



Unit 3

Title IX:

Gender Equality in Public Education

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?

Length of Unit

This unit can be completed in five sixty-minute class periods.

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 students to consider the scope and application of Title IX through the examination of statutory text, federal regulations, enforcement policies, and court decisions. Students are guided to confront questions about how the provisions of Title IX ensure nondiscrimination on the basis of gender, and to think about what sex equality means across different contexts.

Unit Objectives and Standards

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

- Summarize the facts and identify the legal issues in Title IX cases.
 - [NSCG V.B.5](#);
 - [MI-HSCE P2.3](#), [MI-HSCE P2.4](#), [MI-HSCE C6.1.2](#);
 - [CCSS.ELA-LITERACY.SL.9-10.3](#), [CCSS.ELA-LITERACY.SL.9-10.4](#);
 - [C3 D4.2.9-12](#)

Unit 3: Overview

Title IX: Gender Equality in Public Education

- Explain the requirements and purpose of Title IX and the different theories of equality that it embodies.
 - [NSCG III.D.2](#), [NSCG III.D.1](#);
 - [MI-HSCE 8.3.3](#), [MI-HSCE C3.4.3](#);
 - [CCSS.ELA-LITERACY.RH.9-10.2](#);
 - [C3 D2.Civ.10.9-12](#)
- Assess whether women are treated fairly in a variety of educational scenarios and defend their positions.
 - [NSCG III.D.1](#), [NSCG V.B.5](#);
 - [MI-HSCE P3.1](#), [MI-HSCE P3.2](#), [MI-HSCE C6.1.3](#), [MI-HSCE C6.1.5](#);
 - [CCSS.ELA-LITERACY.RH.11-12.7](#);
 - [C3 D4.1.9-12](#); [C3 D4.2.9-12](#)
- 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.
 - [NSCG III.D.1](#), [NSCG V.B.5](#);
 - [MI-HSCE P3.1](#), [MI-HSCE P3.2](#), [MI-HSCE C6.1.3](#), [MI-HSCE C6.1.5](#);
 - [CCSS.ELA-LITERACY.RH.11-12.7](#), [CCSS.ELA-LITERACY.RI.11-12.8](#);
 - [C3 D4.1.9-12](#); [C3 D4.2.9-12](#)

Anticipated Student Understanding/Challenges to Understanding

This unit assumes that students have already studied fundamental values and principles of America's constitutional republic (including justice/desert, due process, equality, and the rule of law), and that they have some understanding of the various levels and responsibilities of courts in the federal and state judicial system.

Material Needed

What we provide:

- Readings and handouts
- Teacher answer keys

What you provide:

- Physical copies of documents from the case

Unit Assessment

Students write a policy reform proposal for Title IX.

References

- Title IX, The Margaret Fund of NWLC, <http://www.titleix.info/> (last visited March 30, 2017)

- U.S. Dept. of Justice, Equal Access to Education: Forty Years of Title IX, June 23, 2012, <https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf>

Lessons

Lesson 1: Conceptualizing Equality and Non-Discrimination

Students will generate and evaluate solutions about how to ensure inclusion and equality for both genders in the context of sports.

Students will be able to:

- Analyze the issues of equality and non-discrimination in sports
- Discuss the benefits and drawbacks of proposed solutions
- Draft an argument about what equality means in terms of gender discrimination and athletics

Lesson 2: Analyzing Title IX and Athletics

Students will learn about the background of Title IX and how the specific regulations ensure equality for both genders in athletics.

Students will be able to:

- Examine the background of Title IX
- Explain the equal participation requirement of Title IX and the three different theories of equality embedded in it
- Assess whether female athletes are being treated fairly in a variety of scenarios and defend their positions

Lesson 3: Applying Title IX Beyond Sports

Students will read a regulation, a statement of the law, a news article, and a court opinion to examine how Title IX applies to other areas of gender discrimination.

Students will be able to:

- Apply Title IX principles to pregnancy discrimination
- Analyze a court opinion that discusses discrimination against women based on parental status

Lesson 4: Applying Title IX

Students will read a court opinion that discusses Title IX's implicit protections against sexual harassment and draft a regulation to provide explicit protections.

