

A copy for
your records

United States Senate

WASHINGTON, DC 20510

December 22, 1994

Honorable Richard W. Riley
Secretary
U.S. Department of Education
Washington, D.C. 20202

Dear Secretary Riley:

We write today about a matter that has the potential to adversely affect college athletic programs across the country. As we struggle to address the economic problems facing our nation, we must be mindful that similar problems face our nation's colleges and universities.

Your department is responsible, through the Office of Civil Rights, for ensuring that colleges and universities satisfy the provisions of Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681 (b)) or otherwise risk losing federal funding. The intent of this provision, to achieve "gender equity" in athletics, we support. We are concerned, however, that the implementation of this provision is having an unintended effect of threatening the economic well-being of certain colleges and universities, particularly those with football teams.

As part of the enforcement of Title IX and the implementing Athletics Regulation (34 C.F.R. Section 106.41), the Department of Education, via its Policy Interpretation, requires colleges to satisfy one of three tests: (1) that participation opportunities for each sex are proportional to enrollment or (2) show a history of expansion in its women's athletic program or (3) demonstrate that the interests and abilities of members of the underrepresented sex have been fully accommodated by the present program.

We are concerned about reports that the Department of Education's Office of Civil Rights, in the rewriting of its Investigators Manual and in its enforcement of Title IX, intends to stress the proportionality test over the other two tests. There are also concerns that the Office of Civil Rights has not and does not intend to give weight to the Javits Amendment, which calls for "reasonable regulations for intercollegiate athletic activities considering the nature of specific sports." We believe that such an emphasis on the proportionality test is inconsistent with the intent of Congress, creates economic hardships to certain universities, and would actually serve to undermine the goal of gender equity.

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Should reliance upon the proportionality test be sustained, we are told that even colleges that fully accommodate the interests and abilities of male and female athletes risk failure to comply with Title IX simply because of the existence of a football program. The result of failure could mean a loss of federal funds and/or a diminished or eliminated football program. Recognizing that many football programs provide financial support to other programs at colleges and universities, such an outcome would assuredly lead to a severe loss of funding not only for the athletics department, but other important programs as well.

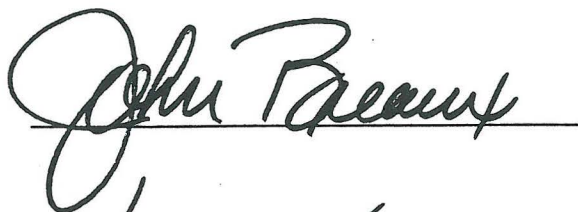
Further, achieving proportionality has required, in some cases, artificially reducing team membership or eliminating teams. It must be understood, however, that the intent of Title IX was to eliminate discrimination, and to promote, rather than eliminate, opportunities.

Recognizing these potential serious repercussions, we urge the Office of Civil Rights to reject the proportionality test as the primary measure of compliance. Instead, any college or university that passes any one of the three tests should be considered to be in compliance with Title IX, as called for in the Department's Policy Interpretation. We also ask that the Javits Amendment, the statute, and the Athletics Regulation be given each its own due weight in the enforcement of Title IX and in the forthcoming Investigators Manual. Further, we ask that the Office of Civil Rights postpone the final issuance of the manual until several parties familiar with the issues facing colleges and universities have had a chance to review and comment on it.

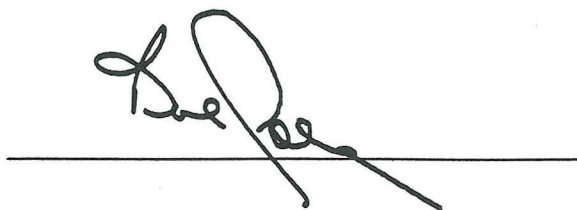
Secretary Riley, please give this important subject your personal attention and consideration.

With kind regards,

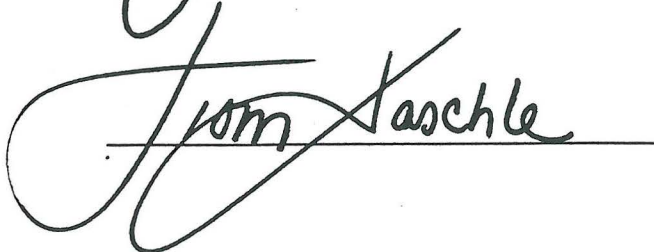
Sincerely,



John Breaux



Sue Be



Tom Kaschke



Greg Egan

Samuel J. Smith

Alvin L. Leger

James H. Hainlock Harry E. Eid

Sam Nalle

Jim Lohoff

David Bryer

Blaine

Alvin Smith
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