

# GENDER EQUALITY AT EDUCATIONAL INSTITUTIONS IN JAPAN



**Human Rights Now**



**Leitner Center**  
for International Law and Justice  
AT FORDHAM LAW SCHOOL, NEW YORK CITY

**Walter Leitner International Human Rights Clinic**  
**Human Rights Now**

# Table of Contents

## I.Executive Summary3

A. Recommendations to deal with general gender discrimination at educational institutions	4
B. Recommendations to deal with gender discrimination in school-related athletics	4
C. Recommendations to deal with sexual harassment and violence at educational institutions	4
D. Recommendations to deal with gender discrimination in admissions to higher education	5

## II.Introduction5

## III.Overview of Title IX in the United States6

A. History of Title IX in the United States	6
B. How Title IX Works	7
1. Department of Education Guidelines for Title IX Compliance in Athletic Programs	8
2. Title IX Protections for Sexual Harassment and Sexual Violence in Educational Institutions	9
3. Title IX Compliance Coordinators	10
4. Enforcement of Title IX through Department of Education’s Office of Civil Rights (OCR)	12
C. Effects of Title IX in the United States	13
1. Successes	13
2. Challenges	15

## IV. Comparative Study of Japanese and American Specific Issues on Gender Equality under educational situations16

A. Gender Discrimination in Athletics	16
A) The Situation in Japan	16
B) United States Comparative Research: Success of Title IX in Addressing Gender Discrimination in Sports	18
C) Application of Title IX in the Japanese Context	23
B. Gender Discrimination in Admissions	24
A) Current Situation in Japan	24
B) United States Comparative Research: Influence of Title IX in Addressing Gender Discrimination in Admissions	25
C) Application of Title IX in the Japanese Context	27
C. Sexual Harassment & Sexual Violence in Education	28
A) The Situation in Japan	28
B) United States Comparative Research: Influence of Title IX in Addressing Sexual Harassment and Sexual Violence in Education	31
C) Application of Title IX in the Japanese Context	35



# GENDER EQUALITY AT EDUCATIONAL INSTITUTIONS IN JAPAN

## I.Executive Summary

In promoting gender equality at educational institutions in the United States, as mentioned specifically below, Title IX of the Educational Act, a United States federal law that prohibits gender discrimination in education (“Title IX”) has played a significant role and made considerable achievements.

When considering how to design and implement a law similar to Title IX in Japan, and how to promote gender equality at educational institutions, it is important to learn from the history of Title IX, the changes at schools caused by Title IX and the challenges still remaining in the United States to ensure more success in Japan.

Although the initial motivation for Title IX was to solve the inequalities in higher education admissions, the law has developed over time and now primarily focuses on regulating gender discrimination in athletics and sexual harassment. Title IX has been successful at promoting gender equality in access to participation in athletics. It is likely that a law similar to Title IX will lead to similar success in Japan. Unfortunately, the Japanese school system is experiencing serious issues with respect to sexual harassment and sexual violence. The United States, having faced similar challenges, has been able to devote much needed attention and resources to the problem of sexual harassment and violence in educational institutions through the implementation of Title IX. The increase in size, capacity, and purview of administrative offices devoted to Title IX, which has helped the United States in its efforts to maximize gender equality and minimize sexual harassment and violence, could have the same effects in the Japanese context.

Thus, the following are recommendations of what type of policies to be implemented in Japan that may promote gender equality at educational institutions in Japan as well as in the United States.

## Recommendationsx

Human Rights Now and the Walter Leitner International Human Rights Clinic recommend that the Japanese Ministry of Education design and implement a law in Japan that is similar to Title IX in the United States in order to combat gender discrimination in Japan’s educational institutions.

In enacting and implementing such a law, Japanese officials should consider the following recommendations to ensure the best chance for the law’s success:

### A. Recommendations to deal with general gender discrimination at educational institutions

Create a standardized compliance office at each educational institution that is supervised by the Ministry of Education, Culture, Sports, Science and Technology, which ensures that campus resources are made available to sexual assault survivors and monitors whether educational institutions to have policies on how to deal with complaints alleging sexual discrimination.

Ensure transparency by requiring all internal school complaints and their findings be made available to the public, including comprehensive statistics on teacher-on-student sexual harassment incidents at educational institutions.

Ensure that both a safe reporting mechanism and counseling services are available for survivors of sexual discrimination in all post-secondary educational institutions.

Require sexual discrimination and gender sensitivity training for all teachers, professors, and school faculty members.

Enact a national mandate for sexual education with a comprehensive curriculum for the appropriate grade levels.

### B. Recommendations to deal with gender discrimination in school-related athletics

Mandate that schools provide equal opportunities for both men and women in school-related athletics.

Clarify in guidelines accompanying the law that schools cannot use financial hardship as a reason for violating the provisions of the law, such as by cutting funding in men’s sports teams, instead of adding women’s teams, in order to reach parity between the amount of teams offered to each gender.

### C. Recommendations to deal with sexual harassment and violence at educational institutions

Require all educational institutions to have clear policies that explicitly prohibit sexual discrimination, sexual harassment, and sexual violence, and include clear standards and procedural requirements for any disciplinary proceedings which might arise following any complaints of sexual harassment and violence.

### D. Recommendations to deal with gender discrimination in admissions to higher education

Prohibit all educational institutions from depriving students of educational opportunities based on sex, including using quotas to make the number of girl students smaller than the number of boy students.

## II. Introduction

This paper, submitted by Human Rights Now and the Walter Leitner International Human Rights Clinic in the Leitner Center for International Law and Justice at Fordham Law School in New York City, sets forth recommendations to target gender discrimination in the Japanese education system, including in the areas of school-related athletics, admissions to higher education, and sexual harassment and violence under educational situations. These recommendations are based on comparative research and analysis of Title IX of the Educational Act, a United States federal law that prohibits gender discrimination in education.<sup>1</sup>

Article 26 of the Constitution of Japan guarantees every boy and girl the right to receive equal education.<sup>2</sup>

The right to education is also reflected in Article 14 of the Constitution of Japan, which prohibits political, economic, or social discrimination based on gender.<sup>3</sup> Japan can make these guarantees of gender equality in education a reality by implementing a law similar to Title IX in Japan.

In this paper, we will present the history of Title IX followed by an explanation of how the law is applied and enforced within U.S. educational institutions. This explanation is followed by data summarizing the successes of Title IX in the United States, as well as some of its challenges. Finally, this paper refers to comparative study of Japanese and American specific issues on gender equality under educational situations.

## III. Overview of Title IX in the United States

### A. History of Title IX in the United States

In 1972, the United States Congress passed Title IX of the Education Act Amendments to address and prevent gender discrimination in education.<sup>4</sup> The law states that: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”<sup>5</sup>

Before the passage and implementation of Title IX, there were many incidents of gender discrimination in schools in the United States. Female students were systemically denied educational opportunities and participation in sports.<sup>6</sup> Women faced unfair quotas when seeking admission to programs in higher education institutions.<sup>7</sup> Women also faced limited scholarship opportunities and more restrictive campus rules, such as earlier curfews.<sup>8</sup>

Title IX was enacted in response to perceived gaps in prior federal anti-discrimination laws that did not address gender discrimination in the educational setting.<sup>9</sup> Title VI of the Civil Rights Act of 1964 is a federal law that prohibits race discrimination by institutions that receive federal funding, and Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on a variety

of bases, including sex.<sup>10</sup> However, Title VII explicitly exempted educational institutions from its application.<sup>11</sup> This exemption was deliberate, due to strong opposition from higher educational institutions.<sup>12</sup> Title IX is the first federal law in the United States to regulate the use of government funding to ensure educational institutions do not use their funds for discriminatory purposes.<sup>13</sup>

In the United States, state and local governments are responsible for primary and secondary education, rather than the federal government.<sup>14</sup> Even though state governments are the primary source of education funding, school districts also receive some funding from the federal government.<sup>15</sup> While the amount of federal funding varies from state to state, school districts throughout the United States received approximately 9% of their funding for primary and secondary education from the federal government in 2018.<sup>16</sup> Title IX applies to all educational institutions that directly receive such federal funds, as well as all public schools within districts that receive federal funds.<sup>17</sup> The law also prohibits gender discrimination in any school-related programs, including athletics and extracurricular activities.<sup>18</sup> Institutions that discriminate on the basis of sex in violation of Title IX risk losing their federal funds.<sup>19</sup>

1 This white paper is authored by students from Fordham University School of Law, Anna Aboody, Joanna Heinz, Marianna Haddad, Savannah Price, and Zainab Zaman, and edited by Professor Chi Adanna Mgbako, clinical professor of law and director of the Walter Leitner International Human Rights Clinic at Fordham Law School, and Lisa Matsue.

2 Nihonkoku Kenpō [Kenpō] [Constitution], art. 26 (Japan).

3 Nihonkoku Kenpō [Kenpō] [Constitution], art. 14 (Japan). To address gender discrimination in the workplace, Japan passed the Equal Employment Opportunity Law for Men and Women in 1986. The Law bans companies from dismissing women who request maternity leave, targets issues of gender discrimination in hiring and promotions, and requires employers to take steps to prevent sexual harassment. “Laws Regarding Working Women,” Cross Currents, accessed May 7, 2019. <http://www.crosscurrents.hawaii.edu/content.aspx?lang=eng&site=japan&theme=work&subtheme=WOMEN&unit=JWORK030>. Nihonkoku Kenpō [Kenpō] [Constitution], art. 14 (Japan). To address gender discrimination in the workplace, Japan passed the Equal Employment Opportunity Law for Men and Women in 1986. The Law bans companies from dismissing women who request maternity leave, targets issues of gender discrimination in hiring and promotions, and requires employers to take steps to prevent sexual harassment. “Laws Regarding Working Women,” Cross Currents, accessed May 7, 2019. <http://www.crosscurrents.hawaii.edu/content.aspx?lang=eng&site=japan&theme=work&subtheme=WOMEN&unit=JWORK030>.

4 Debora A. Hoehne. “Assessing the Compatibility of Title IX and © 1983: A Post-Abrams Framework for Preemption,” Fordham Law Review 74 (2016): 3193. (citing Linda Jean Carpenter & Vivian Acosta, Title IX 24 (2005)). See also “Title IX Legislative Chronology,” Women’s Sports Foundation, accessed May 7, 2019. <https://www.womenssportsfoundation.org/advocate/title-ix-issues/history-title-ix/history-title-ix/>.

5 U.S. Code 20 (2018) § 1681. <http://uscode.house.gov/view.xhtml?path=/prelim@title20/chapter38&edition=prelim>.

6 “Title IX: Opening the Gates of Higher Education,” Birch Bayh Title IX accessed May 7, 2019. <http://www.birchbayh.com/id3.html>.

