anti-discrimination mandate a reality, and the Department of Education promulgated regulations in 1975 to enforce the law.

Room for Improvement

- Sexual harassment remains pervasive in public schools—81 percent of students surveyed have experienced it.
- Sex segregation persists in career education, with more than 90 percent of girls clustered in training programs for the traditionally female fields of health, teaching, graphic arts, and office technology.
- Just 21 percent of all full professors at colleges and universities are women.
- For every new dollar going into athletics at the Division I and II levels, male sports receive 65 cents while female sports receive 35 cents.
- Women receive only 20 percent of computer science and engineering-related technology bachelor's degrees.
- Female students typically get less attention, praise, criticism, and encouragement from teachers than male students get.
- The lower test scores of African American females, Native American females, and Latinas compared to their white and Asian peers remains a serious and deep educational divide.
- Pregnant students are steered towards separate and less academically rigorous schools.

The regulations require education programs or activities that receive federal financial assistance to take steps to prevent and address sex discrimination, including designating an employee to coordinate Title IX compliance and investigate complaints, adopting and publishing grievance procedures that allow for prompt and equitable resolution of complaints, and implementing and disseminating a policy that prohibits sex discrimination.

New Tools for Title IX Enforcement. Although all federal agencies that fund education programs or activities were required to develop regulations to enforce Title IX, until recently, only four agencies (the Departments of Education, Energy, Agriculture, and Health and Human Services) had done so. In August 2000 the Department of Justice, in its capacity to coordinate civil rights enforcement, issued final regulations, modeled on the existing Department of Education regulations, for 20 federal agencies. With these new

regulations, federal executive branch agencies have the means to enforce Title IX's prohibition against sex discrimination. In 2001 the Department of Justice developed a legal manual for federal agencies regarding the variety of education programs and activities subject to Title IX regulations.

Another important enforcement tool is Executive Order 13,160, issued in June 2000. This order prohibits discrimination based on sex, race, and national origin, among other characteristics, in any education program or activity that the federal government conducts. Executive Order 13,160 would cover, for example, education scholarships and fellowships provided by the National Science Foundation. With this order, education programs conducted by the federal government will now be held accountable for complying with Title IX.

Funding Cut for Programs Supporting Title IX. While the new Title IX regulations for federal agencies and Executive Order 13,160 are important steps forward, other means for Title IX compliance and enforcement have not fared well. Funding has been slashed for numerous programs that support gender equity in education. In 1996 Congress eliminated funding under Title IV of the Civil Rights Act of 1964 for programs that had for two decades supported Title IX and gender-equity services in 49 state education agencies. These programs traditionally funded a state Title IX coordinator position and statewide training and assistance to local school districts. Since 1997 only two states have maintained their previous level of services, while only 14 states maintain even part-time services. In a telephone survey conducted by the Women's Educational Equity Act Resource Center after Title IX's 25th anniversary, some state education offices stated, "We don't do Title IX anymore."

Phone surveys by the National Women's Law Center in 2001 and 2002 found that about half of the states have no employee designated to coordinate efforts to comply with Title IX, as required by the regulations. Further, while 10 regional federally funded Equity Assistance Centers continue to provide gender, race, and national origin equity assistance to local school systems, the centers have received no funding increase in the last five years, despite a significant increase in requests for services following the loss of state department of education programs. Additionally, the Women's Educational Equity Act, the only federal program that focuses specifically on increasing education opportunities for women and girls, is inadequately funded and was given no funding in President Bush's 2003 budget.

Challenges to Title IX Enforcement. Of further concern is a growing movement to roll back Title IX protections. Attacks on Title IX and gender equity have been growing, highlighted by the popular media and in the Republican presidential agenda

during the 2000 election. In January 2002 the National Wrestling Coaches Association and other Title IX opponents filed a federal lawsuit against the Department of Education challenging the Title IX regulations and guidance regarding athletics opportunities. That suit is pending.

In addition, U.S. Supreme Court rulings and legal challenges threaten to significantly hamper efforts to enforce Title IX. In 2001 the Supreme Court ruled that individuals cannot bring private lawsuits to enforce regulations implementing Title VI of the Civil Rights Act of 1964 that prohibit practices that have the effect of discriminating on the basis of race, color, or national origin. If this decision were applied to Title IX, which is modeled after Title VI, it would have serious implications for women and girls seeking to challenge practices, such as standardized tests, that limit their access to educational opportunities. Some lower courts have already held that in light of this decision, an individual may not file a private lawsuit under Title IX alleging retaliation. If this decision stands, a school would face no threat of a court challenge if, for example, it expelled a student because she complained about sexual harassment. These court decisions and legal challenges demonstrate the need for heightened public education about Title IX and for remedies to address the discrimination that still plagues girls and women in education.

Strong Enforcement of Title IX Needed. On the 25th anniversary of Title IX, the National Coalition for Women and Girls in Education issued *Title IX at 25: Report Card on Gender Equity.* This report updates that analysis. Thirty years after the enactment of Title IX, while educational opportunities for girls and women have increased, there is much room for improvement in the enforcement of Title IX. As the following progress reports demonstrate, while some gains have been made in many areas—such as higher education, athletics programming, and math and science—many barriers remain. Too many girls and women still confront sex discrimination in their education programs. Girls and women are severely underrepresented in the critical area of technology. Sex segregation is persistent in vocational training programs, with girls and women clustered in programs that are traditional for their sex and that lead to low-wage jobs. Colleges and universities continue to spend the lion's share of athletics money on men's programming. Scoring gaps persist in high-stakes standardized testing across all races and ethnicities, limiting women's access to education institutions, financial aid, and careers. Employment numbers for women at colleges and universities tend to decrease as the rank in the career ladder or the prestige of the institution increases. Women still lag behind men in earning doctoral and professional degrees. Sexual harassment continues to undermine equal opportunity for male and female students. Gender bias continues to

permeate the learning environment. Schools continue to brush aside pregnant and parenting students. And little has been done to address the multiple barriers faced by girls of color, girls with disabilities, and girls from poor backgrounds—all of whom experience a disproportionate number of inequities.

The progress reports that follow examine these obstacles through the lens of 30 years of Title IX. The reports assess how far we have come in making Title IX's goal of equal opportunity a reality—and how far the United States as a nation has yet to go.

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PROGRESS REPORTS

The National Coalition for Women and Girls in Education *Report Card* examines the state of gender equity in education in 10 key areas: access to higher education, athletics, career education, employment, learning environment, math and science, sexual harassment, standardized testing, technology, and treatment of pregnant and parenting students.

The progress reports grade the nation's efforts to implement Title IX based on a variety of indicators, such as women's participation rates, the federal government's enforcement actions, and legal developments. Based on these indicators, the progress reports assess how far the nation has come in realizing Title IX's goal of eliminating sex discrimination in education—first compared to before Title IX, and then compared to Title IX at 25.

Progress Toward Gender Equity

Subject	2002	1997
Access to Higher Education	B	B-
Athletics	C+	C
Career Education	D	C
Employment	C-	C-
Learning Environment	C-	C-
Math and Science	B-	C+
Sexual Harassment	C	D+
Standardized Testing	C	C
Technology	D+	NOT GRADED
Treatment of Pregnant and Parenting Teens	C+	C+

The grading scale is as follows:

A – Equitable: Gender and other areas of diversity respected and affirmed
B – Substantial Progress: Most gender-based barriers eliminated
C – Some Progress: Some barriers addressed, but more improvement necessary
D – Little Progress: Significant barriers remain
F – Failure: No progress

How did the nation fare? As the chart indicates, the nation has made some progress over the last 30 years, but there is much room for improvement. The recommendations at the end of each progress report and in the Action Agenda section provide suggestions about how the nation can make the grade for gender equity in the coming years.

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Access to Higher Education

B

Since its passage in 1972, Title IX has dramatically expanded women's access to higher education. The increased representation of women in degree-granting programs has contributed to the economic progress of women and their families. Title IX has helped reduce sex discrimination, most notably in admissions standards, to the benefit of women and men alike. But other barriers to higher education persist, including sex segregation by academic subject and disparities in financial aid awards.

Admissions. Until the 1970s a great many of the nation's colleges and universities—private and public—simply excluded women outright. Institutions that admitted women welcomed them with a maze of obstacles including quotas, requirements to live in limited on-campus housing, and admissions criteria tougher than those for men. Based on the assumption that women were most interested in marriage and children, other colleges and universities scrutinized whether women applicants were serious about pursuing a degree. In college interviews, female applicants to doctoral programs often had to explain how they would combine a career with a family. Admissions policies too frequently were guided by traditional attitudes about the "proper" place of women and the widespread belief that women would drop out of school to take their "rightful" place in the home. As a result, many colleges and universities limited women's entry to ensure that only the most "committed" students—men—would have access to educational opportunities.

Title IX Snapshot

- Harvard University, which opened its doors in 1636, did not admit women until 1943.
- The University of Virginia excluded women until 1970.
- Before Title IX, the University of North Carolina limited the number of women students by requiring them to live on campus, where there was little housing. Men, in contrast, could live anywhere.
- Women seeking admission to the New York State College of Agriculture in the early 1970s needed SAT scores 30 to 40 points higher than those of men.

Thirty years later, such overt practices have mostly been eliminated throughout higher education. Women have taken advantage of these new opportunities to earn degrees at astonishing rates. Women still lag behind their male counterparts, however, in earning

doctoral and professional degrees, which is especially striking in light of the number of women receiving bachelor's degrees. Women also receive far fewer math and science bachelor's degrees, which typically offer greater earning potential.

Financial Aid. With the ever-increasing cost of college, financial aid has never been more important to providing access to higher education. Prior to Title IX, many colleges and universities kept women from receiving this critical assistance by

- Restricting the most prestigious scholarships, such as the Rhodes Scholarship, to men
- Giving preference to men in the award of other scholarships, fellowships, and loans
- Withholding financial aid from women who were married, pregnant, or parenting
- Withholding financial aid from part-time students, who were more likely to be women
- Failing to allow for child care expenses
- Tracking women into low-paying work-study jobs

Title IX meant an end to many policies and practices denying women financial aid. Over the past 30 years, financial aid programs have been modified to facilitate women's access into higher education, recognizing that many women pursuing degrees must support not only themselves but also their families. Women make up almost 60 percent of part-time students and 58 percent of students over age 24. Compared to men, women who attend a postsecondary institution are twice as likely to have dependents and three times as likely to be single parents. To make higher education more accessible to these students, Congress enacted several key provisions in the 1986 reauthorization of the Higher Education Act. For example, Pell Grants and campus-based aid are now awarded to part-time as well as full-time students. Moreover, to determine eligibility for financial aid, students can waive the value of their homes in the calculation of expected family contributions.

Despite these advances, disparities still exist in the distribution of financial aid. Financial aid budgets include little or no allowance for dependent care, forcing many student parents to rely on friends and family, reduce their course loads, or leave school altogether. In the 1999–2000 school year, the National Collegiate Athletic Association (NCAA) reported that women athletes received as little as 40 percent of scholarship dollars in some athletic divisions, although this number reflects a steady increase over the last nine years. In addition, although Title IX allows education institutions to take affirmative steps to remedy past discrimination, the law also allows colleges and universities to exclude women from certain scholarships that have no remedial purpose.

Percentage of Degrees Awarded to Women			
Degree (Projected)	1971–72	1996–97	1997–98
Associate of Arts	45	60	61
Bachelor of Arts	44	56	56
Master of Arts	41	51	57
Doctorate	16	39	42
First Professional	6	40	43

Title IX's implementing regulation permits schools to administer scholarships created under a will, bequest, or other legal instrument that is sex specific. For example, scholarships exist for men from New Jersey, male engineering students who are members of the Sigma Chi Fraternity, or men who attended certain high schools. Unlike many scholarships targeting women and people of color, these scholarships do not remedy past discrimination; in fact, they reinforce the gender disparities in many fields, conferring advantages from one generation of men to the next.

Sex Segregation in Courses. Even though women have made progress at all levels of education, they continue to be underrepresented in traditionally male fields that lead to greater earning power upon graduation. Women continue to be clustered in areas traditional for their gender. Undergraduate data from the 1997–98 academic year show that women received 75 percent of the education degrees, 74 percent of psychology degrees, and 67 percent of English degrees, all fields in which women have traditionally participated. In contrast, women earned only 39 percent of physical science degrees, 27 percent of bachelor's degrees in computer and information sciences (a gain of just 1 percent from five years earlier), and 18 percent of engineering degrees. This pattern of sex segregation directly limits women's earning power because careers in math and the sciences frequently result in higher pay. For example, in 2001 engineers had median weekly earnings of $1,142; in contrast, elementary school teachers' median weekly earnings were $774, about 30 percent less.

