

EDUCATION REPORTER

NUMBER 294

THE NEWSPAPER OF EDUCATION RIGHTS

JULY 2010

Obama's Title IX Ruling a 'Step Backwards' for Athletic Programs

With its reversal of a Bush-era Title IX regulation that allowed colleges to survey student interest in athletics and then spend accordingly, the Obama administration strongly signaled that gender quotas are the only certain measure of compliance. In April, the Department of Education's Office of Civil Rights (OCR) rejected a recent Civil Rights Commission (CRC) finding that a survey to determine student interest is the "best method available" for adhering to the law without requiring arbitrary gender quotas.

The 1972 law prohibits discrimination on the basis of gender in any educational programs that receive federal funds, and covers a broad range of issues including hiring practices, sexual harassment, and athletics. OCR guidance indicates that schools may demonstrate athletics program compliance in one of three ways: women's sports participation at a level proportionate to their enrollment numbers (known as proportionality), an expanding number of athletic opportunities for women, or proving the school is meeting the athletic interests and abilities of women on campus.

Since Title IX (unlike other sex discrimination policies) does not require an injured party to come forward, interest groups and lawyers are free to sue schools even if no students complain. In the interest of avoiding investigations and lawsuits,

schools often select proportionality as the safest of the three compliance options, especially after the 1995 Cohen vs. Brown suit. That ruling explicitly stated that proportionality was a "safe harbor" for schools wishing to avoid prosecution. The result, critics charge, is the arbitrary and unnecessary loss of many sports opportunities for men.

James Madison University explicitly cited compliance with the proportionality test in 2006 when it decided to cut seven men's teams and three women's teams to force student athletic participation to match student enrollment. Enrollment at the time was 61% female with 51% of females involved in athletic programs.

"We have explored every avenue in search of an alternative to this action," said the athletic director, Jeff Bourne, but the school's lawyer counseled that cutting the teams was the "most viable alternative" for complying with Title IX proportionality.

The Civil Rights Commission recommendations released in April this year advocated the OCR's 2005 "model survey" as a means of gauging student interest and providing colleges with an objective alternative to the sort of "mechanical compliance" with proportionality enacted by James Madison and other schools. However, gender quota advocates including the National Women's Law Center, the

(See Title IX, page 4)



Study Finds Freshman Summer Reading Lightweight and Leftist

A growing number of American universities, including 79 of *U.S. News & World Report's* top 100 list, ask incoming freshman to read one book over the summer. The purpose, as expressed by Florida Southern College, is to promote "a shared intellectual experience" and "campus-wide dialogue." Kalamazoo College says its summer common reading program "is an important first step in building a cohesive, dynamic, educational community."

While praising the stated goals of common reading programs, the National Association of Scholars (NAS) found some troubling trends in an examination of the 180 books selected by the 290 schools with active programs. The primary critique offered in the report is that books are more suited to Oprah's Book Club selections than institutions that purport to help students develop higher levels of intellectual engagement.

"Rather than asking students to stretch to the demands of college-level study, they shrink college-level study to

the comfort zone of the average student" said study authors Ashley Thorne and NAS president Peter W. Wood. Overall, the book selections "tend to be short, caffeinated, and emotional."

For example, this year's most popular book is *This I Believe*, a collection of essays on personal philosophies solicited by National Public Radio, which was assigned by eleven colleges. The second most assigned book, chosen by eleven schools, is *Enrique's Journey*, an account of an illegal immigrant youth's journey from Honduras to the United States by *LA Times* journalist Sonia Nazario. While both books "undoubtedly contain moving and interesting stories," said Thorne, they offer "little if

(See Summer Reading, page 4)



Educators Tamper With Tests

Standardized test scores are up in several states, but so are suspicions of teacher and administrator test tampering. At least six states have announced investigations into cheating this year, and more may be on the way.

Three teachers, the principal and assistant principal all resigned from Normandy Crossing Elementary school outside Houston in May after it was discovered they provided students with a detailed study guide of questions on the state science test. The educators obtained the questions by using a technique known as "tubing,"

whereby they squeezed the plastic surrounding a test booklet to form a tube through which they could read and copy test questions without breaking the seal.

