

# DOCUMENT RESUME

ED 236 508

CG 017 060

AUTHOR Lines, Patricia; And Others  
 TITLE Sex Equity in Public Education. Issuegram 35.  
 INSTITUTION Education Commission of the States, Denver, Colo.  
 PUB DATE 1 Mar 83  
 NOTE 10p.  
 PUB TYPE Information Analyses (070)  
 EDRS PRICE MF01/PC01 Plus Postage.  
 DESCRIPTORS Court Litigation; \*Educational Policy; Educational Principles; \*Equal Education; \*Legal Responsibility; \*Public Education; \*Sex Fairness

## ABSTRACT

Sex discrimination in American education remains a persistent problem that requires concerted attention from many different perspectives. This Issuegram focuses on the legal mandates requiring sex equity in public schools. A brief background indicates a history of sex discrimination in education dating back to 1783. Several important weapons for ending sex discrimination are discussed, including federal constitutional requirements, state equal rights amendments, Title IX, and equal employment opportunity laws including Title VII of the 1964 Civil Rights Act. Some results of litigation under these laws are briefly discussed, and implications for state and federal policymakers are highlighted. (JAC)

\*\*\*\*\*  
 \* Reproductions supplied by EDRS are the best that can be made \*  
 \* from the original document. \*  
 \*\*\*\*\*

# ecs issuegram

A service of the Education Commission of the States

## SEX EQUITY IN PUBLIC EDUCATION

Issuegram 35

Patricia Lines  
Christiane Citron  
Grace Belsches-Simmons

### ISSUEGRAMS

are summary reports on major education issues written for state leaders. They include background information, analysis of differing views, lists of sources and references — all written for busy readers. Each is updated periodically. For more information, see inside back cover or call ECS Distribution Center at (303) 830-3820.

ecs  
issuegram

Education Commission of the States  
Distribution Center  
1860 Lincoln Street, Suite 300  
Denver, Colorado 80295

U.S. DEPARTMENT OF EDUCATION  
NATIONAL INSTITUTE OF EDUCATION  
EDUCATIONAL RESOURCES INFORMATION  
CENTER (ERIC)

This document has been reproduced as  
received from the person or organization  
originating it.

\* Minor changes have been made to improve  
reproduction quality.

\* Points of view or opinions stated in this docu-  
ment do not necessarily represent official NIE  
position or policy.



First Class  
U.S. POSTAGE  
**PAID**  
Denver, Colorado  
Permit No. 153

"PERMISSION TO REPRODUCE THIS  
MATERIAL HAS BEEN GRANTED BY

*S. M. Allen*

TO THE EDUCATIONAL RESOURCES  
INFORMATION CENTER (ERIC)."

This Issuegram was prepared on March 1, 1983, by Patricia Lines, Christiane Citron and Grace Belsches-Simmons, at the ECS Law and Education Center. For more detail, call 303-830-3639.

## 35. Sex Equity in Public Education

### The Issue

Sex discrimination in American education remains a persistent problem that requires concerted attention from many different perspectives. This Issuegram focuses on the legal mandates requiring sex equity in public schools.

### The Background

Throughout history, an individual's sex has profoundly affected his or her educational and career opportunities. In December 1783, Lucinda Foote at age 12, a young scholar of Greek and Latin, was denied admission to Yale University, although "fully qualified, except in regard to sex . . . ." In 1837, Oberlin College admitted four women and became the first "regular" postsecondary institution to try coeducation. These women served the men at meals, mended their clothing, and did the college laundry; they were required to remain silent in class. In 1982, Joe Hogan was denied admission to the nursing school of the Mississippi University for Women; he was the wrong sex.

Studies in the seventies of elementary school texts indicated that texts focused more often on boys than girls (by a ratio of 5 to 2). Males in the texts studied were often clever, persistent, heroic, creative, and adventurous, while females were often dependent, passive, incompetent, or fearful. In 65 out of 67 stories where one sex demeaned the other, females were demeaned by males. Males appeared in 134 different career roles; females in 31. Many career roles reflected sex stereotyping.

Recently, educators have sought to end sex discrimination in education. Their most important weapons include constitutional and other legal mandates.

### Federal Constitutional Requirements

The fourteenth amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws." On finding an intentional policy to burden a class (or group of persons), the United States Supreme Court has required "compelling" or "overriding" justification for that policy. The level of justification required almost always determines the outcome of cases. The courts usually strike down burdens on suspect classes, and uphold burdens placed on others. Traditionally, only classifications by race and national origin were considered "suspect;" other classifications had only to be rationally based.