Students will be able to:

- Evaluate the protections that Title IX provides against sexual harassment
- Examine a court opinion that prohibits sexual harassment on the basis of Title IX
- Draft a proposed addition to Title IX that explicitly prohibits sexual harassment

Lesson 5: Reshaping Title IX

Students will draft a proposed enforcement policy or set of Title IX regulations to improve achievement of the statute's purposes.

- Analyze the application of Title IX in different contexts
- Draft an enforcement policy for Title IX

Unit 3: Overview

Title IX: Gender Equality in Public Education

- Reflect on the issues of equality and non-discrimination

Lesson 1

Conceptualizing Equality and Non-Discrimination

Lesson Objectives

Students will be able to

- Analyze the issues of gender equality and non-discrimination in sports
- Discuss the benefits and drawbacks of proposed solutions
- Draft an argument about what equality means in terms of gender discrimination and athletics

Materials

- Handout 1: The Fourteenth Amendment and Title IX (with teacher answer key)
- Handout 2: What is equality in sports? (with teacher answer key)

Lesson Assessments

- Responses to Handout 1 and Handout 2
- Written answer to gender equality prompt response

Instructional Activities

Anticipatory Set

- Do Now: The following is an excerpt of the testimony given by Marcy Silverman, a student at Jamaica High, a public school in NYC. It comes from the case of Bonnie Sanchez and Laura Edelhart against Harold Baron, Principal of Junior High School 211 and Superintendent of District 28 of the NYC Board of Education (1971).

Q: Do you have the same activities in your gym classes that the boys do?

Marcy: No, we don't. Right now we're doing folk dancing and we asked . . . to go out and run track as the boys do. They play ball out in the recreational fields, and I asked one of the gym teachers if we could get a group of girls who would like to go out and run track or play ball in the fields. . . . She said that just couldn't be done....

Q: And when you go outside, what sort of classes do you have?

Marcy: We play this game...where you just throw the ball and you run around.... There is no equipment though, and when I asked if we could play soccer... I was told that the boys use the fields, and you know, because of that we're not allowed to use them. Because they get priority. The teachers told me that.

Unit 3: Lesson 1

Title IX: Gender Equality in Public Education

- Display this testimony on an overhead projector for students to read. Alternatively, you may read it out loud. Then, ask students to answer the following questions with a partner:
 - Does this situation violate any constitutional provision?
 - What is the best argument that this situation is unfair?
- After students have had a chance to discuss with a partner, ask them to share their ideas with the class.

Direct Instruction

- Distribute **Handout 1: The Fourteenth Amendment and Title IX**. Call on volunteers to read the text of the Fourteenth Amendment and Title IX out loud.
- Instruct students to work with a partner to complete the questions on the handout. Then, go over the answers together as a class. Please see the Handout 1 answer key for suggested answers and additional instruction.

Guided Practice

- Ask students to consider the area of school sports. Ask students what they think it means to treat both genders equally in sports. What kind of rule or policy should a school adopt in order to ensure equality? Allow a few students to share their initial ideas with the class.
- Distribute **Handout 2: What is equality in sports?** Tell students that it might seem easy to decide what it means to treat both genders equally, but in reality there are many different ways to look at it. Instruct students to work with a partner to consider each proposition and list the pros and cons of each.
- After students have had sufficient time to complete the chart, ask each pair to share some of their responses while you write a master list of pros and cons on the board.

Independent Practice

- Tell students: *In the realm of race segregation, separation is inherently unequal. In Brown v Board of Education, the Court stated, “We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. But when we are discussing gender, some people think separation is not only allowed, but required. For example, with athletics, many people think gender segregation is necessary in order to achieve gender equality in sports. That’s why Title IX allows and even encourages athletic segregation by gender.*
- Using what they learned from the class discussion, students should respond to this prompt in writing:
 - Does gender segregation help to achieve equality in sports? Why or why not? (If your answer is no, why might others, including the drafters of the Title IX regulation, disagree?)

Unit 3: Lesson 1

Title IX: Gender Equality in Public Education

- Students should spend about 10 minutes writing a response on their own. When they finish, they should trade their responses with a partner.

