



U.S. Department of Justice
Office of the Attorney General

*file -
Title IX*

Counselor to the Attorney General

July 2, 1982

NOTE FOR THE AG:

This is an excellent chance to strike a blow for deregulation. Ted Bell is proposing to revoke a DOE regulation concerning sex discrimination. The matter is ably summarized in John Roberts' 1-page summary.

I recommend that you approve this action. We should, however, provide notice, if it has not already been provided, to Fred Fielding's shop of your action once it is taken. (You are required by Executive Order to approve all Title IX regulations, of which this is one).

*MIKE
McCOMB
OMB
395-6610
AG
SKMD
DRESS
CODE
REGULATIONS,
JULY 2.*

Memorandum



Subject	Date
Amendment to Title IX Regulations	July 1, 1982

To The Attorney General From John Roberts

Under Executive Order 12250 you must approve all final regulations issued under Title IX, the statutory ban on sex discrimination in federally assisted education programs and activities. Attached for your approval and signature is a final regulation proposed by the Education Department, repealing a previous regulation, 34 C.F.R. §106.31(b)(5). That previous regulation prohibited sex discrimination in the application of "appearance codes." Secretary Bell determined this was an area more suitable for local than federal regulation -- an eminently sound conclusion.

Brad Reynolds, joined by the Deputy, recommends that you approve the final regulation -- which does nothing more than repeal the previous one, putting nothing in its place. I concur in this recommendation.

If you agree, your signature is required in three places:

- (1) statement of approval;
- (2) transmittal letter to Secretary Bell;
- (3) official Federal Register notice, already signed by Secretary Bell.

Upon your approval the regulation (actually a notice of revocation) will be published in the Federal Register, and will take effect 45 days after publication.

Memorandum



ATTORNEY GENERAL/DEPUTY ATTORNEY GENERAL ACTION

RECEIVED
DEPT. OF JUSTICE

JUN 25 1982
JSD:SPC:jfb

172-02a-ED91

Subject Nondiscrimination on the Basis of Sex
in Federally Assisted Education Programs
and Activities

OFFICE OF THE DEPUTY
ATTORNEY GENERAL

24 JUN 1982

To
William French Smith
Attorney General

From
Wm. Bradford Reynolds *WR*
Assistant Attorney General
Civil Rights Division

Action Required:

Approve and sign the attached final rule for publication in the Federal Register.

Final Action By:

Attorney General

Due Date:

RECEIVED
ATTORNEY GENERAL
JUN 30 12 19 PM '82

Deputy Attorney General

Previous Background Provided:

None.

Summary:

The Secretary of Education has submitted this final rule to Justice for approval under Executive Order No. 12250. This rule amends Education's title IX regulation by revoking 34 C.F.R. § 106.31(b)(5). 34 C.F.R. § 106.31(b)(5) prohibits sex discrimination in the application of codes of appearance. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in Federally assisted education programs or activities. 20 U.S.C. §§ 1681-86.

Comments:

The Department of Education's present title IX regulation states, in part, that in providing any aid, benefit, or service to a student recipients of Federal Financial assistance shall not on the basis of sex, discriminate against any person in the application of any codes of appearance. 34 C.F.R. § 106.31(b)(5).

Concurrences: DAG AAG OLC OLP OLA OPA JMD *ADAG* *ADAG*

Initials	<i>WF</i>							<i>EC</i>	<i>ADAG</i>		
Date	<i>6/29</i>							<i>6/25/82</i>	<i>6/29/82</i>		

See Remarks For Instruction

Education's Summary states that the appearance code regulation is being revoked because "development and enforcement of appearance codes is an issue for local determination." Education anticipates that this amendment to its regulation will permit Education to concentrate its resources on cases involving more serious allegations of discrimination.

All final title IX regulations must be approved by the Attorney General. Section 902 of title IX, 20 U.S.C. § 1682, requires that all title IX regulations be approved by the President. Executive Order No. 12250, 3 C.F.R. 298 (1980) reprinted in 42 U.S.C.A. § 2000d-1 App. at (West 1981 Supp.) delegates the President's authority to the Attorney General.



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

24 JUN 1982

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

Re: Nondiscrimination on the Basis
of Sex in Federally Assisted
Education Programs and Activities

Attached is a package transmitting a final rule for approval by the Attorney General for publication in the Federal Register.

The Secretary of Education has submitted this final rule to Justice for approval under Executive Order No. 12250. This rule amends Education's title IX regulation by revoking 34 C.F.R. § 106.31(b)(5). 34 C.F.R. § 106.31(b)(5) prohibits sex discrimination in the application of codes of appearance. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in federally assisted education programs or activities. 20 U.S.C. §§ 1681-86.

