

Unit 3

Title IX: Gender Equality in Public Education

Unit Questions

What does it mean to provide equal opportunities for men and women in the context of education, including school sports? How does federal law protect the civil rights of women in public education?

Overview

Through most of U.S. history, women had limited access to educational programs and extra curricular activities. Most women were excluded from elite academic institutions, and those schools that accepted female applicants required them to have higher test scores and grades than their male counterparts. Even when women were admitted to schools, they did not have the same financial aid opportunities, were excluded from many programs, and faced more restrictive rules. In the 1960s and 1970s, civil rights activists advocated for federal enforcement of equal opportunities for male and female students. In response, Congress enacted Title IX of the Education Amendments of 1972. That law, known as Title IX, bans educational programs that receive federal funding from discriminating on the basis of gender. This applies to a wide range of activities, including admissions, athletics, employment opportunities, and financial assistance. Over the past four decades, Title IX has greatly improved access to educational opportunities for women.

This unit asks you to consider the scope and application of Title IX through the examination of statutory text, federal regulations, enforcement policies, and court decisions. You will confront questions about how the provisions of Title IX ensure nondiscrimination on the basis of gender, and think about what sex equality means across different contexts.

Unit Objectives and Standards

By the end of this unit, you will be able to:

- Summarize the facts and identify the legal issues in Title IX cases.
- Explain the requirements and purpose of Title IX and the different theories of equality that it embodies.
- Assess whether women are treated fairly in a variety of educational scenarios and defend their positions.
- Evaluate the degree to which civil rights litigation protects the civil rights of women in public education and promotes gender equality in the United States.

Unit Assessment

You will write a policy reform proposal for Title IX.

Handout 1

The Fourteenth Amendment and Title IX

The Fourteenth Amendment to the U.S. Constitution reads:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

...

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Congress used its authority under Section 5 of the Fourteenth Amendment to pass Title IX, which reads:

(a) Prohibition against discrimination: 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 education program or activity receiving Federal financial assistance.

1. What does the Fourteenth Amendment have to do with gender discrimination? Underline the phrase that you think would protect people against governmental discrimination based on their gender.

2. Suppose you are a school superintendent and you want to make sure that you are in compliance with Title IX. (If you are not, your school could lose its federal funding.) Underline any words or phrases in the Title IX that you would want further details about. Explain what you would want to know in the space below.

3. What is the main goal of Title IX?

Handout 2*What is equality in sports?*

Directions: Consider the following propositions. Brainstorm some of the pros and cons of each.

	Pros	Cons
1. Girls can play sports, but not “masculine” ones like soccer, basketball, or track. Girls are only allowed to play “feminine” sports including volleyball, gymnastics, and cheerleading.		
2. Girls are allowed to play on the same sports team as boys. Girls have to compete against boys on the merits; girls can play only if they make the team.		
3. Girls are allowed to play on the same sports team as boys, and there’s a minimum number of girls and boys required on each team. (E.g. team of 12 must have at least 3 boys and at least 3 girls).		
4. Girls are allowed to play on the same sports team as boys, and the team must be split evenly between genders.		
5. Girls and boys play on separate teams, and are allowed to play any sport that has enough students interested in that sport to create a full team.		
6. Girls and boys have equally-resourced separate sports teams with the same number of spots.		

Handout 3

Equal Access to Education: Forty Years of Title IX

Report by the U.S. Department of Justice (June 23, 2012)

<https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf>

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance.” –Title IX, Education Amendments of 1972

Passed by Congress on June 23, 1972, Title IX of the Education Amendments of 1972 bars sex discrimination in education programs and activities offered by entities receiving federal financial assistance. As the Supreme Court recognized in the landmark case of *United States v. Virginia*, “our Nation has had a long and unfortunate history of sex discrimination.” But in the forty years since its enactment, Title IX has improved access to educational opportunities for millions of students, helping to ensure that no educational opportunity is denied to women on the basis of gender and that women are granted “equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities.” In 2011 alone, Title IX covered over 49 million students enrolled in more than 98,000 elementary and secondary schools. Title IX also protects more than 20 million students enrolled in postsecondary education.