Closure

- Students will read their partner's response and highlight the best argument their partner made. Students will share the highlights of their partner's piece and will submit these responses at the end of class.

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 1: Answer Key
The Fourteenth Amendment and Title IX

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

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

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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.

"...nor deny to any person within its jurisdiction the equal protection of the laws." This is called the "Equal Protection Clause." It means that the government must treat all people equally and may not discriminate on the basis of characteristics like race or sex.

2. Suppose you are a school superintendent and you want to make sure that your school is in compliance with Title IX. (If 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.

On the basis of sex: *How do you know when a decision is made on the basis of sex?*

Participation: *How much participation is required?*

Benefits: *What kinds of benefits is this referring to?*

Discrimination: *What exactly counts as discrimination?*

Education program or activity: *Does this involve only educational / academic things, or also extracurriculars that do not have any specific educational purpose?*

3. What is the main goal of Title IX?

To prevent discrimination based on sex in education programs and activities that receive federal financial assistance.

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 2: Answer Key*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.	<ul style="list-style-type: none"> - <i>Some might like how this preserves traditional gender roles and expectations</i> - <i>Gives girls an area where they are the best</i> 	<ul style="list-style-type: none"> - <i>Confines students based on gender stereotypes</i> - <i>Does not allow diversity of interest and ability</i>
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.	<ul style="list-style-type: none"> - <i>Might allow girls to prove that they are just as physically capable as boys</i> - <i>Both genders treated exactly the same; no assumptions made</i> 	<ul style="list-style-type: none"> - <i>Girls might not make the cut very often because of differing physical abilities or coach bias</i> - <i>Fewer girls than boys may end up playing sports</i>
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).	<ul style="list-style-type: none"> - <i>Gives girls a chance to play with boys, and beat the stereotypes that they don't belong</i> - <i>Might be positive to teach boys how to play with girls, respect female athletes</i> 	<ul style="list-style-type: none"> - <i>Might “tone down” the competitiveness or physicality found in all-boys games</i> - <i>Spots might be filled by unskilled athletes of a particular gender just to meet the quota</i>
4. Girls are allowed to play on the same sports team as boys, and the team must be split evenly between genders.	<ul style="list-style-type: none"> - <i>Would allow girls to participate more meaningfully; not an isolated minority</i> - <i>Both genders equally represented on each team</i> 	<ul style="list-style-type: none"> - <i>Spots might be filled by athletes of a particular gender just to meet the quota, not based on ability/merit</i> - <i>Some sports teams might get cut because they can't find enough boys or girls to create half of a team</i>
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.	<ul style="list-style-type: none"> - <i>School follows the students' lead instead of imposing requirements; only creates teams where there's enough interest. Most economical?</i> 	<ul style="list-style-type: none"> - <i>Some students might be excluded from the sport they're interested in if they can't gather enough interest from their peers of the same gender</i>
6. Girls and boys have equally-resourced separate sports teams with the same number of spots.	<ul style="list-style-type: none"> - <i>Gives programs the opportunity to grow, even if interest is low at first</i> 	<ul style="list-style-type: none"> - <i>Might be a waste of money if there just isn't enough interest from one of the genders</i>

Lesson 2 **Analyzing Title IX and Athletics**

Lesson Objectives

Students will be able to

- Explain the background of Title IX, including its purposes and effects
- Summarize the equal participation requirement of Title IX and the three different theories of equality embedded in it.
- Assess whether female athletes are being treated fairly in a variety of scenarios and defend their positions.

Materials

- Handout 3: Equal Access to Education: Forty Years of Title IX (with teacher answer key)
- Handout 4: Code of Federal Regulations–Athletics
- Handout 5: Three Theories of Equality in college Athletics (with teacher answer key)

Lesson Assessments

- Handout 3 reading response questions
- Handout 5 hypothetical scenario analysis

