

Title IX Commission Speaks, But Softly, On Possible Change

January 31, 2003

The Presidential Commission charged with reevaluating Title IX stopped short of recommending wholesale changes in the federal gender equity law, and instead will send its final report to Education Secretary Rod Paige next month, with a series of smaller recommendations which—taken together—could spell major changes in access to sports for boys and girls in the nation's high schools and colleges.

On January 30, the Commission on Opportunity in Athletics ("COA") failed to agree on major, sweeping revision. Rather, Commission members concurred on modifications which could, for the most part, be implemented without changes to the statute itself but rather by rewriting the federal regulations which govern it. Should Paige agree with the Commission's proposed recommendations, revisions to the regulations would be subject to public comment before they become final, and that process would take months.

Title IX, passed in 1972, celebrated its 30th birthday last year amid growing controversy over its impact—while focused on increasing sports equity for females—on the number and nature of male sports teams in high schools and colleges. The law gained further attention when an influential Washington, D.C.-based women's group launched an investigation into the possibility that K-12 school vocational programs, allegedly sending females to "clerical" roles and males to higher-potential computer and/or trade roles, are violating the Act. Michigan is one state under the group's microscope. And, in Michigan, a federal court lawsuit against the Michigan High School Athletic Association continues to pursue a Title IX-based challenge to the scheduling of certain girls' sports seasons.

Essential components of the COA recommendations include:

- calculating opportunities in sports by counting the available *positions* on teams rather than the actual number of *players*;
- expanding the role of interest surveys to gauge a school's compliance with Title IX;
- reaffirming the Bush Administration's commitment to equal opportunity;
- urging the Department of Education to aggressively enforce Title IX in a uniform way;
- advising schools that cutting male sports teams in order to achieve equality is not a "favored practice".

Behind that consensus, however, disagreements were sharply drawn, and it is impossible to predict what changes—if any—Paige will implement or recommend for Congressional change. In the interim, the tough standards for assessing Title IX compliance—at both the K-12 and higher education levels—remain in place.

If you would like assistance in evaluating your compliance with Title IX; if you would like Miller Canfield to track the progress of Title IX changes for you; or if you would like Miller Canfield to prepare comments on your behalf to proposed changes in federal regulations at such time as they are published, please contact your Miller Canfield attorney or: Beverly Hall Burns at (313) 496-7508.