Massachusetts revoked the charter for Robert M. Hughes Academy in May after it was discovered that the principal told teachers to look over students' shoulders and point out wrong answers on 2009 standardized tests. In March, an independent panel described how a Norfolk, Virginia principal pressured teachers to use an overhead projector to display answers to a state reading assessment administered to special education students.

The most sweeping scandal reported so far was in Georgia, where the state school board ordered investigations of 191 schools in February. A computer analysis detected pencil erasures, and flagged as suspicious classrooms in which the change from incorrect to correct answers was far above the statistical norm. So far eleven teachers and administrators may lose their

licenses for changing test answers, and more disciplinary referrals are expected, including at least a dozen schools in Atlanta alone. Indiana and Nevada have also reported educator cheating.

Many experts blame the federal No Child Left Behind legislation for the increasing pressure to show annual academic improvement. Though the mandated improvement levels were intentionally low in the earlier years, the law requires that public schools bring all students up to grade level by 2014, and the standards are now more difficult to meet. Penalties for failure are also increasing: teachers and administrators can be fired and schools can be taken over by the state or contracted out to private education firms.

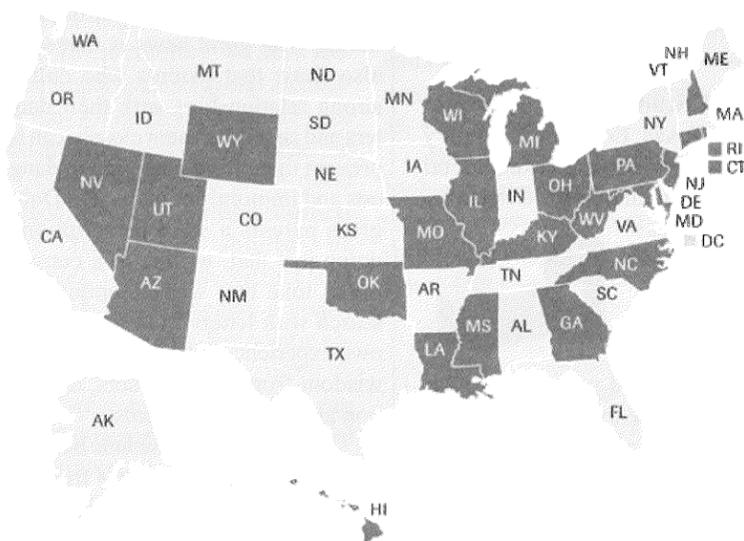
State and local officials add to the performance sticks and carrots. Last month Colorado passed a law making teacher tenure dependent on student test results. Houston recently decided to use the data to identify experienced teachers for possible dismissal. New York City will use test scores to make tenure decisions for novice educators, and almost a dozen states have plans to evaluate teachers at least partly on student scores. Many school districts already link teacher and administrator bonuses to test results.

John Fremer, a data forensics specialist hired to assist with scandals in Georgia and Texas, believes educator fraud is rising. "Every time you increase the stakes associated with any testing

(See Test Tampering, page 4)



States Rush to Adopt Common Standards



As of July 9th, 23 states have decided to replace their own math and English standards with the common set released just over one month ago. By the end of the year, 41 states are expected to cede their sovereign curriculum-setting authority, largely motivated by the possibility of short-term Race to the Top federal grant money. Another flurry of adoptions is expected by August 2nd, the deadline to receive maximum grant application points.

EDUCATION BRIEFS

Silly product warning labels abound, but Wilder Publications' disclaimers on reprints of the Constitution and the Declaration of Independence may top them all:

"This book is a product of its time and does not reflect the same values as it would if it were written today." The notice goes on to advise parents that they "might wish to discuss with their children how views on race, gender, sexuality, ethnicity, and interpersonal relations have changed since this book was written before allowing them to read this classic work." (www.foxnews.com, 6-9-10)

Dismayed that her literature and composition final required analyzing Michael Moore's *Sicko*, Missouri high school senior Celeste Finkenbine filed a complaint with her principal.

