



# The Phyllis Schlafly Report



Vol. 7, No. 2, Section 2

Box 618, ALTON, ILLINOIS 62002

September, 1973

## ERA Won't Help Women In Education

Speakers promoting the Equal Rights Amendment often cite "education" as one area where ERA would remedy discrimination against women. This argument is false. There is nothing ERA would do to benefit women in education. It will *not* give them more opportunities, more pay, or more promotions.

ERA proponents usually start off by weeping crocodile tears about discriminations against women which disappeared decades ago, such as women being denied admission to law schools, medical schools, and other graduate schools. This argument belongs in the same chip-on-the-shoulder category as crying about women not having the right to vote. ERA proponents then proceed to relate how women in education are underpaid and denied promotions, some of which is undoubtedly true. What is emphatically *not* true is that ERA is the remedy.

The principal reason ERA will *not* remedy any alleged discrimination against women in education is that Federal legislation is already more than adequate to assure women of everything they could reasonably want. Women are fully guaranteed equality in educational opportunities, admissions, and employment. This equality is spelled out in various Federal laws, and enforced by the ubiquitous Federal bureaucracy.

The leading Congressional proponent of the Equal Rights Amendment, Congresswoman Martha Griffiths, put a statement in the *Congressional Record* on February 28, 1973 in which the leading activist organization promoting equality for women in education, the Women's Equity Action League (WEAL), boasted that: "When the 92nd Congress adjourned, academic women had almost all they had asked for by way of legislation."

Almost? Well, there is a small remaining area which is not covered by current legislation, and which the Equal Rights Amendment would wipe out, namely, the *undergraduate* institutions of higher education which have been traditionally and continually single-sex. This would include seminaries and other religious academic institutions, military schools, and the few remaining colleges which have been traditionally for men only or for women only. The obsession of ERA proponents for a constitutional amendment which would eliminate the right of American citizens to operate or attend single-sex undergraduate colleges, seminaries, or military schools reveals a psychology of compulsion which is simply incompatible with the American traditions of freedom of speech, freedom of association, and freedom of education.

Present legislation also specifically provides that

educational institutions may maintain separate living facilities for persons of different sexes. Such "discrimination" would also be eliminated by the Equal Rights Amendment.

The principal Federal laws which guarantee women equality of treatment in education are the following:

1. The Civil Rights Act of 1964, Title VII, which was extended in March, 1972 to cover all educational institutions, public and private, regardless of whether or not they receive Federal aid.

2. The Education Amendments of June 1972, Title IX, which spell out the complete and specific prohibition against discrimination on the basis of sex in all Federally-assisted educational programs, from pre-school through graduate school, public and private. (Nearly all educational institutions, in the country are "Federally-assisted" in some way.)

3. The Equal Pay Act of 1963 which requires equal pay for equal work.

4. Executive Order 11246 which established the Higher Education Guidelines and authorizes the Department of Labor, the Office for Civil Rights, and the Equal Employment Opportunity Commission:

- a) to investigate employment practices;
- b) to investigate "patterns of discrimination" as well as individual cases of discrimination;
- c) to deny, terminate or cancel a Government contract in whole or in part, and to blacklist an institution from further Government contracts;
- d) to require educational institutions to develop an "affirmative action plan" to recruit, employ and promote women (and other so-called minorities);
- e) to require that "corrective goals" and "timetables" be established to fulfill an approved "affirmative action plan";
- f) to alter or abolish anti-nepotism regulations of educational institutions;
- g) to require educational institutions to compile data and information on race, sex, color, religion and national origin regardless of any conflicting state or local law, invoking the principle of Federal supremacy.

Ratification of the Equal Rights Amendment would not benefit women in education in any possible way. It would, however, gravely interfere with present educational rights which are retained by our people, and it would accelerate the meddling activism of Federal bureaucrats in every remaining aspect of our educational system.

