

# CRS Report for Congress

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## Title IX and Sex Discrimination in Education: An Overview

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### Summary

Although Title IX has been only partially successful in eliminating sex discrimination in education, the effects of this legislation have been far-reaching. Despite problems with enforcement of the statute, the women and girls of today tend to be better educated and have more opportunities than those of previous generations. Major attention at present centers on funding and support for equal opportunities in athletics, although equality in the classroom, a more complex problem, may affect more students in terms of future opportunities and earning power. The Commission on Opportunity in Athletics has just released their recommendations to reform the application of Title IX to sports to the Secretary of Education. The 108<sup>th</sup> Congress may wish to review any changes to Title IX that may result from these recommendations. An electronic version of the Commission's final report can be found at [<http://www.ed.gov/about/bdscomm/list/athletics/index.html>].

This report provides an overview of Title IX of the Education Amendments of 1972, and the various aspects of education affected by this law. This report will be updated as events warrant. For related reading, see CRS Report RS20460, *Title IX and Gender Bias in Sports: Frequently Asked Questions*, and CRS Report RL31709, *Title IX, Sex Discrimination, and Intercollegiate Athletics: A Legal Overview*.

Title IX was enacted on June 23, 1972, as part of a general education bill, the Education Amendments of 1972.<sup>1</sup> It prohibits discrimination on the basis of sex in federally assisted education programs or activities. The word "programs" under Title IX refers to all of the activities of any educational institution receiving federal funding for any part of its program, a point clarified by Congress under the Civil Rights Restoration Act of 1988.<sup>2</sup> Numerous school activities fall under the umbrella of Title IX. It applies to admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational

<sup>1</sup> PL. 92-318; 86 Stat. 373, 1972: 42 U.S.C. 906a.

<sup>2</sup> PL. 100-259; 102 Stat. 28, 1988: 20 U.S.C. 1681 et seq.

education, recreation, physical education, housing, employment, and athletics. An educational institution is defined as any “public or private pre-school, elementary or secondary school or any institution of vocational, professional or higher education.” Although Title IX has been on the statute books for over 30 years, the law is considered by many to be only a partial success. For persons directly affected by Title IX, the law remains confusing and almost always controversial. To this day, the public perception of the intended purpose and major impact of Title IX is in its application to women’s athletics, yet the statute applies to every area of sex-based discrimination in a educational setting.<sup>3</sup>

Enforcement and administration of Title IX is primarily the responsibility of the Office of Civil Rights (OCR) at the Department of Education (DOE). Administrative complaints concerning possible Title IX violations may be filed with this office. A complaint to the Office of Civil Rights is not a lawsuit. A complaint can be filed by anyone: a parent, a student athlete, a team, or even a concerned third party. The OCR does not file lawsuits on behalf of persons or groups injured by alleged discrimination. It can, but rarely does, seek to have federal financial assistance withheld from educational institutions not in compliance with Title IX. The OCR’s first choice of action is to mediate a solution to a discrimination claim that satisfies the law as well as both the alleged victim and the school. A commonly expressed misunderstanding about the OCR is that it directly disperses federal funds to schools to implement Title IX or conduct sports programs, and that this money can be withdrawn. The OCR neither has appropriated federal funds available to disperse for sports programs, nor is the agency authorized to do so by law. Federal financial assistance that can be withheld can take many forms. It can be defined as federal grants or loans to educational institutions for acquisitions, construction, renovations, restorations, or repairs of buildings and facilities. Federal assistance can also take the form of scholarships, loans, grants, wages, or other funding extended to a school directly or through students at the school. In addition, it can take the form of federal surplus property, either donated or sold to a school, or services provided by federal personnel. Contracts, agreements, or other arrangements between education institutions or individuals associated with educational institutions and federal agencies, such as defense-related research conducted by an educational institution for the Department of the Army, can also be regarded as federal financial assistance for the purposes of Title IX. An educational institution may lose its federal financial assistance if it is found to be in non-compliance with Title IX.

