Abstract

Definition and rationale for full equity under Title IX legislation in terms of outcomes for students and benefits for school districts are given in this article. The relationship of compliance to equity is explored through an analysis of short-term and long-term costs and benefits for students and schools in both minimal and maximal equity responses. This article is an abridged version of a longer paper. (Author/MI)
Title IX Compliance and Sex Equity

Rita Bornstein

I. INTRODUCTION

The Title IX Legislation prohibiting sex discrimination in Federally assisted education institutions was a congressional response to patterns of institutionally perpetuated inequities based on sex. Although significant changes have occurred in schools as a result of the law, many systems have limited their responses to the achievement of minimum legal compliance. The experience of those working in the field clearly indicates that low levels of compliance activity promote neither the equal opportunity goals of Title IX nor the educational goals of the public schools.

The focus on minimum legal requirements does not necessarily indicate a resistance by school administrators to the achievement of full equity. Instead, it reflects the lack of well-defined equity goals and a rationale for moving beyond minimal legal compliance toward progressively more equitable schools and school systems.

This paper attempts to define and provide a rationale for full equity in terms of outcomes for students and benefits for school districts. It seeks to clarify the relationship of compliance to equity, and to provide a method of analyzing the short- and long-term costs and benefits for students and schools of both minimal and maximal equity responses. In addition, it presents some implications for action based on the goal of full equity.

II. DEFINITION OF EQUAL OPPORTUNITY

Because Title IX was enacted by the United States Congress as, essentially, an extension of Title VI of the 1964 Civil Rights Act, the legislation is commonly understood as a tool for equal opportunity. The Title IX legislation prohibits sex discrimination in all educational programs and activities that receive Federal assistance. The law was designed to ensure that educational institutions receive Federal aid and not to explicitly mandate that equal opportunity be achieved. The purpose of the law is to establish a framework within which equal opportunity can be achieved.

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under any education program or activity receiving federal support shall not be excluded from participation on the basis of sex. Title IX mandates that educational institutions providing federal financial assistance must take action to prevent and correct discriminatory practices. Title IX falls under the mandate of Title VI because it is a civil rights act that prohibits discrimination in programs or activities that receive federal financial assistance. However, Title IX specifically addresses educational institutions and emphasizes the importance of affirmative action to ensure equal opportunities for women and men. The law requires that educational institutions take affirmative steps to correct any past discrimination and take reasonable steps to prevent future discrimination.

Equal opportunity, like equity, is a complex concept. In some interpretations, it is based on formal equality, where outcomes are equal, and in others, it is based on substantive equality, where opportunities are equal. The concept of equal opportunity has been interpreted in various ways, and the legal landscape is complex. Title IX, like Title VI, has been subject to varying interpretations. The formal interpretation of equal opportunity implies that all students, regardless of sex, have access to educational programs and activities. The substantive interpretation, on the other hand, suggests that opportunities for educational and occupational achievements must be equal.

The implementation of Title IX has been guided by the Supreme Court's interpretations, which have evolved over time. The Fischel and Potkier (1977) case is significant because it upheld the constitutionality of Title IX and emphasized the importance of affirmative action.

IV. LONG-RANGE OUTCOMES

Interpretation of the Title IX mandate—either formal or substantive—depends on the outcomes desired. The formal approach seeks elimination of sex discriminatory policies and practices, while the substantive approach promotes equal success rates among males and females. School district focus on minimum compliance activities designed to eliminate overt discriminatory practices and provide access to school opportunities has not significantly altered disproportionate participation and achievement rates for males and females. School districts continue to lag behind boys in achievement tests, career preparation, and physical prowess. Boys on the other hand, exhibit higher levels of underachievement, maladjustment, and greater behavior and truancy problems than do girls.

The formal interpretation of equal opportunity implies that continued disproportionate participation and achievement reflects individual ability and preference. However, students may not have the information, experience, and skill necessary to make informed choices. Ability is limited by prior experiences, and preference may be colored by the subtle influence of sex bias and sex role stereotyping. Thus, neither ability nor preference may be adequate criteria for important educational and occupational choices.

The substantive view of equal opportunity requires that continued disproportionate participation and achievement reflects individual ability and preference. However, students may not have the information, experience, and skill necessary to make informed choices. Ability is limited by prior experiences, and preference is not necessarily based on equal opportunities. The high level of variance in school districts makes it difficult to promote as methods to achieve equity in the public schools. However, the highly controversial nature of such actions makes them difficult to promote as methods to achieve equity in the public schools. However, the highly controversial nature of such actions makes them difficult to promote as methods to achieve equity in the public schools. However, the high level of variance in school districts makes it difficult to promote as methods to achieve equity in the public schools. However, the high level of variance in school districts makes it difficult to promote as methods to achieve equity in the public schools.
The achievement of full equity, such as money, status, and power for all social groups, requires the development of strategies for their achievement.