The 18-year-old said the screed against the American health care system is "so far on the left side I don't think it should have been shown in school," and that the teacher called her a "teabagger" (a sexual slur) in class. The district confirmed that Debra Blessman violated school policy by failing to consult with an administrator before showing a film in class, but would not say if she would be disciplined. (St. Louis Post-Dispatch, 5-19-10; www.freerepublic.com, 5-17-10)

A California art teacher told 7th-grader Taryn Hathaway that her picture of the American flag with "God Bless America" emblazoned on it was "offensive," but praised another student's portrait of Barack Obama, saying "Thank you for supporting our country."

The teacher refused to either explain her comment or apologize in a meeting with the girl's parents. (FOX News, 5-12-10)

Colleen Dostal was infuriated when her 8th-grade son reported that Planned Parenthood instructors showed pornographic pictures and simulated sex acts using stuffed animals in a Shenandoah, Iowa sex ed class.

Equally incensed parent Scott Gray, whose 16-year-old son was also in the class, fumed, "It wasn't sex ed, it was sex demonstration." (FOX News, 6-22-10)

Education Reporter (ISSN 0887-0608) is published monthly by Eagle Forum Education & Legal Defense Fund with editorial offices at 7800 Bonhomme Ave., St. Louis, MO 63105, (314) 721-1213, fax (314) 721-3373. Editor: Kim Andrews. The views expressed in this newsletter are those of the persons quoted and should not be attributed to Eagle Forum Education & Legal Defense Fund. Annual subscription \$25. Back issues available @ \$2. Periodicals postage paid at Alton, Illinois.

Web site: <http://www.eagleforum.org>
E-mail: education@eagleforum.org

Grading on NY State Math Exams Doesn't Add Up

Student scores on the New York state math test are up in every grade tested this year, with some grades showing astonishing double-digit gains. Some experts and critics charged the tests were easier than prior years, despite education officials' promises to "strengthen" and "increase the rigor" of both the questions and the scoring for the 1.2 million kids who took the math exams in May.

A Brooklyn teacher hired to help score the tests was so angry about the grading standards that she went to the media even before the test scores were announced to the public. "They were giving credit for blatantly wrong things," she told the *New York Post*.

A scoring guide provided by the whistleblower revealed that kids got half-credit or more for showing fragments of a calculation — even if they executed it incorrectly or left the answer blank. Some examples from the fourth-grade scoring guide include:

- Setting up a division problem to find one-fifth of \$400, without solving the problem and leaving the answer blank, got half-credit.

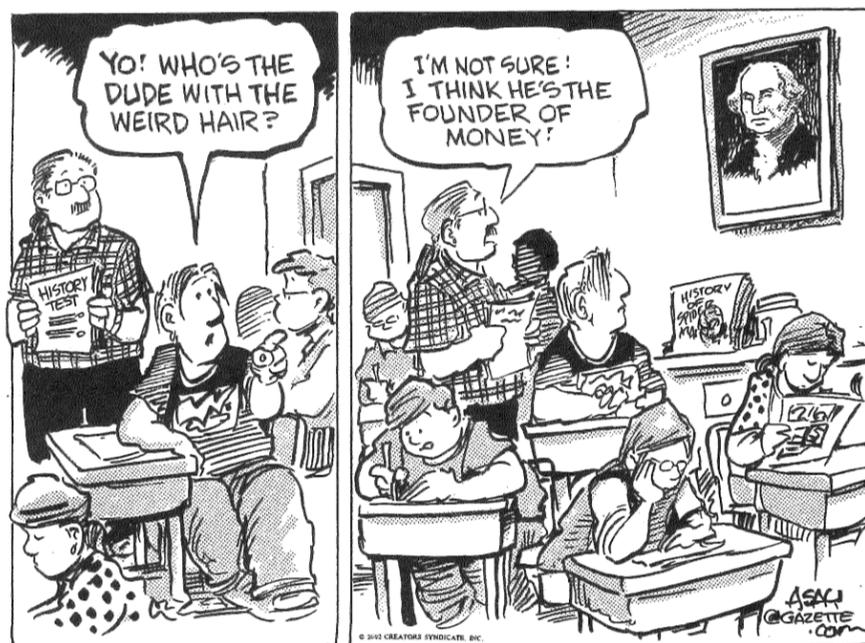
- Subtracting 57 cents from three quarters to determine the correct amount of change and answering 15 cents instead of 18 cents still received half-credit.