Although the federal government is responsible for Title IX enforcement and may terminate funding on the basis of sex bias, no educational institutions have lost funding for this reason. Thus far in Title IX’s 30-year history, pressure for stronger enforcement has come largely as a result of court suits initiated by women and women’s groups, rather

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<sup>3</sup> Several agencies and activities are exempt from Title IX, including educational institutions operated or controlled by religious organizations, if application of Title IX would be inconsistent with the religious tenets of those organizations. Title IX is not applicable to federal military and merchant marine academies. Social fraternities and sororities whose members are primarily students at institutions of higher education are exempt from Title IX. So are voluntary youth organizations which are tax-exempt or whose membership is traditionally limited to one sex. These organizations include groups such as the Boy Scouts of America, the Girls Scouts of America, the Young Men’s Christian Association, and the Camp Fire Girls.

than through agency action. In 1992, the Supreme Court ruling in *Franklin v. Gwinnett County* allowed for monetary awards against educational institutions found to be intentionally discriminating.<sup>4</sup>

Title IX grew out of the women's civil rights movement of the late 1960s and early 1970s. In that period, Congress began to focus attention on systemic educational barriers to women and girls, in part because of the associated limitation on women's employment opportunities, which led to lower lifetime earnings and fewer opportunities generally.<sup>5</sup> This problem had serious implications, not only for women themselves, but also for their ability to contribute to their families, to society, and to the national economy. Hearings in June and July of 1970, prior to passage of Title IX, documented what supporters perceived as pervasive discrimination and sex stereotyping in the treatment of males and females in educational institutions. These hearings and other investigations gave impetus to the growing effort to make taxpayer funded educational programs more equitable.<sup>6</sup>

## Why Congress Enacted Title IX

The testimony before congressional committees prior to passage of Title IX in 1970 documented examples of differential treatment of males and females.<sup>7</sup> Examples from the testimony included the following:

- Some publicly-funded universities did not admit women to undergraduate programs, had higher admissions standards for women than men, or had imposed sex-based quotas.
- Certain academic programs and courses within publicly-funded educational institutions, such as nursing schools, would not admit married women.
- Equally qualified women were found to be less likely to receive financial aid or to receive smaller amounts than their male counterparts, and married women often were excluded from receiving awards of financial aid.

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<sup>4</sup> 503 U.S. 60 (1992).

<sup>5</sup> Since the Supreme Court decision in *Brown v. Board of Education* (347 U.S. 583 [1954]), the relationship between equality in education and in society has been the object of public concern. In fact, Title IX is based on Title VI of the Civil Rights Act of 1964 (P.L. 88-352, 78 Stat. 252), which prohibits discrimination on the basis of race, color, or national origin in federally assisted programs, except that Title IX does not exclude employment from coverage of the statute.

<sup>6</sup> U.S. Congress, House Special Subcommittee on Education, Discrimination Against Women, hearings on Sec. 805 of H.R. 16098, 91<sup>st</sup> Cong., 2<sup>nd</sup> sess., 1970 (Washington: GPO, 1970).

<sup>7</sup> *Ibid.*, passim.

- Some school-sponsored activities, such as honor societies, were reserved for male students only, and women's athletics were commonly funded at levels far below parallel programs for men.
- Women frequently were discouraged from applying to law and medical schools or majoring in hard sciences, such as physics or engineering.
- Women who sought employment at educational institutions with equivalent training and experience to that of male applicants were often hired at lower salaries than their male counterparts and were less likely to be promoted to principal, department head, dean, or university president.
- In high school and college athletics, few women were allowed to coach athletics or hold administrative positions in athletic departments. In 1971, approximately 295,000 girls participated in high school sports, and only about 25,000 played sports at the college level.

## **Changes Attributed to Title IX in Increasing Equal Educational Opportunity**

Proponents of Title IX contend that a more equal, more educated, and more prosperous nation has resulted because of the far-reaching effects of this legislation. While no definitive study has been made of the full impact of Title IX, there are a number of indicators of substantial change. For example:

- In colleges and universities, women now constitute majorities of college enrollment and completion of a degree, and are the majority of recipients of master's degrees. In 1972, only 44% of bachelor degrees were earned by women, 56% in 2000. During this same period the number of medical degrees awarded women grew from 9% in 1972 to 43% in 2000.
- There are more female faculty members at the college level now than in 1972, with women in 1998-1999 constituting about 37% of faculty members at colleges and universities. In 1970, women constituted 8.7% of full professors, 15.1% of associate professors, 19.4% of assistant professors, and 32.5% of instructors. In 1998-1999, women constituted 20.8% of full professors, 35.8% of associate professors, 45% of assistant professors, and 50.6% of instructors.
- In athletics, an area that has received the largest share of media and public attention, women's participation in sports has increased markedly since 1971, when only 295,000 women participated in high school varsity sports and only 30,000 in college sports. By 2001, around 2.8 million girls participated in high school sports and 163,000 in college sports. Since 1981-1982, the number of women's teams at colleges has grown from about 5,695 to 9,479 in 1988-1999, while men's team have grown in number from about 9,113 in 1981-1982 to 9,149 in 1988-1999.

