GENDER EQUALITY AT EDUCATIONAL INSTITUTIONS IN JAPAN

Human Rights Now

Walter Leitner International Human Rights Clinic
Human Rights Now
# Table of Contents

## I. Executive Summary 3
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. Introduction 5

## III. Overview of Title IX in the United States 6
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 situations 16
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.

Recommendations

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 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.1

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

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.3 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.4 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.” 5

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.6 Women faced unfair quotas when seeking admission to programs in higher education institutions.7 Women also faced limited scholarship opportunities and more restrictive campus rules, such as earlier curfews.8

Title IX was enacted in response to perceived gaps in federal anti-discrimination law that did not address gender discrimination in the educational setting.9 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.10 However, Title VII explicitly exempted educational institutions from its application.11 This exemption was deliberate, due to strong opposition from higher educational institutions.12 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.13

In the United States, state and local governments are responsible for primary and secondary education, rather than the federal government.14 Even though state governments are the primary source of education funding, school districts also receive some funding from the federal government.15 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 2018.16 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.17 The law also prohibits gender discrimination in any school-related programs, including athletics and extracurricular activities.18 Institutions that discriminate on the basis of sex in violation of Title IX risk losing their federal funds.19

1 This white paper is authored by students from Fordham University School of Law, Anna Abdozy, Joanna Herz, Marianna Haddad, Savannah Price, and Zainab Zaman, and edited by Professor Chris 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 Kenpo [Kenpo] (Constitution), art. 26 (Japan).
8 Ibid.
14 Ibid.
15 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.
III. Overview of Title IX in the United States

B. How Title IX Works

Title IX prohibits gender discrimination in schools in the United States. The law is a powerful enforcement tool for all students to hold schools accountable. 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. 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. 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.

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.

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. The first option requires educational institutions 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.

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.

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. 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.” 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.

The Clery Act of 1990 is a federal statute that also governs Title IX sexual harassment claims on college campuses. 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. 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. 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. This increase in sexual harassment claims provides further evidence of increased recognition of sexual harassment as actionable gender discrimination under Title IX.

3. Title IX Compliance Coordinators

OCR guidelines require all educational institutions to have policies on how to deal with complaints alleging Title IX violations. The OCR first established a requirement for educational institutions to appoint a Title IX coordinator in 2001. 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.

A Title IX coordinator’s duties also include but are not limited to: (1) monitoring schools’ 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.

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. Additionally, schools are required to investigate all complaints irrespective of their credibility.
III. Overview of Title IX in the United States

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. 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.45

A 2018 study examined the impact of Title IX coordinators in colleges and universities.46 Based on data gathered from 692 coordinators across 42 states, 97% of the participants provided mandatory Title IX training for their students and faculty.47 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.48 One expert noted that many incidents of sexual violence stem from a lack of understanding about consent, especially when drugs and alcohol are involved.49 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.50

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) file a lawsuit in federal courts through either private means or suits brought by the U.S. Department of Justice under the authority of the Attorney General.51

The OCR enforces Title IX and investigates educational institutions’ management when a complaint is filed directly with the OCR or upon compliance review. 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.52 Any individual that files a complaint with the OCR triggers an inquiry into the educational institution’s compliance with Title IX.53 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.54 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.55 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.56 These agreements allow for educational institutions to better their response to sexual harassment instances on campus without immediately losing federal funding, which creates a learning process for schools.57 Otherwise, the OCR may bring a lawsuit in courts against the educational institution.58 Schools must comply with OCR guidelines and with precedents set by the courts through case law.59 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.60 Therefore, these complaints can have far-reaching implications.61

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 gender 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 better their response to sexual harassment instances on campus.

1. Successes

Title IX fundamentally shifted public perception by promoting gender equality in sports.62 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.63 Thirty years later, one in every three girls participates in sports.64 While less than 295,000 women played high school sports in 1972, that number has grown to almost 32 million today.65 Title IX has also led to an increase in athletic scholarships for women. Whereas in 1974, 10

---

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; Jacqueline 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.
56 Ibid.
58 Ibid.
62 Ibid.
65 Ibid.
III. Overview of Title IX in the United States

women received less than 1% of overall scholarship dollars, today they receive more than 33% of total scholarship funding. 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. 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. That year, women took home 61 medals, surpassing men. Participation has also been linked to several long-term health and education benefits for athletes, such as improved 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. Today, this education gap no longer exists. 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. 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. On college campuses, Title IX has led to an increase in reporting of incidents of sexual harassment. Complaints of discrimination and sexual harassment on college campuses rose 500% from 1994 to 2014. 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.