# Federal Laws<sup>1</sup> and Regulations Concerning Sex Discrimination in Educational Institutions<sup>2</sup>

October, 1972

Compiled by Project on the Status and Education of Women, Association of American Colleges

	Executive Order 11246 as amended by 11375	Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972	Equal Pay Act of 1963 as amended by the Education Amendments of 1972 (Higher Education Act)	Title IX of the Education Amend- ments of 1972 (Higher Education Act) <sup>13</sup>	Title VII (Section 799A) & Title VIII (Section 845) of the Public Health Service Act as amended by the Comprehensive Health Manpower Act & the Nurse Training Amendments Act of 1971 <sup>14</sup>
Effective date	Oct. 13, 1968	March 24, 1972 (July 1965 for non- professional workers.) (Institutions with 15-24 employees are not covered until March 24, 1973.)	July 1, 1972 (June, 1964, for non-professional workers.)	July 1, 1972 (Admissions provisions effective July 1, 1973.)	Nov. 18, 1971
Which institutions are covered	All institutions with federal con- tracts of over \$10,000. <sup>7</sup>	All institutions with 15 or more employees.	All institutions.	All institutions receiving federal monies by way of a grant, loan, or contract (other than a contract of insurance or guaranty).	All institutions receiving or benefit- ing from a grant, loan guarantee, or interest subsidy to health per- sonnel training programs or re- ceiving a contract under Title VII or VIII of the Public Health Service Act. <sup>15</sup>
What is prohibited <sup>3</sup>	Discrimination in employment (in- cluding hiring, upgrading, salaries, fringe benefits, training, and other conditions of employment) on the basis of race, color, religion, na- tional origin or sex. Covers all employees.	Discrimination in employment (in- cluding hiring, upgrading, salaries, fringe benefits, training and other conditions of employment) on the basis of race, color, religion, na- tional origin or sex. Covers all em- ployees.	Discrimination in salaries (includ- ing almost all fringe benefits) on the basis of sex. Covers all em- ployees.	Discrimination against students or others <sup>14</sup> on the basis of sex. <sup>15</sup>	Discrimination in admission of students on the basis of sex and against some employees. <sup>16</sup>
Exemptions from coverage	None.	Religious institutions are exempt with respect to the employment of individuals of a particular re- ligion or religious order (including those limited to one sex) to per- form work for that institution. (Such institutions are not exempt from the prohibition of discrimina- tion based on sex, color and na- tional origin.)	None.	Religious institutions are exempt if the application of the anti-dis- crimination provisions are not con- sistent with the religious tenets of such organizations. Military schools are exempt if their primary purpose is to train indi- viduals for the military services of the U.S. or the merchant marine. Discrimination in admissions <sup>14</sup> is prohibited only in vocational insti- tutions (including vocational high schools), graduate and professional institutions, and public undergrad- uate coeducational institutions.	None.
Who enforces the provisions?	Office of Federal Contract Compli- ance (OFCC) of the Department of Labor has policy responsibility and oversees federal agency en- forcement programs. OFCC has designated HEW as the Compli- ance Agency responsible for en- forcing the Executive Order for all contracts with educational institu- tions. HEW's Office for Civil Rights (Division of Higher Education) conducts the reviews and investiga- tions.	Equal Employment Opportunity Commission (EEOC). <sup>9</sup>	Wage and Hour Division of the Employment Standards Adminis- tration of the Department of Labor.	Federal departments and agencies which are empowered to extend financial aid to educational pro- grams and activities. HEW's Office for Civil Rights (Division of Higher Education) is expected to have pri- mary enforcement powers to con- duct the reviews and investiga- tions. <sup>17</sup>	HEW's Office for Civil Rights (Divi- sion of Higher Education) con- ducts the reviews and investiga- tions.
How is a complaint made?	By letter to OFCC or Secretary of HEW.	By a sworn complaint form, ob- tainable from EEOC.	By letter, telephone call, or in person to the nearest Wage and Hour Division office.	Procedure not yet specified. A letter to Secretary of HEW is ac- ceptable.	Procedure not yet specified. A letter to Secretary of HEW is ac- ceptable.
Can complaints of a pattern of discrimination be made as well as individual complaints?	Yes. However, individual com- plaints are referred to EEOC.	Yes.	Yes.	Yes.	Yes.
Who can make a complaint? <sup>4</sup>	Individuals and/or organizations on own behalf or on behalf of ag- grieved employee(s) or appli- cant(s).	Individuals and/or organizations on own behalf or on behalf of ag- grieved employee(s) or appli- cant(s). Members of the commis- sion may also file charges.	Individuals and/or organizations on own behalf or on behalf of aggrieved employee(s).	Individuals and/or organizations on own behalf or on behalf of aggrieved party.	Individuals and/or organizations on own behalf or on behalf of ag- grieved party.
Time limit for filing complaints <sup>5</sup>	180 days.	180 days.	No official limit, but recovery of back wages is limited by statute of limitations to two years for a non-willful violation and three years for a willful violation.	Procedure not yet determined.	Procedure not yet determined.

