

**Testimony to the
Senate Select Committee on Gender Discrimination
And Title IX Implementation**

**Gender Discrimination and the Status of Title IX
Implementation at CSU Fresno**

**Testimony of Mary Wiberg, Executive Director
California Commission on the Status of Women**

**Tuesday, July 24, 2007
State Capitol, Room 3191**

Good morning, Senators.

I am pleased to be here on behalf of the CA Commission on the Status of Women. We thank you, Senator Florez, for requesting that this select committee on gender discrimination and Title IX implementation be established.

I also want to thank the strong women - and men - who have often put their own careers at risk to advocate on behalf of women and girls in California, especially in the area of athletics. We would not be here today if it were not for the women of CSU Fresno who have challenged the university on Title IX compliance.

Title IX is about all of education, not just athletics. I applaud the Rules Committee for not limiting the investigation of Title IX compliance only to athletics. In recent years, the Commission has heard from faculty members at several state universities and community colleges about the discrimination against women in salaries and assignments. We encourage the Committee's attention to all of the Title IX issues in higher education.

Last fall the Commission held public hearings in LA, Sacramento and Fresno to hear from CA women about the issues impacting them. In Fresno, we heard from several faculty members at CSU Fresno specifically about the particular lack of Title IX compliance in athletics. Dr. Kathryn Forbes, a Professor in Women's Studies, also spoke of the discrimination experienced

by many women as high school athletes. Title IX was one of the major issues brought to our attention at the Fresno hearing.

Based on testimony on Title IX, the Commission recommended in its **Public Policy Agenda and Proposals to the Governor and State Legislature** that the State

- Establish a state-level office of equity to carry out oversight and enforcement responsibilities regarding state and federal educational equity laws, including Title IX, and to provide technical assistance to school districts and community colleges.

The only reason universities were not included in the technical assistance portion is because of the unique governance structure of the university systems.

- **We recommend that you seriously consider establishing an office and that it have some responsibility for oversight with all state postsecondary institutions.** Based on the limited oversight currently provided through the Department of Education, we would also suggest that such an office be outside that department.

Title IX and Athletics

The study **Title IX Athletics Compliance at California's Public High Schools, Community Colleges, and Universities**, prepared for the CA Postsecondary Education Commission and the California Department of Education included these recommendations regarding postsecondary athletics:

- The California Legislature should
 - Support state-level monitoring of Title IX compliance in university athletic programs through the universities' respective system wide offices. **(14)**
 - Request that the University of California Office of the President and the Chancellor's Office of the California State University
 - strengthen training and technical assistance to universities on how to meet the participation requirements of Title IX using each part of the three-prong test. **(15)**
 - provide annual equity training to coaches and athletic administrators at universities. The training should

- include Title IX requirements, sexual harassment, and other nondiscrimination issues.(16)
 - institute stronger policy directives and monitoring systems to ensure comparable coaches for men’s and women’s teams. In addition, further study of university coaching should be conducted to determine if compensation is related to quality of coaching.(17)
 - and that the Legislature
 - Institute stronger policy directives and monitoring systems to ensure that universities are spending comparable amounts of money for operating and recruiting for men’s and women’s teams. (18)
- **We recommend that the Select Committee seriously consider these recommendations for implementation**

On a national level, the National Coalition for Women and Girls in Education produced a report **Title IX Athletics Policies: Issues and Data for Education Decision Makers**, May 10, 2007. It confirms that female athletes are not receiving equal treatment of opportunities to participate 35 years after passage of Title IX. The NCWGE recommendations include the following:

- **Vigilant Enforcement.** The OCR (Office of Civil Rights, U.S. Department of Education) must strengthen its enforcement of Title IX....

I call attention to this recommendation because of the changes in OCR regulations of Title IX (March 2005 “Clarification”) which have weakened Title IX enforcement, as well as the actual approach OCR has taken to enforcement.

In a review of all Title IX Complaints from secondary education filed with OCR for the years 1997 through 2006, Herb Dempsey, an investigator of Title IX violations, found that in 1998 – under the Clinton administration, 65% of cases in high school athletics were resolved by an agreement to resolve between the recipient (school district) and the Office of Civil Rights. In 2005 – under the Bush administration, only 16% were resolved in this manner. In addition, the number of cases OCR identified to move forward changed from 62% in all Title IX cases filed in 1998 (not just athletics) to

35% of all Title IX cases filed in 2005 – the year the new “clarification” took place.

In effect, through administrative changes, the current administration has weakened Title IX enforcement significantly. This is true at all levels of education. And the approach that educational institutions are using regarding Title IX complaints is very similar to that which insurance companies have used in dealing with medical (and other) claims:

- Delay
- Deny
- Defend

And if possible, hold the victim responsible for the problem.

In a landmark case on March 28, 2007, the United States District Court, District of Minnesota, ruled in *Amelia Cobb and Diana Saly v. the United State Department of Education Office for Civil Rights* that plaintiffs had the right to sue OCR for unequal treatment and benefits under Title IX. In essence, OCR has failed to do the work it is assigned to do.

- **We recommend that, in the investigation and deliberations of the Committee, the Select Committee identify exactly how significant a role the Office of Civil Rights has had in enforcement of compliance regarding postsecondary violations of Title IX, especially as it relates to higher education in California** (similar to the secondary education study cited above).
- **Further, we recommend that recommendations for strengthening the role of the Office of Civil Rights be developed and forwarded to the U.S. Secretary of Education, the California Congressional delegation, and to the Education Committees of both houses of Congress.**

On behalf of the CA Commission on the Status of Women, I commend the California Senate for establishing the Select Committee on Gender Discrimination and Title IX Implementation. California women and girls deserve better than the treatment they have received in many of the state postsecondary education institutions. We will follow with interest the work of this Committee and look forward to working with the Committee in any way possible.