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November 18, 1974

Mr. James W. McGuire
Chairman Stratford Board of Education
5344 Main Street
Stratford, Connecticut

Dear Mr. McGuire:

We have been asked for our opinion concerning the board's responsibilities to provide equal sports opportunities for girls, and to provide coaches of women's teams with salaries equivalent to salaries of coaches of male teams.

The board is aware of comments from citizens and teachers expressing concern about equality of opportunity in girls' sports programs and in salaries for coaches of girls' sports. The board is already aware of the impact of women's rights legislation in the area of pregnancy leave. As developments are coming fast in the field of legal rights of women, it is well that the board should be aware of the trend of the law in this field, including sports, pregnancy disability, employment and equal pay. As the Department of Health, Education and Welfare has proposed to cut off federal funds from schools discriminating against women or men, sex discrimination can have a serious financial impact on any system.

There are many provisions of law which support the trend towards women's rights, so many in fact, that there is a good deal of overlapping. Some of the significant sources of law in this area follow:

> 42 United States Code § 200 E-2 (a) "It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's *** sex***. (2) to limit ***his employees in any way which would deprive or tend to deprive any individual of employment opportunities ***because of ***sex***."

The Education Amendments of 1972 (92nd Congress Second Session) Section 901; 20 U.S.C.§1681 state:

> "No person in the United States shall, on the basis of sex, be excluded from participating in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving federal financial assistance***".

Section 902 of the Education Amendments of 1972, 20 U.S.C. § 1682, authorizes the Department of Health, Education and Welfare to issue regulations prohibiting sex discrimination and to cut off federal funding to school systems that discriminate on the basis of sex.

In 1973 the United States Supreme Court said that classifications based upon sex are as inherently suspect of being unlawful as classifications based on race. Frontiero v. Richardson, 411 U.S. 677. In 1971 the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment prohibited a county from discriminating against women by giving preferences to men for appointments as estate administrators. Reed v. Reed, 404 U.S. 71. In 1974 the Supreme Court interpreted the due process clause of the Fourteenth Amendment to prohibit the Cleveland and Chesterfield County Virginia school systems from imposing mandatory early commencement dates for pregnancy leave. Cleveland Board of Education v. LaFleur, 39 L.Ed. 2d 52. This holding, together with other cases, suggests that, even in the absence of Connecticut law, the board's new contractual pregnancy leave policy is required by the federal constitution as interpreted by leading Supreme Court cases. As with all Supreme Court decision, these decisions will be used by lower court judges as authority to strike down other forms of sex discrimination.

Connecticut General Statutes Section 31-35 states: "No employer shall discriminate in the amount of compensation paid to any employee solely on the basis of sex***". Conn. Gen. Stats. § 31-26 contains language almost identical to that of 42 U.S.C. § 2000(e) appearing above and bans discriminatory employment practices. Enforcement is in the hands of the State Commission on Human Rights and Opportunities. The electorate on November 5, 1974 approved an amendment to the Connecticut Constitution's Declaration of Rights, Article One, Section Twenty, to prohibit sex discrimination. As we have previously advised, Conn. Gen. Stats. §31-126(g) guarantees reasonable pregnancy leave and a right of return. Note that United States Supreme Court decisions and regulations of the federal Equal Employment Opportunities Commission also require that reasonable pregnancy leave be granted.

As can be seen, there is a considerable body of statutes, federal and local, and constitutional provisions, which, when taken together, form a strong legal framework for women's claims to equal opportunity and equal rights.

There is one additional source of law which is the body of regulations of administrative agencies. These regulations usually have the force of law and will be enforced by courts. Thus they are often as effective as statutes. As mentioned, the Equal Employment Opportunities Commission has for several years had a regulation requiring reasonable pregnancy leave, requiring an employee to grant a leave which is also required by Connecticut General Statutes Section 31-126(g). The Department of HEW is issuing regulations providing means of cutting off federal funds to schools engaging in sex discrimination.

There is little question about the trend of the law in the area of equal rights for women. There is no reason to believe that the law will not grant the same protection to women and use the same tools in achieving this protection that the law has applied in cases of racial discrimination.

In the field of school sports, it can be assumed that courts will order substantial equality of opportunity in boys' and girls' programs. Coaches doing substantially the same work will have to be paid at a substantially equal rate of pay. The New Haven Board of Education has been sued in federal District Court for sex discrimination in its sports program. A final decision is not available yet, but if newspaper reports are to be believed, the city is not in a strong position and it has already signed a consent order. Wright v. City of New Haven, No. 15927.

In Brender v. Independent School District #742, 342 F. Supp. 1224 (1972), a federal court ordered that girls be allowed to participate in boys' tennis and cross country programs where the school provided no tennis or cross country activities for girls and the plaintiff girls were physically able to participate. The court found that sex discrimination violated the Education Amendments of 1972, as well as the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983. The decision was affirmed by United States Court of Appeals. 477 F. 2d 1292 (1973). The appeals court quoted the decision of the Manhattan federal court in the McSorley Old Ale House case: "***discrimination on the basis of sex can no longer be justified by reliance on out-dated images***of women as peculiarly delicate and impressionable creatures in need of protection from the rough and tumble of unvarnished humanity". Reference is made to the attached order of Judge Jon Newman in Wright v. City of New Haven.

Given the state of the law, we think that the board should be concerned with the following areas to insure that it is not inadvertently engaging in sex discrimination:

1. Jobs should not be classified by sex, either directly or in an indirect manner. Thus sex is not a reason to prevent a woman from holding a janitor's job, nor for a man to be prevented from holding the position of cafeteria worker. The board should consider reviewing staffing patterns in all job categories including custodians, cafeteria workers, and DPS personnel.

2. The board should anticipate that it may be required to take the initiative in developing more sports opportunities for girls. In the event that neighboring school systems do not cooperate so that an area league may provide more opportunities for girls, the board could be compelled to expand girls sports activities within the Stratford system.

3. Equal pay laws as well as equal rights laws require that when women do the same work as men, they are to be paid the same rate of pay. Any differences in pay rates must reflect substantial and provable differences in job duties and responsibilities. An employee who has suffered pay discrimination on the basis of sex could have a claim for back wages and, under federal law, board members could be personally liable.

We hope that this opinion will provide the board with information it needs to assess its educational and personnel policies so that there is no inadvertent violation of citizens' rights to equal opportunities.

Very truly yours,

James A. Trowbridge
for Flynn, White & Trowbridge

JAT:mst