- Calculating the numbers of books in 35 boxes with ten books per box as 150 instead of 350 got half-credit.

The Brooklyn teacher said she had scored tests with "controversial questions" in past years, but "this time it was more outrageous." She said she and her peers were stunned at some of the instructions this year, adding, "You feel like you're being forced to cheat." Some of her colleagues joked about giving kids credit for writing their names on the test, bringing their own pencil or sharing gum with friends.

But score inflation is not funny, said the teacher. "The kids who really need the

(See Math Exams, page 3)



Briefs

'Comprehensive' sex education for kindergarten though 12th grade has stirred up a big controversy in Helena, Montana. The curriculum includes teaching first graders that people can be attracted to the same gender. Second graders are instructed to avoid gay slurs. Ten year olds are to be taught about various types of intercourse. Fifth graders will be taught to "understand that sexual intercourse includes but is not limited to vaginal, oral, or anal penetration." Jeff Laszloty of the Montana Family Foundation expressed outrage, saying "It's absolutely insane. This is not education. This has crossed the line and has gone from education to indoctrination and that's the problem parents have." Fox News Radio, 7-9-10.

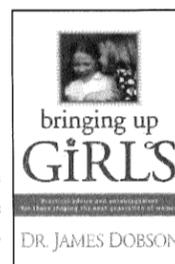
Texas Social Studies Standards Released. The Texas Education Agency posted the newly adopted Texas Social Studies TEKS (standards for Grades K-12) that were adopted for Second Reading and Final Adoption (with technical edits) by the Texas State Board of Education on May 21, 2010. Now everyone can personally see what was adopted, and the public will no longer have to rely on the liberal-left media and other such groups who have deliberately misrepresented the work of the Texas State Board of Education members. Read commentary about the new standards at: www.texaslegislativeupdate.wordpress.com.



Book of the Month



Bringing Up Girls, Dr. James Dobson, Tyndale House Publishers 2010, 285 pages, \$25.99.



This may be the most challenging time to raise girls in modern history, according to psychologist James Dobson, but involved and intentional parents can still raise confident girls with commendable character. Almost a decade after the release of *Bringing Up Boys*, this companion volume offers "practical advice and encouragement for those shaping the next generation of women."

For those who haven't already rejected the notion that boys and girls aren't all that different, Dobson uses the latest research to make the case that physiological hardwiring makes females wonderfully distinct from males. His lay-friendly descriptions of hormonal and neurological differences help explain why girls behave as they do. The doctor also tells how parents can better relate to daughters in varying female developmental stages.

The complicated and crucial relationship between a girl and her mother is examined from several angles, but Dobson makes a special effort to communicate just how desperately girls need the attention and affection of their fathers. Men intuitively understand that they have something unique to offer their sons, but often underestimate their contributions to their daughters' wellbeing.

Girls have an intense desire to connect with the "first man" in their lives, Dobson writes, and research reveals that a father's presence and interactions with his daughter (or lack thereof) impact everything from a girl's self-concept to when her menstrual cycle and sexual activity begin. Fathers will derive special insight about their vital roles from transcripts of young women talking about their dads.

There is plenty of bad news about girls, and the statistics on early promiscuity and destructive behaviors such as eating disorders and self-cutting are sobering. The good news is that studies also show that parents who cultivate strong relationships with their daughters and supervise them closely can help prevent them from engaging in dangerous and immoral activities. Dr. Dobson gives parents a solid prescription for doing just that, writing in a conversational tone that weaves empirical research with letters from little girls, his own experiences as a father, interviews, wisdom from other authors, and question and answer segments.

Additional topics include bullies and best friends, protecting kids from invasive technology, and how our cultural obsession with beauty impacts girls. Also noteworthy is one woman's account of how her parents "charmed" her into realizing that her heart and body were too valuable to give away casually.

FOCUS: Should We Reshape Universities Because of 'Stereotype Threat'?

by Roger Clegg

An Inside Higher Ed article by English professor Satya P. Mohanty of Cornell on "Diversity's Next Challenges" constructs an elaborate house of cards, but then inadvertently knocks the whole thing down. The piece features, in particular, an argument suggesting that "stereotype threat" — the claim that fear of being judged by a stereotype can cause minorities to do much less well on a test than they should — requires that universities and all of society must be restructured before minorities can be expected to succeed.

