
THE CONGRESS PROJECT

Assignment Prompt Sheet

Title IX Amendment of the Higher Education Act of 1972

Overview

Act Title: The Higher Education Act of 1972

Congress: 92nd Congress (1971-1972)
Session/Sessions: 1-2

Statute No: 86 Stat. 373-374
Public Law No: 92 PL 318

Eid: 920318
Gid: 213-027

Bill: S 659

Sponsor: Sen. Claiborne Pell (D-RI)
House Committees: Education and Labor
Senate Committees: Committee on Labor and Public Welfare

Companion Bill: HR 7248

Related Bills: S 1557; HR 2266; S 390; S 2482

House Rules: Hres 661

Past Bills: 90 Sres 218; 91 S 3369; 91 S 3474; 91 HR 16622; 91 HR 16621; 91 S 3636

Introduced Date- Law Date: February 28, 1971-June 8, 1972

House Floor Days: 8

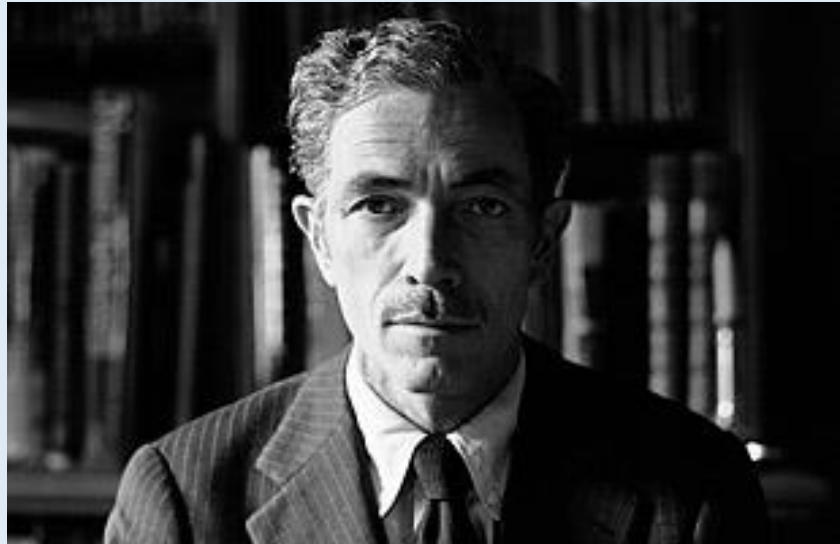
Senate Floor Days: 20

Roll Call Votes: 67 (20 in the House on HR 2266; 12 in the Senate on S 1557; 1 in the House on Hres 661; 5 in the House on S 659; 29 in the Senate on S 659)

Issues: gender; education; sports; busing; civil rights

Procedures: amendment; open rule; conference; point of order; germaneness; sor; filibuster; committee of the whole

Last Updated: 12/4/24



(Above): Sen. Claiborne Pell (D-RI), the sponsor of the Higher Education Act of 1972 ([TIME Magazine](#)).

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Legislative History Comments

The Higher Education Act of 1972 amended the Higher Education Act of 1965. The measure included not only \$20 billion dollars for Pell grants to low income college students, but also two billion for emergency school aid and desegregation and several highly controversial anti-busing provisions. An omnibus education act, it is perhaps most well-known for Title IX, which barred education programs from discriminating on the basis of sex.

Title IX Amendment of the Higher Education Act of 1972 “forbade any education program receiving federal funds from discriminating on the basis of sex, with the exception of admissions to private undergraduate institutions, of educational institutions controlled by religious organizations in which such a policy would conflict with the institution's tenets, of the military and merchant marine academies of the United States and of admissions to any public institution of undergraduate education with a traditional one-sex policy, and provided that federal aid to any program or institution refusing to comply with Title IX could be terminated ([CQ Almanac 1972](#)).” It was a follow-up to the Civil Rights Act of 1964, which did not prohibit sex discrimination against those employed by universities and other educational institutions.