Instructional Activities

Anticipatory Set

- Display the following prompt:
 - Title IX allows schools to have separate sports teams for boys and girls. Pretend you are the athletic director of a public high school. You oversee a girls' soccer team and a boys' soccer team. You have been receiving dozens of phone calls from students and parents complaining that the girls' team is being treated unequally. With a partner, list all the possible things that they might complain about—situations or official actions that might create inequality between the teams.
- After students have had a chance to list, discuss their ideas. These are some possible responses:
 - The boys' team has greater access to and higher quality equipment and supplies
 - The boys' team has a designated practice facility that the boys' coach reserves every day; the girls' team has no such space or has it less often
 - The boys' team has its own locker room, but the girls' team doesn't

Unit 3: Lesson 2

Title IX: Gender Equality in Public Education

- The boys' team gets first pick when scheduling practices and games on the soccer field
- The boys' team gets greater funding from the athletic department
- The boys' team coaches get greater compensation
- The school advertises soccer games for the boys' team in the community and holds pep rallies at the school for big games, but the girls' team doesn't get that kind of attention
- The boys' team has its own athletic trainer but the girls' team doesn't

Direct Instruction

- Inform students that today they will be learning about the background of Title IX and evaluating its regulations as applied to athletics.
- Distribute **Handout 3: Equal Access to Education: Forty Years of Title IX**. Explain that this is an excerpt from a U.S. Department of Justice publication from 2012. Instruct students to highlight and annotate the text as they read to identify the main points. Then, students should respond to the questions at the bottom of the reading.
- When students have finished answering the questions, call on volunteers to share their answers.

Guided Practice

- Distribute **Handout 4: Code of Federal Regulations - Athletics**. This handout provides the Title IX regulations as applied to athletics. Explain to students that regulations such as these are created by an executive agency. The public gets a chance to comment on the proposed regulations. The agency then edits the proposed regulations based on those comments and issues. Compliance with federal regulations is required by law.
- Break students into three groups. Group One will focus on section (a), Group Two will focus on section (b), and Group Three will focus on section (c). Instruct each group to read their section carefully. They may need to read it several times out loud, and they may need to read the sentences one piece at a time to make sense of it. Students should work together in their groups to complete the following tasks:
 - Summarize the section for the rest of the class in “plain English.”
 - What, if anything, does your section require? Think of some concrete examples.
 - What, if anything, does your section prohibit? Think of some concrete examples.
 - What other guidance does your section provide?Each group will work together to interpret their section and then present their summaries to the class.
- Distribute **Handout 5: Three Theories of Equality in College Athletics**. Read the first page of the handout out loud as a class. Call on different students to read each paragraph. When you get to the three-part test, pause after each paragraph to gather student reactions and assess understanding. You may ask questions such as:

Unit 3: Lesson 2

Title IX: Gender Equality in Public Education

- Do you think this is a good way to achieve equality? Why or why not?
- What are the advantages and disadvantages of this approach?

Independent Practice

- Instruct students to go on to the next page of Handout 5. Read the hypothetical scenario out loud. Instruct students to answer the questions that follow, referring to the reading.
- Students should turn in their responses by the end of class.

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 3: Answer Key

Equal Access to Education: Forty Years of Title IX

1) What is the fundamental principle underlying Title IX?

The fundamental principle of Title IX is that students may not be denied educational opportunities because of their sex; everyone should have equal opportunity to achieve and participate based on their individual talents and capabilities.

2) What kinds of school activities does Title IX apply to?

Title IX applies to:

- admissions and financial aid for colleges
- student services and counseling
- athletics and physical education

3) List five ways women were discriminated against in education before the passage of Title IX

1. *Elite colleges and universities would only accept a certain number of women, or none at all*
2. *Women needed higher grades and test scores to be admitted to certain schools, compared to men*
3. *Women could not participate in certain male-dominated programs, such as medicine*
4. *Women had less access to scholarships*
5. *Women had to follow more restrictive rules than men, such as early curfews*
6. *Women faculty were denied tenure more frequently*
7. *Women were forced to take pregnancy and maternity leaves*
8. *Women were prohibited from entering faculty clubs*

4) List five things that have changed for women since the enactment of Title IX.