Sex segregation by academic concentration is even more acute in doctoral degree programs, where women already are underrepresented. For 1997–98 women received only 26 percent of doctorate degrees in mathematics, 16 percent of doctorates awarded in computers and information sciences, and 12 percent of doctorates awarded in engineering. Women received none of the doctoral degrees awarded in engineering-related technologies. Even in areas where women are strongly represented among undergraduate students, women's numbers drop at the doctoral level. In 1997–98, for example, women earned 63 percent of education doctoral degrees and 59 percent of English doctoral degrees.

Women's underrepresentation in math- and science-related fields has a cyclic effect, depriving girls and young women of role models and mentors, in effect further discouraging women and girls from pursuing degrees in those fields.

The hostile environment many women encounter in science, mathematics, and engineering no doubt plays a great role in women's underrepresentation in these fields. Research has shown that women pursuing math and sciences in higher education face outright hostility in many instances, including

- Deliberate sabotaging of female students' experiments
- Constant comments that women do not belong in certain departments or schools
- Slide presentations interspersed with pictures of nude women, purportedly to "liven up" the classroom
- Sexual harassment in laboratory or field work, causing women to avoid these settings altogether

Less blatant forms of sexism also are commonplace and make the environment equally unpleasant. Examples follow:

- Male faculty may be reluctant to work with women because they question women's competence.
- Male students may exclude women from study groups and project teams.
- Male students who do work with women may try to dominate projects.
- Many faculty refuse to incorporate the work of women in math and science in the curriculum, reinforcing women's invisibility in these areas.

The "chilly" climate for women coupled with the small number of female faculty in math, science, and engineering effectively limits women's access to these fields and, in so doing, closes off important career alternatives for women.

Limiting Access in the Future. Despite the progress made over the last 30 years of Title IX enforcement, even today new policy developments threaten women's progress in higher education. In 1996 Congress and President Clinton approved a new welfare law

Room for Improvement

- Women still lag behind men in earning doctoral and professional degrees.
- Some scholarships still are reserved for men.
- Women are underrepresented in math and science, in large part because of the hostile environment many confront in these fields.
- Education institutions are moving to dismantle affirmative action programs that have increased access for women and students of color.
- Low-income women have lost an avenue to higher education under the new welfare law.

that prohibits women receiving public assistance from meeting their work requirement by attending a postsecondary institution. Prior to this law, welfare recipients could, at the states' discretion, attend a two- or four-year college. As this report goes to press, Congress is deliberating the reauthorization of the welfare law. While several proposals could expand welfare recipients' access to higher education, partisan entrenchment may prevent these proposals from becoming a reality, preventing many women from pursuing their dreams of a college degree and a means to support their families.

Currently changes are being made to the Department of Education's research division. While many of these changes could be productive, there is some concern that the department will shift its focus from the research that has been so important to advocates working to make higher education more equitable and accessible. For instance, department data that disaggregate student information by race and gender—essential to monitoring the effects of Title IX and other equity measures—are being reconsidered.

In addition, recent assaults on affirmative action could mean the end of programs that have helped women redress past sex discrimination and enhanced their educational opportunities, particularly in areas where women have been and continue to be underrepresented, such as math and science. Although Congress defeated legislative proposals to dismantle affirmative action in the last reauthorization of the Higher Education Act, more attempts may be proposed in the upcoming reauthorization. The 1996 passage of California Proposition 209 and the *Hopwood v. State of Texas* and *Johnson v. University of Georgia* decisions led many colleges and universities to dismantle affirmative action policies to avoid lawsuits, impeding access to higher education for women and people of color. Most recently, in *Gratz v. University of Michigan,* the U.S. Court of Appeals in Cincinnati heard arguments regarding the constitutionality of the university's affirmative action admissions plan at the undergraduate level for students of color. A decision from that court is pending. In May 2002, however, the Sixth Circuit Court of Appeals upheld the constitutionality of the use of affirmative action in the law school's admissions process. It is widely believed that one of these cases will ultimately be heard by the Supreme Court and determine the future of affirmative action in higher education.

Recommendations.

- The Department of Education should submit an annual report to Congress detailing disbursement of financial aid, loans, grants, and awards in higher education disaggregated by race and gender and offer recommendations for addressing disparities.

- The Department of Education and other federal agencies funding higher education programs should target Title IX enforcement to address discriminatory practices that discourage women from pursuing math and science majors.
- Education institutions should provide opportunities to encourage women to pursue math and science and develop programs designed to increase women's retention in these fields.
- Congress should amend the welfare law to allow women on welfare the opportunity to pursue postsecondary education by counting college study and work study toward a work requirement.
- The Department of Education should clarify and encourage the use of legally acceptable forms of affirmative action for women and people of color.

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Athletics

C+

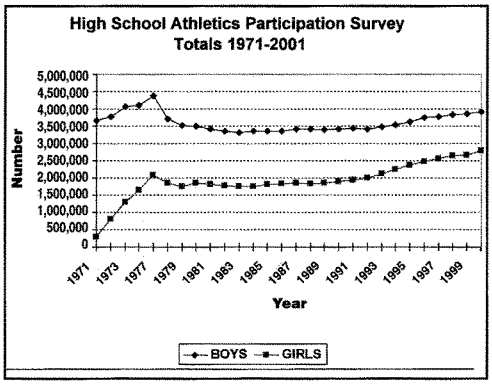
For many people, Title IX is synonymous with expanded opportunities in athletics. Women's and girls' increased participation in sports, the impressive achievements of the nation's female athletes, their stunning advances in summer and winter Olympic Games, and the creation of nationally televised professional women's basketball and soccer leagues demonstrate Title IX's success. It takes a large and vibrant base of general sports participants and 15 to 20 years of elite athlete support to create an Olympic gold medalist or professional athlete—years in which an athlete is given access to quality coaching, sports facilities, weight rooms, athletic scholarships, and competition. Before Title IX, women and girls were precluded from taking advantage of most athletic opportunities in school, but the outcome of equal opportunity on the playing fields is becoming more apparent.

Still, Olympic medals and professional sports contracts are not what Title IX is all about. Rather, the quest for equal opportunity in sports has always been about the physiological, sociological, and psychological benefits of sports and physical activity participation. Research studies commissioned by the Women's Sports Foundation in 1998 and 2000 found that girls who play sports enjoy greater physical and emotional health and are less likely to engage in a host of risky health behaviors (i.e., drug use, smoking, and drinking) than nonparticipants. Other studies have linked sports participation to reduced incidences of breast cancer and osteoporosis later in life. Yet compared to boys, girls enjoy 30 percent fewer opportunities to participate in high school and college sports and are twice as likely to be inactive. Much distance remains between the current status of women and girls in sports and the ultimate goal of gender equity.

Participation Rates and Resource Allocation. Prior to 1972, women and girls looking for opportunities for athletic competition were more likely to try out for cheerleading or secure places in the bleachers as spectators. In 1971 fewer than 295,000 girls participated in high school varsity athletics, accounting for just 7 percent of all high school varsity athletes. The outlook for college women was equally grim: Fewer than 30,000 females competed in intercollegiate athletics. Low participation rates reflected the lack of institutional commitment to providing athletics programming for women. Before Title IX, female college athletes received only 2 percent of overall athletic budgets, and athletic scholarships for women were virtually nonexistent.

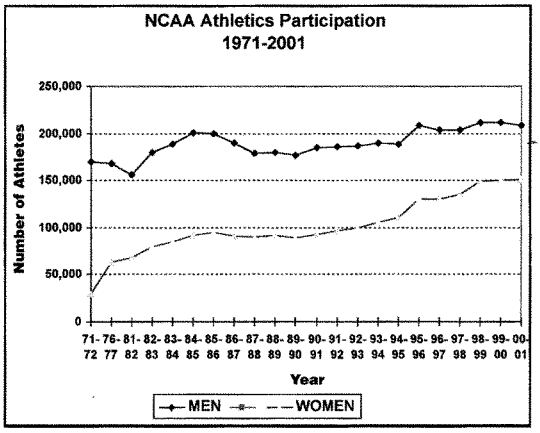
Title IX has changed the playing field significantly. By 2001 nearly 2.8 million girls participated in athletics, representing 41.5 percent of varsity athletes in U.S. high schools—an increase of more than an 847 percent from 1971. Progress on college campuses also has been impressive. Today 150,916 women compete in intercollegiate sports, accounting for 43 percent of college varsity athletes—an increase of more than 403 percent from 1971. Contrary to media reports, men's participation levels at both the high school and college level have also increased. See Figure 1, Figure 2, and Table 1.

Figure 1



National Federation of State High School Associations, 2001

Figure 2



NCAA Year-By-Year Sports Participation 1982-2001; Sports and Recreation Programs of Universities and Colleges 1957-82 (NCAA)

NCAA Year-By-Year Sports Participation 1982-2001; Sports and Recreation Programs of Universities and Colleges 1957-82 (NCAA); National Federation of State High School Associations in 2001

Table 1: Female High School and Collegiate Participation

Year	1971–72	2000–01	Increase
High School Varsity Athletes			
Female	294,015	2,784,154	847%
Male	3,666,917	3,921,069	6.9%
Collegiate Varsity Athletes			
Female	29,972	150,916	403%
Male	170,384	208,866	23%

While significant, these gains still stop short of providing girls and women with their fair share of opportunities to compete. In 1999–2000 female students represented about 54 percent of the student body at four-year colleges, yet only 23 percent of all NCAA Division I colleges provided women with athletic opportunities within five percentage points of female student enrollment. This percentage increased from 9 percent in 1995–96.

Although the resources and benefits allocated to female athletes also have improved significantly since Title IX's passage, they also fall far short of what equity requires. After 30 years, the gap is still significant and closing much too slowly. Institutions are not exercising restraint on men's sports expenditures while women's sports catch up. See Table 2.

- In the past four years, for every new dollar going into athletics at the Division I and Division II levels, male sports received 58 cents while female sports received 42 cents.
- Each year male athletes receive $133 million or 36 percent more than female athletes in college athletic scholarships at NCAA member institutions.
- In Division I, colleges spent an average of $2,983 per female athlete compared to $3,786 for male athletes.

No national data on expenditures exist for girls' and boys' interscholastic sports, but anecdotal evidence suggests that similar financial disparities also exist at the elementary and secondary levels.

Coaches, Administrators, and Other Athletic Personnel. Women in coaching, athletic administration, and other sports positions lack the improved opportunities enjoyed by female students and athletes since Title IX's enactment. In the early 1970s

NCAA 1999–2000 Gender-Equity Report

Table 2: Disparities in Funding Intercollegiate Athletics for 1999

	Division I		Division II		Division III	
	Men	Women	Men	Women	Men	Women
Scholarships	$1,411,400	$1,055,500	$392,100	$268,000	N/A	N/A
Recruiting	184,200	85,900	18,900	10,100	13,200	7,100
Head Coach Salaries	484,900	330,500	136,700	114,500	127,000	102,600
Operating Expense	882,100	486,200	225,600	115,100	137,000	94,700

women head coaches led 90 percent of women's collegiate teams. By the 2001–02 school year, female head coaches led only 44 percent of women's intercollegiate athletic teams, the lowest total since the passage of Title IX. This number is down from 47.7 percent in 1995–96. Since 2000, 90 percent of the available head coaching positions in women's athletics have gone to men. A similar decline in the percentage of women coaching girls' teams can be witnessed at the high school level.

To make matters worse, the loss of coaching opportunities in women's sports has not been offset by a corresponding increase in opportunities for women to coach men's teams. To the contrary, women are virtually shut out of these jobs, holding only 2 percent of the coaching positions in men's collegiate sports, a percentage that has remained constant over the last 30 years. No signs indicate a slowing in the downward trend.

Women's college basketball, considered by most to be the greatest economic success among all women's collegiate sports, is one of few exceptions to diminishing coaching opportunities for women. The number of women intercollegiate basketball coaches has remained relatively constant over the past 10 years, with women currently holding 62.8 percent of these head coaching jobs. Among 24 women's NCAA championship sports, however, female coaches rank in the majority in only seven. See Table 3.

The impact of such sex discrimination on coaching opportunities for women is exacerbated by the striking disparity in the salaries paid to coaches of men's and women's teams. At the Division I level, men's basketball head coaches average $149,700.