Can investigations be made without complaints?	Yes. Government can conduct periodic reviews without a reported violation, as well as in response to complaints. Pre-award reviews are mandatory for contracts over \$1,000,000.	No. Government can conduct investigations only if charges have been filed.	Yes. Government can conduct periodic reviews without a reported violation as well as in response to complaints.	Yes. Government can conduct periodic reviews without a reported violation, as well as in response to complaints.	Yes. Government can conduct periodic reviews without a reported violation, as well as in response to complaints.
Can the entire institution be reviewed?	Yes. HEW may investigate part or all of an institution.	Yes. EEOC may investigate part or all of an establishment.	Yes. Usually the Wage-Hour Division reviews the entire establishment.	Yes. HEW may investigate those parts of an institution which receive federal assistance (as well as other parts of the institution related to the program, whether or not they receive direct federal assistance). If the institution receives general institutional aid, the entire institution may be reviewed.	Yes. HEW may investigate those parts of an institution which receive federal assistance under Title VII and VIII (as well as other parts of the institution related to the program, whether or not they receive assistance under these titles).
Record keeping requirements and government access to records	Institution must keep and preserve specified records relevant to the determination of whether violations have occurred. Government is empowered to review all relevant records.	Institution must keep and preserve specified records relevant to the determination of whether violations have occurred. Government is empowered to review all relevant records.	Institution must keep and preserve specified records relevant to the determination of whether violations have occurred. Government is empowered to review all relevant records.	Institution must keep and preserve specified records relevant to the determination of whether violations have occurred. Government is empowered to review all relevant records.	Institution must keep and preserve specified records relevant to the determination of whether violations have occurred. Government is empowered to review all relevant records.
Enforcement power and sanctions	Government may delay new contracts, revoke current contracts, and debar institutions from eligibility for future contracts.	If attempts at conciliation fail, EEOC or the U.S. Attorney General may file suit. <sup>10</sup> Aggrieved individuals may also initiate suits. Court may enjoin respondent from engaging in unlawful behavior, order appropriate affirmative action, order reinstatement of employees, and award back pay.	If voluntary compliance fails, <sup>11</sup> Secretary of Labor may file suit. Aggrieved individuals may initiate suits when Department of Labor has not done so. Court may enjoin respondent from engaging in unlawful behavior, and order salary raises, back pay and assess interest.	Government may delay new awards, revoke current awards, and debar institution from eligibility for future awards. Department of Justice may also bring suit at HEW's request.	Government may delay new awards, revoke current awards, and debar institution from eligibility for future awards. Department of Justice may also bring suit at HEW's request.
Can back pay be awarded? <sup>6</sup>	Yes. HEW will seek back pay only for employees who were not previously protected by other laws allowing back pay.	Yes. For up to two years prior to filing charges with EEOC.	Yes. For up to two years for a nonwillful violation and three years for a willful violation.	Probably, to the extent that employees are covered.	Probably, to the extent that employees are covered.
Affirmative action requirements (There are no restrictions against action which is non-preferential)	Affirmative action plans (including numerical goals and timetables) are required of all contractors with contracts of \$50,000 or more and 50 or more employees. <sup>1</sup>	Affirmative action is not required unless charges have been filed, in which case it may be included in conciliation agreement or be ordered by the court.	Affirmative action, other than salary increases and back pay, is not required.	Affirmative action may be required after discrimination is found.	Affirmative action may be required after discrimination is found.
