



New Jersey Advisory Commission on the **STATUS of WOMEN**

363 West State Street • Trenton, New Jersey 08625 • P.O. Box 2768 • (609) 292-8840



Brendan Byrne, *Governor*
Constance Woodruff, *Chairperson*

90
W872
1978a

REPORT ON SEX DISCRIMINATION CASES IN HIGHER EDUCATION FILED WITH THE NEW JERSEY DIVISION ON CIVIL RIGHTS

New Jersey Advisory Commission on the Status of Women
Higher Education Committee
1977-1978

ABSTRACT

Delays in processing sex discrimination complaints made to the New Jersey Division on Civil Rights by women in higher education, were studied by the Committee on Higher Education of the New Jersey Commission on the Status of Women.

The Committee found many causes for the delays. In general the causes were inadequate staffing and insufficient funding of the Division, an enormous backlog of cases awaiting resolution, the intransigence of college and university administrations in dealing with sex discrimination in their institutions, the small number of hearing examiners and alleged sex discrimination within the Division and the Department of Higher Education.

Cases dragging on for 4 and 5 years have produced economic, psychological and physical damage to the women complainants. Recommendations are made in the report which include: provision of adequate funding and staffing to permit the Division to carry out its mandate quickly and efficiently, amending the New Jersey Civil Rights Statute(s) to require the speedy settlement of sex discrimination complaints, ordering college and university administrators to pay their own legal counsel in such cases out of their institutional budgets and censuring administrations which take reprisals against a complainant or her supporters.

974.90
W872
1978a
extra
~~copy 4 (7, 11)~~

Susan Reynolds Arndt
Sandra Grundfest

Elizabeth Marie Hogan
Doris Kulman

Jean C. Lane
Ida Castro

Nilda Frulia
Dorothy Riley

Barbara Boggs Sigmund
Anita E. Voorhees

INTRODUCTION

Members of the New Jersey Commission on the Status of Women have received numerous complaints from women in higher education regarding the delay in handling their sex discrimination complaints filed with the New Jersey Division on Civil Rights (the Division), the Equal Employment Opportunity Commission (EEOC) and the Office for Civil Rights of the Department of Health, Education and Welfare (HEW). This matter was referred to the Commission's Committee on Higher Education.

The Committee on Higher Education was not prepared to consider simultaneously the delays in handling complaints in all of the foregoing agencies so it elected to study first, the problems of delay in the Division. It must be noted, however, that there are a number of sex discrimination cases in higher education filed with EEOC. Under present rules all complaints must be sent by EEOC to the New Jersey Division on Civil Rights for its consideration. The Division has 60 days to accept the complaint or return it to EEOC for handling. If the Division accepts and investigates the complaint, it will still send the material to EEOC for review. Both agencies have copies of all complaints. Because the Higher Education Committee lacked the resources to consider both agencies at once, it decided to begin with the agency within its own state.

While some sex discrimination grievances in higher education are resolved through institutional contractual grievance procedures, many of the more serious complaints are resolved only through some form of legal action. The usual procedure is to file with the New Jersey Division on Civil Rights and EEOC. In the past, complaints were also filed with the Office for Civil Rights in HEW, Region II. However, because this agency is only minimally responsive, it is now more usual to file with the other two agencies. Although some women have engaged private lawyers to try to reduce the enormous delays encountered, most women are unable to meet the high cost of such legal assistance. For example, in one case which was closed early by private settlement, the complainant paid \$5000 in legal expenses. Clearly, the majority of women must rely entirely upon the efforts of the Division.

To develop recommendations for reducing current delays in the processing and resolution of sex discrimination cases filed with the Division, the Committee interviewed women who had initiated such cases in New Jersey, and gathered statistical and organizational data. This report is not intended to develop a critique of the State Division on Civil Rights

but was prepared to consider and develop recommendations that are substantiated by the Committee's research. The New Jersey Division on Civil Rights has been most helpful in the Committee's gathering of statistical and organizational material. The Committee deeply appreciates their assistance and help. As a result of its study, the Committee is convinced that meaningful improvements in the handling of sex discrimination cases by the Division require changes not only in the procedures of the Division, but also in New Jersey statutes and in other State agencies.

