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HEW Regulations About "Sexism" in the Schools

Proponents of the so-called Equal Rights Amendment used to claim that ERA is needed to eliminate alleged discrimination against women in education, or, in the women's lib terminology, to eliminate "sexism" in the schools. It has been impossible for ERA proponents truthfully to make that argument ever since the passage of the Education Amendments of June 1972, a very broad piece of legislation which abolishes discrimination against women in all schools which receive any Federal assistance whatsoever, from kindergarten through graduate school, with a few wholly reasonable exceptions (such as permitting the continuation of single-sex undergraduate colleges like the military academies, Wellesley, etc.).

There is usually a certain time-lag, however, before the effects of radical new Federal legislation are felt at the grassroots level. The time-bomb which Congress lit so quietly when it passed the Education Amendments of 1972 exploded on the front pages of newspapers across the country on June 18, 1974 when the Department of Health, Education, and Welfare issued 80 pages of proposed new HEW regulations "to effectuate Title IX of the Education Amendments of 1972." A careful reading of these new regulations compels the following conclusions:

1) Existing laws combined with administrative regulations are *already* more than adequate to abolish all unfair discrimination against women in the field of education, and no reasonable person could ask for more.

2) Ratification of the Equal Rights Amendment would not do anything good for women in the field of education, but would only mandate the elimination of the reasonable exceptions which are now permitted by existing legislation and HEW regulations.

3) All the dire predictions of those who forecast that Federal aid to education would result in Federal control have come to pass, and HEW is now issuing orders down to the smallest detail of administrative management in our schools and colleges, backed by the power of the Federal Government to enforce compliance.

4) The new regulations go a long way toward abolishing educational diversity and freedom of choice at the local level. Even minor administrative decisions are to be made by Big Brother (or Big Sister or Big Person) in HEW, rather than allowing the public to choose in the freedom of the marketplace.

Laws and Regulations

The Federal legislation that brought these regulations about is Public Law 92-318, the Education Amendments of June 1972, Title IX: Prohibition of Sex Discrimination. Section 901 starts as follows:

"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 educational program or activity receiving Federal financial assistance."

The law then makes several reasonable exceptions, including military schools, religious educational institutions if the application of the law is inconsistent with the tenets of the religion, admissions to undergraduate colleges which have been "traditionally and continually" single sex, and the maintenance of separate living facilities for the different sexes.

The HEW regulations issued on June 18, 1974 are designed to give specific implementation to this law and to assure equal treatment for women in admissions, athletics, housing, financial assistance, extracurricular activities, and employment, from kindergarten through graduate school. Failure to comply with the HEW regulations could cause the school or college to lose its Federal aid or be sued by the Department of Justice. Here are some of the specifics of the HEW regulations which will be binding on 16,000 public elementary and secondary school districts and 4,000 colleges and universities:

1. They would require all physical education classes to be coeducational.

2. Schools, colleges and universities would be required to provide equal athletic opportunities and facilities, including coaching and equipment, to women and men. "Sex-integrated athletic teams in all schools and colleges will soon be a reality if women want them," boasted HEW official Gwen Gregory. Colleges and universities would be required to give women as many athletic scholarships as men. All this would be exceedingly expensive. Philip Shriver, president of Miami University in Ohio spoke for many educators when he wrote: "There is no way that we can provide separate but equal programs for men and women in intercollegiate athletics without eliminating a major portion of the existing programs. We simply do not have the funds to do both. Nor do we have them in sight."

3. Colleges and universities would be prohibited from "supporting or assisting" campus organizations which discriminate on the basis of sex. This would prohibit at least some fraternities and sororities, Mortar Board (a senior women's honorary), etc.

4. As written, the language of the HEW regulations would require all sex education classes to be coeducational. This caused such an immediate uproar that HEW Secretary Caspar W. Weinberger backtracked on July 9, 1974, stating: "Although the language of the proposed regulation appears to preclude such separation (of boys and girls in sex education classes), I did not intend that it do so in this area. Sex is perhaps the only area of instruction dealing explicitly with sexual functions. Rights of privacy may well be invaded by requiring mixed classes in sex education. In view of this concern, as well as personal and parental attitudes on sex education, I believe the public interest will best be served by permitting separate classes when desired for boys and girls."

The careful language of this disclaimer is very revealing. Secretary Weinberger will graciously "permit" separate classes "when desired." Desired by whom? Obviously the HEW bureaucrats "desired" otherwise, or their lawyers would not have put the offensive language in the regulations. What if Secretary Weinberger decides tomorrow to revoke his "permission"?

5. They would outlaw most single-sex scholarships. Washington University (in St. Louis) immediately stated that officials were puzzled as to the effect of this ruling. The only single-sex scholarship offered at Washington University are women-only scholarships at the doctorate level. The grants were set up specifically to encourage a higher level of participation by women in graduate school. Abolition of such scholarships would lower graduate-level opportunities for women.