Table 3: Coaches of Women's Sports by Gender for 2002

Sport	Female	Male	Sport	Female	Male
Archery	33.3%	66.7%	Riflery	27.3%	72.7%
Basketball	62.8%	37.2%	Sailing	11.1%	88.9%
Bowling	33.3%	66.7%	Skiing	6.9%	93.1%
Crew/Rowing	37.9%	62.1%	Soccer	30.7%	69.3%
Cross Country	21.3%	78.7%	Softball	65.1%	34.9%
Fencing	26.5%	73.5%	Squash	33.3%	66.7%
Field Hockey	96.8%	3.2%	Swimming/Diving	23.0%	77.0%
Golf	39.2%	60.8%	Synchronized Swimming	100.0%	0.0%
Gymnastics	44.3%	55.7%	Tennis	34.5%	65.5%
Ice Hockey	40.0%	60.0%	Track	19.0%	81.0%
Lacrosse	85.9%	14.1%	Volleyball	57.3%	42.7%
Ride/Equestrian	81.0%	19.0%	Water Polo	25.7%	74.3%

Acosta and Carpenter, *Women in Intercollegiate Sport*, 2002

By contrast, women's basketball head coaches average just $91,300: 61 cents to every dollar paid to men. This trend continues at the assistant coach level, where men's basketball assistant coaches average $44,000 while women's basketball assistant coaches average $34,000. Only in fencing, volleyball, and tennis, the sports paying the lowest salaries to coaches of male teams, do coaches of women's sports receive equal or greater pay than coaches of the equivalent male sports.

Athletic directors at the college level are also predominately male (83.1 percent). As the status and salary of these positions increase, female representation decreases (8.4 percent in Division I versus 25.5 percent in Division III). Males also dominate the positions of sports information director (87.7 percent) and athletic trainer (72.2 percent). As the competitiveness of a division and average salary increases, women's representation in these athletics positions also decreases. This trend remains true for every position except for head coaching jobs, for which gender representation in Division I and Division III is equal, although average salaries are not. See Table 4.

Title IX Enforcement. The record of Title IX enforcement in interscholastic and intercollegiate athletics over the past 30 years is fair at best, as evidenced by the persistent disparities highlighted above. In 1975 the then Department of Health, Education, and Welfare (HEW) issued federal Title IX regulations, which included sweeping requirements for equal athletic participation opportunities, proportional athletic scholarship funding, and equality in the treatment of and benefits provided to male and female athletes. The regulations allowed colleges and high schools a three-year phase-in period and elementary schools a one-year phase-in period. HEW explained the regulations in greater detail through a Policy Interpretation issued in 1979. Enforcement

Table 4: Women in College Sports Positions 2000–02

	All Divisions		Division I		Division II		Division III	
	Men	Women	Men	Women	Men	Women	Men	Women
Athletic Directors	83.1%	16.9%	91.6%	8.4%	86.1%	13.9%	74.5%	25.5%
Head Coaches of Women's Teams	56.0%	44.0%	54.9%	45.1%	61.1%	38.9%	54.4%	45.6%
Head Coaches of Men's Teams	98.0%	2.0%	–	–	–	–	–	–
Full-Time Athletic Trainers	72.2%	27.8%	84.6%	15.4%	70.9%	29.1%	61.2%	38.8%
Full-Time Sports Information Directors	87.7%	12.3%	89.1%	10.9%	87.6%	12.4%	86.2%	13.8%

Acosta and Carpenter, *Women in Intercollegiate Sport*, 2002

in intercollegiate athletics, however, was largely nonexistent throughout the 1980s, in part because of the Supreme Court's 1984 decision in *Grove City College v. Bell.* In that case, the court limited Title IX's application to the specific programs within colleges and universities that actually received federal funds (usually not the case for athletic programs), rather than applying Title IX to entire institutions should any of their programs receive federal funds. Congress overturned this decision in 1988 through the passage of the Civil Rights Restoration Act.

Even with the full scope of Title IX restored, few enforcement actions were brought by OCR. When colleges responded to budget constraints by cutting already beleaguered women's teams, parents and female athletes responded by taking their Title IX complaints to court. Numerous lawsuits in the 1990s resulted in the creation of a uniform body of law protecting the right to equal athletic opportunity regardless of sex, despite defendants' strenuous objections that men purportedly are more interested in playing sports than women and therefore deserve disproportionate participation opportunities. Progress has been made largely on a case-by-case basis, with gains gradual and piecemeal. Most notably, in the case of *Cohen v. Brown University,* the First Circuit rejected the university's argument that women are less interested than men in playing sports because the argument rests on stereotypical notions about women and only perpetuates the discrimination that women face in athletics.

Other cases have helped root out discrimination by athletic associations, which control college and high school athletic programs but claim they have no responsibilities to comply with civil rights laws. The Supreme Court decided otherwise in *Brentwood Academy v. Tennessee Secondary School Athletic Association.* The court held that the high school athletic association is subject to the Constitution, which governs the conduct of government entities only, because the association is essentially an arm of the state. In *National Collegiate Athletic Association v. Smith,* the Supreme Court held that the NCAA is not subject to Title IX just because it receives dues from its federally funded member schools, but the court specifically left open other legal arguments for coverage of athletic associations. The court adopted one of these arguments in *Communities for Equity v. Michigan High School Athletic Association,* in which a federal district court in Michigan held that the association is subject to Title IX, the Constitution, and Michigan state law. Accordingly, the court found that the association discriminated against girls by scheduling six girls' sports, but no boys' sports, in nontraditional or disadvantageous seasons.

Women's progress, albeit limited, has sparked a backlash by Title IX opponents who claim that Title IX has gone "too far" and has "hurt" men's sports. After holding hearings on this issue in May 1995, some members of Congress asked OCR to revisit its

1979 Policy Interpretation and consider weakening its enforcement standards, particularly the equal participation requirement. In response, OCR strongly affirmed its longstanding interpretation through a 1996 Policy Clarification, which explains how institutions can and must comply with the equal participation opportunities requirement. Courts have also rejected suits brought by male athletes claiming their schools have discriminated against them by cutting or capping men's teams, holding that Title IX does not require these actions but gives schools flexibility in structuring their athletics programs as long as they treat men and women equally. Nonetheless, the challenges continue. In January 2002 the National Wrestling Coaches Association and other Title IX opponents filed a federal lawsuit against the Department of Education challenging the Title IX regulations and policy guidance regarding athletics opportunities; the government's response fails to indicate whether it will vigorously defend the longstanding athletics policies.

Given the absence of equal opportunity after 30 years, OCR is not providing adequate leadership in enforcement efforts. In 2001 OCR initiated only two Title IX athletics reviews of institutions. Since Title IX's inception, not one institution has had its federal funding withdrawn because it is in violation of Title IX. OCR's lack of enforcement coupled with an increase in Title IX lawsuits suggests aggrieved parties are required to seek relief through the court system. Parties filing lawsuits incur considerable costs and risk retribution. In light of the numbers of schools still not in compliance, OCR needs to step up its enforcement activities.

Recommendations.

- Congress should mandate data collection on the participation of high school students in physical education and high school athletics programs as part of the administration's proposal for the reauthorization of the Office for Educational Research and Improvement.
- The Department of Education should support the continuation of existing strong compliance standards and increase OCR enforcement of these standards.
- To encourage the filing of actionable complaints, OCR should develop a standard complaint form with a checklist of alleged Title IX violations.
- School athletic administrations should use the Equal Employment Opportunity Commission guidelines (www.eeoc.gov/regs/index.html) to make sure coaches of male and female sports receive equal treatment.

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Career Education

D

Title IX has made training for nontraditional careers possible for girls and women. This option clearly was off limits to female students before 1972, when schools routinely denied girls the opportunity to take classes in shop, manufacturing, architectural drafting, and ceramics or to attend certain vocational schools. Girls were directed to classes where they would learn to cook and sew. Title IX's passage meant that schools no longer could shut the doors to certain courses on the basis of gender. Thirty years later, however, patterns of sex segregation persist, and vocational education opportunities for women and girls remain largely separate and unequal.

Access to Vocational Education and Nontraditional Areas. Before Title IX, the vocational education system was purposefully sex segregated. In high school, girls took home economics and boys took shop. Witnesses at hearings leading to passage of Title IX testified that in New York, for example, certain specialized vocational high schools were reserved for men: automotive, aviation, food, and maritime trades. At the postsecondary level, young women trained for low-wage, traditionally female jobs in health occupations and cosmetology, while young men trained for higher-wage, traditionally male jobs in trade and industry and technical occupations. Education institutions could, and did, legally deny girls and women entry into training deemed "inappropriate" for females. Title IX ended these restrictions, opening the door to greater vocational opportunities for female students.

But today, in far too many cases, female students continue to be discouraged from pursuing certain vocational education opportunities because of gender stereotypes in counseling or guidance material, differential treatment by teachers, or harassment by other students. These practices have reinforced the longstanding sex segregation in vocational education. The striking disparities in course enrollment throughout the nation illustrate the continued need for programs that encourage and support female students pursuing vocational education and that help eliminate gender stereotyping and bias in vocational education programs.

Pre-1998 Vocational Education Law Increases Access. Title IX ended restrictions to nontraditional programs. In addition, in 1978, with the reauthorization of vocational education legislation (the "Perkins Act"), Congress required that each state hire a sex-equity coordinator to carry out functions designed to make the vocational

education system more equitable and improve the access of women and girls to training from which they had previously been denied. Except for $50,000 to support the sex-equity coordinator's position, however, Congress provided no federal funding to carry out these functions, although it was a permissible use of funds.

Research by the National Institute of Education in 1981 found that states spent less than 1 percent of their basic grant money for support services for women seeking to enter nontraditional vocational education, displaced homemakers, and child care. Moreover, only 0.2 percent of all state and local matching funds went for these purposes. The study concluded that most states used "paltry sums" to provide services for displaced homemakers and relied on "symbolic gestures" rather than providing real avenues for women to pursue nontraditional enrollment.

Congress changed this in 1984 during the reauthorization of the Perkins Act by requiring that states spend a specific percentage of their basic grant money to make training opportunities available to women. Congress required each state to set aside 8.5 percent (decreased to 7 percent in 1990) for displaced homemakers, single parents, and single pregnant teens, and 3.5 percent (decreased to 3 percent in 1990) for programs designed to eliminate sex bias and sex stereotyping in vocational education. Since 1984 the number of programs serving displaced homemakers and single parents has grown from 435 to more than 1,300. By 1997 the number of sex-equity programs exceeded 1,400.

1998 Vocational Education Law Eliminated Support. The National Coalition for Women and Girls' *Title IX at 25* report recommended that Congress maintain funding levels for sex-equity programs and services as well as the state equity leadership position and its functions. During the 1998 reauthorization of the Perkins Act (Perkins III), however, Congress eliminated these longstanding provisions that were helping women and girls succeed in vocational education.

- **State Sex-Equity Coordinator Position Eliminated.** Perkins III eliminated the full-time sex-equity coordinator position. The sex-equity coordinator was responsible for implementation of the sex-equity programs; the grant-making process; and the provision of leadership, training, and networking opportunities for programs engaged in equity activities. Perkins III integrated the functions and responsibilities of the state sex-equity coordinators into general state administration and state leadership programs, leaving states to decide whether to fund this position and at what level. Only four states—Hawaii, Oklahoma, California, and Wisconsin—have retained the full-time position. Most states have required that their sex-equity coordinator take on other duties and

responsibilities, significantly limiting the resources, efforts, and dedication available to eliminate sex discrimination in career and vocational education.

- **Specific Funding for Sex-Equity Programs Eliminated.** Perkins III eliminated the gender-equity set-asides enacted in the 1984 legislation. Instead, two provisions were added to the law: (1) States must reserve $60,000 to $150,000 of the funds allocated for "state leadership" activities to provide services to individuals pursuing nontraditional training and employment; and (2) States have the option of reserving 10 percent of the funds allocated for local educational agencies to be redistributed to the local agencies based on certain criteria (rural education, high vocational enrollment, or negative impact by changes in funding formula) and may require that local agencies use these funds to support programs for single parents, displaced homemakers, and students pursuing nontraditional training. These provisions do not mandate the same level of support for women and girls in vocational education that had been previously provided.

Sex-Equity Programs Now Struggling. The availability of services for female students has decreased dramatically with the 1998 changes to the vocational education law. The early outcomes are documented in *Invisible Again: The Impact of Changes in Federal Funding on Vocational Programs for Women and Girls,* released by the National Coalition for Women and Girls in Education. The survey of gender-equity programs nationwide revealed the following:

- Funding for programs has decreased since Perkins III took effect, and additional funding cuts are predicted for the future. (More than half the respondents reported this information.)
- The ability to provide services to students has decreased. (Seventy-one percent of respondents reported this information.)
- Essential student services, such as prevocational services, training, dependent care assistance, transportation assistance, and tuition assistance, are scarcer than they were before Perkins III took effect. (Nearly half the respondents reported this information.)

Thus, the change in the vocational education law represents a tremendous setback for female students.