1. *Women are attaining higher levels of education*
2. *Women have higher graduation rates and lower dropout rates than male counterparts*
3. *Women take more AP exams and earn more advanced degrees than male counterparts*
4. *Women score higher on reading assessment tests than male counterparts*
5. *Women participate more in high school and college athletics*
6. *Women (and men) may take advantage of any course of study regardless of gender stereotypes about traditionally “male” or “female” coursework or professions*
7. *Women (and men) are protected from sex-based harassment that interferes with their education*

5) Explain how Title IX protections have benefitted men.

Men may also participate in any educational program they want, regardless of gender stereotypes (e.g. nursing, teaching); men are also protected against sexual harassment.

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 5: Answer Key

An Introduction to Title IX and Equality in College Athletics

1. Is the college providing equal participation opportunities under a theory of **proportionality**? ...

105 female students and 102 male students means that proportional athletics would require about half of the athletes to be female. By creating spots for 20 men and 20 women, it seems that the school is following the theory of proportionality. But “substantially proportionate” does not require exactly equal numbers when it wouldn't make sense. Here, for example, only 15 women are interested in playing but there are spots for 20.

2. ... a theory of **continuing practices**? ...

The college did not have a women's soccer team 15 years ago, but has since added one. This shows that they have made strides towards equality. Since soccer is the only sport offered for either sex, there does not seem to be any additional areas where the school needs to add a female team in order to achieve equality. However, perhaps the school can begin adding a sport more women are interested in.

3. ... a theory of **accommodating interests and abilities**? ...

The college might argue that they have “fully and effectively” offered women the chance to participate, but there is simply not as much interest. This would depend on several factors, though, including how vigorously they advertised for the women's team, where and when tryouts took place, and other factors that might have discouraged female participation in some way.

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?

Benefits: school can try different strategies and is not stuck with a one-size-fits-all.

Disadvantages: schools might not have clear guidance on what is required; might not have incentive to try everything possible if they can get away with just satisfying one element.

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?

Many answers possible. Examples: consider student perception and level of satisfaction; consider amount of interest and percentage of interested athletes who did not make the team; consider budgeting and amount spent for each sex; etc.

Lesson 3

Applying Title IX Beyond Sports

Lesson Objectives

Students will be able to

- Apply Title IX principles to pregnancy discrimination
- Analyze a Supreme Court opinion that discusses discrimination against women based on parental status

Materials

- Handout 6: Code of Federal Regulations - Marital or Parental Status
- Handout 7: *Chipman v. Grant County School District* (with teacher answer key and annotations)

Lesson Assessments

- Handout 7 responses to case reading
- Exit ticket

Instructional Activities

Anticipatory Set

- Display the following prompt and have students write a quick five minute response. When they have finished, call on students to share their ideas.
 - You are a lawyer. A pregnant high school teen walks into your office looking for your help. She explains that she was required to transfer to a new school, which is specifically designated for teenage parents, in order to be eligible for state-funded child care. Although she was enrolled in several AP classes at her previous high school, her new school does not offer any AP classes. Could this be considered gender discrimination under Title IX? What other information would be helpful to know?

Direct Instruction

- Remind students that in the previous lesson, they considered Title IX as it applies to sports. Explain that today they will think about how Title IX might apply to other contexts besides athletics.

Unit 3: Lesson 3

Title IX: Gender Equality in Public Education

- Distribute **Handout 6: Code of Federal Regulations - Marital or Parental Status**. This provides the Title IX provisions protecting against gender discrimination for parents and married couples. Together, read part (a) out loud. Then instruct students to choose a partner and read the rest of the handout together. While reading, they should complete the following tasks:
 - Underline important words or phrases
 - Write a summary of each paragraph in the margins. What does it require?
 - Keep track of any questions that arise as you read the sections. Is anything unclear? Does anything strike you as odd?
- After students have had a chance to work through the handout with a partner, go over each section together as a class. Call on pairs to provide the summaries and raise any questions. Solicit student responses and reactions.

Guided Practice

- Distribute **Handout 7: Chipman v. Grant County School District**. Explain that this is a real case which began after two girls were barred from their high school's National Honors Society because they were pregnant and not married. The fathers were not similarly barred. The mothers, as plaintiffs in the case, asked the federal district court to require the school district to admit them into their school's National Honors Society.
- Read the case out loud with the class, calling on volunteers to read each paragraph. Pause to offer comments and ask questions as provided in the teacher annotations.

