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Facsimile Cover Sheet

TO: Nicole Rabner
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FROM: **Susannah Baruch, Legislative Counsel**
Office of Congresswoman Lowey

The following number of sheets have been transmitted,

Excluding this page: 5

If there are any problems, please contact Susannah
at (202) 225-6506.

Comments: Here is a draft - we hope to have The Wh.
House on board. Please pass This along to Jennifer
Klein and I will speak to you next week.
Susannah

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S.I.C.

105TH CONGRESS
1ST SESSION**S.** _____

IN THE SENATE OF THE UNITED STATES

MR. MOSELEY-BRAUN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend section 485(g) of the Higher Education Act of 1965 to make information regarding men's and women's athletic programs at institutions of higher education easily available to prospective students and prospective student athletes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 Congress makes the following findings:

5 (1) Since enactment in 1972, title IX of the
6 Education Amendments of 1972 (20 U.S.C. 1681 et
7 seq.) has played a vital role in expanding the athletic

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1 opportunities available to American girls and
2 women.

3 (2) Prior to the enactment of such title IX,
4 fewer than 32,000 women competed in intercolle-
5 giate athletics, women received only 2 percent of
6 schools' athletic budgets, and athletic scholarships
7 for women were practically nonexistent.

8 (3) In 1997, more than 110,000 women com-
9 peted in intercollegiate sports, and women account
10 for 37 percent of college varsity athletes.

11 (4) While ~~such~~ title IX has been very success-
12 ful, a significant gap remains between the athletic
13 opportunities available to men and the athletic op-
14 portunities available to women.

15 (5) According to a 1997 study by the National
16 Collegiate Athletic Association, female college ath-
17 letes receive only 25 percent of athletic operating
18 budgets, 38 percent of athletic scholarship dollars,
19 and 27 percent of the money spent to recruit new
20 athletes.

21 (6) While women represent 55 percent of the
22 students attending institutions of higher education,
23 women comprise only 37 percent of the athletes at-
24 tending institutions of higher education.

OK ✓

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S.L.C.

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1 (7) There is substantial evidence that women
2 and girls who participate in athletics have better
3 physical and emotional health than women and girls
4 who do not participate, and that participation in
5 athletics can improve academic achievement.

6 (8) Easily accessible information regarding the
7 expenditures of institutions of higher education for
8 women's and men's athletic programs will help pro-
9 spective students and prospective student athletes
10 make informed judgments about the commitments of
11 a given institution of higher education to providing
12 athletic opportunities to male and female students
13 attending the institution.

14 **SEC. 2. PURPOSE.**

15 It is the purpose of this Act to make information re-
16 garding men's and women's athletic programs at institu-
17 tions of higher education easily available to prospective
18 students and prospective student athletes.

19 **SEC. 3. INFORMATION AVAILABILITY.**

20 Section 485(g) of the of the Higher Education Act
21 of 1965 (20 U.S.C. 1092(g)) is amended—

22 (1) by redesignating paragraphs (4) and (5) as
23 paragraphs (5) and (6), respectively; and

24 (2) by inserting after paragraph (3) the follow-
25 ing:

*and will encourage institutions
to continue providing greater
opportunities to female athletes*

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1 “(4) OFFICE FOR CIVIL RIGHTS.—(A) Each in-
2 stitution of higher education described in paragraph
3 (1) shall provide to the Assistant Secretary for Civil
4 Rights of the Department the information contained
5 in the report described in paragraph (1). *within 15 days*

6 “(B) The Assistant Secretary for Civil Rights
7 *by April 1* shall annually prepare a report regarding the infor-
8 mation received under subparagraph (A) for the
9 year. The report shall—

10 “(i) summarize the information and iden-
11 tify trends in the information;

12 “(ii) aggregate the information by divisions
13 of the National Collegiate Athletic Association;
14 and

15 “(iii) contain information on each individ-
16 ual institution of higher education.

17 “(C) The Secretary shall ensure that the report
18 described in subparagraph (B) is made available on
19 the Internet.

20 “(D) The Assistant Secretary for Civil Rights
21 shall establish a toll-free telephone service—

22 “(i) to provide the public with information
23 regarding ^{the} reports described in subparagraph
24 (B) and *information collected under*
 paragraph (1)

06-12-97 01:17PM FROM SEN. MOSELEY-BRAUN TO 50546

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1 “(ii) to respond to inquiries from the pub-
2 lic regarding the provisions of title IX of the
3 Education Amendments of 1972.