While this report focuses on sex discrimination cases in higher education, some consideration of total sex discrimination complaints filed with the Division is also included. It is our intention that the recommendations made in this report will also affect all unresolved cases filed with the Division. (See Appendix I)

FINDINGS AND RECOMMENDATIONS

Findings

I. Backlog of Cases; New Jersey Division on Civil Rights

According to the Division on Civil Rights Annual Report, 1976,

In 1976 the Division's workload continued to increase, both in number and complexity, but through use of innovative management techniques and a dedicated staff the year end backlog was reduced to 2,815 cases, the lowest total since 1973. This progress is most astonishing when one considered the Division's staff was reduced from 85 to 75 by budget reduction during the year.

A backlog of 2,815 cases is overwhelming. Cases will remain unresolved on the books for years. We understand the relative satisfaction of the New Jersey Division on Civil Rights on their progress. However, in human and legal terms, this state of affairs is unacceptable. For the time represents the loss of files, witnesses and other essential aspects which constitutes a fair and equitable hearing for the complainant.

This backlog includes 520 unresolved sex discrimination cases. (see Appendix II). There has been a steadily

increasing rate of complaints and unresolved cases despite the fact that there has been increasing pressure from the Division to settle cases early. It is important to eliminate the backlog, and it is equally important to do it in a qualitative manner. There should be no pressure to make unwise compromises.

Table I lists unresolved sex discrimination cases included in this backlog.

TABLE I

All Open Sex Discrimination Cases
as of March 1, 1976

Year	Cases Still Open	Increase	Total
1972-73	25		25
1974	63	38	88
1975	140	77	228
1976	152	12	380

As of March 1, 1976 there were still 25 cases open that had been docketed in the period Sept. 1972 - Dec. 1973. At the same time there are 63 open cases filed in 1974 and 140 cases open filed in 1975. The number increases each year. The total number of open sex discrimination cases still open was 380. The number of open cases continues in July 1977 to grow.

Under the present processing of complaints in another few years the problem of open cases will be compounded and the cost of rectifying the process and dealing with the cases will be astronomical. It is imperative that solutions be found and implemented to deal not only with the growing backlog of unresolved sex discrimination cases but with all open discrimination cases in New Jersey Civil Rights Division.

Recommendations

1. As a result of an open hearing on this topic, conducted by the Commission on March 15, 1978, we urge that an efficiency study of the operation of the Division be conducted immediately to see whether personnel resources and operating methods are

Recommendations (Contd)

efficient and effective in handling discrimination complaints. It was stated that "cases are bogged down by going through an excessive number of channels".

2. The staff handling higher education complaints should specialize in this area. If investigators were assigned exclusively to this area, they would become more efficient as they developed an expertise with the special problems of higher education.
3. The New Jersey Civil Rights Statute should be amended to specify that a complaint must be moved from the date of its filing to Appellate Court within a maximum of 365 days (See Appendix III). Rather than taking four to five years to complete a case, under this plan a maximum of 365 days would be allowed. Further, to be effective, the statute must include an appropriate penalty for non-compliance with these time limitations, such as allowing the complainant to hire outside counsel and be awarded counsel fees.
4. There are presently no women on the N.J. Civil Rights Commission. Appointments of women should be made immediately and continued until a 50% representation is achieved.

II. Docket Numbers

Findings

A sex discrimination case appears in the statistic of the New Jersey Division of Civil Rights only after the plaintiff receives a docket number. This occurs before the investigation takes place. No statistics are available but questioning some four women in higher education who had recently filed cases with the Civil Rights Division revealed that not one woman had received a Docket Number in less than one year after filing her complaint. Clearly, this step alone adds an intolerable delay.

Recommendation

1. We recommend that the Division make sure that all Docket Numbers are issued within 60 days of filing the Complaint.

III. Closing of Cases

Significantly, independent colleges and universities settle their sex discrimination cases much sooner than the public colleges and universities. (See Appendix IV). Our investigation revealed that during the period studied eight independent colleges closed fifteen sex discrimination cases out of seventeen. During the same period eight state colleges closed only nine sex discrimination out of twenty-four. Similarly, in March 1977, eight independent colleges had only two unresolved cases. At the same time the eight state colleges had fifteen unresolved cases. The private colleges tended to settle more of their cases during conciliation period than did the state colleges.