6. Separate housing for males and females would be permitted (isn't that tolerant of HEW!), provided facilities and governing rules are identical. Presumably, if they are not "identical," separate housing for males and females would not be permitted. Different dormitory curfews for girls and boys would be outlawed.

7. They would require that pregnancies would have to be treated "as any other temporary disability or physical condition." This means that neither a teacher nor a student could be barred from classes except presumably for the last week before and the first week after the birth of a baby (unless her doctor certified otherwise). Presumably, the school would not even be able to fire a teacher or student for remaining in classes conspicuously pregnant with an illegitimate baby.

8. Although financial aid programs such as scholarships, loans, and grants would be prohibited unless they are available equally to both sexes, HEW wrote in an interesting exception for single-sex scholarships "established by a foreign will, trust or similar legal instrument or by a foreign government." What is the purpose of this strange provision guaranteeing a right to a foreigner to establish a scholarship exclusive to one sex which Federal regulations deny to U.S. citizens? Why, to preserve the exclusive and preferential status of the Rhodes Scholarships, of course! Nothing must be permitted to interfere with this effective device for indoctrinating the brightest American male students in a pro-British and internationalist ideology according to the terms of the trust established by the Englishman, Cecil Rhodes. According to HEW regulations, no American will be

permitted to will money for a single-sex scholarship, but the Rhodes Scholarships are sacrosanct and immune from the laws the rest of us must obey.

No Exceptions Under ERA

Broad as is the scope of the proposed HEW regulations, there are still a number of significant exceptions to an absolute doctrinaire equality of treatment between the sexes, namely, military schools, seminaries, religious institutions, single-sex undergraduate colleges and high schools, separate dormitory facilities, separate sex education classes, boys' football teams, etc. The principle of separate-but-equal is retained in some aspects of education.

If the Equal Rights Amendment were ratified, however, its effect would be absolute and mandatory and would admit of no exceptions. For example, girls would have to be admitted to military academies, and a Federal affirmative action bureau would order the academies to recruit girls up to their proportion of our population.

It is also probable that the application of ERA would not be confined only to those schools and colleges which receive Federal aid. It could apply to any secondary school or college which has a tax-exempt status, whether or not it receives any Federal grants. On the argument that a tax-exempt status confers a tangible Federal benefit, the Internal Revenue Service could deny tax exemption to any single-sex secondary school or college.

Many questions come to mind after studying the HEW regulations. Do we want to give the Federal Government even more power to run our schools and colleges than it now has?

Is not freedom better served by allowing diversity and freedom of choice among schools which have different administrative policies in regard to scholarships, admissions, fraternities, sororities, dormitories, athletics, housing, financial assistance, and extracurricular activities? Or, must we all be forced into the same mold demanded by the women's libbers who are agitating to abolish all differentiation and separation whatsoever between males and females?

Even some of the more moderate feminists are disenchanted with these HEW regulations, calling it *reductio ad absurdum*. Why, they ask, shouldn't a girl have the right to attend a girls-only physical education class, if that is her choice? And hasn't HEW got any greater problems to worry about than the supposed evils of single-sex clubs on campus?

What We Must Do

1) Defeat the Equal Rights Amendment -- or else we will soon have *more* problems in education than we have already.

2) Write the Department of Health, Education and Welfare, Washington, D.C., with a copy to your Senator and Congressman, giving your views about the new HEW regulations. HEW has announced that it will accept public comment until October 15. After that, the recommendations from the public will be evaluated and a final version submitted to the President. His approval is required before these regulations go into effect. If you don't like any or all of the HEW regulations, *now is the time to act*. Write HEW and request a copy of the 80-page document entitled "HEW Summary Statement on Sex Discrimination, proposed HEW regulation to effectuate Title IX of the Education Amendments of 1972."

Text of HEW "Fact Sheet" on "Sex Discrimination"

Public Comments

The Department solicits comments on the proposed regulation from interested citizens until October 15, 1974. Copies of all comments will be available for public inspection in Room 3256 N., 330 Independence Avenue, S.W., Washington, D.C. 20201 between 9:00 a.m. and 5:30 p.m. Monday through Friday (except Federal holidays). Copies of selected comments will also be made available for public inspection in the Office of each Regional Director of the Office of Civil Rights during normal business hours before and after October 15. After the comments have been evaluated and appropriate changes have been made, the final regulation, as required by Title IX, will be submitted for approval by the President. When approved, it will be published in final form in the *Federal Register* to become effective thirty days from the date of publication.

Coverage

Except for the specific limited exemptions set forth below, the proposed regulation applies to all aspects of all education programs or activities of a school district, institution of higher education, or other entity which receives Federal funds for any of those programs.