Limited Academic Opportunities. Female students in vocational programs that are traditional for their gender often have limited academic course offerings. For example, the 18 career and technical high schools in New York City are highly sex segregated, with the majority of those schools having a student enrollment that is more than 70 percent one gender. The four predominantly female vocational high schools

Room for Improvement

- Sex segregation persists in vocational education: Male students predominate in high-skill, high-wage career tracks, while female students are clustered in the low-skilled, low-wage tracks.
- Programs where male students predominate are being updated with new technology opportunities while traditionally female programs receive no technology updates.
- Female students in programs that are traditional for their gender have limited access to high-level academic courses.
- The vocational education law no longer requires targeted support for programs that have helped women gain access to and succeed in nontraditional occupations.

offer, on average, 1.75 Advanced Placement (AP) courses per school, while the 11 predominantly male schools offer 3.89 AP courses. Only one of the predominantly female schools offers an AP math or science course. This New York City example suggests that 30 years after Title IX became law, female students in traditional vocational programs have fewer opportunities to participate in advanced academic course offerings.

Persistent Sex Segregation. Although Title IX outlawed discriminatory school practices, female students remain concentrated in programs that prepare them for traditionally female, low-paying jobs. For example, the most recent high school transcripts reviewed by the Department of Education found that trade and industry courses, a category including most of the skilled trades occupations, were 77 percent male. A 1998 survey of 14 school-to-work sites found more than 90 percent of girls clustered in five sites that trained students for jobs in the traditionally female fields of health, teaching, graphic arts, and office technology. Postsecondary associate degree programs show the same sex segregation. Women are almost four times as likely as men are to major in health fields, while men are more than 14 times as likely to major in trade and industry programs. This pattern of sex segregation in education perpetuates sex segregation in the workforce.

Nontraditional Occupations Still Key to a Living Wage. Census data show there were more than 7 million displaced homemakers and 8 million single parents in 1998. The data also tell us that these groups are likely to be poor, unemployed, or working in low-wage jobs. In fact, nearly 30 percent are working in low-paying service jobs that offer few, if any, benefits. For example, the Department of Labor reported that in 2000, women made up 91 percent of teachers aides, 90 percent of nurses aides, and 91 percent of hairdressers, earning a mean annual salary of $18,770, $19,100, and $20,710 respectively. In comparison, women in nontraditional jobs such as carpenters, plumbers, and electricians earn a mean annual salary of $35,100, $40,170, and $42,210

respectively. Although women in nontraditional jobs earn higher wages than women in traditionally female occupations, the former account for only 12 percent of the working female population. While this is an increase since the early 1990s, much work remains to be done to break down the barriers that keep women out of nontraditional occupations.

Title IX Enforcement. Title IX opened vocational education opportunities for girls and women in 1972, but there has been little federal enforcement activity in this area. In the few instances where the federal government initiated investigations under Title IX, problems were identified. For example, between 1996 and 1998 OCR initiated several compliance reviews in New England to examine whether girls enjoyed equal access to career and technical education programs pursuant to Title IX. OCR's investigations found sex segregation by school and sex segregation in vocational programs within schools. Additionally, the investigations revealed instances of unequal treatment of female students, including peer harassment that was unremedied by school officials, unequal access to locker room facilities, students steered away from nontraditional fields, and recruiting materials that perpetuated sex stereotypes. The schools entered into agreements with OCR to remedy the problems of sex discrimination. Thus, increased enforcement of Title IX can make a difference for women and girls in career education programs.

Congress will reauthorize the vocational education legislation in 2003. In the face of data demonstrating persistent sex segregation in vocational programs and few resources targeted at opening doors to nontraditional areas, it is imperative that Congress support measures that will enable female students to have equal educational opportunities in vocational programs. Further, Title IX enforcement efforts must be stepped up to ensure that women and girls have full access to opportunities.

Recommendations.

- Congress should restore the full-time state sex-equity coordinator position and funding for programs that support gender equity, displaced homemakers, single parents, and students preparing for nontraditional employment.
- Congress should establish a uniform data collection and reporting system on student participation in and completion of secondary and postsecondary vocational and technical education programs. The system should require information reported by specific program area and disaggregated by sex, race, ethnicity, disability, age, and socioeconomic status.
- OCR should conduct compliance reviews of vocational programs in every region of the country to ensure that the programs provide equal access and opportunity

for female students. The reviews should use Title IX and its implementing regulations as well as the Department of Education's Vocational Education Programs Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap.

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Employment

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The hearings leading up to the passage of Title IX were replete with statistical and anecdotal information highlighting the second-class status of women working in education institutions. At that time, employment for women in education was characterized by—

- Lack of tenure in colleges and universities, particularly elite institutions
- Nepotism rules that locked a woman out of a teaching position where her husband was employed
- Slower promotion rates than those for their male counterparts
- Smaller salaries than those of their male colleagues
- Little access to high-level administrative positions
- Virtually no opportunities to head colleges and universities, even women's institutions

After 30 years of Title IX and a Supreme Court decision declaring that this law prohibits employment discrimination in education based on sex, there is progress but much room for improvement. Notably, a pattern evident at the time lawmakers debated Title IX persists: Women's numbers tend to decrease as the rank in the career ladder or the prestige of the education institution increases. Women still have far to go to attain full equality with men in employment in education institutions.

Women on Faculties. Before Title IX, career opportunities for women in education were concentrated in elementary and secondary classrooms. Testimony at the hearings for Title IX showed that 68 percent of teachers in elementary and secondary schools but just 22 percent of elementary school principals and 4 percent of high school principals were women. The National Education Association (NEA) found only two women among 13,000 school superintendents.

In higher education, women fared no better. In the early 1970s women accounted for 18 percent of the teaching faculty in colleges and universities, clustered primarily in institutions that served predominantly women. For example, women accounted for 40 percent of the faculties in teachers colleges.

Thirty years after Title IX's enactment, women make up a higher number of faculty but remain significantly underrepresented in top positions. During the 1993–94 school year, the most recent year for which data are available, women account for about

73 percent of elementary and secondary school teachers, but only 35 percent of school principals. As of 1998–99, women made up less than 37 percent of faculty members in colleges and universities. The numbers of women are highest at two-year public colleges, where women make up 49.9 percent of full-time instructional faculty members and staff, and lowest at private four-year colleges and universities with significant research facilities, where women are only 26.2 percent of the faculty. Before Title IX, women made up 10 percent of the faculty at such institutions.

In addition to making up a minority of the teaching faculty at colleges and universities, women generally have remained in the lower faculty ranks, just as was true before Title IX's enactment. An NEA study cited during Title IX's hearings found that women made up 32.5 percent of instructors, 19.4 percent of assistant professors, 15.1 percent of associate professors, and 8.7 percent of full professors. Women were promoted far more slowly than their male counterparts and often lacked tenure. Only 9 percent of women who embarked on college teaching careers attained the rank of full professor.

In 1998 women were 53.5 percent of lecturers, 50.6 percent of instructors, 45 percent of assistant professors, 35.8 percent of associate professors, and 20.8 percent of all full professors. In addition, 49.5 percent of all female faculty were employed part-time, compared to 37.8 percent of male faculty. And 51.8 percent of female faculty were tenured, compared to 70.6 percent of all male teachers. Women of color made up 2.4 percent of full-time professors.

Women in the Hard Sciences. In 1994 tenured women faculty at MIT's School of Science formed a committee to investigate whether individual suspicions that they had experienced veiled discrimination in their professional lives represented a broader framework of inequality. The committee's report relied on and analyzed data and interviews conducted with MIT's women faculty and department heads.

The data portion of the report examined areas such as "salary, space, resources for research, named chairs, prizes, awards, amount of salary paid from individual grants, teaching obligations and assignments, committee assignments—department and institute—outside professional activities and committees, and pipeline data: numbers of women/men students and faculty over time." The report found that tenured women faced "patterns of difference," evidenced by consistently lower salaries, unequal access to resources, and persistent exclusion from any substantive power at MIT. The interview portion of the report revealed a correlation between these patterns of difference and the tenured women's consistent reporting of feeling increasingly excluded, disempowered, "invisible," and "marginalized" within their departments as their careers progressed.

According to the report, "as of 1999 there has never been a woman department head, associate head, or center director in the School of Science in the history of MIT."

Percentage of Women Teaching in Higher Education		
Status	1970	1998–99
Full Professors	8.7	20.8
Associate Professors	15.1	35.8
Assistant Professors	19.4	45.0
Instructors	32.5	50.6

As a result of the report, the committee, through collaboration with the dean of science, realized significant progress toward redressing the enduring inequities. This study suggests the possibility to other similarly situated women that through organization, women can play a significant role in the achievement of tangible progress and the vision of Title IX.

Women in Administration. When Title IX became law, women were noticeably absent at the administrative level in education institutions across the country. Women reached the rank of department chair at the absurdly low level of less than 1 percent. The number of female presidents of colleges and universities—including women's colleges—was incredibly low: less than 150.

According to a 1998 survey of institutes of higher education, men head more than 80 percent of the 3,800 institutions of higher education in this country. Women administrators are more likely than are men to hold positions in external affairs and student services than in executive, administrative, and academic affairs. Within each of these categories, women on average are employed at lower ranks and earn lower salaries than their male counterparts. Salary differences are especially prevalent in the upper ranks.

Wage Gaps. Equal pay for equal work is not a reality for women employed in education institutions. Before Title IX, women received smaller salaries than their male colleagues at all faculty ranks, and the wage gaps increased as women progressed up the career ladder. Testimony at the Title IX hearings showed that women professors received an average salary of $11,649, compared to $12,768 for men.

Women still have not achieved parity 30 years later. The average salary for women full professors for academic year 1998–99 was $64,236, just 88 percent of the $73,260 their male counterparts earned. Similar gaps exist for women associate and assistant professors who earned only 92 percent of the salaries earned by their male counterparts.

As in higher education, the salaries of women teachers and principals in elementary and secondary education continue to lag behind the salaries of their male counterparts. For example, the average base salary for full-time female teachers in public elementary schools during the 1993–94 school year was $33,384, compared to $36,182 for men;

Room for Improvement

- Less than 35 percent of school principals are women.
- Just 21 percent of full professors are women and 2.4 percent are women of color.
- Women are least represented at elite education institutions, making up just 26.2 percent of the faculty.
- Students and colleagues evaluate female faculty more harshly than male faculty.
- Women head only 19 percent of colleges and universities.
- Women full professors earn 88 percent of the salaries their male counterparts receive; women elementary school teachers earn 92 percent of the salaries their male counterparts receive.

the average base salary for full-time female teachers in private elementary schools was $21,657, compared to $28,948 for men. Salaries for male and female principals in public elementary schools had the smallest discrepancy: Women principals earned on average $54,736 while male principals averaged $54,922. In private elementary schools, the average salary for women principals was $27,701, compared to $32,039 for men.

The persistence of these disparities is troubling given that the Supreme Court ruled in 1982 in *North Haven Board of Education v. Bell* that Title IX prohibits sex discrimination in employment in federally funded education programs. Ten years later, the Supreme Court held in *Franklin v. Gwinnett County Public Schools* that a damages remedy is available in an action brought to enforce Title IX. The law clearly was intended to protect women employed by education institutions. Despite this clear intent and Supreme Court decisions affirming this proposition, some lower courts have recently held that Title VII of the Civil Rights Act of 1964—the federal statute that prohibits sex-based employment discrimination—provides the exclusive remedy for individuals alleging employment discrimination based on sex in federally funded education institutions. Until the Supreme Court speaks on this issue, an individual's ability to bring a Title IX claim for sex-based employment discrimination varies depending on where the suit is filed, undermining congressional intent.

Unfortunately the statistics show that women still lag behind men in nearly every aspect of faculty and administrative employment at education institutions. While the gaps may have closed to some extent in the years since Title IX became law, significant disparities persist.

Recommendations.

- OCR should enforce employment issues by conducting compliance reviews, collecting data regarding the status of women employed in education institutions, referring cases of noncompliance to the Department of Justice, and taking other necessary actions.
- The Department of Education, the Department of Justice, and the Equal Employment Opportunity Commission should collaborate on reinstating collection of employment data from elementary and secondary school systems and the schools within such systems or districts. This practice was discontinued in 1996. Similar data should be collected for institutions of higher learning.
- Postsecondary institutions should gather their own statistical information, such as data regarding salaries, benefits, promotions, special perquisites, awards, grants, course load, advising load, and committee assignments, to determine if men and women at all ranks and within all units are treated equitably.
- Administrators at postsecondary institutions should monitor and train search committees to understand and address the barriers to hiring women.
- Postsecondary institutions should ensure that each search committee includes an advocate—not necessarily a woman or a person of color—who works to ensure that the committee treats all candidates fairly.
- Postsecondary institutions should develop an exit interview process to solicit information about the climate for women and other issues from faculty members and staff who leave for other employment, whatever the reason.

