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PERSPECTIVE

Title IX at 50

By Phyllis W. Cheng

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

— Title IX of the 1972 Education Amendments (20 U.S.C. Sections 1681-1688)

2022 marks the 50th Anniversary of Title IX, a groundbreaking federal law that has significantly expanded educational opportunities for women and girls in education and in every facet of society.

Title IX had its genesis during the summer of 1970, when Congress focused on sex bias in education at a set of hearings on discrimination against women before a House Education Subcommittee chaired by Rep. Edith Green (Ore.). A year later, noting the link between educational discrimination and employment opportunities, Sen. Birch Bayh (Ind.) introduced an education amendment to combat “the continuation of corrosive and unjustified discrimination against women in the American educational system.”

Today, Title IX applies to virtually all school districts, colleges and universities as recipients of federal grants, contracts or loans. Recipients include approximately 17,600 local school districts, over 5,000 post-secondary institutions, charter schools, for-profit schools, libraries, museums, vocational rehabilitation agencies and education agencies of 50 states, the District of Columbia, and U.S. territories.

Title IX is interpreted through detailed regulations of the former

U.S. Department of Health, Education and Welfare and now the U.S. Department of Education. The regulations provide that each recipient institution must operate its education program or activity in a nondiscriminatory manner free of discrimination based on sex, including sexual orientation and gender identity. Some key obligations include: self-evaluation; designation of responsible individual and adoption of grievance procedure; dissemination of policy; counseling; financial assistance; health and insurance benefits and services; athletics; housing; comparable facilities; access to course offerings; recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment, which encompasses sexual assault and other forms of sexual violence; treatment of pregnant and parenting students; treatment of LGBTQI+ students; discipline; single-sex education; and employment. Further, no recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in a proceeding under Title IX.

The law is enforced by the Department of Education’s Office for Civil Rights. In addition to the risk of losing federal funds, the U.S. Supreme Court has interpreted that individuals also have an implied private right of action under Title IX. *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992).

Higher Education

Before Title IX, women were often excluded from or had limited access

to educational programs. Elite colleges and universities set quotas for the admission of women or prohibited them from attending altogether. Once admitted to schools, women had less access to scholarships; were excluded from “male” programs, such as medicine and law; and faced more restrictive rules, such as early curfews, than their male peers. Discrimination extended beyond students. Women faculty were more frequently denied tenure than their male counterparts, required to take pregnancy and maternity leaves, or prohibited from entering faculty clubs. In part as a result of these inequalities, in 1970 only 8% of women age 19 and older were college graduates as compared with 14% of men.

After Title IX, women’s participation in higher education has reached or even exceeded parity in many areas. Women’s full-time enrollment grew from two-fifths in 1972 to more than half (59.2%) in 2020, according to the National Student Clearinghouse. Women now earn the majority of bachelor’s, master’s and doctoral degrees.

As to professional schools, recall that neither Justices Sandra Day O’Connor nor Ruth Bader Ginsberg were offered a law firm job after graduating at the top of their law school classes. Because of Title IX, women now outnumber men in law schools (54.9%), comprise nearly half (42%) of California lawyers, and represent more than one-third (38%) of judicial officers. Similarly, women students are now in the majority in medical schools (53.5%) and dental schools (52.6%), and are nearly half (41.2%) of business schools.

However, most graduate degrees and certificates awarded to women continue to be concentrated in the more traditional female fields of

education, health sciences, public administration and services, and social and behavioral sciences. Women still lag behind in many STEM fields, in which men earn about three-fourths of master’s degrees (72.2%) and doctoral degrees (75.1%) in engineering, and two-thirds (64.5%) of master’s degrees and three-fourths (74.2%) of doctoral degrees in mathematics and computer sciences.

Sports

The growth of women’s and girls’ interscholastic and intercollegiate sports has been one of the most effective results of Title IX. The availability of more athletic scholarships for women has opened up a previously nonexistent opportunities for female athletes.

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Although still behind their male counterparts, female sports now comprise 36% of intercollegiate athletic operating dollars, 42% of college athletic scholarship dollars, and 32% of athletic team recruitment spending.

Since Title IX, U.S. women have competed and won gold, silver and bronze medals in the Olympics Games. The number of women competing at the Olympics has increased significantly from 34 per cent of the total at Atlanta 1996 to an expected new record of 48.8% at Tokyo 2020, and a commitment to reach full gender equality for the Olympic Games Paris 2024. In October 2018, the Youth Olympic Games Buenos Aires 2018 were the first fully gender-balanced Olympic event ever. In addition to

being the most gender-balanced Summer Games in history, Tokyo 2020 will see full gender representation across all 206 teams.

Sexual Harassment

In 1986, Cornell University surveyed women students and found that 78% had experienced sexist comments. That same year, a Massachusetts Institute of Technology study found that 92% of women students had experienced unwanted sexual attention. In 1980, a University of Rhode Island study found that 70% of women students reported being sexually insulted. As a result of these concerns, the Office for Civil Rights issued regulations and guidance requiring that:

- A school has a responsibility to respond promptly and effectively.

If a school knows or reasonably should know about sexual harassment or sexual violence that creates a hostile environment, the school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its recurrence, and address its effects.

- Even if a student or his or her parent does not want to file a complaint or does not request that the school take any action on the student's behalf, if a school knows or reasonably should know about possible sexual harassment or sexual violence, it must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.

- A criminal investigation into allegations of sexual harassment or sexual violence does not relieve

the school of its duty under Title IX to resolve complaints promptly and equitably.

In response, many educational institutions have developed investigative and hearing procedures that protect victims who file sexual harassment or assault complaints. However, students against whom Title IX complaints have been lodged have sometimes successfully challenged the lack of due process in these administrative proceedings.

Conclusion

Title IX has evolved and matured over a half century. The law has thrown open previously closed doors for women and girls in our educational institutions. It promises to be as expansive going forward.