During the past four years the eight state colleges have closed 37.5% of the sex discrimination cases brought against them, while 62.5% remain open. When all public colleges and universities are considered, 44% of such cases have been closed during the study period while 56% remain open. In contrast, during the same time period the eight private colleges and universities closed 88% of their cases, leaving only 12% unresolved.

Currently, the Attorney General's Office provides legal counsel for both the complainant and the public college respondent. Private colleges, however, must provide and pay for their own legal representatives. If the public colleges and universities also had to pay for legal services from their institutional budgets, they, like the private colleges would have an economic incentive to terminate sex discrimination cases expeditiously. Such a change would have other desirable results: (1) it would end the current anomalous situation in which both the complainant and the respondent are legally represented by deputy attorneys general who are colleagues, working in the same Attorney General's Office, and (2) it would reduce the apparent over-use of the legal services of the Attorney General's Office by the public colleges and universities. It is a well known economic fact that when the price of a service is not borne by the user, the service will be overused. Taxpayers are assuming unnecessary and increasing financial burdens for legal processing.

Recommendations

1. The New Jersey Civil Rights Statute should be amended to require public colleges and univer-

Recommendations (Contd)

sities to employ private legal counsel and to meet all legal costs related to discrimination cases from their institutional budgets.

2. The New Jersey Department of Higher Education should assume a leadership role in reducing the number of sex discrimination cases that continue to be filed with the Division of Civil Rights. The Department of Higher Education has a role as a mediator in the internal grievance procedures within the public institutions of higher education. More sex discrimination cases should have been and should be settled at this level. Adversary roles are not appropriate for either college administrations or the Department of Higher Education.
3. Sex discrimination complaints have been filed against the Department of Higher Education. These cases should receive priority treatment by the New Jersey Division of Civil Rights and EEOC.

IV. Hearing Examiners and Deputy Attorneys General

Findings

According to New Jersey law, not more than five (5) Hearing Examiners may be appointed at one time, to handle all cases in the Division on Civil Rights. These Examiners must hear all cases that reach the Hearing and Order level. This is the final step under the jurisdiction of the New Jersey Division on Civil Rights. There are, presently, at least 520 open cases dealing with sex discrimination. In addition there are cases dealing with race, religion, national origin and marital status. It is unreasonable to expect only five Hearing Officers to quickly and efficiently handle such a large case load.

The lack of sufficient Deputy Attorneys General may also be a reason why those cases with Docket Numbers, which should be at the Hearing and Order level, wait years to be heard, and when they are heard wait long periods for a decision. Between 1972-73 and 1976-77, only one case in Higher Education reached the Hearing and Order level, despite the fact that there were 42 open cases.

Recommendations

1. The limitation on the number of Hearing Examiners should be removed.
2. The number of Deputy Attorneys General should be increased in order to expedite the number of cases brought to hearing.

V. Effects of Delays on Complainant

Findings

Years elapse between the filing of a discrimination complaint with the New Jersey Division on Civil Rights and its resolution. In practice, this means that a complainant may lose her position and find that she must wait four or more years before any decision is made on the merits of her complaint. The effects of prolonged and unresolved discrimination cases on professional advancement, employment, psychological and physical health, and career may be more devastating than the effect of the original discrimination. During the long wait, even if the complainant does not lose her position, she may be subjected to harassment or reprisal. To obtain relief from such harassment or reprisal she must file another complaint with little likelihood of timely redress. Although New Jersey has laws which make sex discrimination illegal and a Division on Civil Rights to enforce these laws, in practice, the long drawn out processes of investigation, conciliation, public hearings and final resolution of a complaint, effectively, frustrate and discourage many women from seeking relief for sex discrimination in higher education institutions.