Coverage of labor organizations	Any agreement the contractor may have with a labor organization can not be in conflict with the contractor's affirmative action commitment.	Labor organizations are subject to the same requirements and sanctions as employers.	Labor organizations are prohibited from causing or attempting to cause an employer to discriminate on the basis of sex. Complaints may be made and suits brought against these organizations.	Procedure not yet clear. Any agreement the institution may have with a labor organization can not be in conflict with the non-discrimination provisions of the legislation.	Procedure not yet clear. Any agreement the institution may have with a labor organization can not be in conflict with the non-discrimination provisions of the legislation.
Is harassment prohibited?	Institutions are prohibited from discharging or discriminating against any employee or applicant for employment because he/she has made a complaint, assisted with an investigation or instituted proceedings.	Institutions are prohibited from discharging or discriminating against any employee or applicant for employment because he/she has made a complaint, assisted with an investigation or instituted proceedings.	Institutions are prohibited from discharging or discriminating against any employee because he/she has made a complaint, assisted with an investigation or instituted proceedings.	Institutions will be prohibited from discharging or discriminating against any participant or potential participant because he/she has made a complaint, assisted with an investigation or instituted proceedings.	Institutions will be prohibited from discharging or discriminating against any participant or potential participant because he/she has made a complaint, assisted with an investigation or instituted proceedings.
Notification of complaints	Notification of complaints has been erratic in the past. HEW is proposing notifying institutions of complaints within 10 days. HEW notifies institutions a few weeks prior to investigation.	EEOC notifies institutions of complaints within 10 days.	Complaint procedure is very informal. Employer under review may or may not know that a violation has been reported.	Procedure not yet determined.	Procedure not yet determined.
Confidentiality of names	Individual complainant's name is usually given to the institution. Investigation findings are kept confidential by government, but can be revealed by the institution. Policy concerning government disclosure concerning investigations and complaints has not yet been issued. The aggrieved party and respondent are not bound by the confidentiality requirement.	Individual complainant's name is divulged when an investigation is made. Charges are not made public by EEOC, nor can any of its efforts during the conciliation process be made public by the commission or its employees. If court action becomes necessary, the identity of the parties involved becomes a matter of public record. The aggrieved party and respondent are not bound by the confidentiality requirement.	The identity of a complainant, as well as the employer (and union, if involved), is kept in strict confidence. <sup>12</sup> If court action becomes necessary, the identity of the parties involved becomes a matter of public record. The aggrieved party and respondent are not bound by the confidentiality requirement.	Identity of complainant is kept confidential if possible. If court action becomes necessary, the identity of the parties involved becomes a matter of public record. The aggrieved party and respondent are not bound by the confidentiality requirement.	Identity of complainant is kept confidential if possible. If court action becomes necessary, the identity of the parties involved becomes a matter of public record. The aggrieved party and respondent are not bound by the confidentiality requirement.
For further information, contact	Division of Higher Education Office for Civil Rights Department of HEW Washington, D.C. 20201 or Office of Federal Contract Compliance Employment Standards Administration Department of Labor Washington, D.C. 20210 or Regional HEW or DOL Office	Equal Employment Opportunity Commission 1800 G Street, N.W. Washington, D.C. 20506 or Regional EEOC Office	Wage and Hour Division Employment Standards Administration Department of Labor Washington, D.C. 20210 or Field, Area, or Regional Wage and Hour Office	Division of Higher Education Office for Civil Rights Department of HEW Washington, D.C. 20201 or Regional HEW Office	Division of Higher Education Office for Civil Rights Department of HEW Washington, D.C. 20201 or Regional HEW Office

