

Chapter 19

Blueprint for Gender Equity in Education

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Introduction

Promising to “leave no child behind,” the Bush Administration has proposed a number of initiatives designed to improve the quality of the nation’s schools. Key to realizing that important goal — but missing from the proposal at this writing — are elements to ensure that sex discrimination is not a barrier to educational opportunities. Far too many young women and girls continue to encounter sexual harassment at every level of school, biased and misused testing for high stakes decisions, or outright hostility to their entrance into areas deemed inappropriate for them, such as math, the sciences, and technology, among others. As the new administration begins to implement its agenda for holding schools accountable for the education they provide to the nation’s children, it should commit to addressing the persistent and damaging gender inequalities that preclude opportunities for so many young people. The following outlines the elements that are essential for assuring that the educational horizons of our boys and girls are not limited by sex discrimination.

I. New Tools for Administrative Enforcement

The Clinton Administration took several important steps to enhance enforcement of Title IX of the Education Amendments of 1972,¹ the law that prohibits sex discrimination in any federally funded education program or activity: issuing model Title IX regulations that apply to the executive branch agencies that fund education programs or activities and an prohibiting discrimination based on sex and other bases in any federally conducted education program. The Bush Administration should build upon these developments to ensure that Title IX’s mandate of equal educational opportunity is realized.

A. Title IX Regulations for Executive Branch Agencies

Although Title IX requires any federal agency that funds education programs or activities to issue regulations to enforce the statute, only four agencies — the Departments of Education, Energy, Agriculture, and Health and Human Services — had done

so until last year, almost 30 years after Title IX's enactment. We recommended that the Clinton Administration address this serious lapse and, in August 2000, 20 federal agencies finally issued regulations to implement Title IX, modeled on the regulations first issued by the Department of Education in 1975.²

With these new regulations, federal executive branch agencies now have the means to enforce Title IX's prohibition against sex discrimination. The new administration should commit to ensuring that the agencies make use of these tools in the myriad education programs that the federal government funds. Specifically, we renew our recommendation that the Department of Justice, through its authority to coordinate enforcement of the civil rights laws, take strong, proactive steps to ensure that the agencies enforce the new regulations vigorously. For example, the Department should provide training and litigation support and work with the various agencies to implement their plans for Title IX enforcement.

B. Executive Order No. 13160

Similarly, a new executive order issued in June 2000 provides additional assistance for assuring gender equity in education. Executive Order No. 13160 prohibits discrimination based on sex, race, national origin, among other characteristics, in any education program or activity the federal government conducts.³ This mandate applies to federally administered programs such as scholarships and fellowships that provide important educational opportunities for students such as the National Science Foundation's scholarship program. With this new Order, the federal government now will be held accountable for complying with the nation's anti-discrimination laws. The Bush Administration should commit to ensuring

that the terms of this executive order are carried out.

II. Enforcement in Key Areas by the Department of Education

A. Athletics

Title IX enforcement has been critical to the significant advancement female athletes have made over the almost 30 years since the statute's passage. Before Title IX, fewer than 300,000 girls took part in interscholastic athletics; and fewer than 32,000 women played intercollegiate athletics. Now 2.65 million girls participate at the secondary school level, while 163,000 take part at the college level. Unfortunately, however, the field is far from level for too many girls and women who seek opportunities to play sports. For example, while women represent over half of all undergraduates, they still receive only 40% of the athletic participation opportunities, 41% of the athletic scholarship monies, 33% of the athletic operating budgets, and 30% of the recruiting dollars. At the high school level, while no data are maintained, anecdotal evidence indicates that substantial disparities exist. For example, the *Atlanta Journal-Constitution* ran a series of articles showing that female high school athletes were relegated to muddy fields and port-a-johns, while their male counterparts had state-of-the-art stadiums. Not surprisingly, the *Journal-Constitution's* report revealed that school districts routinely spent significantly less on girls' sports than on boys' athletics: one county budgeted more than 81% of its resources for male athletes.⁴

Several steps should be taken to address the ongoing problems in athletics. We recommend that the Office for Civil Rights

(OCR) conduct targeted compliance reviews to ensure that female students are getting their fair share of athletic opportunities in educational institutions. Additionally, the Department should make sure that data concerning college and university athletics collected pursuant to the Equity in Athletics Disclosure Act (EADA) be made available centrally at the Department and that it be posted on the Internet for ease of access to the information. Finally, Congress should pass a law similar to the EADA that would apply to secondary schools to assist in identifying and remedying problems.