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Learning Environment

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Title IX, in large part, has paved the way for research regarding the classroom climate. Thirty years ago, the public first became aware that sexist classroom practices can short-circuit the futures of both girls and boys. Before 1972 math and science were viewed as male domains, while literature and the arts were considered female-friendly subjects. Gender dictated class chores, with boys assigned physical tasks such as carrying boxes of books or setting up audiovisual equipment, while girls performed secretarial functions, such as taking attendance. Gender stereotypes played out in the classroom were mirrored on the pages of schoolbooks. Males far outnumbered females and were seen as active, inventive, and brave. The few females portrayed were presented as dependent, nurturing, and accommodating. While the future world of work seemed full of wondrous potential for boys, most women in the texts were full-time wives and mothers. When the curriculum portrayed careers for women at all, only three possibilities existed: secretary, nurse, and teacher.

Males were not only the center of the curriculum; they were also the center of classroom instruction. According to research by David and Myra Sadker, the American Association of University Women, and others, boys captured most of the teacher's time and talent, receiving more questions, more academic help, more praise, and far more behavioral reprimands than female students.

While the 1970s and 1980s witnessed clear progress in freeing students from the limits of gender stereotypes in the learning environment, the 1990s ushered in a new era challenging the progress to date. Critics of gender equity and Title IX now propose a return to many of these past practices. Some critics write that efforts to create equal learning opportunities for females detract from the educational quality provided boys. Recommendations range from creating different learning climates for boys and girls based on their "biological" differences to using textbooks that feature more males. One of the more startling suggestions is to abandon coeducation and return to the single-sex schools popular in the 1800s. While these suggestions pose blatant challenges to gender equity, more subtle gender bias still permeates learning climates, limiting the potential of both girls and boys.

Classroom Interaction. At all levels of education, gender continues to influence instruction. From grade school to graduate school, more active and assertive males

continue to attract more instructor attention, both positive and negative. Gender inequities in teaching present problems for all students. Female students continue to receive less individual encouragement and assistance and learn to accept a quieter, secondary role, both in school and often in the adult roles that follow. While many males benefit from the additional instructional attention they receive, some find the glare of the classroom spotlight an uncomfortable educational environment and would prefer to learn in a quieter, less public manner. The harsher disciplinary messages directed at males reinforce the notion that they are troublemakers and problem students. A more equitable distribution of the teacher's time and talent would benefit both boys and girls.

Some critics have attempted to discount the importance of inequitable teaching practices, pointing to the progress made by women in recent years as evidence that such classroom discrepancies are irrelevant. How can gender-biased teaching be a problem, they say, if females receive higher grades from elementary school through college and if more women than men attend college?

Although girls receive higher grades, many (including girls themselves) believe that this is more a result of pleasing teachers through conforming and compliant classroom behavior, according to research by Karen Arnold and others. Females may well be trading their independence for better grades and their unique and creative potential for conformity that pleases the adults in their lives. Males' lower grades may reflect their more aggressive, demanding, and independent behavior.

Gender-driven teacher expectations and behaviors continue to send males and females down very different paths. Although women are now the majority of college students, they are more likely to be the majority in less prestigious colleges and in less prestigious academic majors. Men continue to make up the vast majority of students in college engineering programs, while women are the majority of students enrolled in social work. In fact, in some careers, segregation by gender has actually increased in recent years. Elementary education majors are more likely to be female today then they were a decade ago, while the percentage of male computer science majors has grown from 65 percent to 75 percent over the past 10 years. These gender-segregated college majors set the stage for the wage gap that follows graduation.

The chilly college climate affects not just careers and wages. It impacts the self-confidence of even the brightest women. A study tracking the college progress of high school valedictorians found that while a significant number of male valedictorians continued to describe themselves as substantially brighter than their peers, female valedictorians actually lose self-esteem during their college years. By college graduation day, one in four male valedictorians rated himself at the top of his peer group in

intelligence; not a single female valedictorian in this study rated herself this way. While women are now the majority of students in college, higher education institutes continue to offer greater rewards and a wealthier future for male students.

Curricular Materials. Today's standards-driven curricula often set the pace and the tone for classroom instruction. Studies suggest that students spend as much as 80 to 95 percent of classroom time using textbooks and that teachers make a majority of their instructional decisions based on these textbooks. Although Title IX did not require changes in such books, three decades of effort directed at creating fairer school climates spilled over into attempts to improve the school curriculum.

In the 1970s professional associations and publishers created and distributed guidelines for creating non-sexist (and non-racist) books. The use of masculine nouns was one of the earliest forms of gender bias to be detected, and today's texts are less likely to use terms such as *caveman, forefathers,* or *policeman.* Yet other forms of linguistic bias persist. One current and popular high school history text describes the influential and famous 19th-century diplomat von Metternich, who shaped Europe's politics for decades, as a man whose "charm" worked well with "elegant ladies"—facts and adjectives of dubious historical import but not without prurient interest. A similar bias also diminishes the efforts of suffrage leaders like Elizabeth Cady Stanton. Few textbooks detail the bravery and sacrifices that resulted in women winning the right to vote, choosing instead to report that women were "given" the vote.

A 1970 study of history texts found that students had to read more than 500 pages before they read one page of information about women. In most history texts, the contributions of women are still minimized, with newer texts devoting only 2 to 3 percent of book space to the experiences or contributions of women. Through these books, both boys and girls learn erroneously that women were of little importance in creating our nation. When asked, most students cannot name 20 famous women from American history. Typically, they list fewer than five.

Mathematics and science curricula continue to reflect gender bias, both in textbooks and software. A 1990s study of elementary mathematics software revealed that when gender-identifiable characters were present (about 40 percent of the time), only 12 percent of the characters were female. Reinforcing stereotypes, the software portrayed female characters passively as mothers and princesses while male characters were shown as active and as "heavy equipment operators, factory workers, shopkeepers, mountain climbers, hang gliders, garage mechanics, and as a genie providing directions." Texts ask students to solve math problems describing males using math for construction, females using math for dressmaking.

Room for Improvement

Before Title IX	30 Years Later
• Female and male students were treated differently. For example, girls' math problems dealt with recipes, while boys' math problems dealt with finance.	• Many educators integrate strategies that enhance treatment for both girls and boys.
• Girls and women were virtually invisible in the college curriculum.	• Some text selection committees analyze books for gender as well as race, ethnicity, and class bias.
• Education and textbooks reinforced stereotypes about male and female students and people of color, setting the stage for disparate expectations.	• Female students still typically receive less attention, encouragement, praise, and criticism than their male counterparts.

Back in the 1970s male figures dominated three out of four commonly used reading textbooks. Boys were depicted as active—playing games, making things, learning, or working with their fathers. Girls, on the other hand, were depicted as passive—being helped by their brothers or engaging in activities such as playing with kittens.

In today's texts, male characters dominate both the narrative and the pictures. Yet these male characters are frequently one dimensional, while female characters possess a wider array of personal traits. Females are drawn as adventurous and nurturing, assertive and caring, offering a wider spectrum of traits and characteristics. Male characters, on the other hand, are confined to the traditional male qualities and have not changed much during the past three decades. Children rarely encounter caring, nurturing, sensitive, or empathetic male characters. Such characterizations put males in a gender-role straightjacket and send strong messages about what behaviors are expected—and not expected—from boys.

Teacher Education. Limited improvement in learning climates in the past three decades can be attributed in part to teacher education programs. In fact, the college textbooks used to educate future teachers often reflect the same gender bias found in elementary and secondary textbooks. Two decades ago, teacher education textbooks gave less than 1 percent of content coverage to the experiences of women, the issue of sexism in schools, and curricular resources or teaching strategies for overcoming such bias. Today, that figure is only 3 percent. Although teaching is commonly thought of as a female occupation, texts send a different message. For instance, a 36-page chapter on the

history of education describes female educators in only paragraphs—just 10 sentences. The rest is devoted to the contributions of male educators.

Twenty years ago, few texts mentioned Title IX. Today, materials describe Title IX, but the description rarely goes beyond athletics. Tomorrow's teachers do not learn that Title IX covers the treatment of students and teachers, counseling, testing, health care, scholarships, and a range of school policies and practices. Most texts offer no specific teaching strategies for more equitable gender instruction, and some recommendations may in fact reinforce gender stereotypes. For example, one textbook informs teachers that because of their innate ability to sit still, girls read better than boys. Another book declares that Title IX shortchanges boys and that gender fairness for females comes at the expense of males. These texts offer little information or skills that will help tomorrow's teachers create gender-equitable learning environments.

Recommendations.

- Teacher education programs, textbooks, and additional resources should offer tomorrow's teachers the information and skills they need to create effective classroom climates for both girls and boys.
- Congress should reinstate federal efforts to provide schools with materials and strategies to improve the classroom climate.
- Congress should reinstate funding for Title IV state educational agencies, which have helped schools improve the classroom environment for all students.
- Educators should make achieving gender equity a priority and continue receiving training to overcome bias and discriminatory practices in classrooms.
- Education institutions should assess and correct practices that lead to inequitable treatment of students.
- Education scholars should conduct additional gender-focused research, examining student treatment in single-sex, dominant-sex, biracial, multicultural, and homogeneous classrooms for the purpose of improving the practice of education.

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Math and Science

B-

The enactment of Title IX 30 years ago removed many gender barriers in the nontraditional fields of math and science, areas critical to success in an increasingly technological world. Disparities still exist, however, in achievement and participation rates in these disciplines. Gender differences in math and science start small and grow as students reach secondary school, where boys outperform girls on standardized tests and participate in math and science classes at higher rates. In postsecondary schools, men major in math and the sciences at rates that exceed those of women, shutting women out of the career opportunities these fields can provide.

Exclusion and Underachievement. Before Title IX, educators, guided by stereotypes that girls could not achieve in math and science, sometimes steered high school girls from higher-level math and science classes and frequently excluded them from extracurricular activities such as science and math clubs. Not surprisingly, girls' achievement in science and math lagged behind boys'.

Science: The 1969–70 National Assessment of Education Progress (NAEP) of the country's students in science found grade school and middle-school boys outscored girls by an average of 5 points; in high school, the gap increased to 17 points. Today, the high school gap has decreased but the disturbing pattern persists.

Performance levels also vary by gender. According to the 1977 NAEP, in eighth grade 14 percent of boys compared to only 9 percent of girls performed at the highest levels. In high school, 61 percent of senior boys, but just 40 percent of senior girls, performed at the highest levels. In 2000, according to the NAEP, 36 percent of eighth-grade boys compared to 27 percent of eighth-grade girls performed at or above a level deemed proficient. Among 12th-graders, 21 percent of boys compared to 16 percent of girls performed at or above a proficient level.

Math: As in science, the gender gap in math starts out small in the early grades and grows by high school. The 1973 NAEP found that girls narrowly outscored boys at the fourth- and eighth-grade levels; by high school, however, girls had fallen significantly behind. By 2000 girls had lost their early edge, as 28 percent of boys compared to 24 percent of girls achieved at or above the proficiency level.

Performance levels vary by gender in math, just as in science. In 1978, 10 percent of senior boys performed at the highest math level, compared to 5 percent of senior

Room for Improvement

- Although decreasing, the gender gap persists in girls' science and math achievement, starting small in elementary school and increasing in high school.
- On high-stakes tests, such as the math SAT, scoring gaps persists, with girls scoring 3 points below boys.
- Women continue to be underrepresented in math and science in higher education, with their representation decreasing as the degree level increases.

girls. Although the gender gap for the NAEP has narrowed—2000 data show that 20 percent of senior boys compared to 14 percent of senior girls performed at or above the proficiency level—the gap is wider on high-stakes tests such as the SAT. More than half (53.6 percent) of SAT test takers are women, according to College Board data, but boys outscored girls in math by 35 points in 2000, compared to 44 points in 1972. Data from the 2001 report maintain this 35-point gap, with boys outscoring girls.

The persistence of the gender gap in high school—and its tendency to grow as students advance in grade—continues to be a subject of great concern. According to a 2000 Department of Education report, the most marked gender differences in math and science achievement appear at age 17. This gap continues in higher education and in math- and science-related careers.

Participation Rates. Girls' participation rates have unquestionably increased since the passage of Title IX. High school girls now take upper-level math and science courses required for math and science majors at the college level at the same rate as boys. And, between 1987 and 1997, the percentage of girls taking Advanced Placement calculus increased by 6 percent and the percentage taking AP physics increased by 10 percent.

Female students' participation rates decline, however, once they enter postsecondary institutions and steadily decrease as degree level increases. For example, in the 1996–97 school year—

- In biological and agricultural sciences, women received 50 percent of bachelor's degrees but only 41 percent of doctoral degrees.
- Women's participation in engineering begins low and shrinks, with women receiving 18 percent of bachelor's degrees and 12 percent of doctoral degrees.

The drop in female students' participation in math and science could be attributed, in part, to the hostile environment they encounter in these fields. Where female students are outnumbered, they can be excluded from full participation in laboratory and fieldwork or experience gender-based harassment in these settings.

Recommendations.