In the 1980s and 1990s, the Supreme Court issued a series of rulings that applied Title IX to sexual harassment. While it's best known for its impact on college athletics, the act never explicitly mentioned sports ([CRS 2012](#)). Debate over this measure gets caught up in a debate over desegregation busing and as a result, it ends up pretty complex from a process standpoint.¹

The measure is originally considered in the Senate as a number of smaller bills (S 1557, S 659). Both of these pass fairly quickly and with broad, bipartisan support. However, an attempt to add gender equity by Senator Birch Bayh (D-IN) was rejected on S 659. The House ended up folding a number of bills in S 659. They considered the bill under Hres 661, an open rule. They also added the gender equity component and the anti-busing provisions. The bill passed the House 334-40.

It went back to the Senate again where the chamber dealt with seven to eight days of primarily busing amendments. They adopted weaker language than the House and passed the bill 89-6. The conference report didn't appear to please anyone, as it passed the Senate 71-17 and the House more narrowly, [232-195](#). It's an odd ends-against-the-middle vote there.

I'd definitely recommend reading through both [CQ \(1971\)](#) and [CQ \(1972\)](#) for more background on the process. Also, don't hesitate to e-mail me with questions. This bill is an absolutely joyous train wreck from a procedural standpoint and I'm more than happy to talk about it!

¹ If you want some more background on this and you like podcasts, the Dollop is a history/comedy podcast that did a really nice episode on the Boston busing riots of 1974:

<https://allthingscomedy.com/podcasts/228---boston-busing-1974>

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Assignments

For the sections below, you're going to want to answer the questions and write-up the process sections that correspond to your assigned number. Feel free to use any notes I may have dropped in below.

#1.

#2.

#3.

#4.

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Background Questions

1. What does this act actually do? Who was pushing for it? Was it part of the President's agenda? Address both title IX here and the Higher Education Act of 1972. This [CRS report](#) should be useful in highlight what the law does. Was there any linkage to this measure to college sports at the time of its enactment?
2. What did existing federal policy look like in higher education? What was the Higher Education Act of 1965?² Why did reformers feel it needed to be changed? Why was gender equity so important at this time? Why wasn't this policy covered in Title VII of the Civil Rights Act of 1964?

Had Congress considered similar legislation unsuccessfully in previous congresses? Additionally, this bill eventually becomes wrapped up in a debate over desegregation busing. What was desegregation busing? Had it been discussed in Congress before?

3. Discuss the broader political context this bill was considered in. Who controlled the House? The Senate? By how many? Who was President? Was this part of the President's agenda? What other pieces of legislation were being considered/passed in this Congress?

The Stathis (2014) piece might worth a citation here. Additionally, what was the Congressional Black Caucus? When were they formed? Why were they opposed to this bill?

4. What motivated consideration of this legislation in this specific Congress? Was it in response to a specific event? Or was this a slower build over time? You might want to contextualize this bill by discussing some of the other landmark laws relating to gender equity that passed during this time period.³

² Passed as part of the Great Society programs, Zelizer (2015) has some fantastic background on that era of politics.

³ While it was never ratified by the states, the *Equal Rights Amendment* was originally proposed in 1921. The amendment sought to end legal distinctions between men and women in terms of divorce, employment and other related topics. It was eventually passed through Congress in 1972. However, its proposing clause provided that “for the ERA to be adopted, three-fourths of the states would have to ratify the amendment within ‘seven years from the date of its submission by the Congress’ (CRS 2019, 1).” This clause was extended in 1978, but it ultimately fell three states short of ratification and it expired in 1982.

Title IX was further supported through the passage of the *Equal Educational Opportunities Act of 1974 (93 PL 380)*. It provided “a four-year \$25.2-billion authorization for virtually every federal aid program to elementary and secondary schools” and extended the landmark Elementary and Secondary Education Act of 1965 (ESEA) ([CQ 1974](#)).” [CRS \(2005\)](#) notes that it also “prohibits discrimination in educational opportunities on the basis of race, color, sex, or national origin.”

Title VII of the civil rights act was amended act in 1978 with the passage of *the Pregnancy, Sex Discrimination, Prohibition Act of 1978*. This measure banned employment discrimination on the basis of pregnancy and required health insurance plans cover pregnant workers. Its passage was not all that controversial, but was considered a major

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Process Sections

Please write-up the sections that correspond to your number.

#1. Senate Consideration of S 1557 (April 19-26, 1971)

Brought to the floor via unanimous consent.