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. 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. Title IX has also led to a decline in the number of women coaches. 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. Critics of Title IX also say educational institutions do not adequately protect students accused of sexual harassment. 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.

89 Ibid.
91 Ibid.
92 Ibid.
95 Ibid.
96 Ibid.
99 Ibid.
102 Ibid.
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.\(^8\) 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.\(^9\) The Plan also highlights the importance of sports in elevating the status of Japan in the international community.\(^10\) A fundamental principle in the Plan is to enable participation regardless of age or gender by increasing sports opportunities for children.\(^11\)

Despite these efforts, there remains a gender gap in sports participation.\(^12\) 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.\(^13\) At both levels, the female students’ participation rate is approximately 20% lower than male participation rates.\(^14\) 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 participation of girls in sports.\(^15\)

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 banned 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.\(^16\) 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.\(^17\) The Federation committee finally approved limited participation of female club assistants on the field during pre-game practice in November 2016.\(^18\) However, women remain barred from entering the field at pre-game practice in 27 prefectures, including Tokyo.\(^19\)

3. Male dominance in sports coaching

The predominance 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.\(^20\)

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.\(^21\)

89 Ibid.
90 Ibid.
93 Ibid.
97 Ibid.
IV. Comparative Study of Japanese and American Specific Issues on Gender Equality under educational situations

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

<table>
<thead>
<tr>
<th>In 1972</th>
<th>In 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>The numbers of female participation in sports</td>
<td>1 in every 27 girls</td>
</tr>
<tr>
<td>The numbers of female participation in sports at the high school level</td>
<td>Less than 295,000 girls</td>
</tr>
<tr>
<td>The numbers of female participation in sports at the university level</td>
<td>29,977 girls</td>
</tr>
<tr>
<td>The number of female athletes who competed for the United States in Olympics</td>
<td>90 female athletes</td>
</tr>
</tbody>
</table>

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.101 When Title IX was passed in 1972, one in every 27 girls played school sports.102 From 1972 to 2018, that number has risen to two in every five girls.103 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.104 At the university level, the participation numbers increased from 29,977 to 216,378.105 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 1975.106

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.107 At the 1972 Olympics, only 90 of the 428 athletes in the U.S. delegation were women.108 U.S. women won 23 medals that year.109 At the 2016 Olympics, the U.S. delegation included 291 female athletes, over triple the amount when compared to 1972.110 That group won 61 medals, reflecting the increase of female athletes and a record-setting 27 gold medals.111 In the 2016 Olympics, 90 to 100 percent of the athletes who competed for the United States had participated in university sports.112

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.113 In 1972, the average number of sports teams for women at the university level was 2.5 teams; in 2004 it was over 8.114 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 2009.115 Women’s soccer teams at the university level have grown from 318 teams to 959 teams within the same timeframe.116

Despite this progress, some schools have looked for ways around complying with the regulation.117 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.118 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 simply too expensive.119 However, in December 2018, a U.S. federal court ruled that a school’s financial hardship cannot be a reason to violate the provisions of Title IX.120 This recent ruling may lead to a decline in this issue, as universities will likely be less able to rely on finances as an excuse to cut women’s sports.121

3. Increased Funding for Women’s Sports Teams and Female Athletes

The passage of Title IX helped allocate more money for women’s sports overall.122 In 1972, women’s athletics programs received only 2% of schools’ sports budgets.123 In 2010, women’s athletic programs received 48% of schools’ sports budgets, marking a huge improvement as the result of the implementation of Title IX.124 The passage of Title IX also requires schools to offer more scholarships to female athletes.125 In 1974, there were 50,000 male students with athletic scholarships, but just 50 women who received athletic scholarships.126 This amounted to less than 1% of overall funding available for athletic scholarships in the United States at the time.127 As a result of Title IX, women received about 45% of all athletic scholarships in 2018.128