- Educators and administrators should encourage girls to pursue math and science while in secondary school so that more women will enter these fields in college and pursue related careers.
- Education institutions should develop programs that increase female students' opportunities for career exploration in math and science.
- Educators should increase the numbers and use of mentoring programs to give students greater exposure to women scientists and engineers.
- High school science and math teachers should have the proper training, including hands-on retraining to update teaching techniques.
- OCR should step up its enforcement by conducting compliance reviews to determine the causes for women's decreased participation in math and science in higher education and by taking action against those education institutions that allow hostile environments in these areas to persist.

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Sexual Harassment

C

Although some gains have been made in this area since 1997, when *Title IX at 25* was published, sexual harassment continues to plague our nation's schools and students—both boys and girls. Sexual harassment is unwanted and unwelcome sexual behavior that creates a hostile environment, limiting full access to education and work. Legal developments since the law's 25th anniversary confirm that schools have an obligation under Title IX to respond to sexual harassment in school. But in too many cases, sexual harassment continues to undermine equal opportunity for students and school employees.

Legal Changes Since 1997. It has been clear for more than a decade that Title IX prohibits the sexual harassment of students. In 1992, in its unanimous decision in *Franklin v. Gwinnett County Public Schools*, the Supreme Court held that a student could bring a Title IX claim for damages for a sexually hostile environment created by a teacher. And in 1999 the court announced, in *Davis v. Monroe County Board of Education*, that schools may also be liable under Title IX if one student sexually harasses another student in a school program. These decisions have made clear that schools have a legal responsibility to take steps to prevent sexual harassment and to respond appropriately to any sexual harassment that occurs.

Although no legal developments have undermined this fundamental principle, recent case law has restricted the scope of remedies available for victims of sexual harassment. In 1998, in *Gebser v. Lago Vista Independent School District*, the Supreme Court held that school districts are not liable for damages for the sexual harassment of students by teachers unless an appropriate official had actual notice of, and demonstrated deliberate indifference to, the teacher's misconduct. *Davis* adopted the same standard for evaluating school liability for damages for student-on-student harassment. In these cases, the court rejected application of the standards of Title VII of the Civil Rights Act of 1964, which protects employees from sexual harassment by their supervisors and colleagues. As a result, students—who are often more vulnerable to sexual harassment than adults, and who are required to attend school—have fewer protections from sexual harassment than do employees in the workplace.

Importantly, however, both *Gebser* and *Davis* made clear that the liability standards they established are limited to private actions for monetary damages. Nothing in either

decision changes a school's obligation to take reasonable steps under Title IX to prevent and eliminate sexual harassment. And nothing in the decisions limits OCR's authority to enforce its regulations and policies, including those provisions that require schools to adopt and publicize a policy against sexual harassment as well as grievance procedures for those subjected to it. OCR has made each of these points clear in its Revised Sexual Harassment Guidance, issued in January 2001.

The Scope of Sexual Harassment. Despite the attention paid to the issue in recent years, sexual harassment remains widespread, hurting girls and boys at every level of their education. This fact is confirmed by a 2001 study by the American Association of University Women (AAUW) Educational Foundation, *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School,* which followed up a similar Foundation study in 1993. According to the 2001 study—a representative sample of 2,064 public school students in eighth through 11th grades—81 percent of students have experienced some form of sexual harassment. As in 1993, girls in 2001 were more likely than boys were to have experienced sexual harassment at some point (83 percent vs. 79 percent). But boys today were more likely than were those in 1993 to experience sexual harassment often or occasionally (56 percent vs. 49 percent). As in 1993, nearly nine in 10 students (85 percent) reported that students sexually harass other students at their schools.

Sexual Harassment in Schools is All Too Common

- Eight in 10 students experience some form of harassment during their school lives, and more than one-quarter of them experience it often.
- Girls are more likely than boys to experience harassment, but boys today are more likely to be harassed than boys in 1993.
- Six in 10 students experience physical sexual harassment at some point in their school lives, one-third often or occasionally.
- The most common forms of sexual harassment in school span the nonphysical and physical:
  - ✔Making sexual comments, jokes, gestures, or looks
  - ✔Claiming that a person is gay or lesbian
  - ✔Spreading sexual rumors about a person
  - ✔Touching, grabbing, or pinching in a sexual way
  - ✔Intentionally brushing up against someone in a sexual way
  - ✔Flashing or "mooning"

How Did the Harassment Make You Feel?

Girls	Boys
• "I was very upset. I cried for someone even thinking that, but I had my friends to help me." (eighth-grader)	• "Disturbed and generally angry." (eighth-grader)
• "Angry, embarrassed, hurt feelings." (eighth-grader)	• "Good." (eighth-grader)
• "I didn't care. It's a joke." (ninth-grader)	• "Mad and upset." (ninth-grader)
• "Like guys like me!" (ninth-grader)	• "It was a joke, and you can just call him fag back and move on with your life." (ninth-grader)
• "Like I have lost most of my respect for the male gender." (10th-grader)	• "I guess uncomfortable, of course. It's not fun for anyone to get harassed." (ninth-grader)
• "Uncomfortable and uneasy." (11th-grader)	• "Kinda grossed out." (10th-grader)
	• "Surprised." (11th-grader)

Moreover, a large number of students (38 percent) still reported that teachers and other school employees sexually harass students.

The Impact of Sexual Harassment. School sexual harassment has a negative impact on students' emotional and educational lives. For example, nearly half (47 percent) of all students who experienced sexual harassment feel very or somewhat upset right after. Those who experienced physical forms of harassment were even more likely to feel very or somewhat upset by the experience. And students' behavior in school was affected by the harassment. Students who experienced sexual harassment were most likely to react by avoiding the person who harassed them (40 percent), talking less in class (24 percent), not wanting to go to school (22 percent), changing their seat in class to get farther away from the harasser (21 percent), and finding it hard to pay attention in school (20 percent). Sexual harassment thus typically exacts high costs from its victims. And students were often quite aware of the feelings that harassment engenders in them, whether negative or more neutral.

Action/Inaction by Education Institutions. Overall, students in 2001 were more aware than were students in 1993 of the definition of sexual harassment and the actions their schools take to raise awareness on the subject. Of the students surveyed in 2001, nearly all (96 percent) understood sexual harassment.

Perhaps one of the most important findings of the AAUW report was that students in 2001 are much more likely than those in 1993 to say that their schools have a policy or distribute literature on sexual harassment. Specifically, 69 percent of students in 2001,

compared to just 26 percent in 1993, said their schools have a policy to deal with sexual harassment and complaints. Thirty-six percent of students, compared to 13 percent in 1993, said their schools distribute booklets, handouts, and other literature and materials about sexual harassment.

Despite an increased awareness of schools' distribution of information on sexual harassment, neither girls nor boys necessarily reported actual incidents to adults. While 71 percent of students said they would complain to an adult at school if they were sexually harassed by a teacher or another school employee, only 40 percent of students reported that they were likely to tell an adult at school if they were harassed by another student. Students were six times more likely to tell a friend than a teacher or other school employee about their experience with harassment.

While awareness of school efforts to distribute information to students on sexual harassment have increased along with student knowledge of sexual harassment, student unwillingness to come forward to report incidents of sexual harassment indicates that schools must do more to empower students to take that next step. When asked why they told no one, many students reported that they "didn't know;" "didn't want to be a tattletale;" or "didn't want to make a mountain out of a molehill." Students who did tell someone about their experience of sexual harassment were most likely to receive the following reactions:

What Could Your School Do to Address Sexual Harassment?

- "Maybe if they had an assembly about sexual harassment and expulsion for those who violate the rules." (eighth-grade boy)
- "My school handles the issue of sexual harassment very well." (eighth-grade girl)
- "Stop letting athletes get off easy." (ninth-grade boy)
- "I'd just like them to, if the matter comes up, deal with it swiftly and fairly, taking in all considerations." (ninth-grade girl)
- "Make aware what exactly it is and what to do about it if you are offended." (10th-grade boy)
- "Deal with the problem on the spot." (10th-grade girl)
- "I think that the current policies that deal with that subject are sufficient enough for the quantity and the degree of offense found at my school." (11th-grade boy)
- "Have the same no tolerance policy as knives or guns and make an example of anyone who does commit sexual harassment, so maybe it will stop others." (11th-grade girl)

- Told to go to the authorities and make them aware or tell parents (18 percent)
- Told it was a joke or were laughed at (13 percent)
- Told "don't worry about it, it's not a big deal, forget about it" (10 percent)

The highest percentage of boys said the people they told either laughed or thought it was a joke (21 percent), whereas the highest percentage of girls said they were told to report the incident (23 percent).

Title IX Enforcement. Complaints of sexual harassment constitute 63 percent of non-sports-related Title IX complaints filed with OCR. Seventy percent of elementary and secondary school and 59 percent of college and university Title IX complaints involve sexual harassment.

OCR's 2001 Revised Sexual Harassment Guidance sets out the standards it will apply in investigating sexual harassment complaints and the steps that education institutions will be expected to take to comply with Title IX. The guidance makes clear that institutions have an obligation to ensure that sexual harassment is not a part of an education program or activity. Among the strategies OCR recommends to prevent sexual harassment is having and implementing a sexual harassment policy. When sexual harassment does occur, institutions must act promptly and appropriately, including investigating the complaint and taking steps to end the harassing conduct.

Recommendations.

- OCR should increase its enforcement, making use of its authority to conduct compliance reviews and refer cases to the Department of Justice.
- OCR should work with community-based organizations and advocacy groups to heighten awareness and conduct technical assistance about sexual harassment and the 2001 guidance.
- Other federal agencies should adopt OCR's sexual harassment policy guidance and devise and pursue their own enforcement strategies for the education programs and activities they fund.
- Education institutions should adopt and enforce strong, comprehensive, and comprehensible sexual harassment policies.
- Education institutions should provide ongoing training for school employees to recognize and respond to sexual harassment in schools.

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Standardized Testing

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Standardized testing has become the battlefield for a national debate on educational equity and opportunity. In early 2002 President George W. Bush signed into law the "Leave No Child Behind" Act, which requires students to be assessed each year in third through eighth grades and once in high school. This act, as well as an increasingly competitive college admissions process that leads many students to take multiple standardized tests, means that students will sit through many more hours of testing than ever before—with the stakes attached higher than at any other time in history.

A substantial record of disparities in scoring between male and female students on many standardized tests date from before Title IX's enactment and continue over the last 30 years. These gaps have had a harmful impact on educational and economic opportunities available to women and girls as well as students of color. Under Title IX, tests must be valid predictors of success in the areas being tested and must measure what they purport to measure. If a test does not meet this standard, and if it produces a scoring deficit for one sex, it has a discriminatory impact on the members of that sex and is unlawful. Despite these requirements, most standardized tests used in K–12 classrooms and for university admissions continue to show gender gaps and underpredict the abilities of females.

K–12 Testing. The late 1990s brought unprecedented growth in K–12 testing for students. By 2002, 17 states required students to pass a test to graduate, with seven other states planning similar measures. The overall gender impact appears relatively small on many state assessments, with few differences between males and females in the aggregate. On many state exams, males tend to score slightly higher in mathematics and science, while females have the edge in language arts. While relatively little research has been conducted regarding the impact on boys as a group versus girls as a group, when gender and race are looked at together, many (if not all) state assessments show large gaps between males and females of different races, with white and Asian male students meeting graduation testing requirements at much higher rates than Latina, African American, and Native American females. Such disparities have major consequences for females of color, who are denied a high school diploma in much higher proportions than white males even though the young women have otherwise satisfied graduation requirements.

In addition to sitting for state assessments, many students must also take Stanford Achievement Tests (SAT-9) or the National Assessment of Educational Progress (NAEP). As with state assessments, disparities in achievement appear most striking between males and females of different races. A study of more than 760,000 SAT-9 test takers conducted by the Council of the Great City Schools revealed few within-race differences between males and females in Great City Schools but large gaps in achievement levels among students of difference races. For example, in grade 10 math, males and females of all races performed at or above the basic level in almost exactly the same percentage when compared with their same-race peers; yet 52 percent of white males and females scored at or above the basic level, while only 14 percent of African American females and 11 percent of Latinas achieved at similar levels. Females of all racial groups scored slightly higher than males in reading comprehension, yet girls of color earned much lower scores than their white peers. On the 2000 NAEP, females continued to trail behind males in mathematics and science, a gap that grew larger since the previous exam was administered in 1996.

Although relatively little research on gender gaps in standardized testing at the K-12 level has been conducted, now that tests are being developed and institutionalized in this arena, it is critical to begin to track performance by gender to root out problems of discrimination before they become set patterns that hinder opportunity.