Independent Practice

- Students should answer the questions at the end of the case.
- Once students have completed their responses, discuss the answers as a class to check for understanding.

Closure

- Students should complete an exit ticket responding to the question: Why is this section of the Title IX regulation important to ensuring educational nondiscrimination on the basis of gender?

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:

Unit 3: Lesson 3

Title IX: Gender Equality in Public Education

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 ...

Unit 3: Lesson 3

Title IX: Gender Equality in Public Education

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?

Unit 3: Lesson 3

Title IX: Gender Equality in Public Education

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 7: Answer Key

Chipman v. Grant County School District

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. ...

Q: What are the pros and cons of this provision?

A: It purports to treat fathers the same as mothers, but in reality, paternity is much less obvious than pregnancy. So girls would be much more likely to be denied than boys.

Q: Does this seem like an appropriate question to ask? If not, why is it important?

A: It matters because it shows pretext. The selection committee said they denied the plaintiffs because of premarital sex, yet they didn't seem to care about anyone else's sexual activity.

ANALYSIS

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

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[.]

Here, the Court identifies the main question of the case: when the selection committee refused to admit the plaintiffs to the National Honor Society because they engaged in premarital sex and got pregnant, was that exclusion “on the basis of pregnancy?”

Q: Which party could use this case to support their side—Plaintiffs or Defendants?
A: Defendants.

This case was sent back to the trial court because a male student testified that he had fathered a child while in NHS, 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 ...

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.

Q: Which party could use these two cases to support their argument—Plaintiffs or Defendants?

A: Plaintiffs

The Court points out that visibly pregnant young women are denied membership, while other students who engaged in premarital sex are not denied membership.

Here, "similarly situated" means other students who have engaged in premarital sex.

Q: What kind of evidence could the defendants have provided to prove that they really were excluding on the basis of premarital sex and not pregnancy?

A: They could have asked all students about premarital sexual activity and denied admission to all who engaged in it; or, they could have shown that they also excluded male students who were fathers.

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

1. Who are the plaintiffs and the defendants?

The plaintiffs are the two senior girls, Somer Chipman and Chasity Glass, who were pregnant and gave birth during high school. The defendants were the Grant County School District, the Superintendent, and members of the Grant County Board of Education.

2. How does the national NHS handbook deal with parental status?

The NHS handbook says that pregnancy may be considered as a factor in determining character. However, if schools consider pregnancy, they must also consider paternity in the same way.

3. What facts show the plaintiffs were discriminated against?

They both have GPAs higher than what is required to be an NHS member; they were the only individuals with qualifying GPAs who were denied admission into the NHS; other students who were admitted into NHS were not questioned about their premarital sexual activity.

4. What have other courts determined when faced with this issue?

- *Pfeiffer v. Marion Center Area School District - Pregnant student may be dismissed from NHS as long as both genders are treated similarly. Schools are allowed to consider leadership and character qualities. Court must consider the fact that a male student fathered a child, yet had not been asked to resign from the chapter.*
- *Wort v. Vierling - Student was dismissed from NHS based on pregnancy, not premarital sex. Since only women can become pregnant, this is unequal treatment based on gender.*
- *Cazares v. Barber - Pregnant girl was denied entry into NHS, but male student who fathered a child out of wedlock was accepted. This was an obvious violation of Title IX*

5. How did the plaintiffs show discrimination?

Plaintiffs were treated differently than other students who also engaged in premarital sexual activity, but were not pregnant. The plaintiffs were denied from the NHS, but other students who engaged in premarital sexual activity were not denied.

7. What does the court order?

The court orders that the school admit the plaintiffs to the Grant County NHS chapter.

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

Pregnancy discrimination is a type of gender discrimination because only females can become pregnant.

Lesson 4 **Applying Title IX**

Lesson Objectives

Students will be able to

- Evaluate the protections Title IX provides against sexual harassment
- Analyze a court opinion that prohibits sexual harassment on the basis of Title IX
- Draft a proposed addition to the Title IX regulations that explicitly prohibits sexual harassment

Materials

- Handout 8: *Davis v. Monroe County Board of Education* and teacher annotations.

