COMMENT

Section F/Page 1
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A blow to women's equality

The damage done by Title IX's death

By Phyllis W. Cheng

The federal law barring sex discrimination in education, Title IX of the 1972 Education Amendments, suffered a stunning defeat last week when the U.S. Supreme Court rendered its decision in *Grove City College* v. *Bell*. On the lesser issue of ensuring compliance with Title IX, the court ruled 9-0 that a college must file a federal form certifying adherence to the law, because student financial aid is federal assistance. On the larger issue of Title IX coverage, the court ruled 6-3, with Justice Sandra Day O'Connor voting with the majority, that while the private college accepted federal aid, the entire institution is not subject to Title IX compliance — only its financial-aid program. This narrow interpretation, which sided with the Justice Department, could dismantle one of the most important women's-rights laws ever passed.

For the dozen years since its enactment, Title IX has increased equal educational opportunity for female students in admissions policies; access to courses in both academic and vocational training, athletics and extra-curricular activities, counseling and other services, and has spurred a modest improvement for women in educational administration. Because of Title IX, college admissions no longer restrict women students by quota, as they once did. The percentage of female enrollment in four-year colleges has increased from 43 percent in 1972 to 52 percent today. The percentage of women students in agricultural, technical trade and industrial programs has grown from 8 percent in 1972 to 28 percent in 1980. Women enrollment in dental schools have increased by 101 percent; in veterinary schools, 120 percent; in law schools, 337 percent; and in medical schools, 296 percent. Even though women's athletic programs still receive an average budget of $400,000 compared to $1.7 million for men's programs, Title IX is credited with creating women's athletic scholarships where none existed before.

The implications of the Grove City decision have been underestimated by the media. Many think they affect only intercollegiate sports programs. That is mistaken. In reality, the ruling will have dire consequences for all educational programs in schools and colleges — public or private, from pre-school and kindergarten to university level — where federal financial assistance is present. The court decision will permit educational institutions to reverse the gains made by Title IX by restricting the law to only a small percentage of their programs which receive direct federal dollars — roughly 4 percent of the programs in most colleges and 8 percent in most school districts. Since many federal categorical programs in education are now financed through block grants to states and local school districts, the Office for Civil Rights, which enforces Title IX, will be hard-pressed to sort out those programs receiving direct federal assistance. In the past, the basis of enforcement policy was the "infection theory" that inequality in one program will spread to all other programs within an educational institution. With a backlog of several hundred Title IX complaints, the Office for Civil Rights will only be able to apply limited remedies to the larger disease of systemic sex discrimination.

The Grove City decision will also have adverse ripple effects on other civil-rights laws in education. Title IX was fashioned after Title VI of the 1964 Civil Rights Act, which bars racial discrimination in educational institutions receiving federal aid. Another law, Section 504 of the Rehabilitation Act of 1973, prohibits discrimination against the handicapped in schools and colleges. Both Title VI and Section 504 may now be called into question.

Women/F-4

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Women

Continued from page F-1

School and college administrators will probably welcome the decision, for Title IX has not been without its share of problems and resistance. In the mid-'70s, a flurry of changes took place across the country so that schools would comply with the federal mandate. In the Los Angeles Unified School District, for example, each of the some 600 schools completed self-evaluations, changed course titles, halted sex segregation in vocational and physical education, eliminated gender-specific titles, altered segregated student clubs, integrated student activities and conducted staff training. The district also developed a grievance procedure, appointed a Title IX coordinator and notified all of its half-million students about the law.

Since none of these required activities was paid for by the federal government, there was obviously little incentive for school administrators to go beyond the initial compliance requirements. Moreover, faculty and staff resisted the many changes required by Title IX which forced shop, home economics, and P.E. teachers to teach integrated classes in which they claimed students of one gender or the other had little interest. Athletic coaches complained of coaching integrated teams for non-contact sports. Discipline deans were confounded with rules requiring equal corporal and other punishment in the treatment of female and male student offenders.

As a result of these many levels of resistance, and the poor resolution of complaints by the Office for Civil Rights, many education institutions slipped back into old patterns of pre-Title IX behavior.

Ironically, the language of Title IX was the cause of its demise. The law states, "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." What is unclear is the definition of programs and activities. The Supreme Court and a number of lower courts have interpreted the terms narrowly.

In addition to judicial dismemberment, Title IX has also been subject to the whims of the executive and legislative branches. Even though former Sen. Birch Bayh, who authored Title IX, has consistently testified that the law was intended to be broad, some of his colleagues have rejected its intent. In 1981, Sen. Orrin Hatch introduced and later withdrew a bill to limit Title IX provisions, excluding indirectly funded educational programs. The White House also established the Presidential Task Force on Regulatory Reform, headed by Vice President George Bush, which singled out Title IX intercollegiate sports guidelines for review. In addition, the administration's Justice Department has deliberately refused to appeal lower-court decisions which limit the scope of Title IX, and took the initiative to recommend the very position which led to the Supreme Court ruling in Grove City.

There are two possible ways to salvage Title IX. First, congressional action needs to be taken to broaden its language. Rep. Claudine Schneider, R-Rhode Island, plans to introduce an amendment to Title IX that would change the interpretation of programs and activities to entire educational institutions. Her bill already has 25 bipartisan co-sponsors in both houses. Schneider had earlier introduced a House resolution supporting comprehensive Title IX guidelines, which passed last year, 414-8. The possibility for amending the Title IX language now is good, providing that competing legislation is not introduced to amend the entire scope of all civil-rights laws on the books. Civil-rights advocates would be wise to make the necessary amendments to Title VI and Section 504 separately.

Second, in ironic agreement with the Reagan administration's view on states' rights, equity advocates should intitiate state "Title IX" laws which parallel but improve upon the national law. Fourteen states have passed state laws similar to Title IX: California, Massachusetts, Washington, Connecticut, Hawaii, Illinois, Iowa, Minnesota, Alaska, New Jersey, New York, Oregon, Pennsylvania and Nebraska. These state laws afford the only protection against the Grove City decision in their jurisdictions.

The California Sex Equity in Education Act (AB3133, by Assemblyman Mike Roos, D-Los Angeles), became effective in 1983. It is a comprehensive, nine-page statute prohibiting bias in educational institutions receiving state financial assistance. The National Organization for Women and 25 other advocacy groups who intitiated the law saw to it that the language specified system-wide application. The California law, often considered to be one of the strongest state laws, would be a good model for other states to follow.

The Grove City decision will force supporters of women's educational equity to regroup and organize in new ways to achieve the broad intent of Title IX. The opposition may have won a skirmish on Title IX in the short run, but may be faced with a defeat in the long run when stronger federal and state laws are enacted. ■