4 “(E) The Assistant Secretary for Civil Rights
5 shall use the information provided by institutions of
6 higher education under paragraph (1) to ensure *promote*
7 compliance with title IX of the Education Amend-
8 ments of 1972.

9 “(F) The Assistant Secretary for Civil Rights
10 shall notify, not later than 180 days after the date
11 of enactment of this paragraph, all secondary
12 schools in all States regarding the availability of the
13 information reported under subparagraph (B) ~~and~~
14 the information made available under paragraph (1),
15 and how such information may be accessed.

The Department of Education would support appropriate legislation to ensure that information on college athletic programs is made more accessible for students. For example, we could support an appropriate bill requiring schools to publish and widely disseminate (e.g., through internet and other means) this information.

However, we have strong objections to S. , as currently drafted:

--It lodges in the Department's Office for Civil Rights (OCR), a civil rights enforcement office, evaluation and dissemination functions that do not belong there;

--In doing so, it almost certainly will interfere with OCR's enforcement program, requiring OCR to take resources from enforcement work and dedicate them to evaluation and dissemination functions on this very discrete issue;

--Contrary to Department policy, it sends a strong signal -- through its prescriptive mandates -- that gender discrimination in college athletic programs is the most significant problem of discrimination that needs to be addressed in education;

--It includes overly prescriptive and intrusive provisions that would interfere with the Executive Branch's capacity to decide how to carry out its functions. For example, no other function in the Department is subject to legislative requirements that they have a toll-free telephone service or to such prescriptive requirements for making information available to the public.

--Particularly because we believe that students can easily obtain information on athletic opportunities from the colleges they are interested in, we fail to see any compelling need that outweighs these concerns.

SPECIAL

Total Pages: 11

LRM ID: CJB59

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, July 3, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: *Janet R. Forsgren*
Janet R. Forsgren (for) Assistant Director for Legislative Reference
OMB CONTACT: Constance J. Bowers
PHONE: (202)395-3803 FAX: (202)395-6148

SUBJECT: EDUCATION Views on HR1987 Fair Play Act ²⁶₂₇DEADLINE: ~~4:00 p.m. Monday, July 7, 1997~~*Wed July 9, 1997*

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

* COMMENTS: Attached is a copy of HR 1987 with (handwritten) annotations by the Dept. of Education. ED proposes to convey informally a message to the bill's supporters that it would support the bill with those amendments.

The bill would require the Secretary of ED to assist in the dissemination of information currently required by the HEA on athletic participation by students. It would require the Secretary to issue his own report on data disclosed by individual institutions and publicize its availability. ED's proposed amendments are designed to reduce the burden on ED and micro-management.

DISTRIBUTION LIST

AGENCIES:

EOP:

Barry White
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James C. Murr
Janet R. Forsgren
Not

→ Jennifer Klein
Leslie Mustain

105TH CONGRESS
1ST SESSION

H. R. 1987

Handwritten edits are
the Dept. of Education's
suggested changes to
make the bill
acceptable.

IN THE HOUSE OF REPRESENTATIVES

Mrs. LOWEY (for herself [see attached list of cosponsors]) introduced the following bill; which was referred to the Committee on

A BILL

To amend section 485(g) of the Higher Education Act of 1965 to make information regarding men's and women's athletic programs at institutions of higher education easily available to prospective students and prospective student athletes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Fair Play Act".

5 **SEC. 2. FINDINGS.**

6 Congress makes the following findings:

1 (1) June 23, 1997, marks the 25th anniversary
2 of the signing of title IX of the Education Amend-
3 ments of 1972 (20 U.S.C. 1681 et seq.) into law,
4 and on that day communities across the United
5 States will honor the tremendous difference such
6 title IX has made to women and girls in our Nation.

7 (2) Since enactment in 1972, such title IX has
8 played a vital role in expanding the athletic opportu-
9 nities available to American girls and women.

10 (3) Prior to the enactment of such title IX,
11 fewer than 32,000 women competed in intercolle-
12 giate athletics, women received only 2 percent of
13 schools' athletic budgets, and athletic scholarships
14 for women were practically nonexistent.

15 (4) In 1997, more than 110,000 women com-
16 peted in intercollegiate sports, and women account
17 for 37 percent of college varsity athletes.

18 (5) While such title IX has been very success-
19 ful, a significant gap remains between the athletic
20 opportunities available to men and the athletic op-
21 portunities available to women.