THE HISTORY OF TITLE IX

Title IX prohibits discrimination on the basis of gender in education programs and activities operated by recipients of federal financial assistance. The fundamental principle underlying Title IX is that students may not be denied educational opportunities based on their sex – a principle that applies to the wide range of activities offered by schools, including admissions to, and financial aid for, post-secondary institutions; student services and counseling; and athletics and physical education. Schools are also responsible for taking steps to prevent sex-based harassment, including sexual harassment, and for responding quickly and effectively to harassment when it occurs. Additionally, under Title IX, a school may not retaliate against a person because he or she opposed an unlawful educational practice or policy or took action against discrimination.

Congress passed Title IX in response to the marked educational inequalities women faced prior to the 1970s. Before Title IX, women were often excluded from or had only limited access to educational programs. Elite colleges and universities set quotas for the admission of women or prohibited them from attending altogether; those that accepted applications from women often required higher test scores and grades for their admission. Once admitted to schools, women had less access to scholarships; were excluded from “male” programs, such as medicine; and faced more restrictive rules, such as early curfews, than their male peers. Discrimination extended beyond students; women faculty were more frequently denied tenure than their male counterparts, required to take pregnancy and maternity leaves, or prohibited from entering faculty clubs. In part as a result of these inequalities, only 8 percent of women age 19 and older were college graduates in 1970, compared with 14 percent of men.

THE IMPACT OF TITLE IX

Since 1972, women have made great strides in their educational attainment, benefitting from the protections enacted through Title IX. In 2009, approximately 87 percent of women had at least a high school education and approximately 28 percent had at least a college degree, up from 59 percent with a high school education and 8 percent with a college degree in 1970. Additionally, enrollment in higher education has increased at a greater rate for females than for males; since 1968, the percentage of women between the ages of 25 and 34 with at least a college degree has more than tripled. Women now have higher graduation rates and lower high school dropout rates, take more Advanced Placement exams, and earn more advanced degrees than their male counterparts. They also tend to score higher in reading assessment tests than male students.

Title IX has also vastly expanded women's access to athletic programs. For example, from 1972 to 2011, female participation in high school sports rose dramatically, as shown in the graph below. Women enjoyed similar gains at the college level. Because education is linked to other benefits, such as participation in the labor force, increased earnings, better health and increased access to healthcare, the benefits of Title IX extend far beyond those experienced in school. Additionally, the benefits of Title IX reach beyond those realized by women. By prohibiting schools from treating students differently on the basis of gender, Title IX allows both men and women to equally take advantage of any course of study regardless of gender stereotypes about traditionally "male" or "female" coursework or professions. Title IX's protections against harassment also apply to both sexes, and schools must take action to prevent sex-based harassment that interferes with the education of both males and females.

Directions: On a separate sheet of paper, answer the following questions based on the reading above.

- 1) What is the fundamental principle underlying Title IX?
- 2) What kinds of school activities does Title IX apply to?
- 3) List five ways women were discriminated against in education before the passage of Title IX
- 4) List five things that have changed for women since the enactment of Title IX.
- 5) Explain how Title IX protections have benefitted men.

Handout 4

Code of Federal Regulations - Athletics

§ 106.41 Athletics

- (a) General. No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.
- (b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.

However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

- (c) Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:
- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
 - (2) The provision of equipment and supplies;
 - (3) Scheduling of games and practice time;
 - (4) Travel and per diem allowance;
 - (5) Opportunity to receive coaching and academic tutoring;
 - (6) Assignment and compensation of coaches and tutors;
 - (7) Provision of locker rooms, practice and competitive facilities;
 - (8) Provision of medical and training facilities and services;
 - (9) Provision of housing and dining facilities and services;
 - (10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

Handout 5

An Introduction to Title IX and Equality in College Athletics

Title IX of the Education Amendments of 1972 states: “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 education program or activity receiving Federal financial assistance...”

