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MEDIA & MARKETING

Title IX's Next Hurdle

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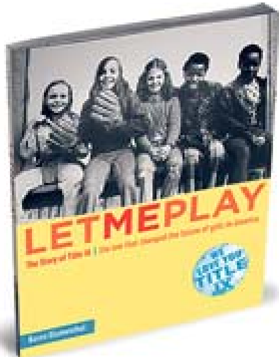
Three Decades After Its Passage, Rule That Leveled Field for Girls Faces Test From Administration

July 6, 2005; Page B1

Thirty-three years after its passage, Title IX, the landmark legislation that forbids sex discrimination at schools receiving taxpayer dollars, is facing new challenges.

Earlier this year, the Bush administration quietly changed the rules for compliance. To prove they are meeting female students' interests, colleges now need only conduct an email survey asking what additional sports programs women would like. A lack of response from students would signal that they weren't interested in additional sports programs, excusing schools from providing any more opportunities to play.



The impact of the change is still unclear, but Title IX advocates have protested, saying it undermines the law's intent, and the National Collegiate Athletic Association has urged members to use other methods to show they comply with the law.

The retirement of Supreme Court Justice Sandra Day O'Connor could also shift how the high court interprets Title IX. Justice O'Connor wrote the majority opinion in three 5-4 decisions in recent years, twice expanding what's covered under the law. In March, the court ruled the law covered a coach who was fired for complaining about discrimination against his female players. And in a 1999 case, the law was extended to cover student-on-student sexual harassment when the school deliberately ignores the behavior.

"Sandra Day O'Connor has been the swing vote that has kept Title IX strong and alive in repeated cases," said Marcia D. Greenberger, co-president of the National Women's Law Center, a Washington advocacy group that was directly involved in the two cases.

Despite the challenges, the benefits of Title IX have never been more apparent. Passed when many universities restricted admissions for women, the law initially was intended to end discrimination such as quotas that limited females to 10% or less of medical schools, law schools and other professional programs. Today, about half the law-school and medical-school students and roughly 57% of all college students are women.

Since the law was passed, the number of girls participating in high-school varsity sports has also increased, growing tenfold, to nearly three million, while the number of women in collegiate sports has grown more than fivefold, to about 160,000.

HISTORICAL MOMENTS

While the debate has focused on athletics, Title IX originally wasn't about sports at all. In a new book for young people, "Let Me Play: The Story of Title IX," Wall Street

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See a list of historical moments0 on the road to women's equality on and off the field.

Journal editor Karen Blumenthal details how one of the nation's most controversial civil-rights laws came about and the enormous impact it has had. An adaptation:

* * *

U.S. Rep. Edith Green, a Democrat from Oregon, was shocked at what she heard one day in the late 1960s, several years after the passage of the Civil Rights Act. A panel of school superintendents spoke at a hearing about a special program for potential high-school dropouts.

One superintendent boasted that his state was having great success with its new program for disadvantaged boys. Many more of them were staying in school. Two other superintendents chimed in that their new classes for boys were a hit as well.

Mrs. Green thought she misunderstood the men. "Do you mean that you had classes only for disadvantaged boys?" she quizzed them. "Yes," they answered.

"Well, was there not a need to have classes for disadvantaged girls?" she asked. She knew for a fact that many girls dropped out of high school, too. "Couldn't you have classes and include both boys and girls?" she wondered.

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Oh no, the superintendents said, it was better to have classes just for boys. The boys needed them, they explained, because they "are going to have to be the breadwinners."

Mrs. Green was stunned. Certainly, she thought, the laws of the United States wouldn't let public schools give boys opportunities that they didn't give to girls. But when she looked up the laws in place, she learned that "It was perfectly legal to discriminate in any education program against girls or women."

To Mrs. Green, that was simply unacceptable. The superintendents' comments, she said later, "made me determined that I was going to change the law so that they could no longer discriminate."

* * *

Mrs. Green held the first hearings on sex discrimination in education in June and July 1970. Over seven days, distinguished women, scholars and government officials outlined the many ways women were shut out of opportunities:

• State universities in Virginia had turned away 21,000 women in the early 1960s; during the same time period, not a single man was turned away.

• A brochure from the University of North Carolina declared that admission of women -- but not men -- was "restricted to those who are especially well-qualified." As a result, the 1970 freshman class had nearly 1,900 men and only 426 women.

• Quotas at many medical and law schools limited females to just five or ten students out of every one hundred. Consequently, just 7% of the doctors in the U.S. at the end of the 1960s were women.

• Even though most teachers from grade school through high school were women, they were rarely promoted. Most principals were men.

Despite the evidence she had collected, Mrs. Green's male colleagues simply weren't interested in changing the law in 1970. In 1971, with a new crop of legislators, Mrs. Green tried to sneak in a new law.