22 (6) According to a 1997 study by the National
23 Collegiate Athletic Association, female college ath-
24 letes receive only 23 percent of athletic operating
25 budgets, 38 percent of athletic scholarship dollars,

1 and 27 percent of the money spent to recruit new
2 athletes.

3 (7) While women represent 53 percent of the
4 students attending institutions of higher education,
5 women comprise only 37 percent of the athletes at-
6 tending institutions of higher education.

7 (8) There is substantial evidence that women
8 and girls who participate in athletics have better
9 physical and emotional health than women and girls
10 who do not participate, and that participation in
11 athletics can improve academic achievement.

12 (9) Easily accessible information regarding the
13 expenditures of institutions of higher education for
14 women's and men's athletic programs will help pro-
15 spective students and prospective student athletes
16 make informed judgments about the commitment of
17 a given institution of higher education to providing
18 athletic opportunities to male and female students
19 attending the institution.

20 **SEC. 3. PURPOSES.**

21 The purposes of this Act are—

22 (1) to make information regarding men's and
23 women's athletic programs at institutions of higher
24 education easily available to prospective students
25 and prospective student athletes; and

4

1 (2) to increase the athletic opportunities avail-
2 able to women at institutions of higher education.

3 SEC. 4. INFORMATION AVAILABILITY.

4 Section 485(g) of the Higher Education Act of 1965
5 (20 U.S.C. 1092(g)) is amended—

6 (1) by redesignating paragraphs (4) and (5) as
7 paragraphs (5) and (6), respectively; and

8 (2) by inserting after paragraph (3) the follow-
9 ing:

10 "(4) SUBMISSION; REPORT; INFORMATION
11 AVAILABILITY.—(A) Each institution of higher edu-
12 cation described in paragraph (1) shall provide to
13 the Secretary, *at such time and in such form as*
14 *the Secretary may require,*
15 ~~institution makes available the report under para-~~
16 ~~graph (1),~~ the information contained in the report

17 "(B) The Secretary shall *issue* ~~prepare~~ a report re-
18 garding the information received under subpara-
19 graph (A) for each year by April 1 of the year. The
report shall—

20 "(i) *Compile* ~~summarize~~ the information *in a form that is useful*
21 *to prospective students and prospective student athletes,*
22 ~~identify trends in the information; as well as the public;~~

23 "(ii) aggregate the information by divisions
24 of the National Collegiate Athletic Association
and

1 “(iii) contain information on each individ-
2 ual institution of higher education.

3 “(C) The Secretary shall ensure that the report
4 described in subparagraph (B) is made available on
5 the Internet within a reasonable period of time.

6 “(D) The Secretary shall establish, within a
7 reasonable period of time, a toll-free telephone serv-
8 ice—

9 “(i) to provide the public with information
10 regarding reports described in subparagraph
11 (B);

12 “(ii) to provide the public with information
13 regarding the information received under sub-
14 paragraph (A); and

15 “(iii) to respond to inquiries from the pub-
16 lic regarding the ^{application} ~~provisions~~ of title IX of the
17 Education Amendments of 1972. ^{to athletics}

18 “(E) The Secretary shall use the information
19 provided by institutions of higher education under
20 paragraph (1) to ensure compliance with title IX of
21 the Education Amendments of 1972.

22 “(F) The Secretary shall ~~notify~~, not later than
23 180 days after the date of enactment of this para-
24 graph, ~~all secondary schools in all States~~ regarding
25 the availability of the information reported under

*take reasonable steps to notify school districts
and secondary schools*

6

- 1 subparagraph (B) and the information made avail-
- 2 able under paragraph (1), and how such information
- 3 may be accessed.

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(6) The statistics described in paragraphs (1)(F) and (1)(H) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act.

(7)(A) Each institution of higher education participating in any program under this title shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding—

(i) such institution's campus sexual assault programs, which shall be aimed at prevention of sex offenses; and

(ii) the procedures followed once a sex offense has occurred.

(B) The policy described in subparagraph (A) shall address the following areas:

(i) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.

(ii) Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or nonforcible.

(iii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.

(iv) Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that—

(I) the accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and

(II) both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.

(v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.

(vi) Notification of students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community.

(vii) Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.

(C) Nothing in this paragraph shall be construed to confer a private right of action upon any person to enforce the provisions of this paragraph.

