

TITLE IX

Title IX is the most comprehensive legislation ever passed on equal rights for women in education and the first to cover fully the rights of students. It applies to all institutions or organizations that receive any federal funds for educational purposes. This includes virtually every elementary, secondary, and higher education institution, as well as many other groups engaged in educational work: recreation departments, agricultural programs, and research and educational associations.

The intent of Title IX is to eliminate sex discrimination in admission policies, the treatment of students, and employment practices.* The lack of strong enforcement procedures by the federal government, however, has frequently undermined the very purpose for which the legislation was enacted.

Title IX became law in July, 1972. The initial result was much confusion and minimal compliance. Three years later, a regulation to help implement Title IX was issued by the Department of Health, Education, and Welfare's Office for Civil Rights. Apathy still prevailed. In February, 1977, Secretary of HEW Joseph A. Califano, Jr., announced that steps would be taken to force action on the part of institutions to come into compliance with the law. No broad moves to cut off federal funds—HEW's ultimate enforcement tool—were stated, but it seems clear that the spotlight will be turned on institutions which have been remiss in responding to Title IX and that the new administration is serious about "forceful and fair enforcement of civil rights laws."

A central part of the Title IX regulation is an institutional self-evaluation. Institutions are required to examine their policies and practices with regard to sex discrimination, identify areas where it exists, modify such conditions, and take remedial steps to redress past discrimination.** They are also required to appoint a Title IX coordinator to monitor the institution's efforts; establish grievance procedures; publicize their equal opportunity policy; and file an assurance form with HEW, indicating that the institution is in compliance.

*Textbooks and curricular materials are excluded because questions of free speech arise.

**The Office of Women in Higher Education, American Council on Education, has prepared a working paper to aid institutions in making a self-evaluation. It is available from the ERIC Document Reproduction Service, P.O. Box 190, Arlington, VA 22210.

The deadline for completing institutional self-evaluations has come and gone (July 21, 1976). Results have been haphazard and spotty. Some institutions have taken the hard look that is needed and are proceeding in good faith to change discriminatory rules and regulations. Many have done a perfunctory job, barely scratching the surface. Others have not even started. It remains to be seen what effect an increased commitment to implementing Title IX from HEW will mean. Better enforcement, policymaking, and operations are anticipated but, as one expert put it, "It would be hard to anticipate anything *but* better."

The following observations are based on a recent discussion of Title IX issues with Bernice Sandler and Margaret Dunkle, Director and Associate Director, Project on the Status and Education of Women, Association of American Colleges, and Emily Taylor and Donna Shavlik, Director and Associate Director, Office of Women in Higher Education, American Council on Education:

On Self-evaluation

No standards were established in the Title IX regulations for what institutions ought to look for or what procedures they should use. This meant that institutions were free to do as little or as much as they wanted to about sex discrimination in whatever fashion they chose. The result is that no systematic data are available for analysis and that no uniform means of evaluating efforts or assessing progress can be used.

There was no requirement to submit self-evaluations to HEW. Institutions are required to check whether self-evaluations have taken place, however, on their assurance forms. As of April, 1977—six months after assurance forms were due at HEW—1,338 colleges and universities had filed statements saying they were in compliance; 2,134 had

not. The deadline has been extended to June 3, 1977, for institutions to return an acceptable assurance of compliance with Title IX.

On Perceiving Discrimination

A shocking number of people still honestly do not know what sex discrimination is. "But girls need the protection of living on campus," they will say. Or "Men's athletics make their own money so, of course, the facilities are better." These people are not just pretending they do not understand or trying to dodge the issue. They really do not see that differential treatment of women and men constitutes sex discrimination.

In a reverse kind of misunderstanding, some institutions were ready to (Continued on Page 7)

TITLE IX Continued from Page 1

eliminate women's studies courses or continuing education programs as being discriminatory. They did not understand that it is still legal to have courses about women or even courses aimed at a target group of women, such as those returning to school, as long as those programs are also open to men.

Many administrators seem to know of other institutions which still discriminate in some areas but are convinced that no discrimination remains on their own campuses. This belief may be slightly prejudiced—but it is also a sign of a kind of awareness that did not exist a few years ago, when most administrators denied that sex discrimination existed anywhere.

Title IX has eliminated some of the most overt kinds of discrimination, like single-sex honorary groups that barred young women or different rules and regulations for men and women. Many of the more subtle kinds of discrimination, however, still go undressed. Rules about part-time students, for example, may seem neutral on the surface but they usually have a discriminatory impact on women. In many institutions, part-time students are not eligible for financial aid and a higher proportion of part-time students are women.

On Athletics

The one year allowed for elementary schools to make sports programs and activities comparable for both sexes has expired. They are all supposed to be in compliance now. High schools and colleges have until July, 1978, to make necessary changes. But it is important to emphasize that this is a transition—not a waiting—period. Not all institutions plan compliance. The University of Minnesota, for example, has already notified HEW that there is no way they can comply by the deadline.

Some institutions are using Title IX as a lever for changes they wanted to make anyway. Budget cuts are being blamed on Title IX by institutions which had long been looking for an excuse to temper tremendously expensive men's athletic operations. The educational value of intramurals is being rediscovered in many institutions, and more students are participating in sports, rather than just being spectators.

Unlike some other areas affected by Title IX, many men are very supportive on the sports issue. Fathers, brothers, boyfriends—they understand what women are saying because many of them did not have much of an opportunity in sports either. They were not able to be one of those few top players on the football team.

The area of sports is important, of course, because it is symbolic. The traits associated with athletic excellence—aggressiveness, leadership, swiftness, teamwork, strength—are all traits which traditionally have not been associated with women. Actually seeing a capable female athlete perform at a top level and win is a dramatic and effective way of confronting and counteracting negative stereotypes about women.

On Litigation

The question of whether individuals have a private right to sue for sex discrimination under Title IX bears watching. Two test cases have been decided exactly the opposite. *Cannon vs. University of Chicago*—where the judge said "no"—is currently under appeal. In *Piascik vs. Cleveland Museum of Art*, the judge said "yes." A related matter concerns the Attorney's Fees Awards Act of 1976, which covers sex discrimination cases. This act awards attorney's fees in certain civil rights actions, including those brought under Title IX, which seems to imply that there is a private right to sue under Title IX. Conflicting decisions will probably be forthcoming in these areas and there may not be any clear answer until a case goes to the Supreme Court.

The definition of "federal assistance" is being challenged in some quarters. If an institution receives federal funds for a particular program or activity, does that funding permeate the entire institutional education effort? The federal government feels that it does. Otherwise, you would have situations where the music department, which gets no federal money, could discriminate but the physics department, which does get federal funds, could not. The National Collegiate Athletics Association, however, is suing HEW, claiming athletic departments which do not get federal money directly should not be covered by Title IX. The Association of Intercollegiate Athletics for Women is supporting the government position.