

**The Implementation and Enforcement of
Title IX of the Education Amendments of 1972**

An Annotated Bibliography

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Introduction

Title IX of the Education Amendments of 1972 originated out of congressional hearings on sex discrimination held in the early 1970s and became law as part of the Education Amendments of 1972. Title IX prohibits sex discrimination in education programs or activities receiving federal funding. It was proposed by Senator Patsy Mink (D-HI) and co-sponsored by Senator Birch Bayh (D-IN). The act was renamed in Senator Mink's honor after her death in 2002.

Title IX's coverage is extremely broad. It applies to gender equality in the classroom in terms of access to educational programs and degree attainment. It also makes schools responsible for addressing sexual harassment and violence that may bar girls' and women's ability to benefit from educational opportunities. Title IX is probably best known for its most controversial application—requiring gender equality in interscholastic and intercollegiate athletic programs.

In this annotated bibliography, I focus on the implementation and enforcement of Title IX. This is no less broad a topic. In my research I found hundreds of documents that pertain to how Title IX has been interpreted, implemented, enforced, and evaluated by government entities. The documents in this annotated bibliography represent a sample of those documents from different institutions, agencies, and political eras. After a discussion of my search methodology, I highlight some of the core documents pertaining to Title IX—the public law of which it was a part, its codification, and initial regulations. I also feature two subsequent public laws, one that overruled a narrowing Supreme Court interpretation of Title IX and another that renamed the act in memory of Senator Mink. I then divide the rest of the documents by branch of government. I start with Congress, particularly highlighting hearings in which Congress evaluated Title IX's progress. Within the Executive Branch, I heavily emphasize materials from the Office for Civil Rights of the Department of Education because it is this agency and office that have primary responsibility for implementing and enforcing Title IX. There are hundreds of court cases one could list under the

Judicial Branch's involvement in Title IX. I have chosen to list major Supreme Court decisions pertaining to Title IX. The only exception is the inclusion of a recent (and controversial) federal district court case on whether competitive cheerleading can be counted for a college's Title IX compliance (not at this point in time, according to the federal district judge). I conclude with some links to non-governmental organizations involved with Title IX and suggested secondary reading sources.

Methodology

I began my search process by reading entries on Title IX in legal and general encyclopedias and on the open web. These entries helped acquaint me with key dates in the history of Title IX, but were maddeningly vague on details relating to actual legislation and/or policy documents. In these broad entries, I was able to find the identifying numbers for some public laws and references to congressional hearings. I then began my search in earnest using *LexisNexis Academic*, ProQuest *Congressional Hearings Digital Collection*, and the CIS Legislative History volumes in Alexander Library.

I also searched the catalog of Rutgers University Libraries for books related to Title IX. Some of these volumes appear in the "Suggested Reading" section. These volumes were helpful in adding details to my searches, such as the names of key senators and representatives, as well as those of plaintiffs in legal cases.

Keyword searching of *FDSys* and *Google* was of limited use to me. In terms of *FDSys*, many laws have a "title IX." Adding gender or sex as a keyword helped, but did not provide me with much confidence or certainty in my search's recall or precision. In *Google*, I used advanced search for <"title ix" gender site:.gov>. This search identified some interesting results, such as the archived Commission on Opportunity in Athletics report (see bibliography entry 34), but also returned the abstracts of many articles in *ERIC* for which Title IX is the subject.

I did come across references to CRS reports through my *Google* search, but the reports did not seem to be available on *OpenCRS* or in the Rutgers Library Catalog. I was able to locate the website of the Penny Hill Press, which sells printed CRS reports. Searching the Penny Hill website, I found several relevant reports and their identifying numbers. Unwilling to pay for the reports myself, I called my congressman's office and asked that they request them for me. I had to explain to the congressional staffer that these reports were not on the Library of Congress website or at my nearest Federal Depository Library. They agreed to request the reports and email any reports available electronically.