7 “Equal Access to Education: Forty Years of Title IX.” U.S. Department of Justice. June 23, 2012, <https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf>

8 Ibid.

9 David S. Cohen, “Limiting Gebser: ‘Institutional Liability for Non-Harassment Sex Discrimination Under Title IX,’” Wake Forest Law Review 39 (2004): 317-318.

10 Ibid.

11 Elizabeth Kaufer Busch and William E. Thro, Title IX: The Transformation of Sex Discrimination in Education (New York: Routledge, 2018), 4.

12 American Association of University Professors, The History, Uses, and Abuses of Title IX, June 2016, <https://www.aaup.org/file/TitleIXreport.pdf>.

13 Justia, “Synopsis of Purpose of Title IX, Legislative History, and Regulations,” <https://www.justia.com/education/docs/title-ix-legal-manual/synopsis-of-purpose-of-title-ix/>

14 “10 Facts About K-12 Education Funding,” Department of Education, accessed May 7, 2019. <https://www2.ed.gov/about/overview/fed/10facts/index.html>.

15 Ibid. The U.S. government enacted the Elementary and Secondary Education Act in 1965 to allow the federal government to issue financial grants to school districts. This Act was reaffirmed by the No Child Left Behind Act signed into law in 2002.

16 Matthew Lynch, “Understanding Federal Funding Part I: Types of School Funding,” The Edvocate, September 18, 2018, <https://www.theedadvocate.org/understanding-federal-funding-part-3-types-school-funding/>. 17 “Title IX and Sexual Harassment in K-12 Public Schools: Key Steps to Compliance,” EduRisk, <https://www.ue.org/uploadedFiles/Title%20IX%20and%20Sexual%20Harassment%20in%20K-12%20Public%20Schools.pdf>.

17 Title IX and Sexual Harassment in K-12 Public Schools: Key Steps to Compliance, EduRisk, <https://www.ue.org/uploadedFiles/Title%20IX%20and%20Sexual%20Harassment%20in%20K-12%20Public%20Schools.pdf>

18 Ibid.

19 U.S. Code 20 (2018) § 1682. [http://uscode.house.gov/view.xhtml?req=\(title:20%20section:1682%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title20-section1682\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:20%20section:1682%20edition:prelim)%20OR%20(granuleid:USC-prelim-title20-section1682)&f=treesort&edition=prelim&num=0&jumpTo=true).

B. How Title IX Works

Title IX prohibits gender discrimination in schools in the United States.<sup>20</sup> The law is a powerful enforcement tool for all students to hold schools accountable.<sup>21</sup> Under Title IX, discrimination complaints may be brought against both public and private entities through the U.S. Department of Education, U.S. federal courts, and educational institutions.<sup>22</sup>

In 1980, the U.S. Department of Education began to oversee educational institutions’ compliance with Title IX through the Office of Civil Rights (“OCR”) division.<sup>23</sup> Over the years, the Department of Education has issued policy guidance regarding the implementation of Title IX, specifically in the areas of college athletics and sexual assault on college campuses.<sup>24</sup>

1.Department of Education Guidelines for Title IX Compliance in Athletic Programs

The Department of Education published guidelines titled “Elimination of Gender discrimination in Athletics Programs,” which require educational institutions to provide members of both sexes equal opportunity to participate in sports-related programs.<sup>25</sup> In the guidelines, the Department of Education clarified the legal standard used to determine schools’

compliance with the law. In brief, it provides three possible options for educational institutions to prove they are in compliance with Title IX regarding their athletic programs.<sup>26</sup> The first option requires educational intuitions to keep track of the numbers of female and male athletes in their schools and make sure these numbers are proportionate to the respective enrollment of female and male students.<sup>27</sup> The second option is to demonstrate a history and continued practice of expanding athletic opportunities for the underrepresented sex, and the third option is surveying members of the underrepresented sex to see if schools are adequately providing opportunities to address their interests.<sup>28</sup>

2.Title IX Protections for Sexual Harassment and Sexual Violence in Educational Institutions

Although the text of the law of Title IX does not expressly reference sexual harassment or sexual assault, U.S. courts and subsequent federal statutes have interpreted the law to prohibit both in educational institutions receiving federal funds.<sup>29</sup> An offender’s conduct qualifies as sexual harassment under Title IX if it is “so severe, pervasive, and objectively offensive

that it effectively bars the victim’s access to an educational opportunity or benefit.”<sup>30</sup> Schools may be held liable under Title IX in cases involving harassment perpetrated by a teacher, as well as cases where the violator is another student.<sup>31</sup>

The Clery Act of 1990 is a federal statute that also governs Title IX sexual harassment claims on college campuses.<sup>32</sup> The Act requires colleges that receive federal funding to release an annual report for their employees and students that summarizes all incidents of violence on campus, including sexual harassment and sexual violence.<sup>33</sup> This reporting of incidents of sexual violence on campus provides a way to track the effects of Title IX.

One of the OCR’s priorities is to ensure that campus resources are made available to sexual assault survivors.<sup>34</sup> A 2018 study found that during the period of 1994 to 2014, complaints filed with OCR alleging sexual harassment in educational institutions approached parity with athletic and academic filings.<sup>35</sup> This increase in sexual harassment claims provides further evidence of increased recognition of sexual harassment as actionable gender discrimination under Title IX.<sup>36</sup>

3.Title IX Compliance Coordinators

OCR guidelines require all educational institutions to have policies on how to deal with

complaints alleging Title IX violations.<sup>37</sup> The OCR first established a requirement for educational institutions to appoint a Title IX coordinator in 2001.<sup>38</sup> According to the OCR’s Resource Guide, a Title IX coordinator’s primary responsibility is to ensure the school’s compliance with Title IX’s administrative requirements.<sup>39</sup> A Title IX coordinator’s duties also include but are not limited to: (1) monitoring students’ participation in athletics and academic fields, (2) providing training and technical assistance on internal policies related to Title IX, and (3) designing grievance procedures to handle complaints related to Title IX.<sup>40</sup> Title IX coordinators must be involved in the drafting of the institutions’ sexual harassment policies and grievance procedures.<sup>41</sup>

The role of the Title IX coordinator is critical in implementing campus reporting policies and grievance procedures for survivors of sexual assault and sexual violence. Guidelines issued during the presidency of Barack Obama expanded schools’ responsibility for monitoring and punishing misconduct by students. Schools are required to regularly inform students and staff of all information regarding what constitutes sexual harassment and what channels are available for reporting it.<sup>42</sup> Additionally, schools are required to investigate all complaints irrespective of their credibility.<sup>43</sup>

20 Shayna Medley, “‘Gender Balancing’ as Sex Discrimination in College Admissions,” Harvard Civil Rights-Civil Liberties Law Review 51 (2016): 562.

21 Ibid. See also Cannon v. University of Chicago, 441 U.S. 677, 674 (1979). See Section 3 below for limitations with respect to bringing a complaint against a private institution with respect to discrimination specifically within undergraduate admissions.

22 Celene Reynolds, “The Mobilization of Title IX across U.S. Colleges and Universities, 1994-2014,” Social Problems 66, no. 2 (May 2019): 245-273, <https://doi.org/10.1093/socpro/spy005>

23 “Title IX Legislative Chronology,” Women’s Sports Foundation, accessed May 7, 2019. <https://www.womenssportsfoundation.org/advocate/title-ix-issues/history-title-ix/history-title-ix/>.

24 Ibid.

25 “Letter to Chief State School Officers, Title IX Obligations in Athletics,” Office of Civil Rights, <https://www2.ed.gov/about/offices/list/ocr/docs/holmes.html>.

26 Elizabeth Kaufer Busch and William E. Thro, Title IX: The Transformation of Sex Discrimination in Education (New York: Routledge, 2018), 29.

27 Department of Education, “Intercollegiate Athletics Policy: Three-Part Test – Part Three,” <https://www2.ed.gov/about/offices/list/ocr/docs/title9-qa-20100420.html>

28 Ibid. See also Elizabeth Kaufer Busch and William E. Thro, Title IX: The Transformation of Sex Discrimination in Education (New York: Routledge, 2018), 30.

29 Lalonne Gray, “Title IX Compliance: Student-on-Student Sexual Violence,” Colorado Lawyer (July 2018): 33, [http://www.cobar.org/Portals/COBAR/TCL/July%202018/Feature\\_CivilRights\\_July-2018.pdf?ver=2018-06-20-122600-297&timestamp=1529527931340](http://www.cobar.org/Portals/COBAR/TCL/July%202018/Feature_CivilRights_July-2018.pdf?ver=2018-06-20-122600-297&timestamp=1529527931340)

30 Davis v. Monroe County Bd. of Education, 526 U.S. 629, 633 (1999).

31 Ibid.

32 Kathryn Joyce, “The Takedown of Title IX: Inside the Fight Over Federal Rules on Campus Sexual Assault,” New York Times, December 5, 2017, <https://www.nytimes.com/2017/12/05/magazine/the-takedown-of-title-ix.html>

33 Jacquelyn D. Wiersma-Mosley and James DiLoreto, The Role of Title IX Coordinators on College and University Campuses (2018): 2, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5946097/>; see also “Summary of Jeanne Clery Act,” Clery Center, <https://clerycenter.org/policy-resources/the-clery-act/>.

34 Jenelle M. Beavers & Sam F. Halabi, “Stigma and the Structure of Title IX Compliance,” Journal of Law, Medicine & Ethics 45 (2017): 558, 562.

35 Celene Reynolds, “The Mobilization of Title IX across U.S. Colleges and Universities, 1994-2014,” Social Problems 66, no. 2 (May 2019): 20,<https://doi.org/10.1093/socpro/spy005>

36 Ibid, at 1. Note from the author: “This article provides the first systematic analysis of how Title IX has been mobilized at the postsecondary level over the last two decades. I draw from a new data set I constructed using information acquired through seven Freedom of Information Act requests filed over 18 months. The data include all resolved postsecondary Title IX complaints filed with OCR against allegedly noncompliant schools from 1994 to 2014 ... This research fills an important gap in the sociological literature and illuminates a pressing social transformation affecting campus life across America.”

37 Department of Justice, “Overview of Title IX,” Title IX Legal Manual, <https://www.justia.com/education/docs/title-ix-legal-manual/overview-of-title-ix/>

38 Jacquelyn D. Wiersma-Mosley and James DiLoreto, “The Role of Title IX Coordinators on College and University Campuses” (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5946097/>

39 Department of Education, Title IX Resource Guide (Office for Civil Rights, 2015), 2,<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>

40 Ibid.

41 Ibid.

42 Melnick, R. Shep, The Transformation of Title IX: Regulating Gender Equality in Education (Washington: Brookings Institution Press, 2018), 203.