In order to comply with Title IX, schools must provide equal treatment for male and female athletes, providing athletes of both genders with equal access to things like equipment, practice time, scholarship support, money to travel to games, coaches and locker rooms.

In addition, the regulation requires schools to provide “equal athletic opportunity for members of both sexes.” In 1979 the Department of Education issued a “policy interpretation” explaining how the Department would enforce this requirement. The Department set out a three-part test: schools can show that they are complying with Title IX by meeting any *one* of the three parts:

1. **Proportionality:** A school can prove that there is equal participation in athletics by showing that the ratio of female athletes to male athletes is “substantially proportionate” to the ratio of female to male students on campus. Under a proportionality theory, if 75% of a school’s students are women, about 75% of its student athlete slots should go to women. “Substantially proportionate” participation does not require exactly equal numbers. The Department of Education does not require exact proportionality when it wouldn’t make sense—for example, if precise proportionality would require the school to have half of a men’s soccer team.
2. **Continuing Practices:** Another way to show equal participation is to show “a history and continuing practice” of expanding the number of athletic opportunities available to women. This way of showing equal participation gives schools that still are not fully equal but that are making strides toward equality more time to fix the problem on their own.
3. **Accommodating Interests and Abilities:** Even without satisfying the proportionality or continuing practices parts of the test, a school can comply with Title IX by showing that it has “fully and effectively” offered opportunities to participate in sports, but students of one gender are just not as interested as the other in fully participating. For example, a school that has vigorously tried to recruit female athletes for its teams is complying with Title IX even if in the end only a few women students signed up. This is by far the most controversial part of the three-part test, because usually—but not always—when female students are uninterested in athletics, it turns out that the school has discouraged their participation in some way.

When you have finished reading and discussing the three parts above, go on to the next page.

Directions: Read the scenario below and answer the questions that follow.

A college has 105 female students and 102 male students enrolled. The only sports the college offers are men's and women's soccer and it budgeted spots for twenty athletes on each team. Fifteen years ago, the college only had men's soccer, but it added women's soccer after a group of female students complained and threatened to sue. After advertising team tryouts all over campus for three weeks, the college held tryouts where 60 men and 15 women showed up to try out for a spot. The coaches cut 40 men—some of whom played varsity soccer at their high schools—to make a team of 20 men. All 15 women who tried out got a spot on the women's team, including two women who had not played soccer in high school.

1. Is this college providing equal participation opportunities under a theory of **proportionality**? Explain your answer. If not, what could it do to satisfy the requirements of proportionality?

2. Is this college providing equal participation opportunities under a theory of **continuing practices**? Explain your answer. If not, what could it do to demonstrate continuing practices?

3. Is this college providing equal participation opportunities under a theory of **accommodating interests and abilities**? Explain your answer. If not, what could it do to actually accommodate interests and abilities?

4. What are the benefits and disadvantages of giving schools multiple different ways to prove equal participation instead of requiring all schools to show equal participation in the same way?

5. Are the Department of Education's three theories of equal participation—proportionality, continuing practices and accommodating interests and skills—the right ones? How else could schools determine whether female athletes are able to participate equally in college athletics? Explain your answer.

Handout 6

Code of Federal Regulations – Marital or Parental Status

Code of Federal Regulations: Title 34 (Education)

§ 106.40 Marital or parental status.

(a) Status generally. A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) Pregnancy and related conditions.

(1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.

...

Handout 7

Chipman v. Grant County School District

Civil Action No. 98-180
30 F.Supp.2d 975 (E.D. Ky. 1998)

BERTELSMAN, District Judge.

The plaintiffs are Somer Chipman and Chasity Glass. The defendants are the Grant County School District, James Simpson, Superintendent of Grant County School District, and members of the Grant County Board of Education...

