

THE CHANGING PLAYING FIELD OF TITLE IX

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.¹

Congress enacted Title IX of the Education Amendments of 1972 to prevent sex discrimination in federally funded education programs.² The statute empowered the Department of Education's Office of Civil Rights to interpret and execute Title IX's commands.³ For nearly fifty years, Title IX has served as the core statutory basis for ensuring gender equity in education.

On November 16, 2018, the Department of Education, under Secretary Betsy DeVos, proposed sweeping new Title IX regulations,⁴ transforming the way the 1972 statute will be enforced. In the notice and comment period that followed, the agency received over 100,000 pieces of feedback from practitioners, experts, and advocates. The *Journal of Law and Gender* created an online archive of a selection of these comments.⁵ On May 6, 2020, the new regulations took effect.⁶

Volume 43.2 of the *Harvard Journal of Law and Gender* is dedicated to the topic of Title IX and the current landscape surrounding its enforcement.⁷ Professors Deborah L. Brake and Joanna L. Grossman analyze the intersection between Title IX and reproductive justice, arguing that Title IX enforcement has failed to recognize the effects of denying reproductive rights on educational equality. Professors Margaret E. Johnson, Emily Gold Waldman, and Bridget J. Crawford contend that Title IX should protect students from menstruation-related disruptions to their education. Nimra H. Azmi, a staff attorney for Muslim Advocates, draws upon one of her cases to expand our

¹ 20 U.S.C. § 1681 (2018).

² *See id.*

³ In relevant part, Section 1682 reads, "Each federal department and agency which is empowered to extend Federal financial assistance to any education program or activity . . . is authorized and directed to effectuate the provisions of Section 1681 of this title." 20 U.S.C. § 1682 (2018).

⁴ *Secretary DeVos: Proposed Title IX Rule Provides Clarity for Schools, Support for Survivors, and Due Process Rights for All*, DEPT. OF ED. (Nov., 16, 2018), <https://www.ed.gov/news/press-releases/secretary-devos-proposed-title-ix-rule-provides-clarity-schools-support-survivors-and-due-process-rights-all> [<https://perma.cc/8LFT-JJP7>].

⁵ *See Title IX*, HARV. J. L. & GENDER: ONLINE CONTENT (2020), <https://harvardjlg.com/category/title-ix/> [<https://perma.cc/69UL-TK5F>].

⁶ *Secretary DeVos Takes Historic Action to Strengthen Title IX Protections for All Students*, DEPT. OF ED. (May 6, 2020), <https://www.ed.gov/news/press-releases/secretary-devos-takes-historic-action-strengthen-title-ix-protections-all-students> [<https://perma.cc/967S-CG6T>].

⁷ The *Journal* had planned a five-day symposium at Harvard Law School to further this conversation on Title IX, bringing together academics and advocates from across the country. However, the symposium had to be cancelled due to the COVID-19 crisis.

understanding of how Title IX could, but does not yet, provide additional protections against discrimination at the intersection of religious practice and gender. Professor Samuel R. Bagenstos challenges critiques of the Office of Civil Rights for being illegitimate enforcers and for trying to impose value judgments onto the statute. Know Your IX organizers Sage Carson and Sarah Nesbitt argue that due process under Title IX should take into fuller account the due process rights of accusers.

While by no means comprehensive, this Volume establishes a forum for the discussion of the scope, shortcomings, and future potential of Title IX.

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