43 Ibid.



The OCR mandates three other forms of remedial action under Title IX. These include (1) interim measures to protect a complainant while the matter is being decided; (2) long-term services, protections, and arrangements for victims; and (3) remedies for the school’s population at large, which may include changes to the school’s Title IX policies and procedures.<sup>44</sup> These measures are not feasible without a Title IX coordinator and office to facilitate the implementation of Title IX as a basis for sexual harassment or violence claims in educational institutions. As was emphasized in our interviews with experts, the proper training, experiential knowledge, and assurance of their neutrality in addressing complaints are vital to successful implementation of Title IX in this context.<sup>45</sup>

A 2018 study examined the impact of Title IX coordinators in colleges and universities.<sup>46</sup> Based on data gathered from 692 coordinators across 42 states, 97% of the participants provided mandatory Title IX training for their students and faculty.<sup>47</sup> Many U.S. academic scholars who are experts in Title IX highlight the importance of education and training for students and faculty as a way to fight against gender discrimination.<sup>48</sup> One expert noted that many incidents of sexual violence stem from a lack of understanding about consent, especially when drugs and alcohol are involved.<sup>49</sup> The expert stressed the importance of

educating students about sex, alcohol and consent, schools’ Title IX policies, and resources available to students through Title IX coordinators.<sup>50</sup>

4.Enforcement of Title IX through Department of Education’s Office of Civil Rights (OCR)

When Title IX is violated, regulations issued by the OCR provide three possibilities of submitting a complaint: a student or employee can (1) utilize the school or university’s internal complaint procedures, (2) file an administrative complaint with the OCR, or (3) litigate in federal courts through either private means or suits brought by the U.S. Department of Justice under the authority of the Attorney General.<sup>51</sup>

The OCR enforces Title IX and investigates educational institutions’ management when a complaint is filed directly with the OCR or upon compliance review.<sup>52</sup> These complaints are often seen as a middle ground between filing an internal complaint with an educational institution and filing a complaint with a court.<sup>53</sup> Any individual that files a complaint with the OCR triggers an inquiry into the educational institution’s compliance with Title IX.<sup>54</sup> A complaint can be filed when an individual perceives a school’s failure to prevent or address gender discrimination. The complaint must be filed within 180 days of the incident alleging a violation of Title IX or a

waiver can be requested for this limit.<sup>55</sup> When the OCR investigates a school as a result of a complaint, the institution must cooperate and enter into an agreement that cures the problem.<sup>56</sup> If the OCR finds that the institution failed to comply with Title IX provisions, it offers the school an opportunity to resolve the problems through a voluntary resolution agreement.<sup>57</sup> These agreements allow for educational institutions to better their response to sexual harassment instances on campus without immediately losing federal funding,

C. Effects of Title IX in the United States

Title IX has successfully increased the participation of girls in school and professional athletics, increased scholarship funding for women’s teams, and provided long-term health and career benefits for student athletes. The implementation of Title IX in the United States has also helped eliminate the gap between men and women in higher education by prohibiting discrimination in admissions and helped fight sexual harassment on college campuses by providing legal remedies for victimized students. Despite this success, the implementation of Title IX has presented some challenges. There has been a decline in women in leadership and coaching positions. Also, the lack of universal investigative process for all schools has made it difficult to have a standardized program of

which creates a learning process for schools.<sup>58</sup> Otherwise, the OCR may bring a lawsuit in courts against the educational institution.<sup>59</sup> Schools must comply with OCR guidelines and with precedents set by the courts through case law.<sup>60</sup> When OCR resolves a Title IX complaint, it can require a school to change its Title IX compliance procedures, which can motivate other schools to do the same.<sup>61</sup> Therefore, these complaints can have far-reaching implications.<sup>62</sup>

Title IX coordinators with clear guidelines that protect both the victims and the accused.

1.Successes

Title IX fundamentally shifted public perception by promoting gender equality in sports.<sup>63</sup> Most notably, there has been an increase in female participation in sports. When Title IX was passed in 1972, about one in every 27 girls participated in athletics.<sup>64</sup> Thirty years later, one in every three girls participates in sports.<sup>65</sup> While less than 295,000 women played high school sports in 1972, that number has grown to almost 3.2 million today.<sup>66</sup> Title IX has also led to an increase in athletic scholarships for women. Whereas in 1974,

44 Ibid. at 205.

45 R. Shep Melnick (Thomas P. O’Neill, Jr., Professor of American Politics, Boston College), telephone interview by Anna Aboody, March 12, 2019; Merrick Rossein (Professor, CUNY School of Law), telephone interview by Anna Aboody, April 5, 2019. Jacquelyn D. Wiersma-Mosley and James DiLoreto, “The Role of Title IX Coordinators on College and University Campuses,” Behavioral Sciences 8, no.4 (April 2018): 8, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5946097/>.

46 Jacquelyn D. Wiersma-Mosley and James DiLoreto, “The Role of Title IX Coordinators on College and University Campuses,” Behavioral Sciences 8, no.4 (April 2018): 8, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5946097/>.

47 Ibid.

48 See Interviews with: R. Shep Melnick (Thomas P. O’Neill, Jr., Professor of American Politics, Boston College), telephone interview by Anna Aboody, March 12, 2019; Merrick Rossein (Professor, CUNY School of Law), telephone interview by Anna Aboody, April 5, 2019; Barbara Osbourne (Professor of Sport Administration and Director of the Graduate Sport Administration Program, University of Northern Carolina), telephone interview by Marianna Haddad, March 25, 2019.

49 Merrick Rossein (Professor, CUNY School of Law), telephone interview by Anna Aboody, April 5, 2019.

50 Ibid.

51 Debora A. Hoehne, “Assessing the Compatibility of Title IX and © 1983: A Post-Abrams Framework for Preemption,” Fordham Law Review 74 (2016): 3195-96.

52 Lalonie Gray, “Title IX Compliance: Student-on-Student Sexual Violence,” Colorado Lawyer (July 2018): 33, [http://www.cobar.org/Portals/COBAR/TCL/July%202018/Feature\\_CivilRights\\_July-2018.pdf?ver=2018-06-20-122600-297&timestamp=1529527931340](http://www.cobar.org/Portals/COBAR/TCL/July%202018/Feature_CivilRights_July-2018.pdf?ver=2018-06-20-122600-297&timestamp=1529527931340) See also “How to File a Discrimination Complaint with the Office for Civil Rights,” Office of Civil Rights, accessed May 10, 2019, <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>.

53 Celene Reynolds, “The Mobilization of Title IX across U.S. Colleges and Universities, 1994-2014,” Social Problems 66, no. 2 (May 2019): 245-273, <https://doi.org/10.1093/socpro/spy005>

54 Jenelle M. Beavers & Sam F. Halabi, “Stigma and the Structure of Title IX Compliance,” Journal of Law, Medicine & Ethics 45 (2017): 558, 562.

55 Celene Reynolds, “The Mobilization of Title IX across U.S. Colleges and Universities, 1994-2014,” Social Problems 66, no. 2 (May 2019): 245-273, <https://doi.org/10.1093/socpro/spy005>

56 Ibid.

57 Jenelle M. Beavers & Sam F. Halabi, “Stigma and the Structure of Title IX Compliance,” Journal of Law, Medicine & Ethics 45 (2017): 558, 562.

58 Ibid.

59 Celene Reynolds, “The Mobilization of Title IX across U.S. Colleges and Universities, 1994-2014,” Social Problems 66, no. 2 (May 2019): 245-273, <https://doi.org/10.1093/socpro/spy005>

60 Lalonie Gray, “Title IX Compliance: Student-on-Student Sexual Violence,” Colorado Lawyer (July 2018): 33, [http://www.cobar.org/Portals/COBAR/TCL/July%202018/Feature\\_CivilRights\\_July-2018.pdf?ver=2018-06-20-122600-297&timestamp=1529527931340](http://www.cobar.org/Portals/COBAR/TCL/July%202018/Feature_CivilRights_July-2018.pdf?ver=2018-06-20-122600-297&timestamp=1529527931340)

61 Celene Reynolds, “The Mobilization of Title IX across U.S. Colleges and Universities, 1994-2014,” Social Problems 66, no. 2 (May 2019): 245-273, <https://doi.org/10.1093/socpro/spy005>

62 Ibid.

63 Jhonette Howard, “Twelve years later, still the best,” ESPN.com, June 23, 2011, <http://www.espn.com/espn/commentary/news/story?page=howard-110623>.

64 “Title IX and the Rise of Female Athletes in America,” The She Network, accessed May 10, 2019, <https://www.womenssportsfoundation.org/education/title-ix-and-the-rise-of-female-athletes-in-america/>

65 Ibid.

66 Jaeah Lee and Maya Dusenbery, “Charts: The State of Women’s Athletics, 40 Years After Title IX,” Mother Jones, June 22, 2012, <https://www.motherjones.com/politics/2012/06/charts-womens-athletics-title-nine-ncaa/>.

women received less than 1% of overall scholarship dollars, today they receive more than 33% of total scholarship funding.<sup>67</sup> Title IX’s success is also represented by the triumph of U.S. women’s teams at the Olympics in the years since its passage. In the 1972 Munich Olympics, only 90 out of 428 U.S. athletes were women.<sup>68</sup> In the 2016 Rio Olympics, there were 292 female athletes and 263 male athletes, the largest number of women on a team in Olympics history.<sup>69</sup> That year, women took home 61 medals, surpassing the men’s teams in participation as well as medal count.<sup>70</sup> This success is tied to the passage of Title IX and its influence in creating athletic opportunities in college for women. In the 2016 Olympics, 79% of the athletes who competed on behalf of Team U.S.A. played sports in college.<sup>71</sup> The statistic demonstrates that Title IX has been instrumental in creating new opportunities for women to successfully pursue professional sports.<sup>72</sup> This increase in sports participation has also been linked to several long-term health and education benefits for athletes, such as higher self-esteem, decreased risk for heart disease, and lower dropout rates.<sup>72</sup>

Following the implementation of Title IX, there has been a significant increase in admissions and enrollment of women in higher education in the United

States. In 1971, right before the passage of Title IX, 18% of female high school graduates were completing at least four years of college compared to 26% of their male peers.<sup>74</sup> Today, this education gap no longer exists.<sup>75</sup> Women now make up the majority of students in America's colleges and universities in addition to making up the majority of those receiving master's degrees.<sup>76</sup> In the United States, women are more likely to finish their degree once enrolled, they graduate at higher rates than men, and they outperform men, finishing with higher grade point averages and receiving more honors.<sup>77</sup> On college campuses, Title IX has led to an increase in reporting of incidents of sexual harassment.<sup>78</sup> Complaints of discrimination and sexual harassment on college campuses rose 500% from 1994 to 2014.<sup>79</sup> Also, Title IX is increasingly being used as basis for protection against sexual harassment and violence in educational institutions as well as training for students and faculty members.<sup>80</sup>