FACTS

The National Honor Society of Secondary Schools (NHS) recognizes high school students for outstanding achievement. High schools may establish a local NHS chapter upon paying a chartering fee and annual initiation fee to the NHS. Chapters are required to adopt the NHS constitution, but each chapter may establish different admission criteria so long as those criteria are consistent with the NHS constitution. A pertinent provision of the NHS handbook provides:

It should be noted that, under provisions of federal law, pregnancy – whether within or without wedlock – cannot be the basis for automatic denial of the right to participate in any public school activity. It may properly be considered, however, like any other circumstance, as a factor to be assessed in determining character as it applies to the National Honor Society. But pregnancy may be taken into account in determining character only if evidence of paternity is similarly regarded.

Grant County High School has established a local NHS chapter. As required by the NHS constitution, those offered admission to the Grant County NHS must demonstrate outstanding scholarship, service, leadership, and character. Although the NHS permits anyone with a grade point average of 3.0 or better to be considered for admission, the Grant County chapter requires a grade point average of at least 3.5.

Plaintiffs are both seniors at Grant County High School. Both plaintiffs have grade point averages substantially above 3.5. ... In the Spring of 1998, when [Chastity was a mother and Somer was visibly pregnant], the GCNHS selection committee voted to offer NHS membership to every junior with a 3.5 or better grade point average except the plaintiffs. There is strong evidence that the GCNHS selection committee considered the fact that each plaintiff had engaged in premarital sexual activity and had given birth to a child out of wedlock. There is further strong evidence that the selection committee did not ask those students offered admission to the NHS – male or female – if they had engaged in premarital sexual activity. ...

ANALYSIS

Title IX prohibits sex discrimination in any educational program or activity receiving federal financial assistance. Specifically, Title IX provides in part:

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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 education program or activity receiving Federal financial assistance.

Regulations promulgated under Title IX unequivocally apply its prohibition against sex discrimination to discrimination on the basis of pregnancy and parental status, stating:

A recipient [of federal funds, such as Grant County Schools] shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

34 C.F.R. § 106.40(b) specifically provides:

(b) Pregnancy and related conditions. (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

The issue, then, is whether refusing to admit the plaintiffs to the GCNHS because they engaged in premarital sex and became pregnant constitutes exclusion “on the basis of pregnancy.” Three prior cases have addressed the issue of exclusion from a NHS chapter due to pregnancy or premarital sexual activity.

In the most recent of the three, ... the court determined that the plaintiff was dismissed from the NHS not because she became pregnant but because she had engaged in premarital sex. In *Pfeiffer v. Marion Center Area School District* (1990), the court concluded that, as long as both genders were treated similarly with regard to premarital sex, the pregnant student could properly be dismissed from the NHS because “regulation of conduct of unmarried high school student members is within the realm of authority of the National Honor Society given its emphasis on leadership and character.” The court emphasized the requirement that the genders be treated similarly[.] [The case was sent back to the trial court because a male student testified that he had fathered a child, yet had not been asked to resign from NHS].

In an earlier case from the Central District of Illinois, the court reached a contrary conclusion. In *Wort v. Vierling* (1984), the court concluded that the plaintiff had been dismissed from the National Honor Society on the basis of her pregnancy rather than the premarital sex that resulted in the pregnancy. Therefore, because only women can become pregnant, the dismissal necessarily constituted unequal treatment based on gender ...

Finally, in *Cazares v. Barber* [a 1990 Arizona District Court case], the court encountered a relatively clear-cut case of gender discrimination. In that case, an otherwise eligible pregnant girl was denied entry into the NHS, but a male student who had fathered a child out of wedlock was accepted into the chapter. With little discussion, the court in that case determined that the plaintiff's denial of membership in the NHS violated [] Title IX ...

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This court agrees with the two latter cases. ...

The plaintiffs have met their burden of proving that the challenged practices of the defendants in screening students for admission to the NHS has caused a significant adverse effect on the protected group, i.e., young women who have become pregnant from premarital sex and have become visibly pregnant. ...

