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TITLE IX AND FEDERAL POWER

Title IX of the Education Amendments of 1972 has stirred up a new controversy. That is the law, you will remember, which made front-page headlines in 1976 when President Gerald Ford discovered that the Department of Health, Education and Welfare was trying to ban Father-Son/Mother-Daughter school events as sex discriminatory.

The overreaching federal bureaucrats in that controversy were ridiculed not only by President Ford, but also by both the sponsors of Title IX, Birch Bayh in the Senate and Edith Green in the House. Congress promptly passed an amendment to Title IX specifically exempting such traditional "sex discriminatory" activities from the absolutist language of Title IX.

Actually, the bureaucrat who made the anti-Mother-Daughter ruling was not as off-base as he appeared to Ford, Bayh and Green. The HEW bureaucrat was simply enforcing a literal interpretation of the statute which prohibits sex discrimination in schools and colleges.

The Father-Son/Mother-Daughter incident produced headlines, network television coverage, interviews, and editorials because the President got into the act and because it was a "fun" incident to comment about. However, the American public got practically no coverage at all about the tremendous grab for power by the same bureaucrats at the same time under the same law.

That reach for power in 1975 is just starting to make headlines in 1982. Why now?

Let's examine the statute. The operative section of Title IX of the Education Amendments of 1972 reads: "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."

After Congress passes a statute, it goes to the appropriate agency to write the specific regulations to administer and enforce the law. In the case of Title IX, the agency was the Department of Health, Education and Welfare, which labored over the task for three years; the regulations went into effect July 18, 1975.

Now look at how the HEW bureaucrats did a sleight-of-hand trick to extend their power far beyond the intent, letter and spirit of the Title IX statute quoted above.

The 1975 HEW regulation stated that Title IX applies "to each education program or activity operated by such recipient [school or college] which receives or benefits from federal financial assistance."

The emphasized words show how HEW changed the meaning of the law in two ways. First, although the statute clearly states that federal control extends only to every "education program or activity receiving federal financial assistance" (see above), the HEW regulation extended the long arm of federal control to encompass every education program or activity operated by a school or college that receives any federal assistance whatsoever -- whether or not the program or activity itself receives federal assistance.

Secondly, the HEW regulation extended federal control past programs "receiving" federal money in order to encompass programs that "benefit from" federal money -- a much broader definition. Together, these two pieces of word chicanery enabled HEW (and subsequently the Department of Education) to assert federal control over every detail of the day-to-day functioning of private schools and colleges.

What propelled this into 1982 headlines was the case of the University of Richmond, a private college receiving no federal funds (except that some students receive federally-funded student loans) which won its case in Federal District Court against this improper use of federal power. The Justice Department did not appeal, and that brought on the wrath of those who want more and more federal control of private schools and colleges.

The issue in this case is not sex discrimination or enforcement of Title IX. The issue is whether federal agencies are to be allowed to enforce a pseudo-Title IX in order to bring private colleges under the thumb of federal control. If the liberals want federal agencies to run private colleges, they should try to get Congress to change the statute; they should not sneak their power grab through the back door by manipulating words in regulations and then trying to get the courts to uphold them.

The Reagan Administration is to be commended for accepting the Richmond decision, which is in total harmony with the Title IX statute. The Reagan Administration would be making a great mistake if it continued the previous Administrations' obnoxious interference with private schools and colleges.