2.Challenges

Despite much success, there have been several challenges for Title IX implementation in schools which should be considered if Japan enacts a similar law. While funding has increased for women’s sports, there is still a lack of equality in the funding for

coaching and team expenses provided for men’s and women’s sports.<sup>81</sup> There is also an issue of schools cutting men’s teams in order to reach Title IX compliance, instead of spending money and resources to add women’s teams.<sup>82</sup> Title IX has also led to a decline in the number of women coaches.<sup>83</sup> A central issue for Title IX enforcement concerning sexual violence and sexual harassment is that the guidance issued by the Department of Education does not carry the force of law, so it varies depending on the political policies of each administration. This leads to confusion and disagreement as to a school’s obligations under Title IX, so the reality of how Title IX is applied to sexual assault cases can be unpredictable.<sup>84</sup> Critics of Title IX also say educational institutions do not adequately protect students accused of sexual harassment.<sup>85</sup> Furthermore, members of the academic field, including students, faculty members, and the executive boards of colleges and universities have not been invited to participate in the formulation and development of the Title IX policies, adding to the confusion regarding its implementation.<sup>86</sup>

67 “Achieving Success Under Title IX,” Department of Education, last modified July 10, 1997, <https://www2.ed.gov/pubs/TitleIX/part5.html>.  
68 Bill Plaschke, “American women are dominating the Games, and it didn't happen by accident,” Los Angeles Times, August 16, 2016, <https://www.latimes.com/sports/la-sp-oly-women-plaschke-20160816-snap-story.html>  
69 Ibid.  
70 Karen Price, “Impacts of Title IX Still Felt by Team USA Athletes Today,” TeamUSA.org, June 22, 2017, <https://www.teamusa.org/News/2017/June/22/Impacts-Of-Title-IX-Still-Felt-By-Team-USA-Athletes-Today>  
71 Ibid.  
72 Ibid.  
73 Alana Glass, “Title IX At 40: Where Would Women Be Without Sports?,” Forbes, May 23, 2012, <https://www.forbes.com/sites/sportsmoney/2012/05/23/title-ix-at-40-where-would-women-be-without-sports/?sh=6ab690284743>; National Coalition for Women & Girls in Education, Title IX and Athletics: Title IX at 40 (NCWGE, 2012), 7, <https://www.ncwge.org/TitleIX40/Athletics.pdf>.  
74 “Title IX: A Sea Change in Gender Equity in Education,” Department of Education, last modified July 10, 1997, <https://www2.ed.gov/pubs/TitleIX/part3.html>.  
75 Ibid.  
76 Ibid.  
77 Shayna Medley, ““Gender Balancing” as Sex Discrimination in College Admissions,” Harvard Civil Rights-Civil Liberties Law Review 51 (2016): 542.  
78 Celene Reynolds, “The Mobilization of Title IX across U.S. Colleges and Universities,” 1994-2014, Social Problems, at p. 1 <https://doi.org/10.1093/socpro/spy005>  
79 Ibid.  
80 Jacquelyn D. Wiersma-Mosley and James DiLoreto, The Role of Title IX Coordinators on College and University Campuses (2018): 8, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5946097/>

81 Crystal Ayres, “16 Pros and Cons of Title IX,” Vittana.org, accessed May 10, 2019, <https://vittana.org/16-pros-and-cons-of-title-ix>.  
82 Ibid.  
83 Jeré Longman, “Number of Women Coaching in College Has Plummeted in the Title IX Era,” New York Times, March 30, 2017, <https://www.nytimes.com/2017/03/30/sports/ncaabasketball/coaches-women-title-ix.html>  
84 Anna North, “Betsy DeVos just rolled back protections for sexual assault survivors. Here’s what that means,” Vox, September 22, 2017, <https://www.vox.com/policy-and-politics/2017/9/7/16266548/betsy-devos-title-ix-college-sexual-assault>  
85 Emily Yoffe, “The Uncomfortable Truth About Campus Rape Policy,” The Atlantic, September 6, 2017, <https://www.theatlantic.com/education/archive/2017/09/the-uncomfortable-truth-about-campus-rape-policy/538974/>  
86 American Association of University Professors, The History, Uses, and Abuses of Title IX, June 2016, 87, <https://www.aaup.org/file/TitleIXreport.pdf>.

# IV. Comparative Study of Japanese and American Specific Issues on Gender Equality under educational situations

The remainder of this paper will focus on three main areas of discussion, which are gender discrimination in school-related athletics, gender discrimination in admissions, and sexual harassment and sexual violence in schools. Each section will begin with a summary of the current situation in Japan,

followed by a discussion of how Title IX has been applied in the United States to help solve similar issues. Each section will end with a recommendation of how to apply a law similar to Title IX to be most successful for the Japanese context.

## A. Gender Discrimination in Athletics

Japan's progress in promoting gender equality has been constrained by gender-based discrimination at all levels of sports activity and resulted in a gender gap in sports participation. The United States faced many of the same challenges that Japan is currently dealing with, but the passage of Title IX helped reduce gender discrimination in sports in the United States. As a result, a similar law requiring equal opportunities for male and female students in sports would likely have the same positive effect in Japan as it did in the United States.

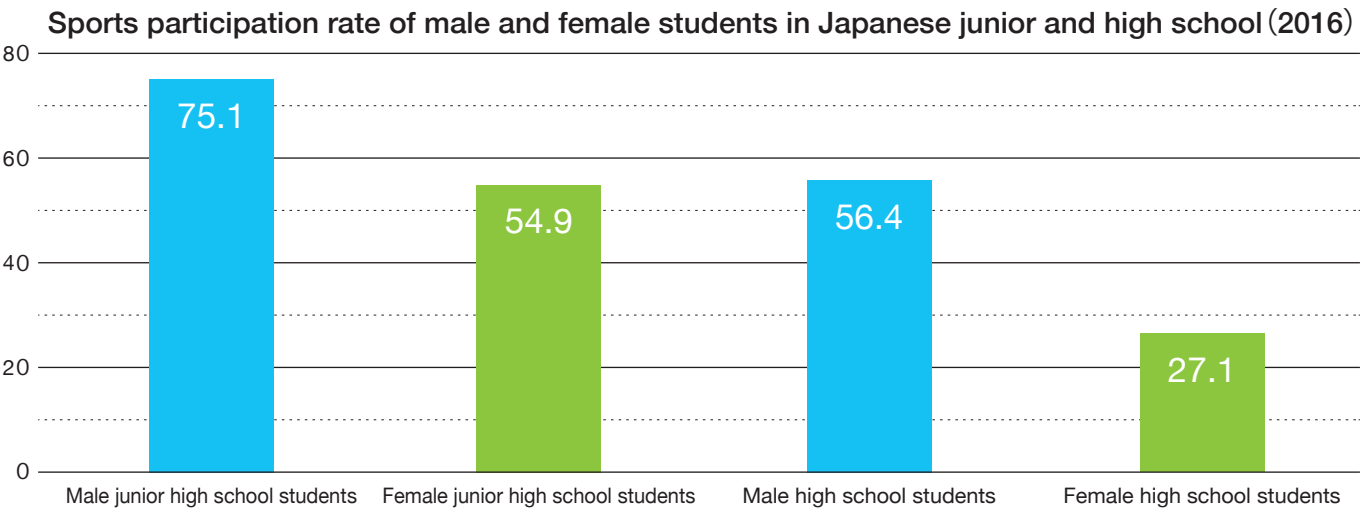
### A) The Situation in Japan

#### 1. Gender Gap in Sports Participation

Japan has tried to promote participation in sports for all genders. Physical Education class is mandatory for girls and boys in elementary and middle schools.<sup>87</sup> As the Ministry of Education, Culture, Sports, Science

and Technology ("MEXT") noted in its Basic Sport Plan 2012, promoting sports helps support youth by encouraging mental and physical health.<sup>88</sup> The Plan also highlights the importance of sports in elevating the status of Japan in the international community.<sup>89</sup> A fundamental principle in the Plan is to enable participation regardless of age or gender by increasing sports opportunities for children.<sup>90</sup>

Despite these efforts, there remains a gender gap in sports participation.<sup>91</sup> According to data collected by the Japan Sports Agency in 2016, the participation rate in organized sports is 54.9% for female junior high school students and 27.1% among female high school students.<sup>92</sup> At both levels, the female students' participation rate is approximately 20% lower than male participation rates.<sup>93</sup> Japan's 2016 Report Card on Physical Activity for Children & Youth identified ineffective implementation of government policies as a cause for the gender gap in sports participation, and noted that new strategies are needed to increase the



Source: Cabinet Office (2018) Active Role of Women in Sports and Men and Women's Health Support From the "White Paper on Gender Equality 2018" at page 9.

participation of girls in sports.<sup>94</sup>

#### 2. Gender Discrimination in Baseball

Baseball provides an example of gender-based discrimination in the opportunities afforded to female athletes when compared with their male counterparts. In Japan, there have been several instances in which girls were banished from baseball fields solely due to their gender. Most recently, a female student from Karyo High School was not allowed to appear on the field at Koshien Stadium even though she was the manager of her high school's male baseball team.<sup>95</sup> After the event, the Japan High School Baseball Federation held a meeting to consider the possibility of abolishing its traditional "boys only" rule with respect to pre-tournament practice.<sup>96</sup> The Federation committee finally approved limited participation of

female club assistants on the field during pre-game practice in November 2016.<sup>97</sup> However, women remain barred from entering the field at pre-game practice in 27 prefectures, including Tokyo.<sup>98</sup>

#### 3. Male domination in sports coaching

The domination of male coaches and officials in sports associations has created barriers for women and this makes it difficult for women to reflect their opinions in sports associations.<sup>99</sup>

The predominantly male leadership in sports can also place female athletes in vulnerable situations. In 2011, for example, two-time Olympic champion Masato Uchishiba was convicted of raping a female member of the women's judo team, which he coached at Kyushu University of Nursing and Social Welfare, after drinking with other club members.<sup>100</sup>

87 Elise Edwards "Gender Lessons On The Fields Of Contemporary Japan: The Female Athlete In Coaching Discourses" This Sporting Life: Sports And Body Culture In Modern Japan. Accessed May 7, 2019. <https://core.ac.uk/download/pdf/62433038.pdf>.  
88 Minister of Education, Culture, Sports, Science and Technology "The Sport Basic Plan" 2017, at page 2-3. Accessed May 7, 2019. [https://www.mext.go.jp/sports/content/1383656\\_002.pdf](https://www.mext.go.jp/sports/content/1383656_002.pdf)  
89 Ibid.  
90 Ibid.  
91 Sasakawa Sports Foundation. "White Paper on Sport in Japan 2017" 2017, at page 21. Accessed May 7, 2019. [http://www.ssf.or.jp/Portals/0/resources/outline/en/pdf/SportWhitePaperinJapan2017\\_c.pdf](http://www.ssf.or.jp/Portals/0/resources/outline/en/pdf/SportWhitePaperinJapan2017_c.pdf).  
92 Cabinet Office, Government of Japan "Active Role of Women in Sports and Men and Women's Health Support", at page 9. [https://www.gender.go.jp/english\\_contents/about\\_danjo/whitepaper/pdf/ewp2018.pdf](https://www.gender.go.jp/english_contents/about_danjo/whitepaper/pdf/ewp2018.pdf)  
93 Ibid.