The Senate considered and dispensed with a number of floor amendments.

It eventually passed S 1557 [74-8](#) on April 26, 1971.

#2. Senate Consideration of S 659 (August 4-6, 1971)

The Senate began consideration of S 659 on August 4, 1971. It was brought before the chamber by unanimous consent.

On August 6th, Sen. Birch Bayh (D-IN) offered an amendment that would have prohibited gender-based discrimination.⁴ During the debate, Sen. Herman Talmadge (D-GA) made a point of order that the amendment was not germane. The Presiding Officer, Sen. Howard Cannon (D-NV) upheld the point of order.

Bayh appealed, arguing: “I think it is important for this body to realize the image it might well project, should the ruling of the chair be sustained. If we hide the question of germaneness and say that a unanimous consent agreement entered into some time ago is going to prohibit us from opening the doors of our colleges and universities to all deserving students, without discrimination, then we certainly do not speak well for the ability of this body to put the emphasis where the emphasis needs to be placed (*Congressional Record*, 92nd Congress, August 6, 1971, 30415.”

The Senate sustained the ruling of the Chair (thus rejecting the Bayh amendment) [50-32](#).

It passed S 659 [51-0 shortly afterwards](#).

#3. House Consideration of HR 7248 & S 659 (October 27-28, November 3-5, 1971)

Considered under Hres 661, an open rule.⁵

decision in women’s rights. The act was passed in response to a Supreme Court ruling that held pregnancy discrimination was a not a form of sex discrimination under the civil rights act.

⁴ Bayh was also in the process of pressing the Equal Rights Amendment through the Senate in this Congress.

⁵ CQ: “In an attempt to bypass the Rules Committee floor managers of the desegregation bill sought to get House consideration under suspension of the rules, a maneuver usually reserved for noncontroversial bills which requires a two-thirds majority of the House. The House on Nov. 1, however, refused to consider the measure under such

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The anti-busing amendment was offered on the floor by Rep. John Ashbrook (R-OH). He explained it as a “limitation on transportation where desegregation orders or racial balance schemes are perpetrated (*Congressional Record*, November 4, 1971, 39313).” His amendment would be amended by Rep. Edith Green (D-OR). The *Washington Post* asserted it “could have the effect of severely curtailing the federal government’s capacity to implement the terms of the Civil Rights Act of 1964.”⁶

The House included S 1557 and the House companion, HR 2266 in this measure (desegregation aid). HR 2266 fails via suspension in the House. Apparently, these bills were being held up in the House by the Rules Committee, so this was viewed as a way around that. See Desegregation Aid 1971 CQ Almanac.

Ehrlenborn amendment exempting undergraduate admissions from Title IX passes [194-189](#). It was adopted a second time after the committee of the whole rose by a vote of [186-181](#).⁷

The House passed HR 7248 [332-38](#).

#4. Secondary Senate Consideration of S 659 (February 22-March 1, 1972)

The Senate considered S 659 on February 22, 1972. It was brought to the floor by unanimous consent. While forming the unanimous consent agreement, Sen. Mike Mansfield (D-MT), the majority leader, announced that “final disposition shall occur not later than 2 p.m. on [March 1, 1972].”

circumstances. It did agree (three days later) to add the desegregation aid provisions, accompanied by anti-busing amendments, to S 659.”

⁶ See “‘Anti-busing’: Two Meanings in the House,” 1971.

⁷ Article 1, Section 5 of the U.S. Constitution specifies that “each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.” The Committee of the Whole is the House or Senate chamber in another form (like a large committee). It developed in response to the Constitution’s quorum provision. Generally, it is used for the purpose of debate and dispensing with amendments. Every legislator is a member. In the modern Congress, it is frequently associated with the U.S. House. The presiding officer is chosen by the Speaker of the House and is normally a member of the majority party who does not hold the chair of a standing committee.

Procedurally, the Committee of the Whole differs from the House of Representatives even though they have identical membership. The Committee of the Whole only requires 100 House members for a quorum. In the modern Congress, only 25 members are required to force a recorded rather than voice vote. Historically, recorded voting in the House (but not Senate) Committee of the Whole was prohibited. This changed in the House after the adoption of the Legislative Reorganization Act of 1970 (first applied in the 92nd Congress). All amendments adopted in the Committee of the Whole are considered after the Committee of the Whole dissolved. Members can reserve the right to request a recorded, division, teller or voice vote on specific amendments (even those that were defeated in the Committee of the Whole).