My most productive searching came from going directly to the agency and institution websites I believed would be relevant to Title IX. I recalled watching the 1999 Women's Soccer World Cup and hearing the victorious U.S.A. team declare, "We are the children of Title IX." I suspected there would be a record of a White House event in which President Bill Clinton congratulated the team. I found this through the Compilation of Presidential Documents on *FDSys*. Searching the Department of Education website was a goldmine. I found the Office for Civil Rights Reading Room, which makes available many different documents pertaining to Title IX. From course lectures, I was familiar with the National Center on Education Statistics, which I also searched productively. For Supreme Court cases, I searched for combinations of "title IX" with sex or gender discrimination from within *LexisNexis Academic*, *The Oyez Project*, *Justia*, and *Cornell University Legal Information Institute*. The lower court cheerleading case was mentioned in a story I was reading on *ESPN.com* and I included it because I think it signals a future area of debate for Title IX and athletics.

Core Documents

1. “Public Law 92-318: Education Amendments of 1972, Title IX: Prohibition of Sex Discrimination.” (86 Stat. 373; Date: 6/23/72). Retrieved from <http://www.cq.com/graphics/sal/92/sal92-318.pdf>. Accessed April 15, 2011.

Title IX prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance.

2. “20 U.S.C. §1681 *et seq.*: Education: Discrimination Based on Sex.” Text from: *Cornell Legal Information Institute*. Current through 2/10/2010. Retrieved from http://www.law.cornell.edu/uscode/html/uscode20/usc_sup_01_20_10_38.html; Accessed April 15, 2011.

Title IX prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance. Religious institutions with contrary religious beliefs, institutions whose primary mission is preparing individuals for military service, public institutions that have been traditionally single sex, social fraternities and sororities, and organizations such as Boy Scouts, Girls Scouts, Boys State, etc. that are traditionally single sex and for people under age nineteen are exempt.

3. Draft Regulations for Interscholastic and Intercollegiate Athletics, 39 Fed. Reg. 22236 (1974, June 20).

In May 1974, the Department of Health, Education, and Welfare (HEW) began circulating draft regulations applying Title IX’s nondiscrimination provisions to athletics, which was then and is now, its most controversial and well-known application. According to

many websites I encountered, HEW received close to ten thousand comments on these proposed regulations.

4. Regulations on Nondiscrimination on the Basis of Sex, 40 Fed. Reg. 24142-43 (1975, June 4).

The final regulations for Title IX's application in the area of athletics defined particular areas of equal opportunity, such as coaching and facilities. They also include a timetable for compliance: one year for elementary schools, three years for high schools and colleges.

5. "Public Law 100-259: Civil Rights Restoration Act of 1987." (102 Stat. 28; Date: 3/22/88; Enacted S.557). Available from: LexisNexis Academic; Accessed April 14, 2011.

This act essentially overrules *Grove City College v. Bell* (see bibliography entry 40), which narrowed the programs eligible for Title IX enforcement. The act was passed over President Ronald Reagan's veto.

6. "Public Law 107-255: Patsy Takemoto Mink Equal Opportunity in Education Act." (116 Stat. 1734; Date: 10/29/2002; Enacted H.J. Res. 113). Available from: LexisNexis Academic; Accessed April 14, 2011.

This act renames Title IX in honor of the late Senator Patsy Mink, the co-author of Title IX and chief advocate of its passage.

Legislative Branch

Congressional Resolutions

7. U.S. House. 110th Congress. “H.Res.406, A resolution celebrating the accomplishments of title IX of the Education Amendments of 1972, also known as the Patsy Takemoto Mink Equal Opportunity in Education Act, and recognizing the need to continue pursuing the goal of educational opportunities for women and girls.” (Version: 2; Version Date: 6/18/2007). Text from: *Thomas*. Retrieved from <http://www.gpo.gov/fdsys/pkg/BILLS-110hres406ch/pdf/BILLS-110hres406ch.pdf>. Accessed April 14, 2011.

This resolution marks the 35th anniversary of Title IX.