The Playing Field

Both the House and the Senate would be discussing a major education bill, which became known as the Education Amendments of 1972. Mrs. Green waited to even

mention outlawing sex discrimination in schools until the bill was before the entire House Education and Labor Committee. There, she had key supporters, including Democratic Rep. Shirley Chisholm of New York, the first African-American Congresswoman, and Rep. Patsy Mink, a Democrat from Hawaii,who helped write the section that would apply to girls and women.

When the full committee gathered, Mrs. Green proposed adding a little section to the education bill that would ban sex discrimination in programs and activities at any school that received federal money. If schools denied girls admission based on gender -- or if schools offered special programs for boys and not for girls -- they could lose their federal money. That was a huge penalty, considering the federal government might pay for everything from school lunches to college scholarships to university research.

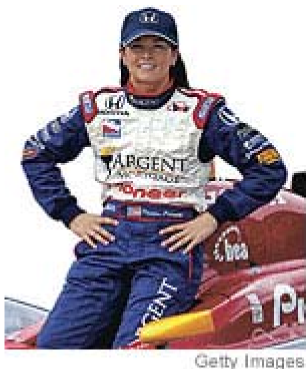
Some committee members thought such a change was unnecessary, even silly. One male representative made fun of the idea, saying "If this passes, you are going to have male stewards" on airplanes. The room erupted in laughter at the preposterous notion. Still, a majority of the thirty-five committee members approved Mrs. Green's suggestion.

* * *

After battles in both the House and Senate, Title IX was included in the law that President Nixon signed on June 23, 1972. Interpreting the law fell to the department then known as Health, Education and Welfare, which moved slowly, in part because it had never before dealt with a sex-discrimination law.

Sometime in mid-1973, HEW staffers asked Secretary Caspar W. Weinberger whether the new law would apply to gym classes and competitive sports. Girls and women had been playing organized sports in the U.S. for nearly a century, but their activities were almost an afterthought, providing access to only a fraction of the programs and resources allotted to boys. In the 1960s, as women began to speak out for more opportunities, attitudes started to change. The American Medical Association, which had warned for years that strenuous competition might be harmful to girls, finally reversed itself and recommended more vigorous activity. Over that decade, some high schools and colleges started girls' teams -- but almost half-heartedly.

Then, in a most surprising way, one person -- and one event -- would help transform the way men and women looked at athletic girls.



Getty Images

Billie Jean King was one of the best women tennis players of the day and her forceful battles to win respect for women's tennis caught the attention of Bobby Riggs, a longtime tennis pro and publicity seeker who had won Wimbledon and the U.S. Open years before. A self-described "male chauvinist pig," Mr. Riggs was a blunt critic of feminism in general and women in sports in particular. "If a woman wants to get in the headlines, she should have quintuplets," he would say. To prove his point, the 55-year-old Mr. Riggs challenged 29-year-old Ms. King to a match.

In one way, the September 1973 match was a giant publicity stunt. But to many people, much more was on the line: If Billie Jean won, women might finally earn credibility as athletes. If Bobby won, men forever would point out their athletic superiority In the end, Billie Jean didn't just beat Bobby. She thrashed him, winning three straight sets, 6-4, 6-3, 6-3.

In the midst of the excitement, Washington regulators were wrestling with whether this new Title IX required boys and girls to share locker rooms and gym classes, and whether schools now had to offer sports for girls as well as boys. Deciding on separate locker rooms was easy enough, but the crucial call on sports teams ultimately fell to Secretary Weinberger, a political conservative who had long opposed big government and heavy-handed meddling in people's business.

At the same time, he wasn't steeped in the athletic culture. Quipped one HEW staffer, "I don't think Weinberger ever played anything other than library."

As Mr. Weinberger listened to arguments on both sides of the sports issue in 1973, he found the disparities glaring and unacceptable. Schools provided facilities, coaches, uniforms and locker rooms for boys and men. But if girls and women wanted a team, he said, the

attitude was, "Why, go raise money yourself."

To him, it wasn't right that girls had to hold bake sales in order to play, while boys didn't. It wasn't right that an estimated 50,000 men went to college on athletic scholarships, compared with perhaps 50 women. Though it was a controversial call, he concluded that sports teams were school activities covered under Title IX. If boys got to play, then girls should get to play, too.

That single decision would change the course of the new law -- and of American sports.

* * *

Title IX would face more challenges, from the National Collegiate Athletic Association, the Reagan administration and others. But a real breakthrough came in Atlanta in 1996.

The female athletes of the mid-1990s were a different breed from those who competed before them. Most were born in the early 1970s and grew up with access to leagues and teams that their mothers had only dreamed about. Dubbed "Title IX babies," many of the team sports players had attended college on athletic scholarships, or at least had gotten to play on college teams. And in this Olympic year, the U.S., the host country, was committed to their success.

