

## A Basic Guide to Title IX

What comes to your mind when you hear “Title IX”? Probably athletics. That's the area most people associate with this important law. But Title IX means much, much more. Title IX of the Education Amendments is a major tool in the battle to make sure that sex discrimination is not a barrier to educational opportunities. What follows is a basic guide to Title IX:

### **What Title IX is and What it Does**

#### **What Title IX Requires**

#### **Admissions and Recruitment**

#### **Athletics**

#### **Career Education**

#### **Employment Discrimination**

#### **Pregnant and Parenting Students**

#### **Sexual Harassment**

#### **Student Services**

### **What Title IX is and What it Does:**

**Title IX generally prohibits** any federally funded education program or activity from engaging in **sex discrimination**. It says simply:

*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.*

20 U.S.C. Section 1681.

**Title IX's prohibition against sex discrimination is very broad.**

**Title IX applies to most** elementary and secondary schools, colleges and universities. It also applies to programs and activities affiliated with schools that receive federal funds (such as internships or School-to-Work programs) and to federally funded education programs run by other entities such as correctional facilities, health care entities, unions and businesses.

**Title IX protects** students, faculty and staff in federally funded education programs.

**Every federal agency that funds educational programs or activities must enforce**

**Title IX.** The Department of Education's Office for Civil Rights (OCR) is recognized as the primary agency charged with making Title IX's mandate a reality. In order to enforce the law, the Department promulgated regulations in 1975. With this authority, OCR has the power to take away the federal funding a school receives if it refuses to comply with the law. In almost 30 years of enforcement, OCR never has had to use this powerful tool.

Title IX also requires all other federal agencies that fund education programs or activities to develop regulations. The Department of Justice, in its capacity to coordinate civil rights enforcement, issued final Title IX regulations for 20 executive branch agencies -- based on the existing Department of Education regulations -- in August 2000.

**Title IX's regulations** require federally funded education programs to take a variety of steps to prevent and address sex discrimination, including:

- designating an employee coordinator to ensure Title IX compliance and investigate complaints;
- adopting and publishing grievance procedures that allow for prompt and equitable resolution of complaints;
- implementing and disseminating a policy that prohibits sex based discrimination.

### **What Title IX Requires:**

**Title IX generally requires federally funded education programs or activities to assure that no person is "excluded from participation in . . .denied the benefits of, or . . . subjected to discrimination" because of their sex.** This mandate applies to *every* aspect of a federally funded education program or activity. Among the broad areas that Title IX covers are the following :

### **Admissions and Recruitment**

Title IX prohibits sex discrimination in admissions, including in institutions of vocational education. The law exempts certain other institutions, such as public and private primary and secondary schools. Covered institutions may not:

- limit the number or proportion of persons of either sex admitted;
- prefer applicants of one sex by ranking applicants separately by sex;
- treat male and female applicants differently because of their actual or potential parental, family, pregnancy or marital status, or make pre-admission inquiries into same;
- discriminate based on sex when recruiting students;
- use tests for admissions purposes that have a disproportionately adverse impact on the basis of sex UNLESS: (a) the test validly predicts success in the program or activity in question,

and (b) alternative tests or criteria that do not have a disproportionately adverse impact are unavailable.

Significantly, however, institutions can engage in affirmative steps to overcome the effects of conditions that resulted in limited participation by persons of a particular sex.

### Athletics

Title IX generally requires institutions to offer male and female students equal opportunities to play sports and that they treat male and female athletes fairly.

There are three ways institutions can prove that athletes of both genders have equal participation opportunities:

- the percentage of male and female athletes is about the same as the percentage of male and female students enrolled at the school, **OR**;
- the school has a history and a continuing practice of expanding opportunities for female students, since they usually have been excluded from sports, **OR**;
- the school can show that it is completely and effectively meeting the needs of female athletes' interests and abilities.

As a general matter, though, institutions do not have to offer any particular sport. **However --**

- If a school offers a contact sport (such as boxing, wrestling, rugby, ice hockey, football, or basketball) to members of one sex, then the school also must offer that contact sport to members of the other sex if:
  - the opportunities for the excluded sex historically have been limited, and
  - there is sufficient interest and ability among members of the excluded sex to sustain a viable team and there is a reasonable expectation of competition.
- If a school offers a non-contact sport to members of one sex, it must also offer that sport to members of the other sex if those conditions are true. In addition, there also must be a showing that
  - members of the excluded sex do not have the skill to be selected for a single integrated team, or to compete actively on such a team, if selected.

Schools also must assure that male and female athletes are **treated equally throughout the athletic program**, including:

- similar quality equipment and supplies;

- fairness in scheduling games and practices;
- similar financial support for travel and expenses;
- fairness in assigning and paying coaches;
- similar opportunities to get tutoring, where necessary; and
- fairness in providing locker rooms, fields, and arenas, for example.

It's important to note that schools do not have to provide the exact same benefits and opportunities to specific men's and women's teams, as long as their treatment of male and female athletes is equal overall.

Colleges and universities also must ensure that the overall share of athletic financial aid going to female athletes must be about the same as the percentage of female athletes participating in the athletic program. Specifically, athletic aid for female athletes must be within 1%, or one scholarship, (whichever is greater) of females' athletic participation rate, unless there are legitimate nondiscriminatory reasons to justify a larger disparity.