The definition of educational sex equity, proposed in this paper, combines the formal equal opportunity goal of equal access with the substantive equal opportunity goal of equal success rates.

Educational sex equity can be defined as the elimination of sex discrimination, bias, and stereotyping in all school structures, policies, and practices and the promotion of proportionately equal educational and occupational attainments between females and males.

V. STAGES OF EQUITY

The Equity Continuum

The two approaches (formal and substantive) to equal opportunity delineated by Nell (1976) have different goals but the substantive equal opportunity goal of equal success rates has as a precondition the formal equal opportunity goal of equal access. The clear directionality of these equal opportunity perspectives suggests a continuum. The formal equal opportunity phase begins with a move from the initial stage of discrimination to the elimination of discriminatory policies (stage two). This action is fundamental to change, since official policies represent a codification of the philosophy of a school district. Stage three is the elimination of discriminatory practices nondiscriminatory policies and practices arising from stages two and three lead to fair rules and equal access, which represent the final stage of formal equal opportunity. This fourth stage also represents full legal compliance.

Fair rules and equal access, while overcoming discriminatory barriers provide only limited equity, however, since as Nell points out, fair procedures may have a disproportionate result when people from some groups have had a history of discrimination. Stage four (equal access), can be considered the first stage of substantive equal opportunity as well as the last stage of formal equal opportunity. It is the basis for stage five, affirmative programs, designed to promote increased levels of participation in all areas by underrepresented groups. Such programs might include recruitment, compensatory training, and extra support services.

Affirmative action is a weaker mechanism to ensure equal participation and success rates than are quotas and preferences which, according to Nell, are vital to the goal of substantive equal opportunity. The modification of quotas to affirmative action places what may seem undue confidence in the good will of educational systems. However, a real commitment of affirmative programs can promote higher levels of equity, albeit without the insurance of specified quotas based on representation in the population.

Affirmative programs should lead to equal participation rates (stage six) in all categories (courses of study, athletics, employment, extracurricular activities, etc.) Equal participation rates tend to produce equal success rates (stage seven), which provide an equal range of benefits and rewards such as money, status, and power for all social groups. This is the final stage of substantive equal opportunity and reflects the achievement of full equity.

The Compliance Continuum

While the term equity is generally used to represent the spirit of Title IX, compliance connotes the letter of the law. A series of sequential stages in compliance have been identified by Shirley McCune (Kaser et al. 1980, pp. 16-17, and subsequent personal communication).

A system first moves from no action at all into paper compliance, stage two. Paper compliance means completion of the procedural requirements of the Regulation—minimal training and information within the district but continuation of violations. Pocket compliance is stage three, although it represents movement beyond paper compliance. Responses to legal requirements are fragmented and only minimum levels of staff and financial resources are allocated to the effort. There are isolated individual efforts toward equity while some legal violations remain. Systemwide compliance, the fourth stage, proposed by McCune in a personal conversation with the author, indicates that a system has fulfilled its legal requirements. The goals of compliance, according to McCune, are access to programs, the elimination of within-class segregation, the establishment of a sex-fair curriculum, and role models of both sexes. Compliance with the law leads to the development of affirmative programs which can stabilize these changes and result in full educational equity (Kaser et al. 1980, pp. 14-15). This is the fifth stage characterized by commitment and operational programs.

The Equity/Compliance Continuum Relationship

McCune’s compliance continuum, therefore, provides equal access (former equal opportunity) and culminates with affirmative efforts to promote full equity (substantive equal opportunity). This construct fits nicely into the equity continuum described earlier. It is important to note that the stages of compliance do not exactly mirror the linear stages of the equity continuum because they reflect uneven systemic adaptations to Federal requirements. In that sense, the compliance continuum is more empirically based than the idealized stages of the equity continuum. Figure 1 portrays the relationship of McCune’s stages of compliance to the equity continuum.

Figure 1 — Equity/Compliance Continuum Relationship

The Compliance Continuum portrays the relationship of McCune’s stages of compliance to the equity continuum.