This final rule has been approved by the Assistant Attorney General for Civil Rights, the Office of Management and Budget and signed by the Secretary of Education.

All final title IX regulations must be approved by the Attorney General. Section 902 of title IX, 20 U.S.C. § 1682, requires that all title IX regulations be approved by the President. Executive Order No. 12250, 3 C.F.R. 298 (1980) reprinted in 42 U.S.C.A. § 2000d-1 App. at 527 (West 1981 Supp.) delegates the President's authority to the Attorney General.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

24 JUN 1982

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: U.S. Department of Education
Modification of its Regulations
Implementing Title IX of the
Education Amendments of 1972

Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681-1686 prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance. Section 902 of title IX provides that each agency empowered to extend Federal financial assistance is directed to effectuate those provisions by issuing rules, regulations, or orders of general applicability. Title IX also requires that all final regulations be approved by the President. This authority has been delegated to the Attorney General. Executive Order No. 12250, 3 C.F.R. 298.

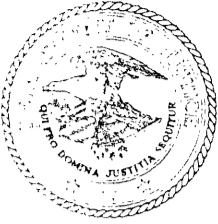
Attached for your review and recommended for your approval is an amendment to 34 C.F.R. § 106.31 of the Department of Education's title IX regulation. This regulation was published in the Federal Register as a Notice of Proposed Rulemaking. 46 Fed. Reg. 23,081 (1981). The draft final regulation revokes 34 C.F.R. § 106.31(b)(5) which prohibits discrimination on the basis of sex in the application of codes of personal appearance. Education believes that this change will permit the Department to concentrate on cases involving "more serious allegations" of sex discrimination.

The Civil Rights Division has reviewed the draft final regulation and recommends that it be approved. If the regulation is acceptable, please sign the attached statement of approval, the regulation, and the enclosed letter to Secretary Bell. Please then return the material to the Civil Rights Division for further processing.



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Attachment



Office of the Attorney General
Washington, D. C. 20530

Re: Final Regulations of the Department of
Education Implementing Title IX of the
Education Amendments of 1972

Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§1681-1686 prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance. The Department of Education has submitted a final regulation that would revoke 34 C.F.R. §106.31(b)(5) (a part of its title IX regulation) for review and approval under Executive Order No. 12250, 3 C.F.R. 298 (1980) reprinted in 42 U.S.C.A. §2000d-1 app. at 527 (West 1981 Supp.). Executive Order No. 12250, delegates to the Attorney General the responsibility for final approval of agency title IX regulations. Under the authority of Executive Order No. 12250, I approve the attached regulation of the United States Department of Education.


William French Smith
Attorney General

Date: July 2, 1982



Office of the Attorney General
Washington, D. C. 20530

July 2, 1982

The Honorable T. H. Bell
Secretary
Department of Education
Office of the Secretary
Washington, D.C. 20202

Dear Ted:

Enclosed is my approval of the Department of Education's final regulation revoking 34 C.F.R. § 106.31(b)(5) under Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681-1686.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

William French Smith
Attorney General

Enclosure

DEPARTMENT OF EDUCATION

Office for Civil Rights

34 CFR Part 106

Nondiscrimination on the Basis of Sex in Education Programs and Activities
Receiving or Benefiting from Federal Financial Assistance

AGENCY: Department of Education

ACTION: Final Regulations

SUMMARY: The Secretary of Education amends the Title IX regulation (non-discrimination on the basis of sex) by revoking Section 106.31(b)(5) which prohibits discrimination in the application of codes of personal appearance. This amendment permits the Department to concentrate its resources on cases involving more serious allegations of sex discrimination. Development and enforcement of appearance codes is an issue for local determination.

EFFECTIVE DATE: Unless Congress takes certain adjournments, these regulations will take effect 45 days after publication in the FEDERAL REGISTER. If you want to know if there has been a change in the effective date of these regulations, call or write the Department of Education contact person. At a future date, the Secretary will publish a notice in the FEDERAL REGISTER stating the effective date of these regulations.

ADDRESSES: Any questions concerning these regulations should be addressed to Clarence Thomas, Assistant Secretary for Civil Rights, 400 Maryland Avenue, S.W. (Room 5000 Switzer Building), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Antonio J. Califa, Telephone No. (202) 245-2184.

SUPPLEMENTARY INFORMATION: Revocation of this subparagraph of the Title IX regulations permits issues involving codes of personal appearance to be resolved at the local level. The Department will concentrate on enforcing Title IX in cases involving more serious allegations of sex discrimination. There is no indication in the legislative history of Title IX that Congress intended to authorize Federal regulations in the area of appearance codes.