94 Chiaki Tanaka, Shigeo Tanaka, Shigeru Inoue, Motohiko Miyachi, Koya Suzuki, and John J. Reilly "Results from Japan's 2016 Report Card on Physical Activity for Children & Youth". Journal of Physical Activity and Health, at 191. Accessed May 7, 2019. <https://journals.humankinetics.com/view/journals/jpah/13/s2/article-pS189.xml>  
95 "Female High School Students Continue To Be Banned On Baseball Field At Koshien Stadium In Japan". Sora News 24, August 4, 2016. Accessed May 7, 2019. <https://soraneews24.com/2016/08/04/female-high-school-students-continue-to-be-banned-on-baseball-field-at-koshien-stadium-in-japan/>.  
96 "Japan high school baseball board OKs girls taking part in pre-game practice". The Mainichi, November 26, 2016. Accessed May 7, 2019. <https://mainichi.jp/english/articles/20161126/p2a/00m/0na/017000c>.  
97 Ibid.  
98 "Girls still not allowed at Koshien, Japanese baseball's scholastic hallowed ground". USA Today, August 5, 2016. Accessed May 7, 2019. <https://usatodayhss.com/2016/girls-still-not-allowed-on-japanese-prep-baseballs-hallowed-ground>  
99 Osamu Takamine "Is There An Olympic Movement Happening In Japan?" 2017, Meiji University. Accessed May 7, 2019. [https://www.meiji.ac.jp/cip/english/research/opinion/Osamu\\_Takamine.html](https://www.meiji.ac.jp/cip/english/research/opinion/Osamu_Takamine.html)  
100 After serving a five-year prison term, Uchishiba recently returned to the sports world and is currently a coach for the men's national judo team of Kyrgyzstan in preparation for the 2020 Olympic Games. "Convicted rapist and Olympic judo champion Masato Uchishiba to coach Kyrgyzstan men's national team". Japan Times, July 31, 2018. Accessed May 7, 2019. <https://www.japantimes.co.jp/sports/2018/07/31/more-sports/judo/convicted-rapist-olympic-judo-champion-masato-uchishiba-coach-kyrgyzstan-mens-national-team/#:~:text=Two%2Dtime%20Olympic%20gold%20medalist,rape%20conviction%2C%20sources%20said%20Monday>.



B) United States Comparative Research:  
Success of Title IX in Addressing Gender Discrimination in Sports

1.Increased Participation of Women in Athletics

Changes in the Number of the Female Participation in Sports Before and After the Introduction of Title IX		
	In 1972	In 2018
The numbers of female participation in sports	1 in every 27 girls	2 in every 5 girls
The numbers of female participation in sports at the high school level	Less than 295,000 girls	Almost 3.2 million girls
The numbers of female participation in sports at the university level	29,977 girls	216,378 girls
The number of female athletes who competed for the United States in Olympics	90 female athletes	291 female athletes

After the implementation of Title IX, the rates of girls participating in athletics in the United States increased dramatically at both the high school and university level.<sup>101</sup> When Title IX was passed in 1972, one in every 27 girls played school sports.<sup>102</sup> From 1972 to 2018, that number has risen to two in every five girls.<sup>103</sup> The overall numbers of female participation in sports similarly reflect this trend. In 1972 there were less than 295,000 girls playing high school sports; in 2018 this number was up to almost 3.2 million.<sup>104</sup> At the university level, the participation numbers increased from 29,977 to 216,378.<sup>105</sup> This upward trend of girls participating in athletics resulted in a 990%

increase in the number of female athletes in high school and a 545% increase at the university level since 1975.<sup>106</sup> As mentioned previously, the increase of female athletes at both the high school and college level has directly improved the success of U.S. women in athletics on the international stage.<sup>107</sup> At the 1972 Olympics, only 90 of the 428 athletes in the U.S. delegation were women.<sup>108</sup> U.S. women won 23 medals that year.<sup>109</sup> At the 2016 Olympics, the U.S. delegation included 291 female athletes, over triple the amount when compared to 1972.<sup>110</sup> That group won 61 medals, reflecting the increase of female athletes and a record-

101 Maegan Olmstead "Title IX and the Rise of Female Athletes in America" Women's Sports Foundation 2016 <https://www.womenssportsfoundation.org/education/title-ix-and-the-rise-of-female-athletes-in-america/>.

102 Ibid.

103 Ibid.

104 Dusenbery, Maya. "Charts: The State of Women's Athletics, 40 Years After Title IX." Mother Jones. June 25, 2017. Accessed April 22, 2019. <https://www.motherjones.com/politics/2012/06/charts-womens-athletics-title-nine-ncaa/>

105 "Title IX and Athletics" National Coalition for Women and Girls in Education, at page 9 <https://www.ncwge.org/TitleIX40/Athletics.pdf> (citing NCAA Sports Sponsorship and Participation Report, 1971-72-2010-11); updated with 2018 statistics found from <https://www.ncwge.org/TitleIX40/Athletics.pdf>

106 Maegan Olmstead "Title IX and the Rise of Female Athletes in America" Women's Sports Foundation 2016 <https://www.womenssportsfoundation.org/education/title-ix-and-the-rise-of-female-athletes-in-america/>.

107 "American Women Are Dominating the Games, and It Didn't Happen by Accident." Los Angeles Times. August 16, 2016. Accessed April 22, 2019. <https://www.latimes.com/sports/la-sp-oly-women-plaschke-20160816-snap-story.html>

108 Ibid.

109 "Impacts Of Title IX Still Felt By Team USA Athletes Today." Team USA. Accessed April 22, 2019. <https://www.teamusa.org/News/2017/June/22/Impacts-Of-Title-IX-Still-Felt-By-Team-USA-Athletes-Today>

110 "American Women Are Dominating the Games, and It Didn't Happen by Accident." Los Angeles Times. August 16, 2016. Accessed April 22, 2019. <https://www.latimes.com/sports/la-sp-oly-women-plaschke-20160816-snap-story.html>

setting 27 gold medals.<sup>111</sup> In the 2016 Olympics, 90 to 100 percent of the athletes who competed for the United States had participated in university sports.<sup>112</sup>

2. Increase in Women’s Sports Teams

The passage of Title IX resulted in an increase in the number of sports teams for women, as the law requires that educational institutions offer women the same opportunities that are afforded to men.<sup>113</sup> In 1972, the average number of sports teams for women at the university level was 2.5 teams; in 2004 it was over 8.<sup>114</sup> For example, women’s collegiate rowing teams experienced a huge increase following the passage of Title IX, jumping from just 12 teams in 1991 to 146 teams in 2009.<sup>115</sup> Women’s soccer teams at the university level have grown from 318 teams to 959 teams within the same timeframe.<sup>116</sup>

Despite this progress, some schools have looked for ways around complying with the regulation.<sup>117</sup> Some schools have cut men’s teams, instead of adding women’s teams, in order to reach parity between the amount of teams offered to each gender.<sup>118</sup> This often happens as a way for schools to avoid spending money on new women’s teams and is usually accompanied by the excuse that funding more teams for women is

111 <https://www.npr.org/sections/thetorch/2016/08/21/490818961/u-s-women-are-the-biggest-winners-in-rio-olympics>.

112 "Impacts of Title IX Still Felt by Team USA Athletes Today." Team USA. Accessed April 22, 2019. <https://www.teamusa.org/News/2017/June/22/Impacts-Of-Title-IX-Still-Felt-By-Team-USA-Athletes-Today>

113 "A History of Women in Sport Prior to Title IX." The Sport Journal. October 12, 2016. Accessed April 22, 2019. <https://thesportjournal.org/article/a-history-of-women-in-sport-prior-to-title-ix/>

114 Ibid.

115 "The Battle for Gender Equity in Athletics in Colleges and Universities" National Women's Law Center. 2011. Accessed April 22, 2019. [https://nwlc.org/wp-content/uploads/2015/08/2011\\_8\\_battle\\_in\\_college\\_athletics\\_final.pdf](https://nwlc.org/wp-content/uploads/2015/08/2011_8_battle_in_college_athletics_final.pdf)

116 Ibid.

117 Ayres, Crystal. "16 Pros and Cons of Title IX." Vittana.org. Accessed April 22, 2019. <https://vittana.org/16-pros-and-cons-of-title-ix>.

118 Ibid.

119 Ibid.

120 Baker, Thomas. "Eastern Michigan's Title IX Case Highlights Difficulties In Cutting Women's Sports Programs." Forbes. December 04, 2018. Accessed April 22, 2019. <https://www.forbes.com/sites/thomasbaker/2018/12/04/emus-loss-in-title-ix-case-highlights-difficulties-in-cutting-womens-sports/#d2c78bc57a54>.

121 Ibid.

122 "Understanding the Importance of Title IX." Ohio University. September 20, 2018. Accessed April 22, 2019. <https://onlinemasters.ohio.edu/blog/understanding-the-importance-of-title-ix/>.

123 Ibid.

124 Ibid.

125 Achieving Success Under Title IX <https://www2.ed.gov/pubs/TitleIX/part5.html>.

126 Ibid.

127 Ibid.

128 Ibid.

for men and women be equal, there is still more progress to be made on the issue of funding. In 2018, female students made up 53% of all university students, yet, despite now making up the majority of the student body across college campuses, women continue to receive less athletic funding than what is allocated for male students.