Stereotype-threat research regarding test performance has been widely used and abused. But, whatever its merits, Professor Mohanty has extrapolated its claimed findings to a broader one, that the "culture of our campuses," indeed the entire "culture of learning," needs to be restructured with the aim of fostering racial trust. Merely admitting a diverse student body is not enough: We must "think about what our campuses feel like to those who come to learn." Campuses must be perceived as "trustworthy" by these students. And this means that campus culture must be "more open, democratic, and genuinely attentive to the experience of different social groups." Again, there must be a focus not only on admitting a diverse student body, but on "the campus as a learning environment for different kinds of learners."

Professor Mohanty then plugs the forthcoming book he has co-edited, *The Future of Diversity* (some of the arguments that follow here are fleshed out by the book's various authors, and the op-ed apparently endorses them). That future is important not only for the success of the university per se, but because "university campuses have a special role to play in building the future of our multicultural and diverse society."

Needless to say, it would be a mistake to think that the problem of stereotype threat should be solved by encouraging students to think of themselves as individuals. To the contrary, we must recognize "the importance of group identification for the psychological well-being of those who are from socially marginalized groups." Group identities are a good thing; indeed, even the resulting conflicts are just fine and should be "normalize[d]," since such conflict is "a potential source of knowledge, a vitally important knowledge in a democratic society that thrives on difference. . . ."

The counterintuitive claims do not end there. The reader will be surprised to learn that "American higher education is no longer available to the population at large." This is "because of the erosion of federal funding and our myopic social policies about lower income groups," which result in too much being left to the states to do, and

a neglect of, in particular, "non-elite and regional institutions."

Professor Mohanty's piece appeared a day after Inside Higher Ed's rival *The Chronicle of Higher Education* published a piece by the Century Foundation's Richard D. Kahlenberg, arguing, as he long has, for the replacement of race-based affirmative action with wealth-based preferences. But the book Mohanty is editing will recommend *both* kinds of affirmative action: that "at least" the top universities give low-income status "at least" as much weight as race in admissions. "Social justice" requires that race and class be weighed. Having done this, we must "question our deeper assumptions about what success is" and "rethink some of our most basic theoretical assumptions."

One of those is "the nature and value of what is called 'objectivity.'" In particular, "genuine objectivity" need not embrace "neutrality" — colorblindness — where "unfairness is built into the environment": "What seems fair and just to a member of one social group is not in fact experienced in the same way by members of a group that is, say, the target of negative social stereotypes."

So, really, you have a remarkable amount of the usual nonsense compressed into one piece here: Our whole educational system — indeed, our whole society — is rife with discriminatory assumptions and attitudes that explain why some groups don't do as well as others, that the solution is to change the way universities (and, ultimately, all society, which of course must be led by our universities) operate so that all students succeed, that identity politics and even conflict is good, that more federal spending on and control of education is essential, and that objectivity is a fraud, or at least it is if you define it as neutral rather than as, well, subjective.

But here's the irony: Professor Mohanty unwittingly does a fine job of refuting most of the rest of his piece in this one sentence that begins his penultimate paragraph:

One of the most revealing experiments . . . showed that what targets of negative stereotype threat respond to most favorably is a clear message that while the test is tough the evaluation will be fair — that the students' social identities will not be a factor in the way their academic performance is judged.

Precisely. And it is impossible to send this message in a system where

students are treated differently — some better and others worse — on account of skin color and what country their ancestors came from, whether the discrimination is politically correct or incorrect. The test can be "tough" — don't dumb it down to ensure that everyone succeeds — so long as the students know that "social identities" aren't weighed, one way or the other.

Universities cannot keep it a secret when they have different admission standards, and they will not fool the students when post-admission policies are jerry-rigged with an eye on politically correct equal outcomes either.