8. U.S. Senate. 110th Congress. “S.Res.242, A resolution celebrating the accomplishments of title IX of the Education Amendments of 1972, also known as the Patsy Takemoto Mink Equal Opportunity in Education Act, and recognizing the need to continue pursuing the goal of educational opportunities for women and girls.” (Version: 1; Version Date: 6/20/2007). Text from: *Thomas*. Retrieved from <http://thomas.loc.gov/cgi-bin/query/z?c110:S.RES.242.ATS:>. Accessed April 14, 2011.

This resolution marks the 35th anniversary of Title IX.

Congressional Hearings

9. U.S. Senate. Subcommittee on Education of the Committee on Labor and Public Welfare. *Prohibition of sex discrimination, 1975*. (HRG-1975-LPW-0050; Date: Sept. 16, 18, 1975). Text in: ProQuest *Congressional Hearings Digital Collection*; Accessed: April 14, 2011.

Shortly after Title IX was enacted, an amendment was offered by Senator Tower (R-TX) to exempt “revenue-raising” sports (i.e., major college football programs) from Title

IX's broad nondiscrimination requirements. These hearings considered this amendment. The amendment was ultimately defeated and replaced by the Javits Amendment, a proposal stating HEW must issue Title IX regulations including the text "with respect to intercollegiate athletic activities, reasonable provisions considering the nature of particular sports."

10. U.S. Senate. Committee on Health, Education, Labor, and Pensions. *Title IX: building on 30 years of progress* (S. HRG-107-542; Date: Jun. 27, 2002). Text in: *FDsys*. Retrieved from <http://www.gpo.gov/fdsys/pkg/CHRG-107shrg80529/pdf/CHRG-107shrg80529.pdf>. Accessed: April 14, 2011.

Under the chairmanship of Senator Edward Kennedy (D-MA), these hearings assessed the progress made under Title IX and sought to highlight both the consistency with which it had been interpreted by the appellate federal courts and the "flexibility" it offered to educational institutions for proving compliance. The hearings appear to be prompted by Senator Kennedy's concern that the administration of President George W. Bush was not firmly committed to strong enforcement of Title IX.

11. U.S. Senate. Subcommittee on Science, Technology, and Space of the Committee on Commerce, Science, and Transportation. *Title IX and science*. (S. HRG. 107-1117; Date: Oct. 3, 2002). Text in: *FDsys*. Retrieved from <http://www.gpo.gov/fdsys/pkg/CHRG-107shrg92452/pdf/CHRG-107shrg92452.pdf>. Accessed April 3, 2011.

This hearing is part of series of hearings on the subject of women studying and working in math, technology, engineering, the natural and physical sciences. Senator Ron

Wyden (D-OR), chair of the subcommittee, stated that the purpose of the hearings was to ensure enforcement of Title IX:

Congress may not be able to legislate away the entrenched attitudes of the math and science establishment that women are somehow second-class scholars in these fields, but... I am determined to see the Title IX statute fully enforced to give women equal opportunity in the critical fields of science, engineering, and math education.”

12. U.S. House. Subcommittee on Higher Education, Lifelong Learning, and Competitiveness, Committee on Education and Labor. *Building on the success of 35 years of Title IX*. U.S. House of Representatives, (HRG-110-48; Date: Jun. 19, 2007). Text in: *FDsys*. Retrieved from <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg35961/pdf/CHRG-110hhrg35961.pdf>. Accessed April 3, 2011.

These hearings focused on what steps might be taken in the next decade to strengthen Title IX, further women’s representation in the fields of science, technology, math, and engineering, and address questions of equity in college athletics.

Congressional Research Service (CRS) Reports

13. U.S. Congressional Research Service. *Sex Discrimination in Education: Overview of Title IX* (97-954 GOV; Jan. 14, 1998), by Leslie Gladstone and Gary Galemore. Retrieved from <http://www.policyarchive.org/handle/10207/bitstreams/489.pdf>. Accessed April 3, 2010.

This report reviews the history of Title IX and the changes in society attributed to its passage. It notes that the most widely-known and controversial aspect of Title IX is its application to intercollegiate sports. The report argues, however, that the application of Title IX to opportunity in the classroom is the more significant portion of Title IX for affecting gender equality.