With respect to *admissions to educational institutions*, the proposed regulation applies *only* to: vocational, professional and graduate schools, and to institutions of public undergraduate education (except those few public undergraduate schools which have been traditionally and continually single sex.)

The proposed regulation *does not cover admission to*: recipient pre-schools, elementary, and secondary schools (except vocational schools), private undergraduate institutions and, as noted above, to those few public undergraduate educational institutions that have been traditionally and continually single sex.

Even institutions whose admissions are exempt from coverage must treat all students nondiscriminatorily once they have admitted members of both sexes.

Military institutions at both the secondary and higher education level are *entirely exempt* from coverage under Title IX. *Practices in schools run by religious organizations* also are *exempt to the extent compliance would be inconsistent* with religious tenets. Thus, for example, if a religious tenet relates only to employment, the institution would still be prohibited from discrimination against students.

Admissions

The proposed regulation covers *recruitment as well as all admissions policies and practices* of those recipients *not exempt as to admissions*. It includes specific prohibitions of sex discrimination through separate ranking of applicants, application of sex-based quotas, administration of sex-biased tests or selection criteria, and granting of preference to applicants based on their attendance at particular institutions if the preference results in sex discrimination. The proposed regulation also forbids application in a discriminatory manner of rules concerning marital or parental status, and prohibits discrimination on the basis of pregnancy and related conditions, providing that recipients shall treat disabilities related to pregnancy in the same way as any other temporary disability or physical condition.

Generally, *comparable efforts* must be made by recipients *to recruit* members of each sex. Where discrimination previously existed, *additional recruitment efforts* directed primarily toward members of one sex *must be undertaken to remedy the effects of the past discrimination*.

Examples

--An institution whose admissions are covered by the regulation *may not set quotas* on the number of men or women

who will be admitted. Thus, a medical school may not set such quotas, although a private undergraduate school may do so.

--An institution whose admissions are covered *may not set different standards* of admission for one sex than for the other. Thus, a graduate school may not require a lower grade point average for men than for women, although a private undergraduate school may do so.

--An institution of graduate, professional or vocational education which prior to enactment of Title IX had limited its admissions primarily to members of one sex *must* undertake special efforts to notify and recruit members of the sex previously barred or restricted in order to overcome the effects of past discrimination. Thus, a professional school which previously purposely limited the proportion of females in each entering class to approximately 15% would be required to initiate special recruitment efforts to attract qualified female students. A similar institution whose admissions had not been subject to such a quota arrangement, but had admitted students without discrimination on the basis of sex, would be required only to make comparable efforts to attract members of each sex.

Treatment of Students

As stated before, although some schools are exempt from Title IX with regard to admissions, *all* schools must *treat* their admitted students *without discrimination* on the basis of sex. With regard to treatment of students, therefore, the proposed regulation applies to recipient pre-schools, elementary and secondary schools, vocational schools, colleges, and universities at the undergraduate and professional levels, as well as to other agencies, organizations and persons which receive Federal funds for educational programs and activities.

Specifically, the treatment sections of the regulation cover the following areas:

(1) Access to and participation in course offerings and extracurricular activities, including campus organizations and competitive athletics;

(2) Eligibility for and receipt or enjoyment of benefits, services, and financial aid;

(3) Use of facilities, and comparability of, availability of, and rules concerning housing (except that single-sex housing is permissible).

There is no provision in the regulation which would prohibit discrimination in textbooks and other curricular materials. As noted in the Preamble to the proposed regulation, the Department recognizes that sex stereotyping in curricula is a serious matter, but has concluded that any specific regulatory provision in this area would raise grave constitutional questions under the First Amendment. The Department assumes that recipients will deal with this problem in the exercise of their general authority and control over curricula and course content. For its part, the Department will increase its efforts, through the Office of Education, to provide research, assistance, and guidance to local educational agencies in eliminating sex bias from curricula and educational material.

Access and Participation Generally

The regulation prohibits discrimination by recipients in granting access to or providing for participation in any course offering or extracurricular activity, including a campus organization or competitive athletics. No classes, including physical education, may be offered separately on the basis of sex.

Athletics

Where selection is based on *competitive skill*, athletics *may* be provided through *separate* teams for males and females or through a single team open to both sexes. Institutions must determine, at least annually, in what sports students desire to participate. If separate teams are offered, a recipient institution may not discriminate on the basis of sex in

provision of necessary equipment or supplies, or in any other way, *but equal aggregate expenditures are not required*. The goal of the regulation in the area of competitive athletics is to secure equal opportunity for males and females while allowing schools and colleges flexibility in determining how best to provide such opportunity.

Where athletic opportunities for students of one sex have been limited, an institution *must* make affirmative efforts to inform members of that sex of the availability of equal opportunities and to provide support and training to enable them to participate.