# Footnotes for Table on Pages 2 and 3

## General

1. State employment and/or human relations laws may also apply to educational institutions. The Equal Rights Amendment to the U.S. Constitution, passed by the Congress and now in the process of ratification would, when ratified, forbid discrimination in publicly supported schools at all levels, including students and faculty.

2. Unless otherwise specified, "institution" includes public and private colleges and universities, elementary and secondary schools, and preschools.

3. A bona fide seniority or merit system is permitted under all legislation, provided the system is not discriminatory on the basis of sex or any other prohibited ground.

4. There are no restrictions against making a complaint under more than one anti-discrimination law at the same time.

5. This time limit refers to the time between an alleged discriminatory act and when a complaint is made. In general, however, the time limit is interpreted liberally when a continuing practice of discrimination is being challenged, rather than a single, isolated discriminatory act.

6. Back pay cannot be awarded prior to the effective date of the legislation.

## Executive Order 11246 as amended by 11375

7. The definition of "contract" is very broad and is interpreted to cover all government contracts (even if nominally entitled "grants") which involve a benefit to the federal government.

8. As of January 19, 1973, all covered educational institutions, both public and private, must have *written* affirmative action plans.

## Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act

9. In certain states that have fair employment laws with prohibitions similar to those of Title VII, EEOC automatically defers investigation of charges to the state agency for 60 days. (At the end of this period, EEOC will handle the charges unless the state is actively pursuing the case. About 85 per cent of deferred cases return to EEOC for processing after deferral.)

10. Due to an ambiguity in the law as it relates to public institutions, it is not yet clear whether EEOC or the Attorney General will file suit in all situations which involve public institutions.

## Equal Pay Act of 1963 as amended by the Education Amendments of 1972 (Higher Education Act)

11. Over 95 per cent of all Equal Pay Act investigations are resolved through voluntary compliance.

12. Unless court action is necessary, the name of the parties need not be revealed. The identity of a complainant or a person furnishing information is never revealed without that person's knowledge and consent.

## Title IX of the Education Amendments of 1972 (Higher Education Act)

(Minority women are also protected from discrimination on the basis of their race or color by Title VI of the Civil Rights Act of 1964.)

13. Final regulations and guidelines for Title IX of the Education Amendments of 1972 have not yet been published. This chart includes information which is explicitly stated in the law, as well as how the law is likely to be interpreted in light of other precedents and developments.

14. The sex discrimination provision of Title IX is patterned after Title VI of the Civil Rights Act of 1964, which forbids discrimination on the basis of race, color and national origin in all federally assisted programs. By specific exemption, the prohibitions of Title VI do not cover employment practices (except where the primary objective of the federal aid is to provide employment). However, there is no similar exemption for employment in Title IX.

15. Title IX states that: "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 education program or activity receiving federal financial assistance. . . ."

16. The following are exempted from the *admissions* provision:

Private undergraduate institutions.

Elementary and secondary schools other than vocational schools.

Single-sex public undergraduate institutions. (If public single-sex undergraduate institutions decide to admit both sexes, they will have 7 years to admit female and male students on a nondiscriminatory basis, provided their plans are approved by the Commissioner of Education.)

Note 1. *These exemptions apply to admissions only.* Such institutions are still subject to all other anti-discrimination provisions of the Act.

Note 2. Single-sex professional, graduate and vocational schools at all levels have until July, 1979, to achieve nondiscriminatory admissions, provided their plans are approved by the Commissioner of Education.

17. Under Title VI of the 1964 Civil Rights Act, which Title IX of the Education Amendments closely parallels, federal agencies which extend aid to educational institutions have delegated their enforcement powers to HEW. A similar delegation of enforcement power is expected under Title IX.

## Title VII & Title VIII of the Public Health Service Act as amended by the Comprehensive Health Manpower Act & the Nurse Training Amendments Act of 1971

18. Final regulations and guidelines for Title VII and VIII of the Public Health Service Act have not yet been published. This chart includes information which is explicitly stated in the law, as well as how the law is likely to be interpreted in light of other precedents and developments.

19. Schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, public health, allied public health personnel and nursing are specifically mentioned in Titles VII and VIII. Regulations issued June 1, 1972, by the Secretary of HEW specify that *all* entities applying for awards under Titles VII or VIII are subject to the nondiscrimination requirements of the act.

20. HEW regulations state: "Nondiscrimination in admission to a training program includes nondiscrimination in all practices relating to applicants to and students in the program; nondiscrimination in the enjoyment of every right, privilege and opportunity secured by admission to the program; and nondiscrimination in all employment practices relating to employees working directly with applicants to or students in the program."

This Table and Footnotes were compiled by the "Project on the Status and Education of Women, Association of American Colleges, 1818 R Street, N.W., Washington, D.C. 20009."

### The Phyllis Schlafly Report

Box 618, Alton, Illinois 62002

Published monthly by Phyllis Schlafly, Fairmount, Alton, Illinois 62002.

Second Class Postage Paid at Alton, Illinois.

Subscription Price: For donors to the Eagle Trust Fund -- \$5 yearly (included in annual contribution). Extra copies available: 15 cents each; 8 copies \$1; 50 copies \$4; 100 copies \$8.