14. U.S. Congressional Research Service. Title IX and Gender Bias in Sports: Frequently Asked Questions (RS20460; Mar. 3, 2003), by Gary L. Galemore. Retrieved from http://www.house.gov/sites/members/nj12_holt/pdf/CRSonTitleIXMar2003.pdf.

Accessed April 3, 2011.

This report answers “often asked” questions about Title IX and “how it pertains to sports activities at educational institutions.” Among the points addressed are the types of school activities that fall under Title IX, exempt programs, agencies responsible for enforcing Title IX, and an explanation of the three part test for Title IX compliance developed and administered by the Department of Education Office of Civil Rights (OCR) (see bibliography entry 25).

15. U.S. Congressional Research Service. Title IX and Single Sex Education: A Legal Analysis (RS22544; Dec. 15, 2008), by Jody Feder.

In 2006, the Department of Education published Title IX regulations that, for the first time, authorized schools to establish single-sex classrooms (see bibliography entry 27). This report evaluates those regulations compliance with the statutory requirements of Title IX and the Equal Educational Opportunities Act. It also considers how these regulations might fare in light of court precedents concerning the equal protection clause of the Fourteenth Amendment and sex discrimination.

16. U.S. Congressional Research Service. Title IX, Sex Discrimination, and Intercollegiate Athletics: A Legal Overview (RL31709; Dec. 17, 2010), by Jody Feder.

This CRS report provides an overview of Title IX in general and particularly the application of Title IX to intercollegiate athletics regulations. It also discusses the 2003

report of the Commission on Opportunity in Athletics (see bibliography entry 34), the response from the Department of Education, as well as legal challenges to the Title IX regulations.

GAO Reports

17. U.S. Government Accountability Office. (1996, October). *Intercollegiate Athletics: Status of Efforts to Promote Gender Equity: Report to the Honorable Cardiss Collins, House of Representatives*. (Publication No. GAO-97-10). Retrieved from <http://www.gao.gov/archive/1997/he97010.pdf>. Accessed April 3, 2011.

According to this report, Representative Collins (D-IL) had requested that GAO determine

(1) the steps the Department of Education and NCAA have taken since 1992 to promote equity between men and women participating in intercollegiate athletics, (2) the steps states have taken to promote gender equity in athletic programs at colleges, and (3) what existing studies show about the progress made since 1992 in promoting gender equity in intercollegiate athletics.

This report details GAO's investigation of these questions, including GAO's survey of federal and state efforts and its identification of major studies by academic and nongovernmental organizations. The report concludes that progress had been made since 1992, but that intercollegiate athletics remained inequitable.

18. U.S. Government Accountability Office. (200, December). *Men's and Women's Participation in Higher Education: Report to the Ranking Minority Member, Subcommittee on Criminal Justice, Drug Policy and Human Resources, Committee on Government Reform, House of Representatives*. (Publication No. GAO-01-128). Retrieved from <http://www.gao.gov/new.items/d01128.pdf>. Accessed April 14, 2011.

This report was requested by Representative Patsy Mink (D-HI), who is considered to be the originator of the Title IX legislation. Mink requested that GAO determine

what is known about title IX's contribution to changes in higher education. Specifically... to (1) determine the extent to which women's participation in higher education academic programs has changed since title IX was enacted, (2) determine the extent to which men's and women's participation in intercollegiate athletics programs at 4-year schools has changed since title IX was enacted, and (3) describe what is known about title IX's effect on men's and women's participation and, more specifically, about how federal enforcement of the law has led to change.

The report finds that gender equality had progressed dramatically in terms of assessing women's enrollment and degree attainment at the college level, although women remained underrepresented in fields such as business, science, technology, math, and engineering. The report notes that the proportion of men receiving degrees in female-dominated fields such as elementary education had risen.

19. U.S. Government Accountability Office. (2004, July). *Women's participation in the sciences has increased, but agencies need to do more to ensure compliance with Title IX*. (Publication No. GAO-04-639). Retrieved from <http://www.gao.gov/new.items/d04639.pdf>. Accessed April 14, 2011.