Lesson Assessments

- Class discussion and factor list about *Davis v. Monroe County Board of Education*

Instructional Activities

Anticipatory Set

- Instruct students to respond to the following prompt by reading it first and then discussing it with a partner. Next, have students share out some of their answers.

You are a lawyer. A woman walks into your office and complains that her fifth-grade daughter, Lisa, is being bullied at school by a fifth grade boy, Gerald. The mother states that over the course of the last few months, Gerald attempted to touch Lisa's breasts and genital area. Gerald also made vulgar statements such as "I want to get in bed with you" and "I want to feel your boobs." In multiple instances, Gerald acted in a sexually suggestive manner. These incidents took place during school hours in the classroom, gym, and hallway of Lisa's public elementary school. Lisa reported each of these incidents to her teachers. Although Lisa's teachers and principal were aware of Gerald's behavior, the school took no action against Gerald and made no effort to separate Gerald and Lisa. Gerald has been charged with, and pleaded guilty to, sexual battery for his misconduct.

In what way might Title IX come into play in a situation like this?

Direct Instruction

Unit 3: Lesson 4

Title IX: Gender Equality in Public Education

- Remind students that they have been studying the statutory language of Title IX, along with specific regulations implementing it. Point out that neither the statutory text nor the regulations refer explicitly to sexual harassment or bullying. Nonetheless, the Supreme Court has ruled that Title IX protects against this type of conduct. It has concluded that harassment of students—when committed by school employees, other students, or others—can amount to gender discrimination prohibited by Title IX. Ask students why that might be, and elicit volunteer responses.
- Explain that the Supreme Court has reasoned that when students become victims of harassment because of their gender, and that harassment interferes with the student's academic performance or emotional and physical well-being, it creates a discriminatory environment which the statute forbids.

Guided Practice

- Distribute **Handout 8: *Davis v. Monroe County Board of Education***, which provides excerpts from a 1999 Supreme Court opinion. Explain that in this case, a mother sought damages from the school board because another student sexually harassed her daughter. The facts of the case are from the Do Now activity at the beginning of class. As students read through the case, instruct them to highlight and take notes responding to the following question:
 - When does harassment amount to gender discrimination so that it is forbidden under Title IX? What factors does the court consider?
- When students have finished reading and annotating, call on volunteers to list factors that the court considers. List them on the board, or have students come up to the board one at a time to write a factor that they found. Discuss and clarify each factor as it is listed.
- Explain that Title IX does not provide *explicit* protection against sexual harassment. But if a regulation were to be drafted, it could either replicate the factors considered in *Davis*, or it could provide greater or lesser protection. Ask students if they think the *Davis* factors are sufficient to protect against sexual harassment, or if they think the factors are too strict or too loose. Allow students to discuss the question with a partner before sharing their thoughts with the class.

Independent Practice

- Instruct students to refer to **Handout 4: Code of Federal Regulations - Athletics** from Lesson 2, and **Handout 6: Code of Federal Regulations - Marital or Parental Status** from Lesson 3. Remind them that these are examples of how Title IX has been implemented in specific contexts: athletics, and marital/parental status. Explain to students that now they will be writing their own regulation to apply Title IX to a new context: sexual harassment. In writing the regulation, students should consider:
 - The factors listed in the *Davis* opinion
 - Ideas from the class discussion of *Davis*
 - Examples from the Code of Regulations on athletics and marital/parental status

Unit 3: Lesson 4

Title IX: Gender Equality in Public Education

- Students may work in groups of three or four to draft a new set of regulations that will provide explicit protection against harassment and bullying on the basis of gender.
- Allow students to work together for the remainder of the class period on drafting their proposed regulation.

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 8: Answer Key

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 Court considers: can the mother sue the school board because of student-on-student harassment?

Yes, if:

- (1) the school board knows about the harassment*
- (2) the school board acts with deliberate indifference*
- (3) the harassment is so severe, pervasive, and objectively offensive that it bars the victim's access to educational opportunity or benefit*

Since the school board receives federal funding, it must comply with Title IX.

Under Title IX, one type of "discrimination" is when a student is excluded from participation in, or denied the benefits of, any education program or activity that receives federal funding.