4. Benefits to Female Students Outside Athletics Due to Their Increased Participation in Sports

There have been several benefits to female students due to their increased participation in sports as a result of the passage of Title IX.<sup>129</sup> Female students involved in sports on average have higher self-esteem than non-athlete students.<sup>130</sup> They are also 29% less likely to smoke, engage in other risky behaviors, and have lower rates of teenage pregnancy.<sup>131</sup> Furthermore, participation in sports is linked to very clear health benefits, like a decreased risk for heart disease and breast cancer.<sup>132</sup> Benefits have also manifested inside the classroom and helped girls excel further in academics.<sup>133</sup> Girls’ participation in sports has also helped reduce the traditional gender gap in scientific subjects and led to lower dropout rates.<sup>134</sup> This trend has further extended to more women earning college degrees, in part due to the expansion in access to

athletic scholarships, which allow more women to attend university.<sup>135</sup>

5. Issues in Coaching

The lack of female coaches has been a challenge that has persisted despite Title IX’s success in addressing gender discrimination in sports.<sup>136</sup> Before Title IX, women held over 90% of head coaching positions for women’s college teams.<sup>137</sup> After Title IX was implemented and women’s programs expanded greatly, this opened up new coaching positions and most of the opportunities were given to men because equality in coaching is outside of the purview of Title IX.<sup>138</sup> In 2010, women held only 42.6% of coaching positions for female teams, the second lowest in history.<sup>139</sup> In 2016, only 28% of coaches across youth sports of both genders were women.<sup>140</sup> Experts are skeptical about the potential for a legislative solution to this problem, believing instead that the responsibility to hire more female coaches will lie with current prominent head coaches and educational institutions prioritizing the issue.<sup>141</sup>

C) Application of Title IX in the Japanese Context

Title IX has been successful in addressing gender

discrimination in athletics in the United States, and a similar law would likely do the same if passed in Japan. The United States was dealing with many of the same problems that Japan is currently facing in gender discrimination against women in athletics, including: a lack of opportunities for women in sports and a resulting lack of participation in sports by female students. By mandating that schools provide equal opportunities for both men and women in school-related athletics, Japan would provide more opportunities for female students, leading to the creation of more women’s sports teams. This in turn would likely encourage more women to participate in sports and raise the participation rates of female

B. Gender Discrimination in Admissions

The Japanese education system is currently facing problems of gender discrimination in admissions to institutions of higher education, as was recently highlighted by the medical school scandal. The United States was able to address similar issues through the implementation of Title IX, which reduced gender discrimination in U.S. higher education admissions. Therefore, the enactment of a law similar to that of Title IX would likely have a similar effect in Japan: it would help reduce instances of gender discrimination in admissions to institutions of higher education.

A) Current Situation in Japan

In its 2009 report to the United Nations Committee on Economic, Social and Cultural Rights, the Japanese government noted that under the School Education Act, all students, regardless of gender, are eligible for admission into upper secondary education.<sup>142</sup> The Japanese government reported

students to be more comparable with that of male students. This increased participation could also lead to more success for Japanese national teams in international competitions, as has been the case for the United States.

While both countries are also facing the issue of a lack of female coaches in athletics, Title IX has not been successful in addressing this issue in the United States, the problem has actually gotten worse since the passing of Title IX. It is important to note that the implementation of a law like Title IX in Japan may not address this issue although it could address others and could lead to the worsening of the problem like it did in the United States.

positive continuation numbers, citing that 97.6% of boys and 98.1% of girls continued to upper secondary school in the 2008 school year.<sup>143</sup> . Unfortunately, this trend does not follow at the higher education level. In its concluding observations on the combined seventh and eighth periodic reports of Japan, the United Nations Committee on the Elimination of Discrimination Against Women stated that it was concerned by the “wide gender gap in higher education enrolment.”<sup>144</sup> The Committee also expressed concern regarding the large percentage of women who continue their higher education without pursuing a university degree, and the potential difficulties that they may consequently face in the Japanese labor market.<sup>145</sup>

A recent scandal in Japan demonstrated the severity of gender inequality in admissions in institutions of higher education.<sup>146</sup> A national newspaper discovered that Tokyo Medical University intentionally gave male applicants additional points to test scores in order to negatively impact female

129 “Title IX and Athletics: Proven Benefits, Unfounded Objections” <https://www.ncwge.org/TitleIX40/Athletics.pdf> at pgs. 10-11.

130 Alana Glass “Title IX At 40: Where Would Women Be Without Sports?” Forbes 2012 <https://www.forbes.com/sites/sportsmoney/2012/05/23/title-ix-at-40-where-would-women-be-without-sports/?sh=340d0ebb4743>

The three prongs of the test are (1) substantial proportionality, (2) history of expansion of women’s programs, ad (3) full and effective accommodation of women’s interests. See “Gender Participation Issues Related To Sports - Title IX Of The Education Amendments Of 1972” by William H. Glover, Jr; “Three-Part Test – Q&A - Title IX Athletics” <http://titleixspecialists.com/wp-content/uploads/2013/09/Q-A-Three-Part-Test.pdf>.

131 “Title IX and Athletics: Proven Benefits, Unfounded Objections” <https://www.ncwge.org/TitleIX40/Athletics.pdf> at pgs. 10-11.

132 Ibid.

133 Ibid.

134 Ibid.

“Title IX: 5 Ways it Changed Title IX for the Better” Everfi 2018 <https://everfi.com/insights/blog/title-ix-positive-changes/>.

135 Ibid.

136 Linda Flanagan, Susan H. Greenberg. “How Title IX Hurts Female Athletes.” The Atlantic. July 01, 2015. Accessed April 22, 2019. <https://www.theatlantic.com/entertainment/archive/2012/02/how-title-ix-hurts-female-athletes/253525/>

137 Jeré Longman. “Number of Women Coaching in College Has Plummeted in the Title IX Era.” The New York Times. March 30, 2017. <https://www.nytimes.com/2017/03/30/sports/ncaabasketball/coaches-women-title-ix.html>

138 Ibid.

139 Linda Flanagan, Susan H. Greenberg. “How Title IX Hurts Female Athletes.” The Atlantic. July 01, 2015. Accessed April 22, 2019. <https://www.theatlantic.com/entertainment/archive/2012/02/how-title-ix-hurts-female-athletes/253525/>

140 Cook, Bob. “Lack of Presence For Female Coaches Extends to Kids’ Games.” Forbes. November 28, 2018. Accessed April 22, 2019. <https://www.forbes.com/sites/bobcook/2018/11/28/lack-of-presence-for-female-coaches-extends-to-kids-games/?sh=7333082a4938>

141 Interview with Athena Yiamouyiannis.

applicants and reduce the number of women entering each class.<sup>147</sup> Following worldwide criticism, MEXT conducted an investigation and confirmed that this test score manipulation was not a single incident. Instead, MEXT confirmed that about 80% of the 81 medical schools in Japan admitted more men than women in the past six years.<sup>148</sup> MEXT also reported that nine universities used deliberate discriminatory actions against female applicants.<sup>149</sup>

Among these nine medical schools, Juntendo University performed the worst due to its low success rate for female applicants.<sup>150</sup> To explain this result, university representatives stated that they considered it necessary to award male applicants more points to their test scores, as women tend to possess stronger communication skills in interviews.<sup>151</sup> Similarly, Tokyo Medical University reported that it based its decision to manipulate test scores on the belief that female doctors were more likely to end their professional career after marriage or childbirth.<sup>152</sup> Rather than recognizing the relevant skills that female medical students bring to the profession, or introducing policies to make sure that they can achieve a work-life balance, universities contributed to gender inequality by reinforcing gender discrimination in their admissions practices.

**B) United States Comparative Research: Influence of Title IX in Addressing Gender Discrimination in Admissions**

Following the implementation of Title IX, there has been a significant increase in the admissions and enrollment of women in higher education in the United States. The fundamental principle underlying Title IX is that students may not be denied educational opportunities based on their sex. This principle applies to a wide range of activities offered by schools, including admissions.<sup>153</sup> Part of the initial motivation for Title IX was admissions, as prior to the passage of the law, universities were systematically denying access to women.<sup>154</sup>

Prior to the implementation of Title IX, women were excluded from education due to societal views that their place was primarily in the home and tending to the family. There was also a fear of too many women having economic independence.<sup>155</sup> However, substantial progress has been made in overcoming the education gap that existed between men and women in completing four years of college prior to the passage of Title IX.<sup>156</sup> In 1971, right before the passage of Title IX, 18% of female high school graduates were completing at least four years of college compared to 26% of their male peers.<sup>157</sup> Furthermore, prior to the passage of Title IX, elite universities were setting quotas for the admissions of women or simply prohibiting women from attending.<sup>158</sup> Women’s applications often required higher test scores and grades for admission to educational institutions that men also attended.<sup>159</sup> In addition, women’s colleges were predominant prior to

the passage of Title IX due to the exclusion of women at elite-level institutions for men.<sup>160</sup>

Today, this education gap no longer exists.<sup>161</sup> After men’s institutions began accepting women and ceased discriminating against female applicants, over half of all women’s colleges in the United States closed, affiliated with men’s colleges, or became co-educational between 1965 and 1975.<sup>162</sup> Today, there are less than 50 women’s colleges in the United States and graduates of these schools make up less than 2% of all college graduates.<sup>163</sup> Women now make up the majority of students in U.S. colleges and universities, in addition to making up the majority of those receiving master's degrees and doctoral degrees.<sup>164</sup> One study shows that between 1976 and 2009 there was a 116% increase in women getting bachelor’s degrees, a 148% increase in women getting master’s degrees, and a 338% increase in women getting doctoral degrees.<sup>165</sup>

Women are also entering business and law schools in record numbers.<sup>166</sup> In 2018, women made up 52.39% of all students in law schools.<sup>167</sup> Furthermore, recent data from the National Center for Education Statistics shows that 47% of students in business school are women, compared to less than 5% in 1970, prior to the passage of Title IX.<sup>168</sup> Female rates of medical school attendees have also steadily increased. In 2018, for the second year in a row, women were the

majority of new enrollees in medical schools, making up 51.6% of new matriculants.<sup>169</sup> Overall, women are more likely to finish their degree once enrolled, they graduate at higher rates than men, and they outperform men, finishing with higher grade point averages and receiving more honors.<sup>170</sup>

**C) Application of Title IX in the Japanese Context**

The implementation of a law similar to Title IX in Japan would solve many of the admissions issues that Japanese universities currently face. By making it unlawful to discriminate on the basis of sex, for example by prohibiting the use of quotas, Japan would ensure qualified women have equal access to higher education. This would also help diminish gender discrimination in the Japanese labor market, as more qualified women would be graduating from institutions of higher education.

In addition, Japan should ensure transparency by requiring that all internal school complaints and their resulting findings be made available to the public. In the United States, transparency of Title IX issues has incentivized schools to self-monitor and motivated them to comply with the provisions of the law.

147 Ibid.

148 Toko Shirakawa, “Japan an underdeveloped country for women,” The Japan Times, January 11, 2019, <https://www.japantimes.co.jp/opinion/2019/01/11/commentary/japan-commentary/japan-underdeveloped-country-women/#.XFClpM9Kgci>

149 Ibid. The nine medical schools include Tokyo Medical University, Showa University, Kobe University, Iwate Medical University, Kanazawa Medical University, Fukuoka University, Kitasato University, Juntendo University and Nihon University.