As the title of this report indicates, it makes recommendations to federal agencies, specifically to NASA, the Department of Energy, and the National Science Foundation, on how to promote gender equality within the fields of science, technology, math, and engineering. The appendices feature data on the enrollment and degree statistics for men and women and grantee institutions.

Executive Branch Materials

Executive Office of the President

20. Clinton, W.J. (1999, July 19). Remarks Honoring the 1999 Women's World Cup Champion United States Soccer Team. *Weekly compilation of presidential documents*, 1405-1406. Available from *FDSys*. Retrieved from

<http://www.gpo.gov/fdsys/pkg/WCPD-1999-07-26/html/WCPD-1999-07-26-Pg1405-2.htm>. Accessed April 3, 2011

Congratulating the U.S. Women's Soccer Team on their recent World Cup victory, the president highlighted the role of Title IX in promoting gender equality in education, including athletics:

I also can't help mentioning briefly, again, the role that Title IX has played in all this, and for all of you who have supported it, I thank you very much. I can say this: For the Clintons and the Gores, the proud parents of daughters, it is always a wonderful thing to see women finding new ways of expressing their God-given talents and abilities. Because what we want for our children is what I think all Americans want for all of our children, whether they're girls or boys, which is a chance to find their way and to follow their dreams.

After the president, several of the speakers, including First Lady Hillary Clinton and the team captains referenced the importance of Title IX. These additional remarks are not included with the publication of the president's remarks, but can be watched online through C-SPAN at <http://www.c-spanvideo.org/program/150657-1> (Accessed April 3, 2011).

21. White House, Office of the Press Secretary. (2009, June 23). "Valerie Jarrett and Education Secretary Arne Duncan Hold White House Roundtable on Title IX." *White House Official Home Page*. Retrieved from <http://www.whitehouse.gov/the-press-office/valerie-jarrett-and-education-secretary-arne-duncan-hold-white-house-roundtable-tit>. Accessed April 3, 2011.

To mark the 37th anniversary of Title IX, White House Senior Adviser Jarrett and the Secretary of Education convened a roundtable on Title IX. Attendees included Billie Jean King, former Senator Birch Bayh (one of the co-sponsors and major advocates of Title IX), several Olympic gold medalists, and representatives of women's rights organizations. The event was streamed live on Facebook.

Department of Justice

22. U.S. Department of Justice. (n.d.). *Title IX Legal Manual*. Civil Rights Division. Retrieved from <http://www.justice.gov/crt/about/cor/coord/ixlegal.php>. Accessed April 15, 2011.

The Department of Justice handles complaints with regard to the enforcement of Title IX. This legal manual is intended as guidance for institutions subject to Title IX and discusses the relationship of Title IX to other nondiscrimination statutes and relevant legal precedents concerning those statutes and the equal protection clause of the Fourteenth Amendment to U.S. Constitution.

Department of Education

The Department of Education is the main federal agency charged with administering Title IX's provisions on nondiscrimination in education programs receiving federal funds. Within the Department of Education, the Office for Civil Rights (OCR) is responsible for issuing Title IX regulations and guidance. As part of its compliance with FOIA, the OCR maintains an excellent reading room on its website that makes available to the public many documents pertaining to Title IX, including *Federal Register* notices and regulations, pamphlets, and reports. The Reading Room is extensive. I have included here representative items from different categories of publications and

from different presidential administrations. Many more items are available at the OCR Reading Room at <http://www2.ed.gov/about/offices/list/ocr/publications.html>.

Policy Guidance

(Federal Register Notices, “Dear Colleague” Letters, Pamphlets, and Memos)

23. U.S. Department of Education. (1975, November 11). Obligations in athletics, including athletic scholarships; intercollegiate, club, and intramural programs. Available from OCR Reading Room. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/docs/holmes.html>. Accessed April 16, 2011.

This memo explains the major responsibilities of an educational institution to ensure equal opportunity in athletics during the first year of compliance with Title IX.

24. A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71413 (1979, December 11). Available from OCR Reading Room. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>. Accessed April 15, 2011.

This notice further clarifies how OCR determines Title IX compliance. Notably, this policy interpretation adds recruitment and support services to the areas that are examined for gender equality.