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This prompted Sen. Robert Byrd (D-WV) to clarify: “does not final disposition really mean the vote to concur in the House amendment-in the nature of a substitute for S. 659-with an amendment in the nature of a substitute, as amended, if amended? (*Congressional Record*, 92nd Congress, February 22, 1972, 4953.)”

Mansfield conceded it was “kind of like that.” Laughter was observed in the chamber.

Probably the most extreme Senate floor amendment is offered by Griffin (R-MI).⁸ This busing amendment was rejected [47-50](#).

The Senate adopted S 659 [88-6 on March 1, 1972](#).

#1. Senate Consideration of the Conference Report on S 659 (May 23-24, 1972)

During consideration of the conference report, Griffin made another attempt to strengthen the bill’s anti-busing provisions. Specifically, he moved the conference report be recommitted to conference with instructions the conferees adopt stronger language. Pell moved to table the motion to recommit, and the motion to table was adopted (thus killing Griffin’s motion) [44-26](#).

The Senate adopted the conference report [63-15](#).

#4. House Consideration of the Conference Report on S 659 (June 8, 1972)

Brought to the floor for consideration on June 8th.⁹

Rep. Carl Perkins (D-KY), the bill manager, brought the conference report to the floor on June 8th. He asked for unanimous consent request that one hour of additional debate time be added. Rep. William Lacy Clay, Sr. (D-MO), a member of the Congressional Black Caucus, asserted that he represented “30 members of this House who are opposed to the legislation.” He further noted that their position was unique and requested 30 minutes of debate time (*Congressional Record*, 92nd Congress, June 8th, 20278).” Perkins refused, arguing there were already too many demands for time. Clay then objected to the unanimous consent agreement.

This led to some anger on the part of several other House members. Rep. H.R. Gross (R-IA) chastised Clay and his supporters for claiming they were a “special group.” Clay responded by asserting they were the “good guys who wear the white hats (*Congressional Record*, 92nd Congress, June 8th, 20279).” Gross took further issue with this and complained Clay was robbing House members of debate time. The Speaker then rejected two points of order against consideration of the conference report made by Rep. Joe Waggoner (D-LA) and debate commenced.

⁸ CQ: “The Senate, after eight days of debate devoted primarily to consideration of a variety of anti-busing amendments, approved language only moderately restricting the future use of busing for desegregation of schools.”

⁹ Four roll calls (two on March 8th and two on May 11th) related to motions to instruct the conference committee the House insist on anti-busing amendments.

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Really interesting final passage vote that looks like an “ends-against-the-middle vote.”

The CBC clearly hated this bill. See e.g. the following quote in opposition by founding CBC member, Rep. Parren Mitchell (D-MD), who argued “[t]he constitutional rights of black children and of all disadvantaged American youth will not simply be suspended over this period, they will be forgotten (*Congressional Record*, 92nd Congress, June 8th, 20325).”

In contrast, moderate and conservative members from both parties felt the measure did not go strong enough in prohibiting busing. For example, Rep. Edith Green (D-OR), asserted it was a “pro-busing bill” and “class legislation,” that placed “almost exclusive emphasis on the disadvantaged student” as opposed to the middle-class (*Congressional Record*, 92nd Congress, June 8th, 20325).”

The House adopted the conference report [232-195](#).

Member Spotlight

Choose one of the following for your member spotlight:

#1. Sen. Claiborne Pell (D-RI); Rep. John Erlenborn (R-IL); Sen. John Tower (R-TX);
Sen. Robert Griffin (R-MI); Sen. Mike Mansfield (D-MT)

#2. Sen. Birch Bayh (D-IN); Sen. James Allen (D-AL); Sen. Herman Talmadge (D-GA);
Sen. Bob Dole (R-KS); Sen. Sam Ervin (D-NC)

#3. Rep. Carl Perkins (D-KY); Rep. Emanuel Celler (D-NY); Rep. William Lacy Clay,
Sr. (D-MO); Rep. William Broomfield (R-MI); Rep. John M. Ashbrook (R-OH)