However, the United States Supreme Court has applied an intermediate level of justification for sex discrimination claims since 1971 without acknowledging a break with precedent that required only a rational basis for such claims. Finally, in 1982, it expressly required "exceedingly persuasive justification" of important governmental objectives before it would uphold sex-based classifications. Applying this standard, the Court struck down a policy of excluding males from the school of nursing in Hogan v. Mississippi University for Women. The narrow ruling gives few clues as to how sex segregation in admission policies at other institutions would be treated. In fact, in 1975 an equally divided Court had upheld the continuation of a sex-segregated public high school. Meanwhile, litigants and courts are likely to rely on more specific statutes, leaving the parameters of federal constitutional protection unsettled.

administered unit, such as a graduate or professional school. The Supreme Court will review this issue.

- "Federal financial assistance" includes direct (programmatic) federal moneys. However, much federal assistance, such as tuition for veterans, is indirect and impossible to trace to a particular program or activity. Lower courts disagree about whether institutions receiving such indirect assistance are subject to Title IX, and the issue is on the Supreme Court's docket.
- Either an injured person or a federal supervisory agency may enforce the statute. The federal agency may withhold federal assistance, after a hearing, if there is sex discrimination in a federally funded program.
- Title IX specifically exempts certain sex-based practices in education, such as admission policies of private undergraduate institutions, and public and private primary and secondary schools. However, Title IX forbids exclusion of students from a public college or university on the basis of sex.

Procedural and jurisdictional arguments have snarled the enforcement of Title IX. Its ultimate effect on sex discrimination is therefore difficult to assess.

Many states also have laws that specifically prohibit sex discrimination in education. Additional states, such as Ohio and New York, are currently considering similar legislation.

#### Equal Employment Opportunity Laws

Title VII of the Civil Rights Act of 1964 broadly prohibits discrimination based on sex (or race, color, religion, or national origin) in compensation, terms, conditions or privileges of employment. It attempts to eliminate discriminatory barriers to the employment and promotion of women, and specifically bars discrimination based on pregnancy or childbirth.

- This comprehensive federal statute applies to employers of 15 or more employees. Most public and private educational institutions are subject to this law. The law somewhat overlaps with Title IX, which also protects employees.
- Title VII specifically excludes certain employment practices from coverage. Sex-based policies based on bona

vide occupational qualifications are legal, although the Supreme Court clearly considers this exception very narrow. Likewise, use of professionally developed ability tests that have a disparate impact on the sexes are not unlawful, provided they are job-related and not used as a pretext for discrimination.

Litigation under Title VII has led to recognition of two distinct types of claims.

- First, "disparate treatment" because of sex, was "the most obvious evil" that Congress addressed in Title VII. This type of claim under Title VII requires proof of discriminatory intent, sometimes through inference. Unlike the Constitution, which allows classifications if adequate justification exists, Title VII prohibits deliberate sex-based policies regardless of their merit. Thus, Title VII prohibits an employer from using sex-based annuity tables, even though women live longer than men. Such policies "tend to preserve traditional assumptions about groups rather than thoughtful scrutiny of individuals," the Court has observed. "[E]ven a true generalization about the class is an insufficient reason for disqualifying an individual to whom the generalization does not apply." For this reason, schools ordinarily may not refuse to hire pregnant or married women, or mothers.
- Second, Title VII also prohibits apparently neutral practices where statistical evidence shows a "disparate impact" on one sex, unless the employer can prove that the requirement was necessary for the job. If the employer fails to produce such proof, such practices are illegal, regardless of the lack of direct proof of discriminatory intent. For example, requiring passage of a written examination is legal only if the test is shown to measure job-related criteria.

Employees are also guaranteed equal wages for equal work under the federal Equal Pay Act. In addition, most states and some cities have enacted civil rights laws providing similar protection. In fact, Title VII recognizes the important role of state laws, and requires an individual to first seek redress from the appropriate state or local agency before seeking relief under Title VII.

## Policy Implications

Eliminating sex discrimination in education is not easy. States should lead by helping public education institutions understand legal requirements, thus avoiding the high cost of ignoring them. Generally, a policy's disparate impact on male or female students or faculty raises questions about the policy's legality, but is not determinative... Under the Constitutional and statutory provisions discussed here, either a clear (or inferred) intent to discriminate must be present, or a disparate impact that cannot be explained or justified by proof that the neutral policy served important and legitimate nondiscriminatory goals. Finally, states may want to consider affirmative action -- seeking qualified women and men regardless of sex stereotyping of abilities will fully utilize the states' human resources.