25. U.S. Department of Education. (1996, January 16). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test. Office of Civil Rights. Available from OCR Reading Room. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/docs/clarific.html#two>. Accessed April 15, 2011.

This very important memo sets out the “three-part test” used by the Department of Education to assess institutional compliance with Title IX in the area of athletics. These three avenues are independent—institutions can prove compliance by satisfying any one of the prongs. The three prongs are:

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a history and continuing practice of program expansion, as described above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

26. U.S. Department of Education. (1998, July 23). Dear Colleague Letter to Bowling Green University from Norma Cantú, Assistant Secretary for Civil Rights. Available from OCR Reading Room. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/docs/bowlgrn.html>. Accessed April 15, 2011.

This letter indicates that Bowling Green State was one of twenty-five schools being investigated for Title IX violations in the awarding of athletic scholarships. The letter attaches guidance from OCR that elaborates on the general principle that “Title IX requires that such scholarships be made available to the separate men's and women's athletic programs in a manner which is ‘substantially proportionate’ to the participation rates of male and female athletes.”

27. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (Final Rule), 71 Fed. Reg. 62530-62543 (2006, October 25).

Available from OCR Reading Room. Retrieved from

<http://www2.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>. Accessed April 3, 2011.

These regulations permit additional options for single-sex classes, extracurricular activities, and schools at the elementary and secondary education levels.

28. U.S. Department of Education. (2008, March 27). Letter to Steven Geoffrey Gieseler of the Pacific Legal Foundation from Margaret Spellings, Secretary of Education. Available from OCR Reading Room. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/title-ix-2008-0327.pdf>. Accessed April 15, 2011.

The Secretary of Education responded to a petition from Steven Geoffrey Gieseler of the Pacific Legal Foundation asking the Secretary to clarify that the three part test for Title IX compliance did not apply to high school athletics. The Secretary denied the petition and reaffirmed Department of Education policy that the three-part test applies to high school athletics.

29. U.S. Department of Education. (2008, September 17). Dear Colleague Letter Regarding Counting Programs for Title IX Compliance from Stephanie Monroe, Assistant Secretary for Civil Rights. Available from OCR Reading Room. Retrieved from: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20080917.pdf>. Accessed April 3, 2011.

This letter “provides clarifying information to help institutions determine which intercollegiate or interscholastic athletic activities can be counted for the purposes of Title

IX compliance.” The Department of Education considers programs based on their administrative structure and organization and team preparation and competition.

30. U.S. Department of Education. (2008). *Sexual Harassment: It's Not Academic*. Washington, D.C. Available from OCR Reading Room. Retrieved from:
<http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf>. Accessed April 15, 2011.

This pamphlet addresses sexual harassment as a form of sex discrimination under Title IX. The pamphlet answers questions about sexual harassment, including how to recognize, respond to, and prevent sexual harassment. It also provides information about how to file a complaint with OCR.

31. U.S. Department of Education. (2010, April 28). Dear Colleague Letter from Russlyn Ali, Assistant Secretary for Civil Rights. Available from OCR Reading Room. Retrieved from
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.pdf>. Accessed April 15, 2011.

In this letter, the Obama administration retracts Title IX regulations and guidance issued during the Bush administration. Specifically, the Department of Education will no longer consider surveys of student interest in assessing Title IX compliance.

32. U.S. Department of Education. (2011, April 4). Dear Colleague Letter Regarding Sexual Violence from Russlyn Ali, Assistant Secretary for Civil Rights. Available from OCR Reading Room. Retrieved from
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>. Accessed April 15, 2011.

The failure to address and prevent sexual violence in an educational institution is considered a violation of Title IX according to this letter. The letter goes into detail about the types of sexual violence included and the need for schools to develop policies and procedures for addressing student grievances.

Reports

33. U.S. Department of Education. (1997, June). *Title IX: 25 Years of Progress*. Available from OCR Reading Room. Retrieved from <http://www2.ed.gov/pubs/TitleIX/title.html>. Accessed April 2, 2011.