#4. Rep. Edith Green (D-OR); Sen. Lee Metcalf (D-MT); Rep. Roman Pucinski (D-IL);
Rep. Parren Mitchell (D-MD); Sen. Jacob Javits (R-NY); Rep. H.R. Gross (R-IA)

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Aftermath Questions

1. How was this act viewed upon passage? What did the newspapers say? How did the measure change throughout its consideration? Additionally, when you google “Title IX” you typically get two types of op-eds that pop up: (1) Articles by people upset about the impact the law has had on men’s college sports (see e.g. [ESPN 2002](#)); and (2) Articles written by fans of other women’s national soccer teams explaining why the U.S. has been so dominant (see e.g. [The Guardian 2019](#)). Address both of these claims. Are they correct?
2. How has this act been viewed by scholars? Do they highlight any major limitations? Are there some portions viewed more favorably than others? Has the law been considered “effective”? Address both the Title IX and broader educational aspects of the law here.
3. How has this law evolved over time? Has it been featured in any major Supreme Court cases? Significantly altered by subsequent legislation? In particular, what was *Grove City v. Bell*? And what was the [Tower Amendment](#)? How has it impacted how Title IX is viewed?¹⁰
4. How relevant is this law currently? Specifically, address two recent related stories that have been in the news. First, how does Title IX impact sexual assault rules on college campuses? How did this relate to the recent controversial with the Trump administration and Education Secretary Betsy DeVos? Second, what happened with desegregation busing after this act? Discuss the recent controversy over this issue and Joe Biden’s candidacy in the 2019 Democratic Primary. See suggested newspaper citations below for more information.

¹⁰ Suggs (2006) suggests the association between Title IX and sport-equity stemmed from the rejection of an amendment by Senator John Tower (R-TX) that would have exempted athletics departments from the law.

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Suggested Sources

Scholarly Articles

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Durrant, Sue M. "Title IX—Its power and its limitations." *Journal of Physical Education, Recreation & Dance* 63.3 (1992): 60-64.

Sigelman, Lee, and Paul J. Wahlbeck. "Gender proportionality in intercollegiate athletics: The mathematics of Title IX compliance." *Social Science Quarterly* (1999): 518-538.

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Melnick, R. Shep. 2020. "Analyzing the Department of Education's Final Title IX rules on Sexual Misconduct." *The Brookings Institution*. June 11.
<https://www.brookings.edu/research/analyzing-the-department-of-educations-final-title-ix-rules-on-sexual-misconduct/>

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<https://repository.law.miami.edu/cgi/viewcontent.cgi?article=4497&context=umlr>

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Newspaper Pieces

- <https://www.olympic.org/news/-title-ix-or-why-the-americans-have-some-of-the-best-female-football-players-in-the-world>
- <https://www.brookings.edu/research/analyzing-the-department-of-educations-final-title-ix-rules-on-sexual-misconduct/>
- https://www.washingtonpost.com/opinions/what-betsy-devos-doesnt-understand-about-title-ix-and-campus-sexual-assault/2017/07/18/918a4366-6b36-11e7-9c15-177740635e83_story.html
- <https://www.nytimes.com/2020/06/25/us/college-sex-assault-rules.html>
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- <https://www.vox.com/2019/1/31/18202447/sexual-assault-title-ix-betsy-devos-drew>
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- <https://time.com/2912420/titleix-anniversary/>
- <https://www.npr.org/2014/05/06/310099267/controversy-over-title-ix-protecting-transgender-students>
- <https://www.espn.com/espnw/title-ix/article/7959799/the-silent-enemy-men-sports>
- <https://www.history.com/news/desegregation-busing-schools>
- <https://time.com/5616709/joe-biden-busing-democratic-debate/>
- <https://www.politico.com/magazine/story/2019/05/05/joe-biden-busing-problem-226791/>
- <https://www.nytimes.com/2019/07/15/us/joe-biden-busing-timeline.html>
- <https://www.nytimes.com/2019/07/15/us/politics/biden-busing.html>
- <https://www.vox.com/policy-and-politics/2019/6/28/18965923/joe-biden-school-desegregation-busing-democratic-primary>