When a woman loses her position because of sex discrimination and files a complaint with the Division of Civil Rights, she is formally advised that she must seek other employment while her case is being processed. For the woman in higher education this is almost impossible. Firstly, most such positions are filled primarily in the spring and little hiring occurs at other times of the year. Secondly, a woman seeking a new position normally depends upon recommendations from her previous institution. What kind of recommendation can a woman expect from the institution she is suing? Thirdly, the very fact that a woman is involved in an unresolved sex discrimination suit has a negative impact

Findings (Contd)

on most potential employers. Thus, many complainants in New Jersey have suffered real hardship, living for years in legal limbo, sustaining substantial monetary and professional losses and psychological damage. Even if, after four or more years, the complainant wins her case, she can never fully recover her real losses. In short, complainants often become victims of the procedures presumably designed to correct sex discrimination. Administrators in institutions of higher education and their legal advisors are well aware of these facts. They have used them to their advantage, both by delaying and extending the legal procedures, thus sapping the will and resources of the complainants. (See Appendix V)

Recommendations

1. All public colleges and universities that continue cases to the Appellate Court should be required to submit copies of their rationale for consideration and approval by their Boards and the State Board of Higher Education.
2. The number of women on Boards of Trustees and the Board of Higher Education should be substantially increased. Women are now limited to a token number.

VI. Harassment and ReprisalFindings

Although it is prohibited, institutions of higher education often respond to sex discrimination suits by taking reprisal against the complainant and any men or women who support the charges. Under present regulations, the only recourse for those suffering reprisal is to file new complaints - which will be subject to all the delays already described.

Recommendations

1. The Division should speedily investigate all reprisal and harassment complaints and, if necessary, should bring them to public hearing within 60 days.

Recommendations (Contd)

2. Any public or private college or university found guilty of reprisal against a complainant or her supporters in a discrimination suit should be censured by the Governor, under authority of Executive Order #61 on Affirmative Action.

VII. Allegations of Sex Discrimination Within the DivisionFindings

Sex discrimination complaints have been filed with the EEOC against the Division by past and present women employees. Many of the cases have not been settled to date; these complaints should receive top priority. Clearly, sex discrimination within the Division can affect not only the female employees of the Division but also the handling of sex discrimination complaints brought to the Division.

Recommendations

1. All cases against the Division on Civil Rights should be given top priority by EEOC.
2. If even one sex discrimination complaint against the Division is proved the Division should be investigated by the Governor immediately.
3. More women investigators should be assigned to all kinds of discrimination cases and given opportunities for promotion. Women should not be confined to the lower administrative levels.
4. If the turnover of women investigators is high, in the N.J. Division on Civil Rights, this matter should be investigated immediately.

SUMMARY OF RECOMMENDATIONS

Statute and Legal Changes Needed

1. The New Jersey Civil Rights Statute should be amended to allow a maximum of 365 days to move a discrimination complaint from the New Jersey Division on Civil Rights to the Appellate Court. Further, to be effective, the statute must include appropriate penalty for non-compliance with these time limitations.
2. The New Jersey Civil Rights Statute should be amended to require that public colleges and universities employ private legal counsel and also meet all legal costs related to discrimination cases from their institutional budgets.
3. The law should be amended to extend the number of Hearing Officers beyond the number of 5. The number of Hearing Examiners should be large enough to permit a realistic response to the number of Civil Rights cases waiting to be heard.

New Jersey Division of Civil Rights

1. An efficiency study of the operation of the Division should be conducted to determine why there is such a backlog of complaints and to provide remedies.
2. Staff investigating higher education complaints should specialize in this area. This would insure a more efficient and effective handling of discrimination complaints in higher education.
3. More women investigators should be assigned to all kinds of discrimination cases and given opportunities for promotion. Women should not be confined to the lower administrative levels.
4. The high turnover of women investigators should be investigated.
5. All Docket Numbers should be issued within 60 days of the filing of the complaint.
6. The Division should investigate all reprisal and harassment complaints and bring them to public hearing within 60 days.