B. Career Education

OCR also should focus its attention on enforcing Title IX's mandate in career education — that is, School-to-Work, vocational education, career academies, and other job training programs — where ingrained patterns of sex segregation and sex discrimination persist. Female students remain concentrated in programs that prepare them for traditionally female, and low-paying, jobs in fields like health care, child care, clerical work, and the service industry. And male students still dominate the programs that prepare them for the high-wage skilled trades jobs. Now, however, as the new economy expands, and with it, the need for students to acquire skills in math and science, these disparities have serious implications for the many female students who do not pursue nontraditional areas.

Specifically, female students are dramatically underrepresented in courses that can open the doors to the high-tech careers of the new economy, and, as a result, lack the training necessary for jobs that lead to economic security. In high school, young women are significantly less likely to take classes in computer programming or applications. They are only 9% of the students taking the higher level Advanced Placement

computer science exam. In associate degree programs, men are six times as likely to major in engineering or science technology; in bachelor's degree programs, women receive only about one-third of the degrees in mathematical and computer sciences. In high schools, predominantly male programs, such as electrical and automotive repair, are being updated with high-technology courses and programs, while predominately female programs have barely changed. Additionally, students in predominantly female vocational schools appear to have fewer opportunities to take advanced-level math and science classes.

While some would claim that young women are not interested in these areas, the truth is that discrimination dissuades too many female students from pursuing nontraditional areas: counseling that steers them away from technology courses, instruction that leads to different and less challenging assignments for young women in traditionally male programs, or sexual harassment from male peers who feel that women just don't belong, for example. This discrimination has implications for young women's future earning potential. Technical education programs and training for the skilled trades can mean the difference between making a real living and just getting by. For example, the median income of a chemical engineer in 1998 was over \$64,000 in 1990, compared to that of a preschool teacher, which was only \$17,310. Access to technology programs clearly translates into access to economic security for young women.

OCR should conduct targeted compliance reviews in the many sex-segregated programs in schools across the country to identify and address the issues that preclude young women from pursuing educational opportunities in technology, the sciences, and other areas deemed nontraditional for them. Additionally, OCR should provide these schools with guidance as to how to

ensure that nontraditional areas are not hostile environments for female students.

C. Testing

OCR should build upon efforts to ensure that standardized tests are not misused in such a way as to deny students educational opportunities. Since testing has emerged as a cornerstone in education reform efforts, including the President's proposal, great care needs to be taken in order to address gender differentials in test scores prevalent in so many widely used standardized tests.

Disparities have been well-documented particularly regarding two categories of standardized tests: (1) admissions tests for higher education; and (2) tests used for vocational and career education program selection, placement, and career counseling. With respect to post-secondary admissions tests, female students have consistently scored lower than male students. For example, the results from the 1999 SAT show that the gender gap is now 43 points. The test score gap on the math section of the SAT is particularly startling — female test-takers averaged a score of 495 while male test-takers averaged a score of 531. This gender gap persists within racial and ethnic groups as well: on average, in 1999, African American females scored 16 points less than their male counterparts; Asian American females scored 45 points less than their male counterparts; and Mexican American females scored 46 points less than their male counterparts.⁵ The implications of this persistent and widespread gap are great, given that it has been well-documented that the SAT underpredicts academic performance for female students. Therefore, the use of this test for purposes such as admissions and determining scholarship awards effectively denies many female students access to educational opportunities.

With respect to vocational education, it is well-documented that sex-segregation is a persistent problem. The Title IX regulations and 1979 vocational education guidelines require that when tests are used in connection with a vocational program, they must be validated as essential to that program.⁶ However, there have been few efforts to validate vocational tests, such as the Armed Services Vocational Aptitude Battery (ASVAB), in the secondary school setting. The ASVAB is administered to about 20% of high school juniors and seniors throughout the United States. It is used by about 60% of American high schools as part of a Defense Department-sponsored "Career Explorations Program," run through the Defense Manpower Data Center (DMDC). However, a recent U.S. General Accounting Office (GAO) report concluded that the ASVAB posed a systemic barrier for women, who after taking the test remain clustered in traditional areas for their sex, such as health care, administration, personnel, and supply occupations.⁷ Thus, the continued use of the ASVAB in the secondary setting is to the detriment of girls in vocational programs.

As the use of standardized tests has begun to claim a major role in the education reform movement, little attention has been paid to the gender impact of these tests. The challenge, then, is to ensure that increased test use at all levels of education does not limit opportunities for particular groups of students, and especially women and people of color, because we have not taken the time to examine the use of these tests carefully.

In December 2000, OCR issued *The Use of Tests as Part of High-Stakes Decision-Making for Students: A Resource Guide for Educators and Policy-Makers*, which provides institutions with some guidance as to the appropriate use of testing. The Resource Guide sets out important legal principles regarding the use of tests, including ensuring that a test not be the sole criterion for an educ-

ational decision. OCR should make use of this Guide and the principles articulated in it to ensure that female students are not disadvantaged by the misuse of standardized tests.