This is not a new point. The stigma that inevitably results from race-based policies (what, in a marvel of euphemistic obliqueness, Mohanty may be alluding to in his phrase "sentimental partiality") has been recognized by others on the left, right, and center. See, e.g., Russell K. Nieli's paper, "Selling Merit Down the River" (2009) (discussing the pro-preference books *The Shape of the River*, *The Source of the River*, and *Taming the River*) and Paul Sniderman's books *The Scar of Race* (1993, with Thomas Piazza) and *Reaching Beyond Race* (1997, with Edward G. Carmines).

And how could it be otherwise? If a university has one set of admission standards for one group, but it lowers them for another group, it will inevitably feed stereotype threat rather than thwart it. The same is true if schools begin changing post-admission standards.

Rather than obsessively defining and redefining diver-

sity, and trying to calibrate what effect this or that kind of diversity has on this or that vague aspect of "the learning environment," universities would be better advised to focus on hiring smart professors who are best qualified to find the truth in particular disciplines and impart it to students who are, in turn, chosen as the most qualified to do work at the intellectual level demanded by that university.

This is challenge enough without being distracted by grand political and societal considerations and parsing the various aspects of individuals' "social identity." And race and ethnicity, in particular, ought to be ignored in making these hiring and admission decisions.

The fact of the matter is that "the future of diversity" means "the future of racial and ethnic preferences." And focusing on superficial characteristics like skin color and what country someone's ancestors came from is, besides being divisive and unfair and legally dubious, simply not a good way to select the most talented and valuable individuals. (See, for example, my article "Another Bad Idea: 'Diversifying' Science Faculties" at www.mindingthecampus.com). No doubt it is desirable to have a variety of perspectives, for example, but why use race as a proxy rather than selecting directly for the perspective? If you need someone with a different perspective or set of experiences when it comes to chemical engineering, or political science, or modern dance — fine, but don't assume that someone's race or ethnicity will provide that. And be wary of trading the hard value of talent for the soft fashionable-ness of diversity, of any sort.



Roger Clegg

Roger Clegg is president and general counsel of the Center for Equal Opportunity. This article is reprinted with permission of the author and Minding the Campus, where it first appeared on 6-2-10. For more information, visit www.mindingthecampus.com.

Math Exams (Cont. from page 2)

help are just being shuffled along to the next grade without the skills to have true success. They are given a hollow success—that's the crime of it."

State Education Department spokesman Tom Dunn defended the grading instructions, stating, "Students who show work and demonstrate a partial understanding of the mathematical concepts or procedures embodied in the question receive partial credit."

Among experts who suggested parents should not accept the elevated scores at face value is Robert Tobias, a former top testing official for the New York Board of Education. "Given that the scores are going up to a very large degree, especially in certain grades, it sug-

gests the test is probably easier than it was in the past," he said.

Meanwhile, state officials celebrated and congratulated themselves. "The era of year in and year out stagnant classroom performance is over," said Mayor Bloomberg, whose school reform plan includes paying cash bonuses to students, teachers and principals when state test scores increase.

Education Commissioner Richard Mills attributed the rise in scores to increased spending, a statewide curriculum, and improved teacher training. "The bottom line is this," he said, "Performance is up in mathematics. It's up in English and more students are meeting the standards." (*New York Post*, 6-6-10; *New York Daily News* 6-24-10)

Arizona Bill Would Reveal Costs of Educating Illegal Immigrants

Arizona has another bill in the pipeline that could make the debate over the state's recent immigration enforcement law look like a minor skirmish. Senate Bill 1097 would require public schools to report the number of illegal immigrant children in their student populations, and to provide an estimate of the costs associated with educating those children.

The legislation does not require schools to deny public education to children who are not citizens, but may provide the basis for the Supreme Court to reconsider a 1982 decision involving funding public education for illegal immigrants.

In *Plyer vs. Doe*, a five-to-four majority said Texas could not deny education funding for students there illegally, even while allowing that the law was not unconstitutional. The majority opinion stated that while public education is not a fundamental right, the law furthered no "substantial goal of the state," particularly since Texas failed to prove "any significant burden to the State's economy." In an op-ed for WorldNetDaily, former Colorado congressman Tom Tancredo remarked, "That may have been true in Texas in 1982, but is it true in Arizona in 2010? Is it true any-

where in Texas, California, Nevada, Colorado, Oklahoma, Utah or Georgia in 2010?"