University Admissions Testing. In addition to the proliferation of K–12 assessments, students must take more college admissions tests and at an earlier age. In an increasingly competitive world of college admissions, many students try to augment their credentials by taking one or more Advanced Placement (AP) exams. In 2001, although females represented a larger portion of AP test takers than males, they tended to score lower than males on most AP subject exams. Females of all ethnicities earned lower average scores than males on the AP biology, calculus, chemistry, computer science, economics, English language and composition, environmental science, French language, government, psychology, statistics, and U.S. and European history exams. The gender gaps were fairly consistent regardless of ethnicity, although the gaps between Latino male and female students were larger on many exams than for other ethnic groups. The smallest gender differences tended to be between male and female Asian test takers. Because such tests are optional, score differences have gone largely unchallenged. Yet the stakes attached to these once relatively obscure tests have grown considerably, sounding an alarm about the persisting gender gaps.

Title IX has played a positive role in improving the construction methods for college admissions tests. Allegations of bias have led test makers to run statistical analyses to

ensure that individual test items do not show large gender or racial differences. Blatantly biased questions are removed in a second screening process. Despite these measures, gender and racial gaps continue to appear and have diminished only slightly in the last 30 years. Among 2001 college-bound seniors, the average combined SAT I score for females was 42 points lower than males. ACT differences were slightly less, with females ranking just 0.2 points lower than males (on a 1–36 scale). While test makers offer little explanation for the persistent gender gaps, independent researchers point to several factors as the likely culprits: the timed, multiple-choice format of the exams, a method better suited for males than females; the "guessing penalty" on the SAT; and subtle bias in the content of test questions.

The test score gap is even more troubling when one considers racial differences, which place girls from underrepresented groups in double jeopardy. Within every racial category, males outscore females on the SAT (with the exception of African American females, who have a slight edge over their male peers on the SAT-Verbal). The gender score gaps become especially alarming when compared across racial groups; for example, white males averaged nearly 200 points more than Latinas and 230 points more than African American females on SAT combined scores (out of 1,600). In an admissions process that heavily weighs SAT results or uses "cut-off" (minimum) scores, such gaps act as a culling device for those groups at the bottom of the range. Moreover, as college admissions grow more competitive and affirmative action comes under attack, women of color will be shut out of the increasingly important world of higher education simply because of their test scores.

Females' lower scores illustrate the serious shortcomings of university admissions exams: While in general young women earn higher grades than young men in both high school and college (when matched by comparable courses), females trail on the SAT and ACT. Such discrepancies challenge test-maker claims that their products are good predictors of academic success in college. Nearly 400 colleges and universities nationwide (see www.fairtest.org for a listing) recognize the shortcomings of college admissions tests and admit a substantial number of freshman applicants without regard to SAT or ACT scores.

The gap between the sexes continues with graduate school exams. The most popular of these tests, the Graduate Record Exam (GRE), shows a male advantage on two of the three portions of the 2000 exam: Males on average scored nine points higher on the verbal and 15 points higher on the analytical sections, while females earned three points higher than males on the quantitative portion. The Graduate Management Admission Test (GMAT), used for business school applicants, shows the most sizable gender

differences, with males of all ethnicities scoring on average 27 to 50 points higher than females (on a 200-800 scale). The largest gender gaps appeared between Native American and Puerto Rican males and females, and the smallest among Mexican Americans. The disparities on graduate school tests are especially problematic given that many admissions offices tend to rely on strict test score minimums when choosing among applicants.

Title IX Enforcement. Title IX has been used to challenge discriminatory scholarship programs that rely on standardized test scores as part of the qualifying criteria. One example of this is the National Merit Scholarship competition, the most prestigious award program in the country, which relies exclusively on PSAT scores to select semi-finalists. The sifting effect of using test score cut-offs results in a finalist pool that is disproportionately white and male. Over time, females and students of color have lost millions of dollars in tuition aid through state-run and private scholarship programs that rely on test scores. In response to a federal discrimination complaint filed under Title IX by the National Center for Fair & Open Testing (FairTest), in 1999 a multiple-choice "writing skills" section was added to the National Merit Scholarship Qualifying Test. While these changes helped close the gender gap slightly on the PSAT, disparities still exist and undoubtedly lead to shortchanging females in the scholarship competition. OCR monitors this settlement, but so far little has been done to investigate the impact of the changes.

Similarly, in 1989 a federal court ruled in *Sharif v. New York State Education Department* that the State of New York could no longer rely exclusively on SAT scores to determine recipients of state Regents and Empire State college scholarships. Use of SAT scores had a discriminatory impact on female students, violating the regulations under Title IX: While males represented 47 percent of the scholarship competitors, they received 72 percent of the Empire Scholarships and 57 percent of the Regents Scholarships. Under federal orders, the state added high school grades to the qualifying criteria, a change that resulted in a more equitable scholarship distribution among male and female students.

More recently, under the Clinton administration, OCR issued a set of guidelines regarding proper standardized test use. *The Use of Tests as Part of High-Stakes Decision-Making for Students: A Resource Guide for Educators and Policy-Makers*, draws from principles specified under Title IX as well as Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans With Disabilities Act of 1990, which prohibit discrimination against students based on their race, national origin, sex, or disability. The OCR guidelines call for reviewing several

factors: test validity, reliability, fairness, and cut-off scores and their appropriate use. If a test's use is determined to have a disparate impact against a particular group, the education institution must justify that use and employ an alternative practice when feasible. While the OCR testing guidelines provide an important framework for ensuring equitable test use, the current Bush administration marked their current status as "archived," making implementation difficult and leaving education institutions without clear federal guidance.

While the gender gap on standardized testing has certainly decreased under Title IX, the disparities have remained largely intractable over the last five years. The recommendation in *Title IX at 25* that education institutions not rely on standardized tests alone as measures of student achievement still remains a concern in the awarding of financial aid; and while most college admissions policies include other measures of achievement (such as grades), many still employ cut-off scores to determine initial eligibility. As state and federal educational policies come to rely more heavily on standardized testing, females—particularly young women of color—will be systematically disadvantaged and blocked from important educational opportunities. Rather than serving as a tool to address educational equity as the "leave no child behind" rhetoric claims, most standardized tests diminish the quality of females' K–12 education and block them from valuable opportunities at the undergraduate and graduate levels. Therefore, standardized tests must still be scrutinized to ensure that their designs are not biased and that they are used in equitable ways.

Room for Improvement

- The increasingly high stakes attached to many standardized tests compound the problems associated with the longstanding gender gap. The lower test scores of African American, Latina, and Native American females compared to their white and Asian peers remain a serious educational divide.
- Scholarship programs, such as the National Merit contest, continue to use test scores as a qualifying criteria. Such use leads to disproportionately fewer females receiving the valuable awards.
- Rigid use of test scores in university admissions underestimates the potential achievement of women, who score lower on the exams but perform comparably to their male peers once enrolled.

Recommendations.

- OCR should monitor closely the implementation of tests under the No Child Left Behind Act and investigate states where high-stakes uses of tests result in a disparate impact based on gender or race.
- OCR should release and widely publicize and disseminate its "archived" publication, *The Use of Tests as Part of High-Stakes Decision-Making for Students: A Resource Guide for Educators and Policy-Makers.*
- Government agencies and higher education institutions should not use standardized test scores for the sole measures of students' achievement or academic potential or for high-stakes purposes. Other forms of assessment and data that better reflect students' accomplishment and potential should be employed.
- Education institutions, scholarship programs, and athletics associations such as the NCAA should guard against the use of cut-off scores. Such use is against test-maker guidelines and frequently leads to gender and racial disparities.

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Technology

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Assessing the progress of the nation's schools in providing technology opportunities for girls and women is critical in this information-driven economy. Fluency in technology often determines the ability to get jobs, and the high-tech jobs are often the high-paying jobs. While Title IX opened paths for girls and women in fields such as math and science, girls and women are now severely underrepresented in this new field of technology and face barriers that must be addressed. Unless women and girls achieve greater parity in technology, they will continue to be underrepresented and earn less in these fields.

Importance of Technology. The introduction of technology into daily life has greatly changed how individuals and corporations operate and communicate and altered the economy of the United States. Gone are the days when manufacturing was the lead industry. The service and information technology industries have risen in its place and become an integral part of society. The rise of information technology in the workplace requires a new kind of computer fluency—defined not as the ability to use e–mail and basic tool kit functions, but rather as a comprehensive approach to technology. Fluency assumes an ability to use abstract reasoning; to apply information technology in sophisticated, innovative ways to solve problems across disciplines and subject areas; to interpret vast amounts of information with analytic skill; to understand basic principles of programming and other computer science fundamentals; and to continually adapt and learn new technologies as they emerge in the future. And as colleges and universities increase their funding of online education classes and degree programs, it becomes even more important for females to be proficient in technology use. Online programs are often seen as ideal for women who are nontraditional students (because of their age or family responsibilities), but students' inability to navigate the system renders the programs worthless.

Inadequate Teacher Preparation and Lack of Resources. Most students attend schools in which the educational environment has not kept up with technology. In fact, less than 2 percent of all computer/technology teachers have a degree in computer science. Teachers are also unlikely to have received any substantial pre-service or in-service training on how to integrate technology into the curriculum. According to an AAUW Educational Foundation survey, only 30 percent of teachers reported that they

received any technology training in an undergraduate or master's teacher education program, which probably reflects in part responses from older teachers. Only 11 percent reported that they received training specifically in how to apply or integrate computer technology into their lesson plans. In addition, 75 percent of teachers cited shortage of computers in the classroom as a major obstacle, illustrating another major impediment to teaching computer fluency at the K–12 level. Lawmakers now recognize the need for professional development in the areas of curriculum development and technology integration in the classroom as well as the need to upgrade schools and classrooms. More funding, though, still needs to be dedicated to these areas for such proposal to be successful.

High School Girls Underrepresented in Technology and Computer Science. At both the secondary and postsecondary levels, female students are less likely to receive the necessary training in computers and technology beyond the traditionally female areas of word processing or data entry. Such classes are equivalent to the typing classes of yesteryear. While they may teach skills needed to function in the workplace, in and of themselves they offer no well-paying employment opportunities. A study by the Department of Education found that among 1994 high school graduates, men were significantly more likely to have taken computer science and computer applications courses than women. The only computer-related courses girls took more than boys were data entry. In 1998, 57 percent of the males but only 43 percent of the females who took the SAT had taken computer math courses in high school.

Girls are also underrepresented in Advanced Placement (AP) computer science classes and exams, which can translate into college credit if students receive a high score on the exam. Nationwide in 2000, girls comprised only 17 percent of the introductory-level computer science exam takers and less than 11 percent of the advanced computer science exam takers. Those who took the exams also scored lower than did their male counterparts—41 percent received the lowest score of 1, compared to 28 percent of boys.

Underrepresentation in Higher Education. The gender disparity continues once young women leave high school. Among students working toward associate's degrees, 12 percent of males but less than 2 percent of females majored in engineering or science technologies. Women receive only 20 percent of computer science and engineering-related technology bachelor's degrees. While a computer science major is not the only path to competence, women seem to be dropping out of the arena at the same time that this field is becoming an essential component of many disciplines.

Female Students Face Unequal Treatment. In some cases, girls are not receiving an equal opportunity to learn in technology-oriented classes. A recent study found that

71 percent of male teachers believed that male students were more interested in the mechanics of computer technology, and the teachers were more likely to attribute boys' success in technology to talent, while dismissing girls' successes as luck or diligence. As a result, boys may get more time and encouragement from their technology teachers. Studies of students working in groups on technology projects have found that boys tended to take over the more technically challenging tasks from female peers, often relegating girls to lower-status tasks affording limited access to new technologies. Some female students also faced sexual harassment in these classes. For example, in May 2001 a female high school student in Hawaii filed a lawsuit in federal court against the state Department of Education, alleging that she was robbed of her opportunity to continue her interest in computers after a boy in her computer class downloaded pornographic images, superimposed her face on the pictures, and circulated them. Thus, low teacher expectations based on gender stereotypes and hostile classroom environments interfere with female students' opportunities to learn.

Room for Improvement

- Fewer girls than boys enroll in computer science, feel self-confident with computers, and use computers outside the classroom.
- According to a 2000 study by the Department of Labor, nearly 75 percent of future jobs will require the use of computers, but less than 33 percent of participants in computer courses and related activities are girls. Girls take approximately half of all AP exams but only 17 percent of the AP computer science exams. Further, women receive only 34 percent of math and computer science degrees—a number that has decreased 25 percent since 1984.
- Although teenage girls use computers and the Internet at rates similar to their male peers, girls are five times less likely to consider a technology-related career path or plan on taking postsecondary technology classes. According to a 1996 study of SAT test takers, female students are less likely to have experience using computers to solve math problems but more likely to have used a computer for word processing, a skill that will not lead to high-paying, high-tech jobs.