Although 100% of young women who are visibly pregnant or who have had a child out of wedlock are denied membership, as far as the record reflects, defendants' policy excludes 0% of young men who have had premarital sexual relations and 0% of young women who have had such relations but have not become pregnant or have elected to have an early abortion. ...

[A] plaintiff seeking to prove discrimination must first prove that she is a member of a protected class who has been treated differently because of her sex or, in this case, because of pregnancy. Here, plaintiffs must prove they were treated differently than similarly situated non-pregnant students. That these prerequisites have been met here is obvious. ...

[T]he defendants here have failed to articulate a legitimate credible non-discriminatory reason for their NHS pregnancy policy. The reasons articulated for the exclusion of the plaintiffs are vague, conclusory and undocumented. In the face of the admitted fact that plaintiffs were the only students surpassing the grade cutoff who were excluded, the court on the present record finds these proffered non-discriminatory reasons insufficient and not credible. ...

IT IS ORDERED AND ADJUDGED:

1. That plaintiffs' motion for preliminary injunction [is] granted;
2. That ... the defendants ... admit the plaintiffs to the Grant County High School Chapter of the National Honor Society, not later than January 31, 1999.

Directions: Answer the following questions about *Chipman v. Grant County School District*.

1. Who are the plaintiffs and the defendants?
2. How does the national NHS handbook deal with parental status?
3. What facts show the plaintiffs were discriminated against?

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4. What have other courts determined when faced with this issue? List the three cases discussed in this excerpt and what those cases concluded.

5. How did the plaintiffs show discrimination?

7. What does the court order?

8. Why is pregnancy discrimination a type of gender discrimination?

Handout 8

Davis v. Monroe County Board of Education
526 U.S. 629 (1999) [edited]

Justice O'Connor delivered the opinion of the Court.

Petitioner brought suit against the Monroe County Board of Education and other defendants, alleging that her fifth-grade daughter had been the victim of sexual harassment by another student in her class.... We consider here whether a private damages action may lie against the school board in cases of student-on-student harassment. We conclude that it may, but only where the funding recipient acts with deliberate indifference to known acts of harassment in its programs or activities. Moreover, we conclude 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...

...

II.

Title IX provides...that “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 education program or activity receiving Federal financial assistance.”

There is no dispute here that the Board is a recipient of federal education funding for Title IX purposes. ...

B.

We [in a case in 1998] concluded that sexual harassment is a form of discrimination for Title IX purposes. Having previously determined that “sexual harassment” is “discrimination” in the school context under Title IX, we are constrained to conclude that student-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of discrimination actionable under the statute. The statute's other prohibitions, moreover, help give content to the term “discrimination” in this context. Students are not only protected from discrimination, but also specifically shielded from being “excluded from participation in” or “denied the benefits of” any “education program or activity receiving Federal financial assistance.” The statute makes clear that, whatever else it prohibits, students must not be denied access to educational benefits and opportunities on the basis of gender. We thus conclude that funding recipients are properly held liable in damages only where they are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.

The most obvious example of student-on-student sexual harassment capable of triggering a damages claim would thus involve the overt, physical deprivation of access to school resources. Consider, for example, a case in which male students physically threaten their female peers every day, successfully preventing the female students from using a particular school resource -- an athletic field or a computer lab, for instance. District administrators are well aware of the daily ritual, yet they deliberately ignore requests for aid from the female students wishing to use the resource. The district's knowing refusal to take any action in response to such behavior would

fly in the face of Title IX's core principles, and such deliberate indifference may appropriately be subject to claims for monetary damages. It is not necessary, however, to show physical exclusion to demonstrate that students have been deprived by the actions of another student or students of an educational opportunity on the basis of sex. Rather, a plaintiff must establish sexual harassment of students that is so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities.

Whether gender-oriented conduct rises to the level of actionable "harassment" thus "depends on a constellation of surrounding circumstances, expectations, and relationships," including, but not limited to, the ages of the harasser and the victim and the number of individuals involved. It is thus understandable that, in the school setting, students often engage in insults, banter, teasing, shoving, pushing, and gender-specific conduct that is upsetting to the students subjected to it. Damages are not available for simple acts of teasing and name-calling among school children, however, even where these comments target differences in gender. Rather, in the context of student-on-student harassment, damages are available only where the behavior is so severe, pervasive, and objectively offensive that it denies its victims the equal access to education that Title IX is designed to protect.