### **Career Education**

Title IX prohibits institutions from discriminating based on sex in career education programs, such as vocational education, "tech-prep" programs, and school-to-work programs. Institutions must:

- provide information about all career opportunities to females, and not just about traditionally "female" jobs;
- assure that recruitment practices, classroom treatment, assignments facilities, career assessment tests, career counseling and evaluations are free from sex stereotypes;
- provide referrals to non-discriminatory training programs, non-discriminatory placement efforts and referrals to training programs with equal opportunity employers.

### **Employment Discrimination**

Title IX protects employees at covered institutions against employment discrimination.

Covered institutions may not:

- recruit employees in a way that discriminates based on sex;
- engage in hiring, promotion, layoff or rehiring practices that disproportionately affect one sex, unless they can be shown to predict job success, and there are no discriminatory alternatives;
- classify a job as either male or female, or establish separate lines of progression or tenure based on sex, unless sex is a bona fide occupational qualification for the job;

- discriminate based on sex in the provision of benefits, including medical, accident, hospital, life insurance, profit-sharing, bonus, retirement plans or leave, or in the payment of compensation.

### **Pregnant and Parenting Students**

Title IX prohibits discrimination based on pregnancy and parental or marital status. Institutions must:

- ensure that health services and insurance are available equally, regardless of pregnancy, parental, or marital status;
- provide pregnant students and faculty an excused medical leave of absence for a period deemed reasonable by their doctor, and must afford them the status held at the time the leave began;
- provide separate programs for pregnant students only if they are voluntary and comparable to the instructional programs provided to other students;
- require a doctor's certification verifying a pregnant student's ability to continue participation only if it is required for all students under the attention of a physician; and
- provide accessible gynecological services if health services are provided by the institution.

### **Sexual Harassment**

Title IX's broad prohibition against sex discrimination includes sexual harassment. That means institutions must ensure that this form of discrimination is not a part of the education program or activity.

The Department of Education's Office for Civil Rights (OCR) recently issued a policy guidance on sexual harassment, which provides important information regarding how institutions can comply with Title IX in this area, and reflects recent decisions by the Supreme Court, which are briefly discussed below.

**OCR's policy guidance makes clear** that institutions have an obligation to ensure that sexual harassment is not a part of an education program or activity. Among the strategies OCR recommends to prevent sexual harassment in the first instance is having, and implementing a sexual harassment policy.

OCR describes sexually harassing behavior as unwelcome and severe, pervasive, or persistent enough to limit a student's ability to get an education. It recognizes two forms of harassment. The guidance makes clear that institutions must act promptly and appropriately when sexual harassment occurs – including investigating the complaint and taking steps to end the harassing conduct.

The United States Supreme Court recently issued two important rulings regarding sexual harassment in schools, both of which cite the OCR guidance favorably.

In *Gebser v. Lago Vista Independent School District*, the Court decided that when students or their parents sue schools in order to get money damages, for example, to remedy pain and suffering resulting from the harassment, they must prove that:

- school officials actually knew about the specific misconduct; and
- they were deliberately indifferent to it.

This standard does not apply when students or their parents seek other forms of relief in court, such as an order to stop the harassment.

In addition, this decision does not call into question the policy developed by the Department of Education's Office for Civil Rights (OCR), schools can still be found out of compliance with Title IX if they fail to take appropriate steps to remedy teacher-to-student harassment. Under OCR's policy, schools can be found in violation of Title IX if a teacher, or other employee, abuses his or her authority to sexually harass a student – regardless of whether school officials knew about the harassment.

In *Davis v. Monroe County Board of Education*, the Court made clear that schools have an obligation to address complaints of student-to-student sexual harassment. The Court ruled that Title IX requires schools to take reasonable steps when officials learn about students harassing other students. As in the *Gebser* case, the Court decided that when students or their parents sue schools to get money damages to remedy the pain and suffering resulting from harassment, they must prove that:

- school officials actually knew about the harassment; and
- they were deliberately indifferent to it.

The decision puts schools on notice that they must take student complaints of sexual harassment seriously.

### **Student Services**

Title IX requires institutions to treat male and female students equally when providing various student services and benefits. Covered institutions may not:

- provide different counseling or testing materials for males and females, unless they cover the same occupations and interest areas for both sexes and their purpose is to eliminate sex bias;
- maintain an employment assistance office, work-study program, apprenticeship program, or cooperative education program that lists or restricts jobs to one sex or makes placements in a way that discriminates based on sex.

- require different financial aid eligibility standards for males and females;
- solicit or restrict funds to either male or females, or make special awards designating a specific sex when the overall effect of the distribution of these restricted awards discriminates on the basis of sex; and
- require different standards, fees or policies in the cost or availability of housing or provide housing that is substandard in relation to what is provided members of the other sex, in either on- or off campus.

### **Conclusion**

Title IX is a broad tool designed to make equality of educational opportunity a reality in this nation. For more information about the areas Title IX covers, visit the [Education](#), [Athletics](#), and [Sexual Harassment](#) sections of our website.