Some supporters of the bill think that if Arizona can prove that educating an increasingly large proportion of illegal students places an undue hardship on the public treasury, the Supreme Court might consider overturning that ruling. Regardless, wrote Tancredo, if the law passes, "The public will then know the true cost of providing public education to the children of illegal aliens," which could fuel citizen demand for a change in public policy.

The Arizona Senate passed the bill in March, but the House of Representatives tabled it. Assuming that Republicans will gain seats in the November mid-term elections, Tancredo predicted the bill would pass in 2011. However, Republican Jan Brewer would also need to win reelection in a tight race against Democratic opponent Attorney General Terry Goddard for the bill to be signed in to law.



Summer Reading (Cont. from page 1)

any intellectual substance."

The report, *Beach Books: What Do Colleges Want Students to Read Outside of Class?* also noted that 70% of the books "promote a liberal political agenda or advance a liberal interpretation of events." By contrast, no selected books advocated conservative political causes. Only three books represented traditional values, and those were selected by private sectarian colleges. Twenty-seven of the 33 sectarian colleges picked books reflecting the same liberal political outlook apparent in secular institution choices.

Wood doesn't expect most people will find the preponderance of books promoting the liberal political causes *du jour* surprising. "But," he said, "whatever your politics, it is disappointing to see colleges and universities relaxing into their biases. Students will soon enough learn that their colleges are gung-ho for 'sustainability' and that identity politics trumps reason in most classrooms. They don't need to be spoon-fed this stuff before they even unpack the SUV and meet their roommates."

Thorne and Wood say they began their work with no preconceived categories, but looked for sensible ways to reflect the proclivities of selection committees. The most popular topics related to multiculturalism, immigration and racism, with 60 colleges choosing books with those themes. Environmentalism, animal rights and food issues proved to be the second most popular themes, with 36 picks (seven colleges chose *The Omnivore's Dilemma*). Other popular categories included the Islamic world (27 colleges), New Age/spiritual/philosophy (25 colleges) and holocaust, genocide, war and disaster titles (25 colleges). On the whole, the report observed, the books "offer a distinctly disaffected view of American society and Western civilization."

Also illuminating, says the report, is

what kinds of books didn't make the cut. There were no works of classical antiquity, and none by Shakespeare or any other Renaissance or Enlightenment writers. Mark Twain is the only acknowledged master of American literature represented, and no classical works of Christian or Jewish thought, science, or history were selected. The only work of social theory written earlier than the last decade is *The Communist Manifesto*. Mary Shelley's *Frankenstein* is the sole representative of all European literature, from Homer to Dostoevsky. These last two titles comprise half of the only four books that were written before the 20th century.

Three institutions that had common reading programs in 2009 have kept the "common" experience, but ditched books in favor of other mediums in 2010. Fairfield University is asking students to watch a DVD, *RFK in the Land of Apartheid*; University of San Francisco is having students "read" a mural by Diego Rivera; and the University of California at Berkeley is asking students to submit DNA samples on a voluntary basis to test for lactose tolerance and alcohol metabolism. Nine colleges didn't totally abandon the printed page, but selected less challenging comic books, also called "graphic novels."

The predominant and most serious problem, according to Wood, is that colleges are missing a chance to introduce students to the larger conversations of civilization. Instead of setting the tone for serious intellectual inquiry and conveying the idea that important books may be difficult and require slow and careful reading, colleges are opting for choices that give the same sort of "quick impressions, entertaining stories, snappy ideas, or empathetic evocations of misfortune" with which students are already saturated. (*Huffington Post*, 6-6-10)

Title IX (Cont. from page 1)

American Association of University Women, and the NCAA dispute the CRC's assertion that surveys are a valid measure of women's interest in sports.

A common criticism of the survey method is that many students don't bother to fill surveys out or that they get lost in email spam filters. Proponents of the model survey say the 2005 guidelines are more rigorous than those laid out previously, in that they tie surveys to mandatory events such as class registration, which ensures every matriculating student will see the survey. Guidelines now also require reasonable follow-up measures for non-responses.