... The relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach Title IX's guarantee of equal access to educational benefits and to have a systemic effect on a program or activity.

C.

Applying this standard to the facts at issue here, we conclude that the [lower court] erred in dismissing petitioner's complaint. Petitioner alleges that her daughter was the victim of repeated acts of sexual harassment by G.F. over a 5-month period, and there are allegations in support of the conclusion that G. F.'s misconduct was severe, pervasive, and objectively offensive. The harassment was not only verbal; it included numerous acts of objectively offensive touching, and, indeed, G.F. ultimately pleaded guilty to criminal sexual misconduct. Moreover, the complaint alleges that there were multiple victims who were sufficiently disturbed by G.F.'s misconduct to seek an audience with the school principal. Further, petitioner contends that the harassment had a concrete, negative effect on her daughter's ability to receive an education. The complaint also suggests that petitioner may be able to show both actual knowledge and deliberate indifference on the part of the Board, which made no effort whatsoever either to investigate or to put an end to the harassment.

Accordingly, . . . the case is remanded for further proceedings consistent with this opinion.

IT IS SO ORDERED.

Handout 9
Other Title IX Regulations

The Title IX regulations in *italics* are exact quotes. The rest is paraphrased.

Title IX Regulations (34 C.F.R.)

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 106.21 Admission. No person shall be denied admission or be subjected to discrimination in admission on the basis of sex.

§ 106.23 Recruitment. A recipient shall not discriminate on the basis of sex in the recruitment and admission of students.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 106.31 Education programs or activities.

(a) General. *Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance....*

(b) Specific prohibitions. *Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:*

- (1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;*
- (2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;*
- (3) Deny any person any such aid, benefit, or service;*
- (4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;*
- (5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;*
- (6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;*
- (7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.*

....

§ 106.32 Housing. *A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing....*

§ 106.33 Comparable facilities. *A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.*

§ 106.34 Access to classes and schools. A recipient shall not provide or carry out any educational programs or activities or require or refuse participation of its students on the basis of sex, except for, among other things contact sports and human sexuality classes. A recipient may provide single-sex classes or extracurricular activities provided that the single-sex nature of the class or activity is substantially related to achieving an important objective such as improving educational achievement, the objective is implemented in an evenhanded manner, the student enrollment is voluntary, and the recipient provides a substantially equal coeducational class to all other students, including students of the excluded sex. A school that excludes students from admission on the basis of sex must provide students of the excluded sex a substantially equal single-sex school or coeducational school.

106.35 Access to institutions of vocational education. *A recipient shall not, on the basis of sex, exclude any person from admission to any institution of vocational education operated by that recipient.*

§ 106.36 Counseling and use of appraisal and counseling materials. A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission. A recipient shall not use different materials on the basis of their sex in appraising or counseling students unless such materials cover the same occupations and interest areas. A recipient shall assure itself that classes that contain a disproportionate number of individuals of one sex are not the result of the counselor's sex discrimination.

§ 106.37 Financial assistance. A recipient cannot provide different amount or types of financial aid to its students on the basis of sex. If a recipient provides athletic scholarships, it must provide reasonable opportunities for such awards for members of each sex proportionate to the number of the number of student athletes of each sex participating in athletics.

§ 106.38 Employment assistance to students.

(a) Assistance by recipient in making available outside employment. A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) Employment of students by recipients. A recipient which employs any of its students shall not do so in a manner which violates subpart E of this part.

§ 106.39 Health and insurance benefits and services A recipient cannot discriminate on the basis of sex in providing medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students.

§ 106.43 Standards for measuring skills or progress in physical education classes Standards for measuring skill or progress in physical education classes can not have an adverse effect on members of one sex.