Limited Career Opportunities. Girls' lack of advanced knowledge and degree completion in technology arenas will limit the ability to get and maintain jobs. Occupational outlooks predict that several of the fastest-growing occupations will require computer fluency, including systems analysts, computer support specialists, and computer engineers. The fastest-growing occupations—often precursors to long-term changes in the economy—show the new directions the economy is taking. But most children, and girls in particular, do not receive the education they need to acquire such

positions. Although teen girls now use computers and the Internet at rates similar to their male peers, girls are five times less likely to consider a career in technology. Indeed, a congressional commission studying the lack of women in science, engineering, and technology concluded that "active discouragement" contributes to females' lack of interest in those careers.

Title IX Enforcement. The government has done little to enforce Title IX in this new area of technology. OCR has apparently conducted no compliance reviews to ensure that girls and women get equal opportunities, although such reviews are sorely needed. OCR needs to make a greater effort to ensure that as education institutions incorporate technology into their programs and provide more technology opportunities to students, girls and women are not left behind.

Recommendations.

- Congress should ensure adequate funding for school technology improvements and professional development.
- OCR should increase Title IX enforcement in the area of technology, making use of its authority to provide technical assistance, conduct compliance reviews, and refer cases to the Department of Justice.
- Schools of education should prepare tech-savvy teachers who can design curricula that incorporate technology in a way that is inclusive of all students.
- Educators should ensure that girls actively participate in technology-related courses to maximize girls' understanding of the field and guarantee that they reach their full potential.
- Education institutions should convey the connection between technology and the world of work because all jobs, including those in the arts, medicine, law, design, literature, and the helping professions, will involve more and more technology.

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Treatment of Pregnant and Parenting Students

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Prior to the enactment of Title IX, pregnancy and parenting typically signified the end of a young woman's formal education. Most schools expelled pregnant students and precluded their return to school if they chose to have their babies. Under Title IX, however, schools are prohibited from discrimination against pregnant and parenting students. The law also outlaws discrimination against a student because of childbirth, false pregnancy, or recovery from these conditions as well as marital status. Despite a glaring lack of national data on compliance with these protections, anecdotal evidence suggests that schools have far to go to ensure that pregnant and parenting students are afforded every opportunity to succeed in school and in life.

Importance of Education. The importance of teen parents having access to education cannot be overstated. Research clearly shows that education contributes to students' future economic independence and self-sufficiency, and for many teen parents, access to education improves their chances of moving out of poverty and off public assistance and contributes to the health and development of their children. Unfortunately, adolescent parents attain lower levels of educational achievement than other students. A 1997 Urban Institute study found that only 30 percent of adolescent mothers earned a high school diploma by age 30, compared to almost 76 percent in the comparison group of women who delay childbirth until age 20 to 21. Teen parents also have higher rates of single parenthood and, in their first 13 years of parenthood, have an annual income of less than half the poverty rate.

While many factors contribute to young women dropping out of school, pregnancy and parenting pose major barriers to full-time school attendance. Indeed, pregnancy and parenting are the leading reasons girls give for dropping out of school. Proper implementation of Title IX can protect pregnant and parenting students from discrimination and serve as a tool to ensuring that these students receive a quality education that will allow them to attain self-sufficiency.

Barriers to Educational Success. While no comprehensive study documents the treatment of pregnant or parenting students nationally, the research of several independent organizations reveals that discrimination against pregnant and parenting students still exists. Research by the Center for Assessment and Policy Development suggests that the most common barriers to education faced by pregnant and parenting

students are (1) being strongly encouraged to attend stand-alone alternative programs of questionable academic quality; and 2) unlawful leave and absence policies.

Title IX requires that students be allowed to voluntarily choose their educational options. If a student chooses an alternative school or program, it must be of comparable quality to programs offered at a comprehensive high school. Title IX also prohibits discriminatory absence and leave policies. Students who have a physician's note must be allowed excused absences, and pregnant and parenting students may not be penalized for absences due to childbirth. If a school requires a physician's certificate for pregnant students, the school must also require such certification from all other students with physical or emotional conditions requiring a physician's care. Many school districts, however, are unaware of these requirements and have not adopted district-wide policies consistent with Title IX.

Progress Achieved. Although in the last five years neither the Department of Education nor OCR has undertaken a national initiative to address the needs of pregnant and parenting students and systemically enforce Title IX, advocacy organizations have pursued their own initiatives to help schools comply with the law. From 1996 to 1999 the Center for Assessment and Policy Development implemented an initiative in a Pittsburgh school district to help its Teen Parent Program staff protect its students' rights and better meet their educational needs. The initiative focused on raising awareness among administrators, school personnel, and students about Title IX and its implications for pregnant and parenting students. For more than two years, the center worked with the district's superintendent to require each school to develop its own policy on pregnant and parenting students consistent with Title IX. This process helped concerned parties become aware of the law and allowed for a coordinated effort among faculty, administrators, and students to make education and support services fully accessible to pregnant teens and young mothers.

School districts in other states have also made efforts to expand the scope of their services and programs for pregnant and parenting students by providing alternative approaches to credit accumulation and by changing absence and school hour policies. Additionally, some school districts have successfully maximized flexibility and equity in access to education by instituting on-site day care and other services to ease the barriers many pregnant and parenting teens face in schools.

Persistent Lack of Government Enforcement. OCR has no information regarding the number of complaints it has received about the treatment of pregnant and parenting students because complaints regarding pregnant and parenting students are not identified in the department's coding system. Further, few states have accurate

information about the number of parenting teens, unless they are part of the welfare system.

As a result of this lack of basic data collection and analysis and the apparent lack of enforcement, many pregnant and parenting students are unaware of their rights and the steps they can take if they believe their rights have been violated.

Advocacy Efforts by Organizations. It is apparent that the rights of many pregnant teens and young mothers are in jeopardy. Without strong government enforcement, legal advocacy organizations have had to take steps on behalf of pregnant and parenting students to ensure compliance with Title IX. These efforts include public education, non-litigation advocacy, and, where necessary, litigation. For example, groups such as the New York Civil Liberties Union and the California Women's Law Center have launched "Know Your Rights" campaigns in their respective states' school districts to help educate students and parents about Title IX's protections for pregnant and parenting students.

In 1998, a year after Title IX's 25th anniversary, the National Honor Society refused to admit two young mothers from Grant County, Kentucky. The school district's policy excluded 100 percent of young women who had become pregnant from premarital sex and 0 percent of young men who had premarital sexual relations. The ACLU Women's Rights Project filed a Title IX lawsuit on behalf of the two young mothers, and the court issued a preliminary injunction ordering that they be readmitted. The presiding judge stated that "although the defendants argue that they are not basing their decision on pregnancy, but rather on nonmarital sexual relations, the disparate impact on young women such as [Chipman and Glass] is apparent." On the 30th anniversary of Title IX, this and other legal victories demonstrate that discrimination against pregnant and parenting students can be stopped where there is vigorous enforcement of Title IX.

Despite legal rulings reinforcing the rights of pregnant and parenting students, some schools continue to violate Title IX. In January 2002 the Virginia Military Institute (VMI) adopted a regulation requiring a student who is married or the parent of a child to resign from VMI voluntarily or be expelled. The National Women's Law Center immediately sent a letter to VMI, informing the school that because the regulation unfairly targets and burdens pregnant students, the regulation constitutes sex discrimination in violation of Title IX. Indeed, substantial evidence exists that VMI adopted its policy as a means to exclude pregnant female students because prior to its admission of women to the school (which VMI was forced to do after a Supreme Court decision), VMI did not act to expel students based on marriage or parental status. Thus, while some schools have made small strides toward eradicating discrimination against

pregnant and parenting students, a much more deliberate and coordinated effort is necessary to ensure compliance with the letter and spirit of Title IX.

Recommendations.

- The Department of Education should collect data on the numbers of parenting students in school and whether these young women are being provided with the opportunity to stay in school.
- OCR should track the number and type of Title IX complaints it receives regarding pregnant and parenting students and pursue enforcement actions and compliance reviews as necessary.
- OCR should develop a systemic plan for providing schools with technical assistance on the rights of pregnant and parenting students under Title IX and conduct compliance reviews in targeted areas.
- School district superintendents should develop a policy regarding pregnant and parenting students consistent with Title IX and ensure that all schools comply with the policy.

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ACTION AGENDA

This Action Agenda provides recommendations designed to create a blueprint for change and move closer to achieving Title IX's goal of eliminating sex discrimination in education. The list of recommendations for Congress, administrative agencies, and education programs and activities should be viewed as a starting point; undoubtedly, people working on these issues will develop additional strategies. Further recommendations are also provided in the 10 progress reports. *The Report Card's* recommendations, in tandem with efforts by students, parents, educators, and policy-makers in communities throughout the country, can help ensure that gender is not a barrier to educational opportunity.

What Can Policy-Makers Do?

President Bush and congressional leaders have identified education as a top priority. Ensuring that education opportunities are available to all students—male and female—is a critical part of the goal to improve education in our nation. Congress should take the following steps:

- Reauthorize the welfare law with increased access to education and job training programs, which have proven critical to employability, earnings, and job retention to enable recipients to attain self-sufficiency and leave welfare permanently.
- Establish a data collection system that enables analysis and evaluation by specific program area of male and female enrollment in and completion of secondary and postsecondary vocational education in the states.
- Establish a data collection system for elementary and secondary school participation in athletics disaggregated by sex, race, and national origin. Data should be collected and made available to the public on a regular basis by the Department of Education.

- Make the achievement of gender equity in education a priority in the reauthorization of the Office of Educational Research and Improvement, including providing funding for gender-equity research and for the identification of promising and exemplary programs and practices.
- In reauthorizing vocational education legislation, reinstate funding for sex-equity programs and services and state-level sex-equity coordinators.
- Reinstate funding for Title IV state educational agencies, which have provided schools with important assistance in their efforts to cultivate a nondiscriminatory learning environment.
- Establish a system for the collection of information and reporting on the incidence of sexual harassment in schools.
- Provide adequate appropriations for the Women's Educational Equity Act, the only federal program that focuses specifically on increasing educational opportunity for women and girls.

What Can the President and Administrative Agencies Do?

Every administrative agency that provides funding for educational programs or activities has the authority and responsibility for enforcing Title IX. Thus, while the U.S. Department of Education's Office for Civil Rights is the lead agency for Title IX enforcement, other federal agencies must also take proactive measures to ensure compliance with Title IX.

- Every agency that has adopted the Title IX regulations should develop a comprehensive enforcement plan that includes conducting compliance reviews in areas where inequities persist.
- Every agency and executive department should develop a strategy to ensure that federally conducted education programs and activities comply with Executive Order 13,160.
- The Department of Education should adopt regulations and guidance for the No Child Left Behind Act that are consistent with civil rights laws.
- The Department of Education should vigorously defend the Title IX regulations and guidance as valid in any legal challenges.
- OCR should release and widely publicize and disseminate its archived publication, *The Use of Tests as Part of High-Stakes Decision-Making for Students: A Resource Guide for Educators and Policy-Makers*, and monitor the implementation of

new testing requirements to ensure compliance with Title IX and other civil rights laws.

- Agencies should develop a comprehensive strategy for heightening awareness of Title IX's requirement concerning sexual harassment, including adopting and implementing OCR's 2001 sexual harassment guidance.
- OCR should disseminate its 2001 sexual harassment policy guidance to all school superintendents and college and university presidents.
- OCR should step up its Title IX enforcement efforts by undertaking more proactive compliance reviews related to sex discrimination.

What Can Education Programs and Activities Do?

All education programs or activities that receive federal financial assistance must comply with Title IX's requirements. This includes the following:

- Designate at least one person as Title IX coordinator to organize efforts to comply with Title IX and to investigate any Title IX complaints. This person should ensure that all staff and students are educated about their rights and responsibilities under Title IX.
- Inform all students and staff of the people responsible for Title IX compliance with contact information (name, address, and telephone number).
- Notify everyone in the education program or activity about the nondiscrimination policy. Groups to notify include admission and recruitment personnel and representatives, applicants for admission and employment, students, and unions and professional organizations holding collective bargaining or professional agreements with the institution.
- Place the notice of nondiscrimination prominently in recruitment materials, bulletins, catalogs, and application forms. Colleges recruiting athletes should be sure this notification appears in materials to prospective athletes.
- Ensure that all programs facilitated by the institution do not discriminate on the basis of sex. For example, an education institution that places students in internships or on-the-job training must ensure that those programs are nondiscriminatory.
- Ensure that classes disproportionately represented by one gender are not the result of sex discrimination in counseling or appraisal materials, the use of these materials, or academic or guidance counselors' actions.

- Ensure that any separate class, activity, or program offered to pregnant or parenting students is voluntary and comparable to those offered to non-pregnant students.
- Provide female and male students with equal opportunities to participate in athletics programs.

There are many more strategies that will help move our nation toward full equal educational opportunities for all. Students, parents, and educators have an important role to play in ensuring that education programs and activities live up to their obligations under the law. Communities should determine the steps they will take to help the nation make the grade for gender equity in education in the future.

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[Whereupon, at 4:36 p.m., the committee was adjourned.]

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