This report, issued under Secretary of Education Richard Riley, assesses progress under Title IX in degree attainment, lowered drop-out rates, and increased participation and funding for women's interscholastic athletics.

34. U.S. Dept. of Education. (2003, February 26). *Open to all: Title IX at Thirty*. Secretary of Education's Commission on Opportunity in Athletics. Available from OCR Reading Room. Retrieved from <http://www2.ed.gov/about/bdscomm/list/athletics/report.html>.

Secretary of Education Rod Paige convened a blue-ribbon panel of sports professionals and educators to examine ways to strengthen enforcement of Title IX and to consider ways to expand "opportunities to ensure fairness for all college athletes." The final report of the commission was never implemented, in part because of media attention to the strong dissenting minority report (not included in the final report) issued by commission members Olympic Medalist Donna de Varona and Women's World Cup Soccer Champion Julie Foudy.

Public Statements

35. Duncan, Arne. (2010, April 10). Remarks: The Importance of Title IX. Available at OCR Reading Room. Retrieved from <http://www.ed.gov/news/speeches/importance-title-ix>. Accessed April 3, 2011.

This speech by Secretary of Education Arne Duncan announced the “Dear Colleague” letter withdrawing some Bush administration Title IX regulations.

Statistics

36. National Center for Education Statistics. (n.d.) *Fast Facts: Title IX*. Retrieved from <http://nces.ed.gov/fastfacts/display.asp?id=93>. Accessed April 3, 2011.

At this website, NCES links to tables and datasets that pertain to assessing the progress of gender equality under Title IX, including statistics related to degree attainment by women and girls and participation in athletics.

U.S. Commission on Civil Rights

37. U.S. Commission on Civil Rights. (2009, September/October). *Briefing Report: Title IX Athletics: Accommodating Interests and Abilities*. Retrieved from <http://www.usccr.gov/pubs/TitleIX-2010.pdf>. Accessed April 15, 2011.

The U.S. Commission on Civil Rights (USCCR) is an independent bi-partisan commission with members appointed by both Congress and the president. In this report, the USCCR recommends to the President Obama and Congress that Title IX regulations instituted under the Bush administration be continued. (See bibliography entry 31). The Obama did not follow this recommendation.

Judicial Branch Materials

U.S. Supreme Court

38. *Cannon v. University of Chicago*, 441 U.S. 677 (1979).

a. Oral argument audio file: http://www.oyez.org/cases/1970-1979/1978/1978_77_926

b. Decision text online:

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=441&invol=677>

Geraldine Cannon sued the University of Chicago because she claimed she was denied admission on the basis of her sex in violation of Title IX. Lower courts dismissed her claim because they found that Title IX did not include a private right of action. The U.S. Supreme Court reversed, finding that Congress' silence when the Court had found a private right of action in similar laws implied that Congress was aware such a right would be interpreted for Title IX.

39. *North Haven Board of Education v. Bell*, 456 U.S. 512 (1982).

a. Oral argument audio file: http://www.oyez.org/cases/1980-1989/1981/1981_80_986

b. Decision text online: <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=456&invol=512>

In *North Haven*, the Supreme Court found that Title IX applied to employment discrimination within educational institutions receiving federal funding.

40. *Grove City College v. Bell*, 465 U.S. 555 (1984).

a. Oral argument audio file: http://www.oyez.org/cases/1980-1989/1983/1983_82_792

- b. Decision text online: <http://supreme.justia.com/us/465/555/>

Grove City was sued for Title IX violations. The college claimed exemption from Title IX because it did not accept federal funds. The Supreme Court held that the college was not exempt because its students received federal financial aid. The Court held, however, that Title IX did not apply institution-wide, but only to the college's financial aid program. This decision was overruled by the Civil Rights Restoration Act (see bibliography entry 5).

41. *Franklin v. Gwinnett*, 503 U.S. 60 (1992).

- a. Oral argument and opinion announcement: http://www.oyez.org/cases/1990-1999/1991/1991_90_918.

- b. Decision text online:

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0503_0060_ZS.html

The Supreme Court considered the case of a student who alleged sexual harassment by one of her teachers. The teacher resigned on the condition that all charges against him be dropped. The Court held that a student can sue for damages when a school directly avoids Title IX.