Department of Higher Education

1. The New Jersey Department of Higher Education should assume a leadership role in reducing the number of sex discrimination cases that continue to be filed with the Division on Civil Rights. The Department of Higher Education has a role as a mediator in the internal grievance procedures within the public institutions of higher education. They should settle more sex discrimination complaints at this level.
2. Sex discrimination complaints have been filed against the Department of Higher Education. Some of these cases may be hold overs from the last administration. In any case, the Department of Higher Education should settle these complaints immediately.
3. The number of women on Boards of Trustees of institutions of higher education and the State Board of Higher Education should be substantially increased. A major effort should be made to recommend qualified women to the Governor and to make sure the number on the Boards exceeds the token number of three.
4. All public colleges and universities that keep appealing cases they have lost should be required to submit a copy of their rationale for consideration to the Department of Higher Education and their own Board of Trustees.

Public Colleges and Universities

1. A greater attempt should be made to settle sex discrimination complaints within the internal grievance procedures. Excessive use of the Attorney General's Office should be avoided.
2. Women should be recommended as members of the Board of Trustees of each state college and university. The number of women on the board should reflect the percentage of women students on the campus.
3. Colleges and universities should not always be represented by men in sex discrimination cases. Some of their women administrators should also be involved.

Governor's Office

1. The Division on Civil Rights needs the special help of the Governor in order to improve its financing and service.

Governor's Office (Contd)

2. Any public or private college or university found guilty of reprisal against a complainant or her supporters in a discrimination suit should be censured by the Governor under authority of Executive Order No. 61 on Affirmative Action.
3. Administrators who prolong sex discrimination cases without excellent grounds, should be censured by the Governor under Authority of Executive Order No. 61 on Affirmative Action.
4. If even one sex discrimination complaint against the New Jersey Division on Civil Rights is proved, the Division should be investigated by the Governor.
5. The number of women on State College/University Boards of Trustees should be substantially increased. The legal number of women representatives on each Board of Trustees in public higher education should be met and then exceeded.
6. Women should be appointed to the N.J. Civil Rights Commission and should comprise 50% of the membership on that Board.

Office of the Attorney General

1. More Deputy Attorneys General should be assigned to the New Jersey Division on Civil Rights to expedite the number of cases brought to hearing.

Equal Employment Opportunity Commission

1. The quality of service given to women filing sex discrimination complaints should be improved. Investigators who deal with higher education should be specialized in this area. More women investigators should be involved in sex discrimination complaints.
2. Time limitations should be established and followed.
3. Sex discrimination complaints have been filed with EEOC against the New Jersey Division on Civil Rights. These complaints should be given priority and investigated immediately.

Equal Employment Opportunity Commission (Contd)

4. Sex discrimination complaints have been filed with EEOC against the New Jersey Department of Higher Education. These complaints should be given priority and investigated immediately.

APPENDIX I

CASES OF SEX DISCRIMINATION IN EMPLOYMENT
FILED WITH THE NEW JERSEY DIVISION ON CIVIL RIGHTS
9/72-3/77⁽¹⁾

TOTAL COMPLAINTS BY TYPE OF EMPLOYER

Business	969	71.2%
Boards of Education	138	10.1%
Institutions of Higher Education	88	6.5%
Municipal Government	56	4.1%
State Government	38	2.8%
County Government	37	2.7%
Unions	16	1.2%
Other	20	1.5%
	<hr/>	<hr/>
Total	1,362	100.0%

(1) A survey of post - 3/77 figures shows no change in results.