Despite Title IX’s requirement that opportunities

103 Ibid.

119 Ibid.
123 Ibid.
124 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.129 Female students involved in sports on average have higher self-esteem than non-athlete students.130 They are also 29% less likely to smoke, engage in other risky behaviors, and have lower rates of teenage pregnancy.131 Furthermore, participation in sports is linked to very clear health benefits, like a decreased risk for heart disease and breast cancer.132 Benefits have also manifested inside the classroom and helped girls excel further in academics.133 Girls’ participation in sports has also helped reduce the traditional gender gap in scientific subjects and led to lower dropout rates.134 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.135

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.136 Before Title IX, women held over 90% of head coaching positions for women’s college teams.137 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.138 In 2010, women held only 42.6% of coaching positions for female teams, the second lowest in history.139 In 2016, only 28% of coaches across youth sports of both genders were women.140 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 heads coaches and educational institutions prioritizing the issue.141

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 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.

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.142 The Japanese government reported positive continuation numbers, citing that 97.6% of boys and 98.1% of girls continued to upper secondary school in the 2008 school year.143 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.”144 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.145 A recent scandal in Japan demonstrated the severity of gender inequality in admissions to institutions of higher education.146 A national newspaper discovered that Tokyo Medical University intentionally gave male applicants additional points to test scores in order to negatively impact female students.

132 Ibid.
133 Ibid.
134 Ibid.
136 Ibid.
139 Ibid.
140 Ibid.
143 Ibid.
145 Ibid.
applicants and reduce the number of women entering each class.147 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.148 MEXT also reported that nine universities used deliberate discriminatory actions against female applicants.149 Among these nine medical schools, Juntendo University performed the worst due to its low success rate for female applicants.150 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.151 Similarly, Tokyo Medical University reported that it based its decision to manipulate test scores on the belief that female doctors would be more likely to end their professional career after marriage or childbirth.152 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.

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.153 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.154

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.155 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.156 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.157 Furthermore, prior to the passage of Title IX, elite universities were setting quotas for the admissions of women or simply prohibiting women from attending.158 Women’s applications often required higher test scores and grades for admission to educational institutions that men also attended.159 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.160 Today, this education gap no longer exists.161 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 1972.162 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.163 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.164 One study shows that between 1976 and 1990 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.165

Women are also entering business and law schools in record numbers.166 In 2018, women made up 52.39% of all students in law schools.167 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.168 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.169 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.170

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.
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. The 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. 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. 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. Further, even if a teacher’s credentials are revoked, a teacher can request reissuance of their credentials after three years.

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. 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. 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. In May 2016, the members of the club intoxicated and sexually assaulted a female victim. Two of the students charged with the assault were given suspended sentences. 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. The University suspended three of the offenders, but none of them faced criminal prosecution. 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. 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.

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. 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 asserted that they did not provide sex education as part of their curriculum. 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. A 2006-2016 study concluded that both male and female university students...
students tend to accept traditional gender roles. 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. 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.

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. 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. 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. From 2011 to 2015, colleges spent more than $100 million to comply with Title IX sexual-harassment guidelines.

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. In 2018, an empirical study examined the impact of the work of Title IX coordinators in colleges and universities. Based on data gathered from 692 coordinators across 42 states, 97% of the participants provided mandatory training for their

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. Complaints of discrimination and sexual harassment on college campuses rose 500% from 1994 to 2014. 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. 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. 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. As one expert noted, this is problematic given the coordinator’s close ties with the school’s leadership and the potential for bias. Title IX coordinators, 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

References

190 Committee on NGO Reporting on the Convention on the Right of the Child (Japan), “Implementation of the CRC.”
192 Ibid., 21.
193 Ibid., 31.
194 Ibid.
195 Ibid.
197 Ibid., 28.
199 R. Shep Melnick (Professor of American Politics at Boston College), telephone interview by Anna Abodo, 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 Abodo, 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.
203 Ibid.
204 Mandy Hambliton (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.
207 R. Shep Melnick, telephone interview.
IV. Comparative Study of Japanese and American Specific Issues on Gender Equality under educational situations

through comprehensive training and experience.208 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.209

Finally, there is widespread concern that there is insufficient due process protection for the accused.210 Recently, federal courts have found that educational institutions have violated suspects’ due process rights when handling sexual harassment cases.211 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.212 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.213 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.214

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.
212 Ibid.
213 Emily Yoffe, “The Uncomfortable Truth About Campus Rape Policy.”
214 Rick Rossein, telephone interview.