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THE WHITE HOUSE
WASHINGTON

TO: ALL OPL SENIOR STAFF

FROM: FAITH R. WHITTLESEY *ful*

Information

Action

I am attaching, for your use, talking points on TITLE IX with respect to the Grove City case in particular.

December 15, 1983

Blackwell

TALKING POINTS ON TITLE IX
OF THE EDUCATION AMENDMENTS OF 1972

(Compiled from briefing papers with legal guidance from USED)
November 30, 1983

244 { Sec. 901.(a) 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...

- I. History of Title IX of the Education Amendments of 1972
 - A. Senator Birch Bayh's proposed legislation covered entire "institution".
 - B. Congress passed Title IX as "program or activity".
 - C. Lower courts ruled both ways until...
 - D. North Haven v. Bell 1982, when Supreme Court held that Title IX was, indeed, "program specific" but did not define term.
 - E. Sense of House of Representatives Resolution #190 calls for "comprehensive" application of Title IX--again without definition.
 - 1) Secretary of HEW Casper Wineburger "plead to grant a special exemption" Boy Scouts and Girls Scouts against coverage.
 - 2) President Ford defended mother/daughter, father/son events coverage.
 - 3) Nine exemptions written into the regulations:
 - (a) institution changing from single sex to coed
 - (b) religious institutions
 - (c) military institutions
 - (d) traditionally single sex schools
 - (e) fraternities and sororities
 - (f) voluntary youth organizations; Girl Scouts/Boy Scouts; YWCA/YMCA
 - (g) Boys/Girls State/Nation (NACWEP opposed this exemption, 1976)
 - (h) father/son mother/daughter events
 - (i) scholarships related to beauty pageants

II. Grove City College v. Bell

A. Background

- 1) Grove City College, a private religious school, receives no Federal monies directly; there are no charges of discrimination on the basis of sex or race against the school.
- 2) Students who receive federal loans or grants choose to apply such monies to their tuition or books at Grove City College.
- 3) Title IX forbids sex discrimination in any "education program or activity" receiving federal financial assistance.
- 4) USED regulations pursuant to Title IX require recipients of federal financial assistance to sign an assurance of compliance with Title IX nondiscrimination requirements.

B. Case before the Supreme Court:

- 1) Is Grove City a recipient of federal financial aid by virtue of the fact that students receive student financial assistance in the form of (guaranteed student loans) and ADS Pell Grants?
- 2) Is Grove City required to sign an assurance of compliance with Title IX?
- 3) Does "program or activity" mean an entire institution?

C. The more comprehensive question is the definition of "program or activity":

- 1) The Administration has taken the middle-of-the-road interpretation that student aid is federal financial assistance, but that Title IX applies only to the entire student financial aid "program". (Both federal and private funds.)
- 2) Grove City argues that the student financial aid is aid to the student only, not to an institution; therefore, Grove City College is not a recipient of federal financial aid and should not be required to sign an assurance of compliance since it does not discriminate and there are no charges of discrimination against the school.
- 3) The broad interpretation of Title IX, supported by women's groups and Civil Rights groups, argues that "program or activity" means the entire "institution", school district, etc.

D. Congress has not defined "program or activity" nor has the Supreme Court. (Legislative history suggests it does not mean institution.)

- E. Education Department regulations are written in such a way that they could be interpreted either way; lower court cases have decided for both interpretations.
- F. The Administration modified the position of "broad interpretation" following the Supreme Court decision in North Haven v. Bell which declared that Title IX is program specific.
- G. U.S. House of Representatives approved House Resolution #190 November 16, 1983:

"Resolved, That it is the sense of the House of Representatives that Title IX of the Education Amendments of 1972 and regulations issued pursuant to such title should not be amended or altered in any manner which will lessen the comprehensive coverage of such statute in eliminating gender discrimination throughout the American educational system."

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- H. In expressing the sense of the House on Education opportunity, Congressman Carl Perkins noted: "Under policies established in Education Department regulations, Title IX covers any education program or activity receiving or benefitting from Federal financial aid. This includes programs assisted by the tuition and fees paid by students with Federal grants and loans under Title IV of the Higher Education Act. It also includes programs aided by funds authorized for other purposes, such as Federal research grants and contracts. The Department may investigate any unassisted program whose discriminatory practices may result in discrimination in--or "infect"--an assisted program. These policies prevent Federal financial support for discriminatory practices, as Congress intended..."

"Although there have been numerous challenges to Title IX...Republican and Democratic administrations alike have defended a comprehensive interpretation of this title, and Congress has resisted attempts to alter Title IX regulations through limiting amendments. Furthermore, no definitive court ruling has invalidated the basic law or the Department's regulatory interpretations..."

"The Justice Department has redefined and limited the obligations of recipients from nondiscrimination in all of their activities and programs. The redefinitions require that only specific programs that receive Federal funds need comply with Federal civil rights statutes...as interpreted by Mr. Reynolds, an institution that receives assistance for its library (program) may practice discrimination in its other programs without sanction...(see North Haven v. Bell decision that Title IX is "program specific" according to Supreme Court.)

"House Resolution #190 reaffirms the importance that the House of Representatives places on comprehensive protection against sex discrimination in educational institutions."

(R-11)

- I. Congressman John Erlenborn, ranking minority member, Committee on Education and Labor, gave the following dissenting views of H.R. 190:

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"The resolution states that the Congress in enacting Title IX 'intended that it be applied comprehensively.' Those who hold that view have sifted through every word ever uttered during consideration of that legislation, straining to find some support for that position. They have ignored the plain meaning of the words in Title IX as they twist and distort its intent to conform to their notion of what they wish the law said..."

"If the conference managers had wanted Title IX to reach to institutions, they would have written the law that way. The fact that they did not speak eloquently for itself..."

"This (H.R. 190) conceptual leap from coverage relating to specific programs to application to the entire institution cannot fairly be characterized as the intent of Congress. I was here and was actively involved in the debates preceding passage of the act. I can say unequivocally that it is not an accurate reflection of the intent of Congress..."

"The distinction between institutions receiving Federal aid and any program or activity receiving Federal aid is absolutely critical..."

"I believe the clear meaning of the operative language of Title IX limits the Federal government's concern to identifiable programs or activities which are federally funded and bars action against whole school systems or institutions with respect to programs or activities which do not receive Federal funds..."

"Both bureaucratic and judicial interpretations of Title IX have wandered far from its original intent. It has become a prime example of Federal intervention at its worst and of good intentions gone awry..."

"A vote against this resolution is not a vote against sex equity in education. It is a vote for not compounding the egregious excesses that have led to unwarranted interventionism in the affairs of our schools by the Federal government. It is a vote for faithful administration of the laws as they are written, consistent with express statutory language and congressional intent."

- J. To sum up,

- 1) Women's rights groups argue for the broad interpretation of Title IX that "program or activity" means entire institutions or school districts;

- 2) The Administration argues that the law means what it says, limiting Title IX enforcement to any "program or activity" receiving federal financial aid; that it is applying the law as interpreted by the Supreme Court in North Haven v. Bell;
- 3) Grove City argues it is not a recipient, that student financial aid is not federal aid, and that its financial aid program is not governed by Title IX regulations.

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