150 Ibid.

151 Ibid.

152 Ibid.

153 “Equal Access to Education: Forty Years of Title IX,” U.S. Department of Justice, June 23, 2012, 2, <https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf>

154 Ibid.; Athena Yiamouyiannis (Executive Director for National Association for Girls and Women in Sport), telephone interview by Zainab Zaman, March 28, 2019.

155 Shayna Medley, “‘Gender Balancing’ as Sex Discrimination in College Admissions,” Harvard Civil Rights-Civil Liberties Law Review 51 (2016): 542.

156 “Equal Access to Education: Forty Years of Title IX,” U.S. Department of Justice, June 23, 2012, 2, <https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf>; Athena Yiamouyiannis (Executive Director for National Association for Girls and Women in Sport), telephone interview by Zainab Zaman, March 28, 2019.

157 “Equal Access to Education: Forty Years of Title IX,” U.S. Department of Justice, June 23, 2012, 2, <https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf>

158 Ibid.; see also Shayna Medley, “‘Gender Balancing’ as Sex Discrimination in College Admissions,” Harvard Civil Rights-Civil Liberties Law Review 51 (2016): 542.

159 “Equal Access to Education: Forty Years of Title IX,” U.S. Department of Justice, June 23, 2012, 2, <https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf>

160 Shayna Medley, “‘Gender Balancing’ as Sex Discrimination in College Admissions,” Harvard Civil Rights-Civil Liberties Law Review 51 (2016): 542.

161 “Equal Access to Education: Forty Years of Title IX,” U.S. Department of Justice, June 23, 2012, 2, <https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf>

162 Andrew L. Yarrow, “For Women's Colleges, A Surge of Optimism,” New York Times, January 5, 1986, <https://www.nytimes.com/1986/01/05/education/for-women-s-colleges-a-surge-of-optimism.html>

163 Rebecca Prinster, “In an Unequal World, Women’s Liberal Arts Colleges Remain Relevant,” (Potomac Publishing, June 2012): 36-38, <https://www.insightintodiversity.com/in-an-unequal-world-womens-liberal-arts-colleges-remain-relevant/>

164 “Equal Access to Education: Forty Years of Title IX,” U.S. Department of Justice, June 23, 2012, 2, <https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf>

165 Susan D. Barnes, “Rise and Resilience of Women’s Colleges,” Western New Mexico University, (Jan. 1, 2014): 81.

166 “Equal Access to Education: Forty Years of Title IX,” U.S. Department of Justice, June 23, 2012, 2, <https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf>

167 “Where do women go to law school?” American Bar Association, February 28, 2019. <https://abaforlawstudents.com/2019/02/28/where-do-women-go-to-law-school-2018-numbers/>

168 “Why More Women Are Applying to Business School,” MBA.com, January 11, 2018, <https://www.mba.com/articles-and-announcements/articles/women-in-business/why-women-are-applying>

169 “Women Were Majority of U.S. Medical School Applicants in 2018,” Association of American Medical Colleges, December 4, 2018, <https://www.aamc.org/news-insights/press-releases/women-were-majority-us-medical-school-applicants-2018>

170 Shayna Medley, “‘Gender Balancing’ as Sex Discrimination in College Admissions,” Harvard Civil Rights-Civil Liberties Law Review 51 (2016): 542.



C. Sexual Harassment & Sexual Violence in Education

The Japanese school system faces issues concerning sexual harassment and sexual violence at each educational level. Teacher-on-student sexual harassment is an issue at all levels, from elementary to university. Peer-to-peer sexual harassment specifically concerns the university level. The lack of sex education is a contributing factor to these challenges at every level of education in Japan. In the United States, the implementation of Title IX has led to the expansion of campus resources, most notably Title IX offices and coordinators, which has resulted in increased training on Title IX policies, as well as more holistic sexual education. Implementation of a similar law in the Japanese context could have a similar effect given the immense need for official school policies against sexual harassment and assault, more procedural guidance for schools in dealing with claims, and more administrative staff whose priorities include the training, remediation and prevention of sexual harassment and violence in education.

A) The Situation in Japan

1.Sexual Violence and Harassment at the Elementary, Middle, and High School Level

Statistically identified sexual harassment occurring at the pre-university level in Japan is often related to teachers and other school administrative staff acting inappropriately toward their students.<sup>171</sup> MEXT recently reported that 226 members of the teaching staff at public schools in Japan were

disciplined for acts of obscenity or sexual harassment in 2016.<sup>172</sup> However, it is unlikely that the MEXT’s statistics are a reflection of every instance of teacher-on-student sexual harassment. For example, a 2017 survey conducted by the Chiba Prefectural Board of Education reported that 308 students at Chiba Prefecture’s public schools felt that their teachers’ language or actions constituted sexual harassment.<sup>173</sup> Most teachers who committed sexual harassment are allowed to voluntarily resign without notations on their records, allowing them to potentially work again at different schools.<sup>174</sup> Further, even if a teacher’s credentials are revoked, a teacher can request reissuance of their credentials after three years.<sup>175</sup>

2.Sexual Violence and Harassment at the University Level

Teacher-on-student sexual harassment is also an ongoing problem in Japanese universities, which are mainly private. However, private universities do not have to disclose disciplinary actions taken against their employees. Consequently, there are no comprehensive statistics on teacher-on-student sexual harassment incidents at the university level, as reports of harassment only become public if they part of a secret scandal reported on by the press. However, according to an annual recollection conducted by the Japanese NGO, “Sexual Harassment on Campus National Network,” newspapers reported 376 disciplinary action cases for harassment in universities over the period 2006-2016.<sup>176</sup>

Sexual harassment and sexual violence at the

university level also often occur in the context of college clubs and parties, fueled in part by alcohol use. There is documentation of college parties leading to the rape or gang rape of female university students.<sup>177</sup> For example, in 2016, a group of male students at the University of Tokyo founded a social club called “The University of Tokyo Birthday Research Group,” with the goal of intoxicating and assaulting women.<sup>178</sup> In May 2016, the members of the club intoxicated and sexually assaulted a female victim.<sup>179</sup> Two of the students charged with the assault were given suspended sentences.<sup>180</sup> In another 2016 case, a female victim filed a criminal complaint against six male students that were part of Keio University’s Advertisement Society. The male students allegedly coerced the victim into drinking a significant amount of alcohol before gang raping her.<sup>181</sup> The University suspended three of the offenders, but none of them faced criminal prosecution.<sup>182</sup> As one expert from Hiroshima University’s Harassment Consultation Office noted, growing conversation and outrage over complaints tends to lead to harsher punishments for offenders.<sup>183</sup> However, the expert also noted the difficulty in documenting any precise statistics regarding the frequency of harassment cases involving

disciplinary action at the university level, given the privatization of universities who are not required to publicize this information.<sup>184</sup>

3.Lack of Sexual Education for Students and Teachers

A critique of Japan’s education system is the lack of sex and gender-related education provided to both students and teachers. Schools are failing to integrate gender equality and sexuality education into their curricula in a systematic way.<sup>185</sup> In a survey of the Japan’s Teacher’s Union, more than 30% of teachers responded that they were not aware of sex education being present in their school curriculum, while another 30% affirmatively answered that they did not provide sex education as part of their curriculum.<sup>186</sup> There is also a lack of understanding and awareness among university students as to what constitutes sexual harassment or sexual violence. According to a 2011 study, the majority of university students do not consider verbal harassment, control by an intimate partner, or unprotected sex without the consent of both partners to be forms of violence.<sup>187</sup> A 2006-2016 study concluded that both male and female university

177 Mark Schreiber, “Rape Allegation Casts Harsh Light on University Club”, The Japan Times, 22 October 2016, <https://www.japantimes.co.jp/news/2016/10/22/national/media-national/rape-allegation-casts-harsh-light-university-club/#.XE-EU2RKj-k>;  
see also “Chiba University Medical Student Gets Four Years For Gang Rape”, The Japan Times, May 29, 2017, <https://www.japantimes.co.jp/news/2017/05/29/national/crime-legal/chiba-university-medical-student-gets-four-years-gang-rape/#.XE-EVmRKj-k>;  
see also Shusuke Murai, “University of Tokyo Student Who Co-Founded Club For Molesting Women Given Suspended Sentence”, The Japan Times, September 20, 2016, <https://www.japantimes.co.jp/news/2016/09/20/national/crime-legal/university-tokyo-student-co-founded-club-molesting-women-given-suspended-sentence/#.XE-EX2RKj-k>;  
see also “Kyoto University Trio Held In Suspected Gang Rapes”, The Japan Times, January 27, 2006, <https://www.japantimes.co.jp/news/2006/01/27/national/kyoto-university-trio-held-in-suspected-gang-rapes/#.XKFN0y2h01l>.  
178 Murai, “University of Tokyo Student.”  
179 Ibid.  
180 Ibid.  
181 “Prosecutors drop rape case against 6 Keio University students”, Japan Today, November 29, 2017, <https://japantoday.com/category/crime/prosecutors-drop-rape-case-against-6-keio-university-students>.  
182 Ibid.  
183 Professor Kitanaka, email interview.  
184 Ibid.  
185 Committee for NGO Reporting on the Convention on the Right of the Child (Japan), “Implementation of the CRC in Japan: Perspectives of NGOs on the Fourth and Fifth Periodic Report of Japan”, October 2017, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fNGO%2fJPN%2f29990&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fNGO%2fJPN%2f29990&Lang=en)  
186 Ibid.  
187 Ohnishi M, Nakao R, Shibayama S, et al. Knowledge, “Experience, and potential risks of dating violence among Japanese university students: a cross-sectional study,” BMC Public Health 11, (2011): 339, <https://doi.org/10.1186/1471-2458-11-339>.

