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Title IX and Equality for Women Students in Sports

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TITLE IX AND EQUALITY FOR WOMEN STUDENTS IN SPORTS

[The following excerpt comes from an excellent pamphlet entitled "What Constitutes Equality for Women in Sport?" prepared by the Project on the Status and Education of Women at the Association of American Colleges, 1818 R Street, N.W., Washington, D.C. 20009. The report includes a thorough review of Title IX and athletics as well as several rich pages on resources, including publications.]

The legal mandate for equal athletic opportunity regardless of sex comes from Title IX of the Education Amendments of 1972. The key section of Title IX, which became effective on July 1, 1972, reads:

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 educational program or activity receiving Federal financial assistance.

All educational institutions which receive any federal money are covered by the anti-discrimination provisions of Title IX. Virtually every college and university receives some form of federal financial assistance. Although there are some exemptions from non-discriminatory admissions, Title IX requires all educational institutions to provide equal opportunities to their students regardless of sex once they are admitted.

The implications of Title IX for the issue of equality in sport (as well as for a variety of other issues) are considerable. Interestingly, although the Education Amendments Act was hailed as a landmark education legislation, the sex discrimination prohibitions were generally ignored by the press and little noted by the educational community.

Title IX empowers the government to withdraw funds, debar institutions from eligibility for future funds and to bring suit against institutions which discriminate against students or employees on the basis of sex. The enforcement provisions of Title IX are patterned after those of Title VI of the 1964 Civil Rights Act, which prohibits discrimination against the beneficiaries of federal monies (students) on the basis of race, color or national origin. Title IX (like Title VI) is enforced by the Office for Civil Rights of the Department of Health, Education and Welfare. Charges of discrimination may be brought by writing to the HEW Secretary, specifying the nature of the discrimination.

Although (as of April 1974) the implementing regulations were not issued, Title IX has been in effect since July 1972. HEW's Office for Civil Rights, which has jurisdictional power over Title IX, had not fully decided (as of April 1974) exactly how Title IX would apply to some aspects of sports and athletic programs. Despite this, a number of complaints of sex discrimination in sport and other areas have already been filed. For example, women students have filed complaints against the University of Michigan and the University of Wisconsin concerning the athletic and sports programs.

Prior to the enactment of Title IX, charges of discrimination in sports programs could only be brought under the Equal Protection Clause of the Fourteenth Amendment to the Constitution. Perhaps the most common challenge under the Fourteenth Amendment has been by women who were prohibited from participating on "male" teams by the rules or regulations of an athletic conference or association. In most instances, there were no parallel female teams. In all probability many future complaints of sex discrimination in sport will be brought under both Title IX and the Fourteenth Amendment.

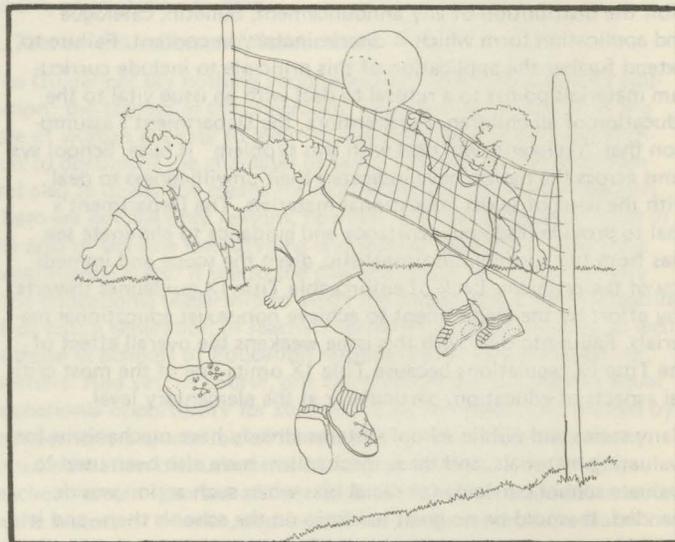
The existence of state laws, or rules and regulations of an athletic association, which permit or require different treatment based on sex is not a defense to charges brought either under Title IX or the Fourteenth Amendment. In accordance with the concept of federal supremacy, the obligation to comply with federal law supersedes the

obligation to comply with state law or regulations of private associations (such as athletic associations or conferences).

Federal law does not presume to dictate what specific philosophy or practices an institution must follow concerning sport. This is an educational decision which belongs to those who formulate educational policy at an institution. Federal law does require, however, that once a philosophy or practice is determined, it be applied equally regardless of sex and that it not have a disproportionate impact on one sex.

It would be equally legal, for example, for a college to have no competitive athletic program whatsoever or to have an extensive competitive athletic program, so long as the policies were applied equally regardless of sex.

Many aspects of sport at the college level—especially male competitive athletics—are coming under increasing scrutiny and criticism. For example, the American Council on Education has recently sponsored a preliminary study of the educational, economic, legal, moral, political, and sociological aspects of intercollegiate athletics in an effort to formulate recommendations to alleviate these problems. Challenges and questions to the philosophy and operations of college athletic programs are coming from a variety of sources and can be expected to lead to significant changes. Certainly some of these changes will be caused by an effort to eliminate discrimination against women in sport.



THE FEMINIST PRESS ON TITLE IX (continued)

advise similarly. Without specific compliance procedures, the Guidelines will not prevent us from repeating the errors of the past five years in higher education where "voluntary" compliance has not occurred. There is no need, of course, to refer you to the Carnegie Commission's recent publication, *Opportunities for Women in Higher Education*, and other similar documentary reports on the general failure of good will to change the status of women in higher education. Obviously, the work of Title IX involves more educational institutions and more students than previous legislation; hence, its impact can only be more diffused unless there are firm procedures for compliance.

We hope these remarks have been helpful. While we have not attempted to comment on all aspects of the Guidelines, and while we have not taken the space to name in detail those aspects we are most pleased with, we wish to state once again our view that they represent a fortunate step in the equitable direction. We trust that the comments you receive will help to make these Guidelines more complete and more effective.