## Commission on Opportunities in Athletics

On June 27, 2002, Rod Paige, Secretary of Education, established the Commission on Opportunity in Athletics. The Commission was tasked with collecting information and analyzing issues pertaining to the application of current federal standards for measuring equal opportunity for male and female participation in athletics at high schools and colleges under Title IX. The Commission held six public meetings at locations around the country between July 2002 and January 2003. The Commission forwarded its 23 recommendations to the Secretary at the end of February 2003. For an electronic version of the full report, see [<http://www.ed.gov/about/bdscomm/list/athletics/index.html>]. The Secretary is not required to act on any of the recommendations of the Commission nor is there a time limit for his actions, if any are taken. It should be noted that the Secretary could simply revise or change the compliance requirements issued by the Office of Civil Rights at the Department of Education, which would not require legislative action on the part of Congress. The 108<sup>th</sup> Congress may wish to review any action taken by the Secretary which might weaken enforcement or application of this law.

## Continuing Controversies

One of the reasons for the seemingly disproportionate attention paid to women's athletics under Title IX relates in no small part to persistent differences in funding support for men's and women's sports programs (a more easily measured indicator than classroom inequities). Although women represent the majority of total students in undergraduate college programs and nearly 43% of all athletes, a 2002 gender-equity study by the National Collegiate Athletic Association (NCAA)<sup>8</sup> found that spending on a Division I male athlete, on average was \$3,786, while spending on a female athlete was \$2,983.

Although the cost of football accounts for a substantial portion of this financial disparity, and even though some specific universities and colleges reportedly are doing a good job of balancing their sports programs, critics would say much more needs to be done in this area.

For some, the current gains made by female athletes under Title IX represent sufficient progress. They believe that a more aggressive implementation of Title IX would result in even more men's non-revenue generating sports (such as wrestling) being dropped by educational institutions in order to add mandated women's teams to meet the equity standards of the act.<sup>9</sup>

These opponents of Title IX point to the sports administrators at colleges and universities selectively dropping men's teams as an unintended consequence of Title IX enforcement. They contend that the law has resulted in a kind of reverse discrimination against men's sports programs, substituting discrimination against men for discrimination

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<sup>8</sup> National Collegiate Athletic Association, *NCAA Gender-Equity Report*. (Indianapolis, IN: April 2002).

<sup>9</sup> Amy Shipley, "Title IX at 25," *Washington Post*, July 6, 1997, pp. A1, A6-7.

against women, and thus defeating the original intent of the law.<sup>10</sup> They also point to the fact that as women's enrollment at colleges and universities continues to grow, making women a majority of the student body at most educational institutions, it becomes more difficult to meet the law's requirement for proportionate athletic programs. Many opponents have also suggested that the problems with compliance could be simplified by removing football from the equation.

For advocates of Title IX, however, the perceived slow progress in implementing gender equity is not only harmful, but also contravenes the legal requirements of the law. They believe that educational institutions must adapt to the needs and legal rights of both male and female students, and must serve the entire student population, rather than, in the case of athletes, concentrating limited resources on a few high-profile sports like football and basketball.

They also argue that Title IX has been the law since 1972, but only in the last 10 years have schools made an honest effort to meet the requirements of the law, and 30 years is sufficient time to bring athletic programs into compliance. Supporters of greater enforcement of Title IX reject opponents' arguments that men's football and basketball are revenue-producing sports and, thus, should not be included in formulas seeking to achieve equity. This argument includes the proposition that men's football and basketball programs are critical to supporting all other no-revenue sports at most institutions.

Proponents do not entirely disagree with this pleading, but point out that over 40% of NCAA Division I schools are losing money on their sports departments, even with football and basketball. Advocates of Title IX also contend that these revenue sports not only raise greater profits than most other sports played at the college level, as claimed, but also consume a greater share of limited funds.

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<sup>10</sup> Under Title IX, a school is considered in compliance with the gender-equity requirements of the statute if it meets one prong of a three-pronged test: if the ratio of female athletes to male athletes is substantially proportionate to the ratio of female students to male students; if the college or university can show that it is making a good faith effort to balance its programs over time or in a reasonable number of years; or if the educational institution can show that there are no unmet sports needs (interests) among the under-represented class, which is usually, but not always, women. Determining if needs are being met can be accomplished by surveying the student body for its opinions or by noting the number of club sports at the institution as a measure of student interests in varsity versions of those sports.