Campus Organizations

Generally, a recipient may not, in connection with its education program or activity, *support or assist* any organization, agency or person which discriminates on the basis of sex. The proposed regulation does not specify in more detail what organization, agencies, or persons could not, if they operated discriminatorily, be supported by a recipient consistent with its obligations under Title IX. It does, however, set out the major criteria to be applied in determining existence of a violation in this area, which are (1) the *substantiality* of the relationship between the recipient and the organization (including financial support and housing), and (2) the *closeness* of the relationship between the organization's functions and the educational program or activity of the recipient.

Examples

--A recipient school district may not require boys to take shop and girls to take home economics, exclude girls from shop and boys from home economics, or operate separate home economics or shop classes for boys and girls.

--A recipient school district may not require segregation of boys into one health, physical education, or other class, and segregation of girls into another such class.

--A recipient vocational or other educational institution may not state in its catalog or elsewhere that a course is solely or primarily for persons of one sex.

--A recipient institution which admits male and female students may not provide varsity sports opportunities exclusively or virtually exclusively for male students. However, it is *not* required to provide women access to men's teams if it furnishes women separate opportunities to participate in competitive athletics of comparable types and at comparable levels of competition (e.g. varsity, junior varsity, etc.).

--A recipient educational institution would be *prohibited from providing financial support* for an all-female hiking club, an all-male language club, or a single-sex honorary society. *However, an organization whose membership was restricted to members of one sex could adhere to its restrictive policies, and operate on the campus of a recipient university, if it received no support or housing from the university and did not operate in connection with the university's education program or activity.*

Benefits, Services, and Financial Aid

Generally, a recipient subject to the regulation is prohibited from discriminating in making available, in connection with its educational program or activity, any benefits, services, or financial aid. Benefits and services include medical and insurance policies and services for students, counseling, and assistance in obtaining employment. Financial aid includes scholarships, loans, grants-in-aid and work-study programs.

The general prohibition does not apply to administration by a recipient of a scholarship or similar financial assistance program which is restricted to members of one sex *and* is established under a foreign will, trust, or similar legal instrument or by a foreign government.

Facilities

Generally, all facilities must be available without discrimination on the basis of sex. As provided in the statute, however, *the regulation permits separate housing based on*

sex as well as separate locker rooms, toilets and showers. A recipient may not make available to members of one sex locker rooms, toilets and showers which are not comparable to those provided to members of the other sex. With respect to housing, the regulation requires comparability as to the facilities themselves and nondiscrimination as to their availability and as to the rules under which they are operated, including fees, hours, and requirements for off-campus housing.

Examples

--An institution which has one swimming pool *must* provide for use by members of both sexes on a non-discriminatory basis.

--An institution which lists off-campus housing for its students *must ensure that, in the aggregate, comparable off-campus housing is available in equal proportion to those members of each sex expressing an interest in it.*

--Administration by a recipient institution of different rules based on sex regarding eligibility for living off-campus, curfews, availability of cleaning and janitorial assistance, etc. would violate the regulation.

Employment

All employees in all institutions are covered, both full- and part-time, except those in military schools, and in religious schools, to the extent compliance would be inconsistent with the controlling religious tenets. Employment coverage under the proposed regulation generally follows the policies of the Equal Employment Opportunity Commission and the Department of Labor's Office of Federal Contract Compliance. Specifically, the proposal covers: (a) employment criteria; (b) recruitment; (c) compensation; (d) job classification and structure; (e) fringe benefits; (f) marital or parental status; (g) effect of state or local law or other requirements; (h) advertising; (i) pre-employment inquiries; (j) sex as a *bona fide* occupational qualification.

As to fringe benefits, employers must provide either equal contributions to or equal benefits under pension plans for male and female employees; as to pregnancy, leave and fringe benefits to pregnant employees must be offered in the same manner as are leave and benefits to temporarily disabled employees.

Examples

--A recipient employer may not recruit and hire employees solely from discriminatory sources in connection with its educational program or activity.

--A recipient employer must provide *equal* pay to male and female employees performing the *same work* in connection with its educational program or activity.

--A recipient employer may not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy or related conditions.

The proposed regulation includes a general procedural section which includes among other things, compliance reviews, access to information, complaint procedures, administrative termination procedures (hearings), decision, administrative and judicial review and post-termination proceedings. As noted earlier, a more detailed procedural regulation will be issued at a later time.

Should a violation of the statute occur, the Department is obligated to seek voluntary compliance. If attempts to secure voluntary compliance fail, enforcement action may be taken:

(1) by administrative proceedings to terminate Federal financial assistance until the institution ceases its discriminatory conduct; or

(2) by other means authorized by law, including referral of the matter to the Department of Justice with a recommendation for initiation of court proceedings. Under the latter mode of enforcement, the recipient's Federal funds are not jeopardized.