Feminist activists still argue that student interest survey results are insufficient and should be combined with consultations with area elementary and secondary schools, local youth sports program coaches, and an analysis of national trends. Furthermore, the critics contend, surveys are inherently unreliable as the sole measure of interest because they tended to reflect women's lack of exposure to sports. Jocelyn Samuels, Vice President for Education and Employment at the National Women's Law Center, told the CRC that surveys "are likely only to provide a measure of the discrimination that has limited, and continues to limit, sports opportunities for women and girls."

The CRC report roundly rejected such concerns and concluded that "students (including women) are fully capable of expressing their interests." Additionally, the report suggested that men also be surveyed in order to "[restore] Title IX to its original goal of providing equal opportunity for individuals of both sexes."

Women now comprise six out of ten college students nationwide, which means that under the Obama administration ruling, most schools must reserve 60% of athletic spots for women. If previous years are any indication, schools that have trouble filling all their female roster spots or have budget concerns often find cutting men's programs to be the easiest path to compliance. Sometimes,

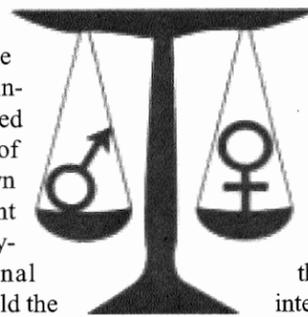
as with James Madison University in 2006, schools also cut smaller women's programs such as gymnastics to achieve exact proportionality.

"[The Obama administration's ruling] is a step backwards for everyone that cares about fairness in athletics," said Jessica Gavora, vice president of policy for the College Sports Council. In her testimony before the CRC in 2007, Gavora said her organization's longitudinal study of 25 years of NCAA data showed that opportunities for women have increased under Title IX, but opportunities for men have decreased. She said from 1981 to 2005, male athletes per school declined by 6% while female athletes per school rose 34%.

Gavora also cited a University of California system survey finding that among students indicating an interest in sports, 60% were men. She added that the College Board's survey of students taking the SAT and PSAT revealed a similar breakdown, and that participation data on voluntary club sports and intramural sports on campus showed males overwhelmingly outnumbered females. Her testimony ran counter to Jocelyn Samuels' statement to the CRC that women and men are equally interested in sports, and that to believe otherwise was a stereotype and impermissible under the law.

According to data compiled by the Department of Education's Office of Postsecondary Education for 2008, 58% of intercollegiate athletics participants were men and 42% were women. National collegiate enrollment averages remain around 40% male and 60% female, which implies that many schools cannot currently demonstrate rigid proportionality quotas.

Look for more athletic programs to be cut as schools scramble to align student gender ratios with athletic participation to avoid becoming targets of the Obama administration's feminist action agenda. In March, Education Secretary Arne Duncan announced that the OCR would open investigations in more than 30 school districts and some universities to see whether they are violating civil rights laws, including Title IX. (*New York Times*, 4-19-10; collegeswimming.com, 4-21-10)



Test Tampering (Cont. from page 1)

program, you get more cheating," he said. Economist Steven D. Levitt, author of *Freakonomics*, agrees. He and a colleague studied answer sheets from Chicago public schools in the 1990s after the introduction of high-stakes testing; they concluded that four to five percent of elementary teachers cheat.

Others say there are dishonest practitioners in every profession, and that high-stakes testing is not to blame. Gregory J. Cizek, an education professor at the University of North Carolina who studies cheating, said past violations were often swept under the rug. "One of the real problems is states have no incentive to pursue this kind of problem," he said.

Now retired, Crawford Lewis was superintendent in 2008 when a Georgia principal and assistant principal colluded to

alter student answer sheets at Atherton Elementary in suburban Atlanta. The school had met the adequate yearly progress goals of the NCLB act for seven years, but stumbled when the bar was raised again that year. The scoring gains were so spectacular at Atherton and a handful of other schools that the *Atlanta Journal Constitution* noted the improvements approached a statistical impossibility.

Lewis remembers how the Atherton administrators broke down in tears under questioning. He now calls for moving away from high-stakes testing because he says it introduces enormous pressures and distorted incentives for teachers. "I don't say there's any excuse for doing what was done, but I believe the problem is going to intensify before it gets better." (*New York Times*, 6-11-10)