## Resources

Bailey, Susan, and Rebecca Smith. Policies for the Future. Washington, D.C.: Resource Center on Sex Equity Council of Chief State School Officers, May 1982.

Citron, Christiane. "Legal Bibliography on Sex Equity." Denver, Colo.: Education Commission of the States, LEC 83-5, March 1983. (Containing citations to judicial decisions and statutes discussed in this issuegram). \$1.50.

Comment. "Teaching Woman Her Place: The Role of Public Education in the Development of Sex Roles," Hastings Law Journal vol. 24 (1973): 1191-1226..

Guerrier, Charles. Title IX and the Achievement of Equal Educational Opportunity: A Legal Handbook. Washington, D.C.: Resource Center on Sex Equity, Council of Chief State School Officers, September 1979.

National Advisory Council on Women's Educational Programs, Educational Equity: A Continuing Quest, 1981 Annual Report, Washington, D.C., March 1982.

Title IX: The Half Full, Half Empty Glass. Washington, D.C.: National Advisory Council on Women's Educational Programs, Fall 1981.

(See reverse side for list of Issuegrams)

Name \_\_\_\_\_

Title or Organization \_\_\_\_\_

Address \_\_\_\_\_

City, State and ZIP \_\_\_\_\_

**Price:** Single copies of Issuegrams are free upon request to the seven ECS Commissioners in each of the 51 member jurisdictions. For others, each Issuegram is \$2 prepaid, including postage and mailing. Orders for 10 or more copies are \$1.50 per copy prepaid. **\$1 additional charge on all non-prepaid orders (to cover invoicing).** All Issuegrams are mailed first class. Please make checks payable to the Education Commission of the States. To order by phone or for further information, call Terry Shinkle at 303/830-3820.

       Check here if you are an ECS Commissioner

\_\_\_\_\_ Please bill me

\_\_\_\_\_ Payment enclosed

[illegible]

Total Cost For Order \$ \_\_\_\_\_

Mail this order form to: Distribution Center  
**EDUCATION COMMISSION OF THE STATES**  
1860 Lincoln Street, Suite 300  
Denver, CO 80295



# ecs issuegrams

A service of THE EDUCATION COMMISSION OF THE STATES

ISSUEGRAMS are summary reports on major education issues written for state leaders. They include background information, analysis of differing views, lists of sources and references — all written for busy readers. Each is updated periodically.

## Issuegrams currently available:

1. Research Findings on Effective Teaching and Schools
2. Achievement Trends in the Arts
3. Collective Bargaining Issues Continue
4. Adult Learning: A Major Trend
5. Low-Cost School Improvement
6. Achievement in Mathematics and Science
7. Testing for Teacher Certification
8. Energy Education: Another Passing Fad?
9. How Well Can Students Read and Write?
10. Special Education and the Law
11. State Programs of School Improvement
12. Compulsory Schooling and Nontraditional Education
13. Education for Economic Growth
14. The Four-Day School Week
15. Setting Up Blue Ribbon Commissions
16. Student Achievement in Public and Private Schools
17. Information Society Challenges Education
18. School Programs To Prevent Drug Abuse
19. Tuition Tax Credits
20. Student Minimum Competency Testing
21. Improving Higher Education Through Budget Incentives
22. Regulation of Postsecondary Institutions: Model Legislation
23. State Policies To Screen And Attract Teachers
24. Teacher Shortages in The Next Decade
25. School Finance Equity
26. School Finance Reform: Past, Present and Future
27. School Finance Litigation
28. Programs for Special Student Populations
29. Responding To Change: Goals for State Public Education
30. State Structures of Elementary/Secondary Governance
31. The State Legislative Voting Process in Education
32. Implementing the Education Block Grant
33. Prayer, the Bible and The Public Schools
34. Curriculum and The Constitution
35. Sex Equity in Public Education
36. Legal Rules for Student Competency Testing
37. Student Skills for a High Technology Economy
38. State Strategic Planning For Education Technology
39. Migrant Education
40. Postsecondary Program Review

It is the policy of the Education Commission of the States to take affirmative action to prevent discrimination in its policies, programs and employment practices.