42. *Gebser v. Lago Vista*, 524 U.S. 274 (1998).

- a. Oral argument audio file: http://www.oyez.org/cases/1990-1999/1997/1997_96_1866

- b. Decision text online: <http://supreme.justia.com/us/524/274/case.html>

Gebser had a sexual affair with one of her teachers. When it was discovered, she sued the school district for damages for sexual harassment. The Supreme Court found that for the school district to be held liable for the sexual harassment, two minimal criteria must

be met. “First, the party must show that a school district official, with the ability to institute corrective measures, knew of the forbidden conduct. Second, a showing must be made that despite having knowledge of the forbidden conduct, the educational establishment deliberately failed to respond in a proper manner.” The school district never knew nor could have been expected to know, either formally or informally, of the affair’s existence and was not liable.

43. *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).

- a. Oral argument and opinion announcement: http://www.oyez.org/cases/1990-1999/1998/1998_97_843
- b. Decision text online: <http://www.law.cornell.edu/supct/html/97-843.ZO.html>

In this case, a mother sued on behalf of her daughter, claiming that the school district failed to take action to prevent the daughter’s sexual harassment by another student. The Supreme Court held that schools are liable for student on student harassment when the school shows “deliberate indifference to known acts of harassment in its programs or activities.” The Court concluded that “such an action will lie only for harassment that is so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.”

44. *Fitzgerald v. Barnstable School Committee*, 555 U.S. ____ (2009).

- a. Oral argument and opinion announcement http://www.oyez.org/cases/2000-2009/2008/2008_07_1125
- b. Decision text online:
<http://www.law.cornell.edu/supct/search/display.html?terms=fourteenth%20and%20amendment&url=/supct/html/07-1125.ZS.html>

In the case of kindergartener whose parents complained that the school district had failed to protect her from sexual harassment by another child, the Supreme Court held that the use of Title IX did not prevent the parents from also making a claim based on another provision of federal law. The Court concluded that Title IX was not meant to be the only tool used to enforce anti-discrimination.

United States District Court

45. *Biediger v. Quinnipiac University*, 728 F. Supp. 2d 62 (D. Conn., 2010)

a. Decision text online:

<http://courtweb.pamd.uscourts.gov/courtwebsearch/ctxc/KX330R32.pdf>

Quinnipiac University eliminated its women's volleyball team. Members of the team filed a Title IX complaint. In claiming Title IX compliance, the university counted its varsity cheerleading squad as a women's sport ("Competitive Cheer"). In this decision, the district court judge holds that a competitive cheerleading team does not qualify as a varsity sport for the purposes of Title IX. He indicates that "competitive cheer may, some time in the future, qualify as a sport under Title IX; today, however, the activity is still too underdeveloped and disorganized to be treated as offering genuine varsity athletic participation opportunities for students."

Non-Government Websites Related to Title IX Implementation

American Civil Liberties Organization: Title IX—Gender Equity in Education

<http://www.aclu.org/womens-rights/title-ix-gender-equity-education>

National Collegiate Athletic Association (NCAA)

<http://www.ncaa.org/>

National Organization of Women—Education & Title IX:

http://www.now.org/issues/title_ix/index.html

Title IX Info (sponsored by the National Women’s Law Center):

<http://www.titleix.info/Default.aspx>

Suggested Reading

Brake, Deborah L. (2010). *Getting in the Game: Title IX and the Women’s Sports Revolution*. New York: New York University Press.

Carpenter, Linda Jean, and Acosta, R. Vivian. (2005). *Title IX*. Champaign, Illinois: Human Kinetics.

Mitchell, Nicole, and Ennis, Lisa A. (2007). *Encyclopedia of Title IX and Sports*. Westport, Connecticut: Greenwood Press.

Suggs, Welch. (2005). *A Place on the Team: The Triumph and Tragedy of Title IX*. Princeton, New Jersey: Princeton University Press.

Ware, Susan. (2007). *Title IX: A Brief History with Documents*. Boston: Bedford/St. Martin’s.