(g) DATA REQUIRED.—

(1) IN GENERAL.—Each coeducational institution of higher education that participates in any program under this title, and has an intercollegiate athletic program, shall annually, for the immediately preceding academic year, prepare a report

that contains the following information regarding intercollegiate athletics:

(A) The number of male and female full-time undergraduates that attended the institution.

(B) A listing of the varsity teams that competed in intercollegiate athletic competition and for each such team the following data:

(i) The total number of participants, by team, as of the day of the first scheduled contest for the team.

(ii) Total operating expenses attributable to such teams, except that an institution may also report such expenses on a per capita basis for each team and expenditures attributable to closely related teams such as track and field or swimming and diving, may be reported together, although such combinations shall be reported separately for men's and women's teams.

(iii) Whether the head coach is male or female and whether the head coach is assigned to that team on a full-time or part-time basis. Graduate assistants and volunteers who serve as head coaches shall be considered to be head coaches for the purposes of this clause.

(iv) The number of assistant coaches who are male and the number of assistant coaches who are female for each team and whether a particular coach is assigned to that team on a full-time or part-time basis. Graduate assistants and volunteers who serve as assistant coaches shall be considered to be assistant coaches for the purposes of this clause.

(C) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, separately for men's and women's teams overall.

(D) The ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes.

(E) The total amount of expenditures on recruiting, separately for men's and women's teams overall.

(F) The total annual revenues generated across all men's teams and across all women's teams, except that an institution may also report such revenues by individual team.

(G) The average annual institutional salary of the head coaches of men's teams, across all offered sports, and the average annual institutional salary of the head coaches of women's teams, across all offered sports.

(H) The average annual institutional salary of the assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the assistant coaches of women's teams, across all offered sports.

(2) SPECIAL RULE.—For the purposes of subparagraph (G), if a coach has responsibilities for more than one team and the institution does not allocate such coach's salary by team, the institution should divide the salary by the number of teams for which the coach has responsibility and allocate the salary

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among the teams on a basis consistent with the coach's responsibilities for the different teams.

(3) **DISCLOSURE OF INFORMATION TO STUDENTS AND PUBLIC.**—An institution of higher education described in paragraph (1) shall make available to students and potential students, upon request, and to the public, the information contained in the report described in paragraph (1), except that all students shall be informed of their right to request such information.

(4) **DEFINITION.**—For the purposes of this subsection, the term "operating expenses" means expenditures on lodging and meals, transportation, officials, uniforms and equipment.

(5) **REGULATIONS AND EFFECTIVE DATE.**—The Secretary shall issue final regulations to implement the requirements of this subsection not later than 180 days following the enactment of this subsection. Each institution described in paragraph (1) shall make available its first report pursuant to this section not later than October 1, 1996.

(20 U.S.C. 1092)

SEC. 485A. COMBINED PAYMENT PLAN.

(a) **ELIGIBILITY FOR PLAN.**—Upon the request of the borrower, a lender described in subparagraph (A), (B), or (C) of section 428C(a)(1) of this Act, or defined in subpart I of part C of title VII of the Public Health Service Act may, with respect to a consolidation loan made under section 428C of this Act (and section 439(o) of this Act as in effect prior to the enactment of section 428C) and loans guaranteed under subpart I of part C of title VII of the Public Health Service Act (known as Health Education Assistance Loans), offer a combined payment plan under which the lender shall submit one bill to the borrower for the repayment of all such loans for the monthly or other similar period of repayment.

(b) **APPLICABILITY OF OTHER REQUIREMENTS.**—A lender offering a combined payment plan shall comply with all provisions of section 428C applicable to loans consolidated or to be consolidated and shall comply with all provisions of subpart I of part C of title VII of the Public Health Service Act applicable to loans under that subpart which are made part of the combined payment plan, except that a lender offering a combined payment plan under this section may offer consolidation loans pursuant to section 428C(b)(1)(A) if such lender holds any outstanding loan of a borrower which is selected for inclusion in a combined payment plan.

(c) **LENDER ELIGIBILITY.**—Such lender may offer a combined payment plan only if—

(1) the lender holds an outstanding loan of that borrower which is selected by the borrower for incorporation into a combined payment plan pursuant to this section (including loans which are selected by the borrower for consolidation under this section); or

(2) the borrower certifies that the borrower has sought and has been unable to obtain a combined payment plan from the holders of the outstanding loans of that borrower.

(d) **BORROWER SELECTION OF COMPETING OFFERS.**—In the case of multiple offers by lenders to administer a combined payment plan for a borrower, the borrower shall select from among them the