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## UNRAVELING TITLE IX REGULATIONS

Education Secretary Terrel Bell is moving valiantly to cut out some of the federal regulations which are excessive, over-reaching, redundant, conflicting, or all of the above. In so doing, he is simply trying to fulfill the Reagan mandate by reducing federal control, especially over schools and colleges.

An example of his efforts to unravel bureaucratic entanglements is his proposed revision of the Title IX regulations. The Education Amendments of 1972, popularly known as Title IX, is the basic law prohibiting sex discrimination in schools and colleges.

Title IX forbids sex discrimination in "any education program or activity receiving federal financial assistance." This statutory language gave the federal government the power to stop sex discrimination in any education program or activity receiving federal money. It's a rule of politics that the strings of control follow a gift of money.

But the over-ambitious bureaucrats of previous Administrations interpreted that language to reach much, much farther. Without any statutory authority whatsoever, the Department of Health Education and Welfare wrote the regulation in such a way as to stretch federal control to an enormous additional area never intended by the law.

The HEW regulation (supposedly implementing the statute) asserts federal control over "each education program or activity operated by such recipient [that is, over every private school or college] which receives or benefits from federal financial assistance." The italicized words show how HEW changed the meaning of the law in two ways.

First, the bureaucrats rewrote the law so that the long arm of federal control applies to every education program or activity operated by any private school or college that receives federal assistance -- whether or not the particular program or activity itself receives federal money.

Second, HEW bureaucrats extended federal control to include not only those programs "receiving" federal money, but also programs that merely "benefit from" federal money, a much broader definition. Together, these changes in wording extended federal control

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over every detail of the day-to-day functioning of private schools and colleges if they receive so much as a modicum of federal aid.

After taking office, Secretary Bell reviewed the legislative history and language of Title IX and came to the conclusion that the regulations written by the previous Administrations are far beyond what Congress intended in the statute, and furthermore that his Department's jurisdiction over employment simply duplicates that of EEOC (the Equal Employment Opportunity Commission) under Title VII of the Civil Rights Act.

The result of the over-reaching regulations was to subject private schools and colleges to needless and endless paperwork and costly federal meddling. The result of the redundant regulations about employment was to subject private schools and colleges to conflicting rules and litigation.

These Title IX regulations are so complex that they have spawned an extensive body of litigation challenging their validity. The court decisions generally found the regulations to be invalid insofar as they gave the Education Department so much power over employment. The litigation continued until, as a result of conflicting decisions in different circuits, three cases are now pending before the U.S. Supreme Court.

Secretary Bell proposes to leave the enforcement of nondiscrimination in employment to the EEOC, except for some limited aspects directly affecting students. After all, Title IX was designed to benefit students, not to be a second EEOC.

The author of Title IX, former Rep. Edith Green, in a 1977 speech expressed her sad disillusionment with the way the law had been distorted by the bureaucracy. She pointed out that the purpose of the law was simply to give women equal opportunity in education. Then she added:

"Title IX was not designed to force integration by sex of every physical education class in the country. Title IX was not designed to do away with all-male choirs, father-son or mother-daughter banquets, or to require the integration by sex of Boy Scouts, Girl Scouts, Campfire Girls, YMCAs, YWCAs, sororities, fraternities. In each one of these instances, the regulation grew out of the fertile imaginative brain of someone in the administrative branch of the government."

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