APPENDIX II

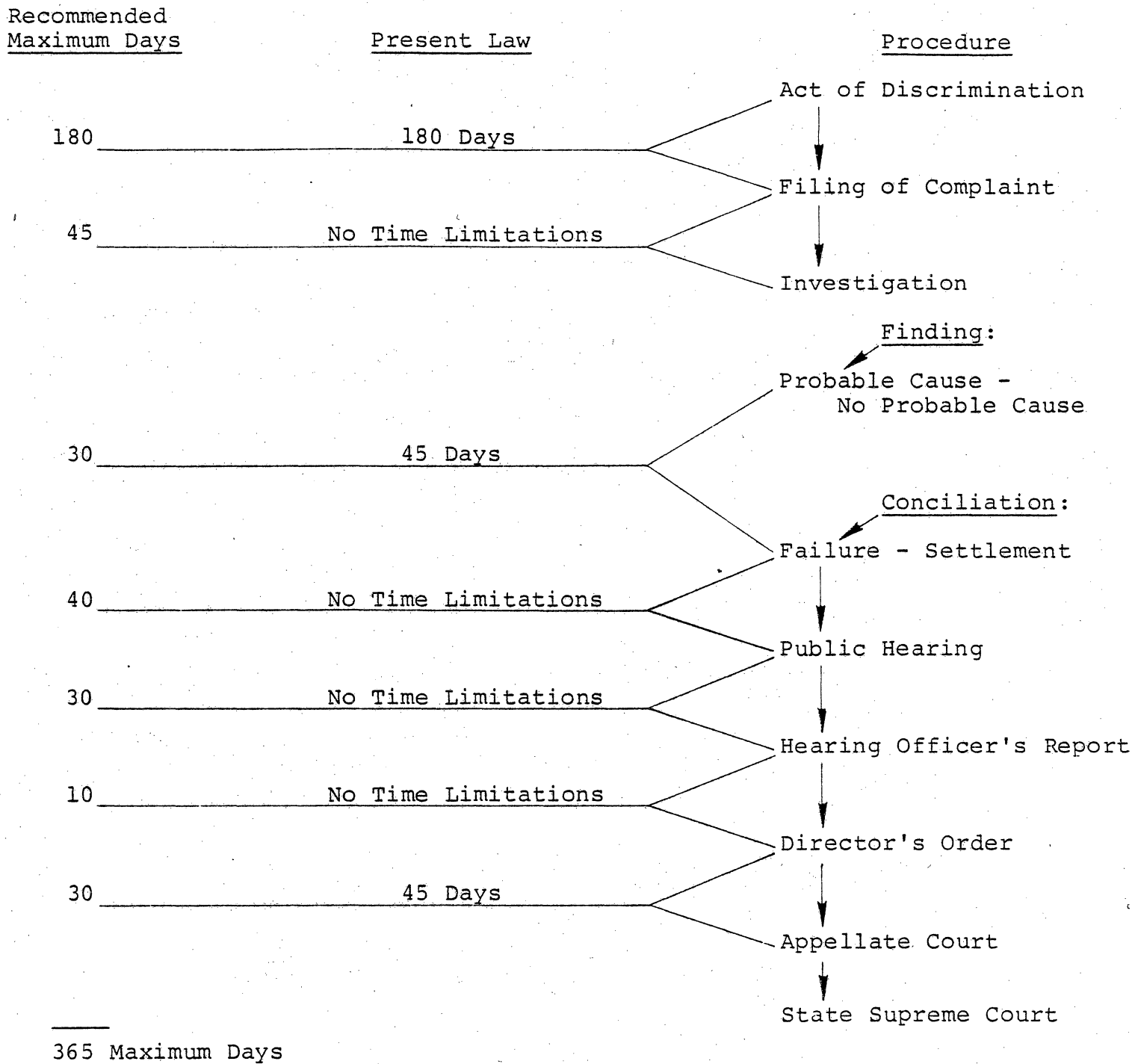
CASES OF SEX DISCRIMINATION IN EMPLOYMENT
FILED WITH THE NEW JERSEY DIVISION ON CIVIL RIGHTS
9/72-3/77

TABLE IV

STATUS OF COMPLAINTS BY TYPE OF EMPLOYER

<u>Type of Employer</u>	<u>(A)</u> <u># Closed</u>	<u>(B)</u> <u># Open</u>	<u>(C)</u> <u>Total</u>	<u>(A÷C)</u> <u>% Closed</u>
Business	635	334	969	65.5
Boards of Education	66	72	138	47.8
Institutions of Higher Education	46	42	88	52.3
Municipal Government	33	23	56	58.9
State Government	23	15	38	60.5
County Government	20	17	37	54.1
Unions	10	6	16	62.5
Other	9	11	20	45.0
	<hr/>	<hr/>	<hr/>	<hr/>
Totals	842	520	1,362	61.8%
				of all cases are closed