Title IX says that students must not be denied access to educational benefits and opportunities because of their gender.

Here, the Court restates the three factors outlined in the introduction.

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

One type of sexual harassment that would violate Title IX: physically depriving a student of access to school resources (e.g. with physical threats)
- Threats happen every day
- Administrators know about it, but deliberately ignore requests for help

Victims don't have to be literally blocked from the educational opportunity; they must be "effectively denied equal access." This could mean the female students are intimidated and threatened enough that they are too fearful to access or enjoy the educational opportunity in the same way that their male peers do.

Is it Title IX harassment?
Consider:
- ages of harasser and victim
- number of individuals involved

Some typical bullying or teasing isn't enough

It must be so serious that the victims are denied equal access to education.

Although this case is about student-on-student harassment, the Court notes that teacher-on-student harassment is more likely to deny a student equal access to educational benefits.

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.

Harassment in this case was both verbal and physical.

Concrete negative effect on victim's education: the victim's grades dropped severely because she could not concentrate on her studies; she also became suicidal.

Lesson 5 **Adding to Title IX**

Lesson Objectives

Students will be able to

- Analyze the application of Title IX in different contexts
- Draft an enforcement policy for Title IX
- Reflect on the issues of equality and non-discrimination

Materials

- Handout 9: Other Title IX Regulations
- Teacher rubric for proposed regulations / enforcement policy

Lesson Assessments

- Written proposed regulations / enforcement policy
- Class presentation
- Exit ticket

Instructional Activities

Anticipatory Set

- Do Now: What would sex discrimination look like in the following educational contexts?
Ask students to jot down an idea for each:
 - Admission
 - Recruitment
 - Academic programs
 - Housing
 - Restrooms, locker rooms, and showers
 - Access to classes and schools
 - Counseling
 - Financial assistance
 - Employment assistance
 - Health and insurance benefits
 - Physical Education classes

Direct Instruction

- Distribute **Handout 9: Other Title IX regulations**. Read through it together as a class, having a different student read each regulation out loud. As you go, pause and consider: What exactly is prohibited or required by the section? Is it similar to or different from what you imagined when you jotted down your own ideas in the “Do Now” activity?

Guided Practice

- Instruct students to gather with their groups from yesterday to finish drafting their Title IX regulation prohibiting sexual harassment and bullying on the basis of gender. Tell them that they will be presenting their proposals to the class, so they should make the language in their regulations as clear as possible.
- Once students believe they have completed a working draft regulation, write the following questions on the board. Instruct students to go through the questions with their group and assess whether or not their regulation provides answers. If not, they should add to and revise their regulation so that it provides guidance on each of the following questions:
 - What would be considered sexual harassment or bullying? What would not?
 - How will you know if the bullying or harassment is on the basis of gender?
 - What are teachers responsible for doing? What are administrators responsible for doing?
 - What will be the consequences if appropriate actions are not taken?
 - How bad does the harassment or bullying have to be before action is required?
 - What factors should the school consider when assessing the severity of the harassment or bullying?
- After students have had sufficient time to write and revise, have each group present their proposals to the class. After the group explains their regulation, call on students who are not in the group to answer some of the above questions. Discuss and evaluate how effective the regulation was in providing answers and guidance.

Closure

- Exit ticket: Students should respond to the following prompt: What ideas did your classmates come up with that you hadn't thought of? How would you evaluate your own group's regulation now that you've heard everyone else's?
- Students should turn in their written regulations and exit tickets.

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.

Teacher's Rubric
Proposed Regulation

Names:

	Did not address		Partially answered		Fully answered
What would be considered sexual harassment or bullying? What would not?	1	2	3	4	5
How will you know if the bullying or harassment is on the basis of gender?	1	2	3	4	5
What are teachers responsible for doing? What are administrators responsible for doing?	1	2	3	4	5
What will be the consequences if appropriate actions are not taken?	1	2	3	4	5
How bad does the harassment or bullying have to be before action is required?	1	2	3	4	5
What factors should the school consider when assessing the severity of the harassment or bullying?	1	2	3	4	5

Total: _____ / 30 points