VII. RESPONSES TO TITLE IX

School district responses to Title IX may be analyzed in functional terms, which involve the assessment of short-run and long-run responses. The short-run response involves the immediate assimilation of Federal requirements into the school system with the expectation that compliance will be maintained. The long-run response involves the development of programs and policies that are consistent with Federal requirements and that contribute to substantive equal opportunity.

Programs and policies that contribute to substantive equal opportunity may include the establishment of a sex-fair curriculum, the development of role models of both sexes, and the provision of equal opportunity for all students.

These programs and policies are essential to the achievement of substantive equal opportunity, which includes access to programs, equal opportunity, and equal access.

The Compliance Continuum portrays the relationship of McCune’s stages of compliance to the equity continuum.
by building new administrative capacities to ensure the adequate if both tend to be neither too aggressive nor personally vulnerable.

Differential enrollment patterns are most apparent in vocational education. According to a study conducted for the American Institutes for Research, AIR, Harcourt and Rau, 1971, the enrollment in vocational education programs throughout the country in 1967-68 was predominantly segregated: the percentage of students in vocational programs that were black was lower than the percentage of the high school population that was black. Community attitudes toward integration were also calculated.

Unintended consequences for school districts may also result from studies that explore the legal bases of compliance with federal regulations. The study of individual and institutionalized activities aimed at fostering greater equity, as under and implementation of the Civil Rights Act of 1964, but also those experiencing the greatest amount of nontraditional enrollment.

The third federal mandate, however, is not to be denied the benefits of education programs. It is not to be denied because the benefits of education programs, although equal for males and females, are not always available. The Title IX Regulation requires that all educational programs be equal for males and females, and that they not disqualify on the basis of sex. The Title IX Regulation provides that districts not be allowed to discriminate against students of the opposite sex.

School District Response to Curriculum and Instruction Issues

Differences between training and the procedures and practices that relate to the academic curriculum and the nonacademic educational programs that are available are significant. The Title IX Regulation provides that curricula be available to all students, regardless of sex. The Title IX Regulation requires an analysis of the extent to which education programs are open to all students of the same sex. It is not to be denied that education programs are available to all students, regardless of sex.

Title IX Regulations do not provide guidelines for determining whether benefits derived from education programs are equal for males and females. It is not to be denied that benefits derived from education programs are equal for males and females.

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VIII. IMPLICATIONS FOR ACTION

Since the passage of Title IX by Congress in 1972, many new possibilities for high participation and success have become available to both females and males in our nation's schools. In many school districts, however, responses to Title IX have been more cosmetic than fundamental. Overall participation and success rates for females and males, while changing in some areas, still only minimally affected.

It is the central thesis of this paper that failure to establish sex equity as a goal is the long-run strategy for students and schools. Equitable treatment in both financial and human terms, and equitable opportunity, are necessary for the school system to achieve its goals. Without significant efforts, no meaningful progress toward Title IX compliance will be made.

Investigations of factors related to the level of compliance indicate that although school districts report a high priority for Title IX, less attention is paid to the need for compliance. Adler (1978), written on the precise topic, indicates that schools are paying considerable attention to the amount of money to be spent on Title IX programs. However, the need for Title IX programs is that they are essential to the effective operation of schools and society. Without significant efforts, no meaningful progress toward Title IX compliance will be made.

The Rand report (Hill and Retting 1980) indicates that while leadership in the administration and support from school superintendents are important, other factors are necessary for successful implementation of Title IX. One of these conditions is pressure for change from both the federal government and interested parties within the institutions or in the communities served by them. (p. 80) Title IX professionals have long been familiar with the pressure for change to occur. Leadership can indeed come from a variety of sources. In some school districts, the impact for change has come from community groups and others from leaders of the school system often in the area of athletics.

Leadership for school districts is sponsored by Title IX can also come from the state department of education and from federally-funded Title IX projects focusing on sex discrimination.

The major federal impetus for change of course is the Office for Civil Rights (OCR) which is the agency responsible for enforcement of Title IX. However, the extreme sensitivity of OCR to political pressure has resulted in an unclear and inconsistent enforcement and interpretation of the regulations.

A leading advocate for sex equity in education, Holly Knox, Director of the Project on Educational Equity (PEER) asserts that cutting off funds is the only way to get schools to change their policies. This is based on the fact that there is no evidence that schools will act for any other reason except under court order or massive monetary damages, or under the threat of losing federal money. An Interview (1978:55).

Momentum for Title IX compliance and equity can come from a variety of sources. No matter what the source action will be more or less functional for students and schools. It is important for schools to change to those outcomes. Favorable outcomes, measured in this paper, have to be with equalizing participation and success rates for males and females.

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