A Notice of Proposed Rulemaking was published in the FEDERAL REGISTER on April 23, 1981 (46 FR 23081). Interested persons were given until May 26 to submit written comments. A summary comment analysis and the Department's response follows.

Section 106.31(b)(5)

Fifty-three comments were received regarding revocation of section 106.31(b)(5). Of those, thirty-one favored the rescission, seventeen opposed it, and five expressed no clear opinion. Twenty-two of the comments favoring the amendment specifically mentioned the need to allow appearance code matters to be resolved by the local community.

Comment: Many commenters supported the Department's proposal to leave appearance codes to local determination. Some commenters stated that the proposed rule would remove an area of overregulation by the Federal government. Others stated that the Department was unnecessarily burdened by the enforcement of requirements such as the regulation on appearance codes.

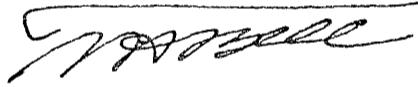
Response: The Department agrees with the commenters and has revoked the appearance code regulation.

Comment: Some commenters opposed the elimination of appearance codes as an area for Federal regulation under Title IX. These commenters stated that appearance codes encourage restrictive stereotyped roles for male and female students and foster an atmosphere which is not conducive to equal educational opportunity. Some commenters expressed concern that individual liberties would be restricted as a result of the proposed regulatory amendment. Others cited the symbolic value of the appearance code regulation and stated that its elimination would indicate to school administrators that restrictions on educational opportunities based solely on a student's gender are appropriate.

Response: The Department does not take any position regarding the adoption of appearance codes by local school districts since this is a matter that should be left to local discretion. The Department does not believe that the regulatory change will lead to restrictions on individual liberty. The amendment does not indicate any lack of resolve on the part of the Department to vigorously enforce the Title IX regulation. On the contrary, one result of the regulatory amendment will be to permit the concentration of resources on areas of the Title IX regulation which are more central to the statute's prohibition of discrimination on the basis of sex in education programs which receive Federal financial assistance.

REGULATORY FLEXIBILITY ACT CERTIFICATION: The Secretary certifies that this regulation will not have a significant economic impact on a substantial number of small entities. These regulations are administrative and do not affect any small entities.

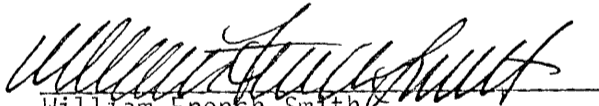
Dated: 7 JUN 1982



T. H. Bell
Secretary of Education

Approved:

July 2, 1982



William French Smith
Attorney General

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

§106.31 [Amended]

Subparagraph (b)(5) is revoked and removed. Subparagraphs (b)(6)-(8) are redesignated as (b)(5)-(7).

5-10-82
DATE

The New York Times

A20
PAGE

*s. ct. to
appeal to
jurisdiction*

Mr. Smith Does His Duty

At last, Attorney General William French Smith has told Congress what he thinks of laws that would strip the Federal courts of power in school prayer and busing cases. Not much.

He has spoken out so eloquently it is a wonder he waited so long. If the aim was to avoid offense to right-wing legislators, that cause is now brilliantly betrayed. His legal analyses vary from case to case, but together, the two letters to Congress provide telling reasons against the legislative maneuvers around the Constitution.

Mr. Smith demolishes the legal underpinnings of a Senate bill to deny even the Supreme Court review of state laws that permit "voluntary" prayer in public schools. Congress does have some power to regulate court jurisdiction, he concedes. But not in ways that destroy the courts' "core functions," and especially not the Supreme Court's unique role in construing the Constitution, ensuring uniform law throughout the nation and maintaining the supremacy of Federal law.

The Attorney General finds less constitutional difficulty, but abundant problems of policy, in the case of busing. He politely objects to a bill that would forbid the Justice Department from even asking for busing to rectify acts of official segregation and sharply restrict a Federal court's power to decree such busing. It is constitutional, he concludes, to curtail busing, but only if that doesn't deprive the offended minorities of remedy. And since busing tends to be used only as a last resort, the measure is plainly confusing and unnecessary.

Although he promises to defend almost any law, Mr. Smith gives Congress a lot to think about and ample reason to avoid these court-stripping measures. Without abandoning his objection to some court rulings, he has forthrightly asserted the courts' right to issue them — and their independence in a system of separated powers. Without accepting all of Mr. Smith's arguments, we congratulate him for a scholarly and professional performance of duty.

DOJ-1981-11

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