Disappointed by a third-place finish in 1992, USA Basketball spent $3 million to allow the women's national team to train and tour together for the better part of a year since women didn't have a professional league like the men did. Tara VanDerveer took a leave from her job as the women's basketball coach at Stanford University to mold a team out of current and former college players. Some of them hadn't played competitively in a long time. College star Sheryl Swoopes had been working as bank teller in west Texas and playing pickup ball at a recreation center while waiting for a chance to compete in the Olympics.

All the women's teams promised to be competitive. But the NBC television network figured viewers wanted to see the glamour sports, like men's basketball, women's gymnastics, swimming, diving and track, during the prime evening hours. Women's soccer and basketball would be shown in the off-hours or late at night. Women's softball wasn't on the schedule at all.

Even without the television cameras, the women brought fans in record numbers. The softball team sold out every game as it swept through the competition to capture the gold medal. Women's soccer, also appearing for the first time in the Olympics, filled a 76,000-seat stadium, introducing eager fans to Mia Hamm, Brandi Chastain and Brianna Scurry. They won another gold medal.

More than 30,000 spectators watched as the U.S. women's basketball team scored more than 100 points in the championship game to defeat the previous world champion, Brazil. As she watched the celebration, Coach VanDerveer couldn't help but remember her days as a school mascot in a bear suit. Her team had just won a gold medal in a sport she hadn't been allowed to play in junior high.

When the games were over, the U.S. women had won gold in an amazing array of sports: swimming, track and field, gymnastics, soccer, synchronized swimming, basketball, and softball. Their heart-pounding success refocused attention on the incredible gains women had made.

* * *

Once the doors to opportunities were opened, women surged through them. In the early 1980s, the number of women in undergraduate schools passed the number of men and kept growing.

Today, as female matriculation rates have soared, women are also well-represented in certain fields of study -- such as business and biological sciences -- once synonymous with men.

Ironically, the rush of women into colleges and universities has made it challenging for schools to provide equal opportunities on the playing field, especially under one measure that calls for athletic spots to be proportional to the student population.

Some athletes and coaches have argued that in order to afford new sports for women, schools have had cut some men's programs such as wrestling, gymnastics and fencing. Such complaints prompted the Bush administration to assess the impact of Title IX rules on athletics in 2002 and 2003. After a flood of emails and letters from the law's supporters, however, the Department of Education initially left the rules alone -- until its move in March saying that an email survey would be sufficient to show whether women were interested in particular sports.

By its 30th anniversary, Title IX had become so much a part of the school landscape that many people took it for granted. At the 2002 U.S. Open, a reporter interviewing tennis star Jennifer Capriati noted that President Bush was considering changing the rules of Title IX. "If you could say something to President Bush, what would you say," the reporter asked.

"I have no idea what Title IX is," Ms. Capriati replied. "Sorry."

Historical moments on the road to women's equality on and off the field:

1932: Olympic gold medalist and track star Mildred 'Babe' Didrikson.

1960s: Donna de Varona wins two gold medals in swimming the 1964 Olympics, but can't swim in college because there were no scholarships -- or even swimming programs for women.

1971: House of Representatives approves the Education Amendments of 1972, replacing an expiring higher-education bill. The amendments create Title IX, banning sex discrimination in programs and activities in any school receiving federal money.

1972: The Senate approves the Education Amendments and Title IX; President Nixon signs them into law.

1973: Top female tennis player Billie Jean King beats long-time tennis pro Bobby Riggs in three straight sets in the 'Battle of the Sexes.'

1975: Caspar W. Weinberger announces the first rules for Title IX, which applies the law to sports and educational programs.

1979: Test for Title IX compliance devised: Schools could offer male and female students roughly equal opportunities to play sports, show history of improving opportunities for women, or show that they were meeting demands and interests of female students.

1982: For the first time, women earn more bachelor's degrees than men.

1984: Supreme Court rules that Title IX applies only to programs directly receiving federal funds; much of Title IX is put on hold.

1988: Congress passes Civil Rights Restoration Act, which extends Title IX to all programs in schools that receive federal funds.

1990s: 'Title IX babies' including the U.S. women's softball team, above, win big in the Atlanta Olympics, and the U.S. women's soccer team fills huge stadiums on the way to winning the Women's World Cup.

2000s: Prompted by complaints of discrimination by some men's sports teams, the Bush administration launches a year-long review of Title IX. At its close in 2003, the Department of Education lets Title IX rules stand; then, a move in March 2005 lowers compliance standards.

May 2005: Danica Patrick qualifies for the 89th Indy 500.

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Excerpted from a new book by Karen Blumenthal, an editor at The Wall Street Journal: "Let Me Play: The Story of Title IX, the Law that Changed the Future of Girls in America." *A9 2005, Karen Blumenthal. Published by Atheneum Books for Young Readers, an imprint of Simon & Schuster.*

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