

■ Title IX

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Author: Birch Bayh, original bill by Patsy Mink and Edith Green

Genre: law

Summary Overview

Equal opportunity in education had been at the center of the civil rights movement since the filing of *Brown v. Board of Education* in 1954. As women pushed for equal rights, education was one area that was understood to be of vital importance. In 1970, Representative Edith Green held hearings on the issue and, with Representative Patsy Mink, introduced legislation. In February 1972, with the assistance of Representatives Mink and Green, Senator Birch Bayh introduced essentially the same bill, which ultimately passed. Known as Title IX (for its place in federal statutes), the act transformed educational opportunities for girls and women.

Although Title IX is generally referred to in the context of sports, the law goes well beyond this limited, albeit very public, aspect of educational institutions. It outlaws most gender-based discrimination in education. While there are very specific exceptions, any educational entity that receives federal money for any part of its program is subject to this law. Thus, while opportunities to participate in athletics is one area where great changes had to be made at most schools, this law also applies to admission to schools and academic programs. It has led to significant changes in school policies, increased participation of women and girls in athletics, and added to efforts to address issues such as sexual harassment and violence in educational settings. The law is considered a cornerstone of modern liberal efforts to promote gender equity in education and has had a profound impact on expanding women's participation and rights within the educational system.

Defining Moment

While the push for gender equality in American society, as well as racial and ethnic equality, had existed for decades, the 1960s brought new strength to these efforts. What was called the women's liberation movement, or the feminist movement, not only advocated changes in the role women were expected to play within society, but it also advocated equal opportunity and treatment for women in education and employment. In the 1950s, only men were considered for most professional positions, giving rise to the thought that women did not need educational opportunities to be housewives or part of the clerical staff. Even within the professional roles allocated for women, such as nursing, training was generally offered only to unmarried women. Fighting against these expectations, women sought the freedom to choose how to live their lives, including the educational opportunities necessary to succeed in their choices. Although by the 1960s the number of women in higher education had

increased since World War II, not all programs were open to them. Title IX was a step toward opening most programs to women and to insuring equal opportunity and treatment within these institutions and fields of study.

President Nixon was willing to work on many issues with the much more liberal Congress, controlled by the Democratic Party. Women's rights were a part of the legislative agenda for this Congress, which passed the Equal Rights Amendment (never ratified by enough states) in March 1972. Previously, in 1970, Representative Green had chaired hearings on discrimination against women in education, but the resulting bill did not get through that session of Congress. In 1972, Senator Bayh added an amendment to a bill on higher education, reflecting Mink's/Green's bill and the Equal Rights Amendment, which at that time was stalled in Congress. In many ways, Title IX was slipped through Congress, as supporters were urged by Green to be quiet, keeping

opposition to a minimum. The bill (S 659) was also being propelled through Congress because it contained provisions to stop public school busing for desegregation until 1974 and to limit the use of federal money for busing. When President Nixon signed the bill, he said nothing about Title IX, focusing his remarks on the issue of busing for desegregation. Thus, what was a major victory for those seeking educational equality for women became law, virtually unnoticed.

Author Biography

Birch Evans Bayh, Jr. (b. 1928) of Indiana was a Democrat who served three terms in the Senate. His undergraduate degree was from Purdue University and he had a law degree from Indiana University School of Law. He authored the Twenty-fifth and Twenty-sixth Amendments to the Constitution, as well as the failed Equal Rights Amendment.

Edith Starrett Green (1910–1987), a Democrat from Oregon, was a graduate of the University of Oregon and served ten full terms in the House of Representatives. While she might have moved to the Senate, she stayed in the House because the seniority system, then in place, did not allow House leaders to bypass her in committee assignments. A former teacher, she was an influential member of the Committee on Education.

Patsy Takemoto Mink (1927–2002), from Hawaii, was the first woman of color in Congress and the first woman representative from Hawaii. She had a BA from the University of Hawaii and a law degree from the University of Chicago Law School. She had wanted to be a doctor, but was denied admission to twelve medical schools because most allowed only a few women entry each year. A Democrat, she served twelve and a half terms in the House (1965–77, 1990–2003).



Historical Document

Title IX

Title IX, Education Amendments of 1972

(Under Title 20 U.S.C. Sections 1681–1688)

Section 1681. Sex

(a) Prohibition against discrimination; exceptions. 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, except that:

(1) Classes of educational institutions subject to prohibition in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) Educational institutions commencing planned change in admissions in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

(3) Educational institutions of religious organizations with contrary religious tenets

this section shall not apply to any educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) Educational institutions training individuals for military services or merchant marine

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) Public educational institutions with traditional and continuing admissions policy in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) Social fraternities or sororities; voluntary youth service organizations

this section shall not apply to membership practices—

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association; Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) Boy or Girl conferences

this section shall not apply to—

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for—

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) Father-son or mother-daughter activities at educational institutions

this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) Institutions of higher education scholarship awards in “beauty” pageants

this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

(b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance.

Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: Provided, that this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) Educational institution defined.

For the purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college or department.

Section 1682. Federal administrative enforcement; report to Congressional committees

Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 1681 of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement

adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* that no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Section 1683. Judicial Review

Any department or agency action taken pursuant to section 1682 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 1682 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

Section 1684. Blindness or visual impairment; prohibition against discrimination

No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity; but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

Section 1685. Authority under other laws unaffected

Nothing in this chapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

Section 1686. Interpretation with respect to living facilities

Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes....

Section 1688. Neutrality with respect to abortion

Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.



Document Analysis

Although most people associate Title IX with athletics, the law says nothing directly about sports. The law is a “prohibition against discrimination” in education, based on a person’s sex. In addition, it also has one section which prohibits discrimination based on “blindness or visual impairment.” The basic law is simply stated in one sentence, with several paragraphs of exceptions following the prohibition against discriminatory policies in admission, participation, or benefits in educational programs or activities. Most exceptions seem to be based upon what it would take to assure skeptical members of Congress that certain traditional programs could continue. However, as exemplified by the law’s impact on sports, the simplicity of the prohibition as law is deceptive due to the scope of its application upon educational institutions.

Title IX does not do away with single-sex colleges, for those that historically have had that admissions policy, or for those schools related to the military or merchant marines. Market forces (most students’ desire coeducational institutions) or laws (a 1975 law opened the military academies) have caused most single-sex colleges to change their admission policies since that time. It should be noted that in Title IX, an exemption is not specifically given for single-sex elementary or high schools. Gender-based admission quotas, which had been common in many professional graduate programs, became illegal. Two results of the mandate that the treatment of male and female students be given equal opportunities has been the end of prohibitions against pregnant, or married, women’s participation in the educational program and the use of Title IX to create institutional policies with the goal of ending instances of sexual violence or harassment.

The most visible change to the general public is the change to athletic programs. Many schools did, and do, complain that the impact of Title IX is to decrease opportunities for male athletes. However, overall, the number of male athletes at the collegiate level has increased since 1972, although not as dramatically as the increase in women. Lists of programs which have been deleted have been compiled by various groups, with college wrestling as the sport most often cut.

This is presented as the outcome of the law, rather than the new opportunities which are being given to female athletes. While some sports were definitely cut to balance athletic programs, the cost-benefit value of others was such that, even without Title IX, they would have been eliminated. The guidelines given for the implementation of Title IX is not that there must be total equality between programs for men and women, but rather that athletic opportunities, including facilities and scholarships, be substantially proportional.

The YMCA, YWCA, Boys State, Girls State, social fraternities, and “beauty” pageant” scholarships exemptions are for things only loosely associated with formal educational institutions; however, they assisted in getting the bill passed. The mother-daughter/father-son exemption is the only thing that might be considered an activity specifically offered by some schools. The section on living facilities deals with a concern that many had, and to allay concerns, single-sex residence halls are legal, but need to be substantially equivalent. Thus, peripheral exemptions are allowed, but what it takes for an environment conducive to education must be gender-neutral.

Essential Themes

The basic foundation for Title IX is equal opportunity for all students. While obviously this does not mean all students will take advantage of all opportunities, or be successful, Title IX simply dictates that there be essentially equal opportunities for both genders. In the more than four decades since Title IX was signed into law, higher education has had monumental changes as a result of Title IX and other social forces. In 1971–72, about 43 percent of the bachelor’s degrees were earned by women, versus about 57 percent in 2011–12. Graduate and professional education has had an even larger change, with dental schools going from about 1 percent women to over 40 percent. Law schools and medical schools have moved from about 7 and 10 percent respectively, to women earning about 50 percent of the degrees. Within PhD programs, the increase has been from about 12 percent in 1970 to more than 50 percent of the new degrees being earned by women in 2012. Opening all programs to

women on an equal basis has had a great, if less visible, impact on higher education.

The more visible aspect of Title IX, sports, has also had great changes for women. At the high school level, about ten times as many girls compete in sports as was the case before Title IX. At the collegiate level, which previously had a higher participation rate than at high schools, after more than forty years, about six times as many women participate in varsity athletics than was the case before Title IX. Even though there are more female undergraduates than male, there are still more opportunities for males to participate in varsity sports, and more money is expended on their programs. The increased physical activity created by girls' and young women's participation in sports has been credited with an overall increase in the quality of women's health.

The passage of this law was very much a part of the effort for greater equality within the general civil rights movement and, more specifically, what is known as second wave feminism. While most view the second wave as ending by the late 1980s, the concerns for equal opportunity remain. The simple goal of true equality has not been fully attained, yet Title IX has been one major factor in the gains made by women.

Under the second Trump administration, the Department of Education was slated to be drastically reduced, starting with the department's Office of Civil Rights, which, among other things, oversees Title IX cases.

—Donald A. Watt, PhD

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