RECOMMENDED TIMETABLE FOR HANDLING SEX DISCRIMINATION COMPLAINTS
FILED WITH DIVISION ON CIVIL RIGHTS



CASES OF SEX DISCRIMINATION IN EMPLOYMENTSUMMARY BY COLLEGE
AND UNIVERSITY

A. <u>PUBLIC INSTITUTIONS</u>	<u>Closed</u>	<u>Open</u>	<u>Total</u>
Rutgers University	12	7	19
New Jersey Institute of Technology	3	-	3
College of Medicine and Dentistry of New Jersey	-	1	1
Subtotals (15)		(8)	(23)
<u>FOUR-YEAR STATE COLLEGES</u>			
Glassboro	3	4	7
Jersey City	-	1	1
Kean	-	3	3
Ramapo	2	2	4
Stockton	1	1	2
Trenton	2	2	4
William Paterson	1	2	3
Subtotals (9)		(15)	(24)
<u>TWO-YEAR COMMUNITY COLLEGES</u>			
Atlantic	-	1	1
Bergen	-	5	5
Brookdale	-	1	1
Burlington	1	4	5
Cumberland	1	-	1
Essex	1	1	2
Gloucester	1	-	1
Mercer	-	3	3
Middlesex	1	2	3
Union	2	-	2
Subtotals (7)		(17)	(24)
<u>B. INDEPENDENT COLLEGES AND UNIVERSITIES</u>			
Bloomfield	5	-	5
Drew	1	-	1
Fairleigh Dickinson	4	-	4
Princeton	2	-	2
Rider	-	1	1
Saint Peter's	1	-	1
Seton Hall	-	1	1
Upsala	2	-	2
Subtotals (15)		(2)	(17)
TOTALS	46	42	88

APPENDIX V

SAMPLE OF HIGHER EDUCATION SEX DISCRIMINATION CASES
FILED WITH THE NEW JERSEY DIVISION ON CIVIL RIGHTS
 1972-76

CASE A

A female college professor was released when she applied for tenure. The college administration stated that she was released because she had not completed her doctoral degree. The plaintiff found that men faculty were retained even though they did not have their doctorates. These men also had less work then she did toward their doctoral degree.

1. Complainant filed with New Jersey Division on Civil Rights - October 1972
2. Docket Number issued - November 1972
3. The Division found Probable Cause - Winter 1973
4. Hearings began Winter 1974
5. Hearings ended - Spring 1975
6. Decision rendered in favor of Plaintiff - December 1975
7. The state college appealed to the Appellate Division of the Superior Court of New Jersey - Winter 1976
8. Appellate Court heard case - April 1977
9. Appellate Court ruled in favor of Plaintiff - May 1977
10. State college appealed to the New Jersey Supreme Court - Summer 1977
11. New Jersey Supreme Court will probably hear the case in the Spring of 1978

The plaintiff has won in all hearings and courts but to date has not received even an offer of reinstatement. Certainly taxpayers should ask why a state college continues to use tax money to appeal a case that they have lost at the Appellate Court level. Is this a form of harassment? Why has this state college not reinstated the plaintiff? Why should the New Jersey Supreme Court spend its time on this type of case?

This case is a classic example of the overuse of the free legal service provided by the Attorney General's Office by a public college. No private college or university has a record of this type of action.

CASE B

A female faculty member at a New Jersey College was denied advancement to a higher rank. Men who had been on the faculty for shorter periods of time and with fewer qualifications had received promotions.

1. Complainant filed with New Jersey Division on Civil Rights - June 1972
2. Verified complaint drawn up by the Division - October 1972
3. Division found Probable Cause - August 1973
4. Conciliation hearing held in Trenton - November 1973
5. Public Hearings held April 1974 - September 1974
6. Division issued "Findings, Determination and Order" in plaintiffs favor - March 1975
7. College appealed "Order" - March 1975
8. College filed motion to stay "Order" of Division - June 1975
9. Case heard by Appellate Division of Superior Court of New Jersey - December 1975
10. Appellate Court upheld "Order" of Division - March 1976
11. Plaintiff received promotion
12. Complainant was harrassed by college
13. Reprisal Complaint filed by Complainant
14. Verified Complaint drawn up by Division - June 1975
15. Division found Probable Cause in favor of plaintiff - April 1976
16. Public Hearings and settlement talks on reprisal complaint May 1977 - June 1977
17. Consent Agreement signed - June 1977

