

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR: THE PRESIDENT
FROM: KEN COLE
SUBJECT: Title IX and Sports

This memorandum is in response to our discussion concerning the proposed HEW regulation under Title IX of the Education Act, outlawing sex discrimination in higher education, and the potential effect of these regulations on intercollegiate athletics.

We have worked with both HEW and Justice to restrict the adverse impact on intercollegiate athletics. HEW has altered their proposed regulations, and Secretary Weinberger feels they will meet with your approval. He would like to publish them as soon as possible and to allow extensive time for public comments (letter to you at Tab A).

Justice prefers that HEW now publish these regulations for public comment so that both HEW and Justice can have the advantage of outside expertise in final preparation of the regulations. Justice has advised us that Title IX must cover sports as a matter of law, but that there is room for a somewhat stricter interpretation on intercollegiate sports than even HEW's last draft, and the commentary period will aid in this.

Most of the NCAA objections are to an earlier "leaked" draft, and Secretary Weinberger feels his proposed regulations will meet NCAA's objections and thereby make further legislation unnecessary. However, we will continue to work with the NCAA to determine whether amendatory legislation would be helpful or desirable in this area.

Recommendation: I recommend that Secretary Weinberger publish the proposed regulations for public comment so that we can have the benefit of outside discussion and expertise. By law, you approve the final regulations before they go into effect; therefore, nothing final can be issued without your approval.

Approve _____ Disapprove _____



May 31, 1974

MEMORANDUM FOR THE PRESIDENT

During the week of June 3, HEW will publish for rule-making the proposed regulations which are required by Title IX of the Education Amendments Act of 1972. The comment period will end October 15. The Statute requires your approval of the final regulations.

As you know, Title IX prohibits sex discrimination by educational institutions receiving Federal financial assistance. As you will recall, when you signed Title IX, the law closely parallels the language of Title VI of the Civil Rights Act of 1964 which prohibits race discrimination by recipients of Federal funds.

Under the Title IX statute, the Department is required to cover athletic activities conducted by recipients of Federal financial assistance. The proposed regulation has been drafted in such a way, however, so as to minimize the impact on existing competitive athletic programs, because to do otherwise would in my opinion create a serious backlash against women's rights. For example, the proposed regulation simply requires that recipients of Federal financial assistance provide equal opportunity for both sexes to participate in competitive athletics to the extent that the sexes express an interest in participating. In addition, the proposed regulation authorizes educational institutions to conduct separate competitive athletic teams for males and females. Finally, and most significantly, the proposed regulation states expressly that, "Nothing in this section shall be interpreted to require equal aggregate expenditures for athletics for members of each sex."

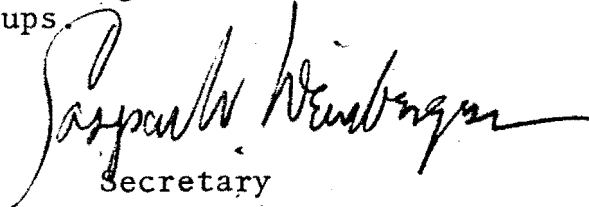
While HEW's treatment of athletics in the proposed Title IX regulation is designed to minimize the impact of the statute on competitive intercollegiate athletics, it should be recognized that the mere fact that the statute covers athletics will increase pressures on competitive collegiate athletic programs to broaden athletic opportunities for females.

As you are aware, considerable controversy has surrounded the subject of sex discrimination in collegiate athletics. Generating most of the debate on the subject has been the NCAA whose concerns seem to be premised on a misinterpretation of an early, preliminary draft of the proposed Title IX regulations, which unfortunately was leaked to the public in mid-winter. The NCAA misinterpreted that draft as requiring equal expenditures for male and female competitive athletic programs. As a result, the NCAA proposed language that would exempt from Title IX monies generated by revenue-producing sports, such as football and basketball, to the extent that such monies were used to support those revenue-producing sports. The Tower Amendment which is ambiguously drafted and was recently passed by the Senate during debate on the Elementary and Secondary Education Act, attempts ineffectively to incorporate the intent of the NCAA proposal. That amendment is now in the Conference Committee.

HEW believes that its proposed treatment of athletics is preferable to that proposed by the NCAA and Senator Tower. First, the HEW language does not highlight the expenditures issue but allows the provision of equal opportunity in competitive athletic programs to be judged on the basis of a multiplicity of factors, including the provision of equipment, supplies, scheduling of competition, use of facilities, etc., rather than solely on the basis of expenditures. Second, the proposed HEW regulation, as noted above, expressly states that nothing in the regulation shall be interpreted to require equal expenditures.

In sum, the enforcement of the statute will necessarily bring about some changes in the existing pattern of intercollegiate athletics. We believe our regulations minimize these changes to the extent the law permits us to do so.

In fact, we believe our regulations will be attacked by numerous women's groups.


Secretary