D. Sexual Harassment

The Bush Administration also should build upon existing efforts to combat sexual harassment in the nation's schools. Specifically, in January 2000, the Department of Education's Office for Civil Rights issued supplemental guidance on sexual harassment⁸ in light of the Supreme Court's decisions in *Gebser v. Lago Vista Independent School District* and *Davis v. Monroe County Board of Education*. Under those decisions, recipients can be liable in monetary damages for sexual harassment when an appropriate school official has actual notice of sexual harassment, but responds to it with deliberate indifference.⁹ The OCR guidance explains these standards and informs recipients of the standard that applies for administrative enforcement, which is grounded in the Title IX regulations. Under this standard, recipients may be found out of compliance with Title IX in cases of employee-student harassment when the harassment occurs in the course of the employee's providing aid, benefits, or services to students, irrespective of whether the institution had notice of the harassment. In cases of student-to-student harassment, recipients may be out of compliance with Title IX if they knew or should have known about the harassment but failed to take prompt, remedial steps to address it.

OCR should take steps to ensure that recipients across the country are aware of the updated guidance, the standards that apply, and take proactive steps to ensure that they are complying with it. For example, OCR should conduct targeted compliance reviews to ensure that institutions have

policies and procedures in place to address complaints of sexual harassment.

III. Reauthorization of the Elementary and Secondary Education Act

The foregoing are just some of the steps the Bush Administration should take to promote gender equity in educational institutions. It should be added that the 2001 reauthorization of the Elementary and Secondary Education Act (ESEA), the main federal law that addresses elementary and secondary education in this nation, also presents an opportunity to address these issues. For example, the President's proposal includes a provision to "enhance education through technology."¹⁰ While providing funding to states targeted for bringing technology to the classroom is one way to bridge the growing digital divide affecting low-income students, efforts are needed to address the growing gender gap in this area described above, such as requiring state educational agencies to keep and send to the Department of Education data disaggregated by race, gender, and ethnicity, concerning the number of students pursuing such courses. Similarly, the proposal relies on testing of students to hold schools accountable for the education they provide. In light of the well-known abuses of standardized tests, the administration's proposal should include safeguards to ensure that the tests developed for the purpose of assessing states' progress are not used to make high-stakes decisions about students. The proposal also should include sexual harassment among the ills to be addressed in its efforts to encourage safe schools.¹¹ In this connection, states should gather and provide to the Department of Education data disaggregated by race, sex, and ethnicity concerning sexual

harassment complaints institutions receive and how they are resolved. Finally, the proposal does not include a provision to reauthorize the Women's Educational Equity Act (WEEA). Established in 1975, WEEA is the only federal program that focuses specifically on increasing educational opportunity for women and girls. Since its inception, WEEA projects have been on the forefront of addressing the myriad of barriers to education facing our nation's daughters: sexual harassment, biased standardized testing, tracking of girls into traditional low-paying careers, among others. Because WEEA projects have developed strategies to overcome those barriers and encouraged girls and young

women to achieve, continued funding of this program is critical to efforts to achieve gender equity.

IV. Conclusion

Much work remains to ensure that the promise of Title IX is realized in educational institutions across this country. With the new tools developed in the previous administration and new case law, the Bush Administration has an opportunity to make significant inroads in making gender equity a reality.

Endnotes

¹ 20 U.S.C. § 1681–1688 *et seq.*

² “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; Final Common Rule,” 65 Federal Register 52857 (Aug. 30, 2000).

³ “Executive Order No. 13160 of June 23, 2000,” 65 Federal Register 39775 (June 27, 2000).

⁴ Mike Fish and David Milliron, “The Gender Gap: A Special Report,” *The Atlanta Journal-Constitution*, Dec. 12, 1999, at 1.

⁵ See The College Board, *1999 Profile of College-Bound Seniors — National Report*.

⁶ See 34 C.F.R., Part 100, App. B (IV)(K).

⁷ See Norman J. Rabkin, *Gender Issues — Trends in Occupational Distribution of Military Women*, GAO/NSIAD-99-212 (Sep. 14, 1999).

⁸ “Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties,” 66 Federal Register 5512 (Jan. 19, 2001).

⁹ *Davis v. Monroe County Board of Education*, 526 U.S.C. § 629, 642 (1999); *Gebser v. Lago Vista Independent School District*, 524 U.S.C. § 274, 290 (1998).

¹⁰ “No Child Left Behind” at 22.

¹¹ *Id.* at 20.