171 Shohei Kato, “308 school students in Chiba Pref. felt ‘sexual harassment’ by teachers: survey”, The Mainichi, June 11, 2018, <https://mainichi.jp/english/articles/20180611/p2a/00m/0na/006000c>.  
172 “Record 226 School Staffers Punished in Japan for Obscenity”, Nippon.com, December 28, 2017, <https://www.nippon.com/en/behind/110698/record-226-school-staffers-punished-in-japan-for-obscenity-news.html>  
173 Kato, “308 school students.”  
174 Toko Shirakawa, “Crack down on sexual harassment in schools”, The Japan Times, October 4, 2018, <https://www.japantimes.co.jp/opinion/2018/10/04/commentary/japan-commentary/crack-sexual-harassment-schools/#.XEkt89Ki9Z%20/>;  
see also “High school teacher disciplined over sexual harassment after serving alcohol to girl”, Japan Today, December 7, 2018, <https://japantoday.com/category/national/high-school-teacher-disciplined-over-sexual-harassment-after-serving-alcohol-to-girl>  
175 Shirakawa, “Crack down on sexual harassment in schools.”  
176 Professor Kitanaka (Harassment Consultation Office, Hiroshima University), email interview by Stephy Kwan, April 2, 2019.

students tend to accept traditional gender roles.<sup>188</sup> In 2016, the United Nations Committee on the Elimination of Discrimination Against Women recommended that Japan focus on having systematic gender quality education within school curricula in order to promote female empowerment.<sup>189</sup> In 2017, the Committee for NGO reporting on the Convention on the Rights of the Child suggested the same measures, making explicit reference to the recommendations of the CEDAW Committee.<sup>190</sup>

**B) United States Comparative Research: Influence of Title IX in Addressing Sexual Harassment and Sexual Violence in Education**

**1.Increased Resources for Survivors of Sexual Harassment and Sexual Violence**

Title IX has resulted in an increase in resources available to survivors of sexual harassment and sexual violence at U.S. educational institutions in the form of anti-sexual violence and anti-sexual harassment school policies and reporting and grievance procedures designed to handle allegations of sexual assault and sexual harassment. Many of these resources are implemented by Title IX offices and coordinators, which have grown significantly under the issuance of OCR guidelines.<sup>191</sup> As explained in III, Title IX offices and coordinators play a critical role in ensuring their school’s compliance with Title IX and the corresponding guidelines. While these guidelines are not legally binding rules, they carry great weight given

federal courts’ willingness to defer to them in private actions filed against schools.<sup>192</sup> As such, schools go to great lengths to ensure that they are in compliance with a particular administration’s Title IX guidelines. The Obama Era Guidelines expanded schools’ responsibility in addressing complaints of sexual harassment and implementing preventative measures.<sup>193</sup> From 2011 to 2015, colleges spent more than \$100 million to comply with Title IX sexual-harassment guidelines.<sup>194</sup>

It should also be noted that Title IX efforts to address sexual violence in education in the United States have mainly focused on the university level because many universities have students living on campus and as such, peer-on-peer sexual violence is more prevalent in that context. Schools teaching elementary, middle, and high school students are not typically boarding schools and students spend a lot of their time off-campus, so sexual violence is less likely to take place on campus at that level.

**2.Increased Educational Trainings on Sexual Harassment and Sexual Violence Prevention**

The expansion of Title IX offices has led to increased education and training for both students and faculty on Title IX and the issues of sexual assault and harassment.<sup>195</sup> In 2018, an empirical study examined the impact of the work of Title IX coordinators in colleges and universities.<sup>196</sup> Based on data gathered from 692 coordinators across 42 states, 97% of the participants provided mandatory training for their

students and faculty.<sup>197</sup> While the specifics of these trainings are often kept secret, there is a clear indication that Title IX offices are striving to not only inform students about Title IX policies but also to re-educate students about the meaning of masculinity and femininity in an effort to shift the culture of sexual inequality on campuses.<sup>198</sup> Experts on Title IX place great emphasis on the importance of this kind of education and training for students and faculty and note that inadequate training and education is a source of sexual discrimination.<sup>199</sup> One expert noted that many sexual harassment and assault claims stem from a lack of understanding and knowledge with regard to consent, especially when drugs and alcohol are involved.<sup>200</sup> The expansion of Title IX offices over the past decade has helped address this gap in sexual education. A leading Title IX expert explained that: “These mandatory trainings attempt to explain to students how to draw the line between acceptable and unacceptable sexual activity, incorporating guidance from several government publications about what constitutes ‘healthy, mutually respectful’ sexual relationships.”<sup>201</sup>

**3.Increased Reporting of Sexual Harassment and Sexual Violence**

Title IX has also led to an increase in reporting of incidents of sexual harassment and sexual violence on college campuses.<sup>202</sup> Complaints of discrimination and sexual harassment on college campuses rose 500%

from 1994 to 2014.<sup>203</sup> This increased reporting is likely indicative of students’ increased knowledge about their rights to education free from gender discrimination and sexual violence.

**4.Remaining Challenges**

Despite the positive influence of Title IX in addressing sexual harassment and violence at institutions of higher education, challenges remain in ensuring a clear and fair investigative process as well as due-process for the accused. The investigative process is not uniform across U.S. educational institutions. While there are often OCR guidelines issued regarding Title IX investigations, there is no universal investigative process that all schools adhere to.<sup>204</sup> Additionally, experts have noted the difficulty of obtaining information about schools’ Title IX complaint and investigations processes, as this information is not readily available to the public.<sup>205</sup> Title IX coordinators and their respective offices on campuses are tasked with handling their school’s internal investigations into instances of peer-on-peer sexual violence or harassment.<sup>206</sup> As one expert noted, this is problematic given the coordinator’s close ties with the school’s leadership and the potential for bias.<sup>207</sup> Title IX coordinators, often performing these internal investigations, often have no formal legal or investigative background. One expert highlighted the fact that investigating sexual violence, and rape in particular, requires a set of skills which is only acquired

188 Tamara Stephens et al., “Rape Myth Acceptance Among College Students in the United States, Japan, and India”, SAGE Open, (2016): 2, <https://doi.org/10.1177%2F2158244016675015>

189 Committee on the Elimination of Discrimination against Women, “Concluding observations on the combined seventh and eighth periodic reports of Japan”, 10 March 2016, [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fJPN%2fCO%2f7-8&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fJPN%2fCO%2f7-8&Lang=en).

190 Committee for NGO Reporting on the Convention on the Right of the Child (Japan), “Implementation of the CRC.”

191 R. Shep Melnick, “The Strange Evolution of Title IX,” National Affairs 36, (Summer 2018): 31,<https://www.nationalaffairs.com/publications/detail/the-strange-evolution-of-title-ix>

192 Ibid., 21.

193 Ibid., 31.

194 Ibid.

195 Ibid.

196 Jacquelyn Wiersma-Mosley and James Diloreto, “The Role of Title IX Coordinators on College and University Campuses,” Behavioral Sciences 8, no. 4 (2018): 1-14, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5946097/>.

197 Ibid., 8.

198 Melnick, “The Strange Evolution of Title IX,” 32.

199 R. Shep Melnick (Professor of American Politics at Boston College), telephone interview by Anna Aboody, March 12, 2019;

see also Rick Rossein (Professor of Civil Rights and Employment Law at The City University of New York School of Law), telephone interview by Anna Aboody, March 28, 2019;

see also Barbara Osborne (Professor of Sport Administration and Director of Graduate Sport Administration Program at the University of North Carolina), telephone interview by Marianna Haddad, March 25, 2019.

200 Rick Rossein, telephone interview.

201 Melnick, “The Strange Evolution of Title IX,” 32.

202 Celene Reynolds, “The Mobilization of Title IX across Colleges and Universities, 1994-2014,” Social Problems 66, no. 2 (March 28, 2018): 245, <https://doi.org/10.1093/socpro/spy005>

203 Ibid.

204 Mandy Hambleton (Title IX coordinator at Florida State University), telephone interview by Savannah Price, March 12, 2019.

205 R. Shep Melnick, telephone interview; see also Rick Rossein, telephone interview.

206 R. Shep Melnick, The Transformation of Title IX: Regulating Gender Equality in Education (Washington: Brookings Institution Press, 2018), 203-205.

207 R. Shep Melnick, telephone interview.

through comprehensive training and experience.<sup>208</sup> Investigative experience and an assurance of neutrality in their roles are important qualifications that schools should be looking for when hiring Title IX coordinators. Another expert suggested creating a training program for all Title IX coordinators, sponsored by the government, to ensure that coordinators possessed the necessary skills to ensure Title IX compliance at their respective educational institutions.<sup>209</sup>

Finally, there is widespread concern that there is insufficient due process protection for the accused.<sup>210</sup> Recently, federal courts have found that educational institutions have violated suspects’ due process rights when handling sexual harassment cases.<sup>211</sup> These violations include a failure to provide notice to a suspect of the charge against him or her, an imposition of disproportionate constraints on the scope of cross-examination, and the use of unfair procedures against a suspect.<sup>212</sup> The length of school-led investigations into these complaints, which one study reported was an average of 963 days, also raises significant due process concerns.<sup>213</sup> This has an impact on both the accused and survivors. Experts emphasized the expediency of the investigation as a marker of successful Title IX implementation, as it relates to sexual harassment and violence in educational institutions.<sup>214</sup>

C) Application of Title IX in the Japanese Context

Successful implementation of a law like Title IX regarding sexual harassment and assault in Japan should not necessarily exactly mirror the U.S. legislation, but instead be cognizant of Title IX’s successes and shortcomings in an effort to implement

a more effective version of the law. The issues of sexual harassment and violence seen in Japanese educational institutions indicate that Japan would benefit from the increase in resources and attention that would accompany the implementation of a law similar to Title IX. Any legislation similar to Title IX that is implemented in Japan should include policies and mandates that specifically address the sexual harassment and sexual violence issues unique to educational institutions. Japan is currently faced with sexual harassment and violence in educational institutions that can often be tied to a lack of sexual education, particularly as it concerns consent. One fundamental result of Title IX’s application to sexual harassment and violence was the development of Title IX offices and the increasingly broad scope they have on college campuses. This scope includes the much-needed training and education of students and faculty on Title IX basics and its mechanisms for redressal. Further included is a curriculum inclusive of a more comprehensive sexual education and consent training. The increase in size, capacity, and purview of administrative offices devoted to Title IX, has helped the United States in its efforts to maximize gender equality and minimize sexual harassment and violence, especially at institutions of higher education. As such, Japan should prioritize effective administrative bodies and institutional offices in any analogous future legislation.

However, in any efforts to enact a law like Title IX, Japan must also account for the deficiencies in Title IX’s effectiveness in addressing sexual assault and sexual violence in educational institutions. The absence of uniformity in complaint, investigation, hearing, and disciplinary procedures is a primary source of the continuing challenges that the United States faces with Title IX implementation. In Japan, the

government should set clear standards and procedural requirements for all schools in order to avoid any potential ambiguity. Moreover, any law issued in Japan which seeks to address the sexual harassment and violence within higher education should mandate a training for students, teachers, and the administration that informs them of the law’s specifics and its applicability. These training sessions should address the lack of clarity surrounding consent, and further gaps in the sexual education of Japanese students and teachers.

208 Rick Rossein, telephone interview.  
209 Barbara Osborne, telephone interview.  
210 Emily Yoffe, “The Uncomfortable Truth About Campus Rape Policy,” The Atlantic, September 06, 2017. <https://www.theatlantic.com/education/archive/2017/09/the-uncomfortable-truth-about-campus-rape-policy/538974/>  
211 American Association of University Professors, “The History, Uses, and Abuses of Title IX,” Bulletin, June 2016, 80, <https://www.aaup.org/file/TitleIXreport.pdf>.  
212 Ibid.  
213 Emily Yoffe, “The Uncomfortable Truth.”  
214 Rick Rossein, telephone interview.



