

Title IX - Training

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Title IX is part of the Education Amendments of 1972, prohibiting discrimination on the basis of sex in education programs and activities receiving Federal assistance. For over three decades, Title IX has worked to promote equality in educational opportunities, yet it continues to face opposition. This tutorial will discuss the impact and importance of Title IX in schools. We will also discuss how to stay in compliance with the law. In this tutorial, you will learn the following objectives. - What is Title IX? - 10 Key Areas Addressed by the Law - Who Enforces Title IX? - How to File a Complaint - Grievance Procedures - Filing with the OCR. Updated 5/18/2020: to reflect "Final Rule" regulations towards Sexual Harassment

Introduction

Title IX is part of the Education Amendments of 1972, prohibiting discrimination on the basis of gender in education programs and activities receiving Federal assistance. For over four decades, Title IX has worked to promote equality in educational opportunities, yet it continues to face opposition. This tutorial will discuss the impact and importance of Title IX in schools; including how to stay in compliance with the law.

Objectives

In this tutorial, we will discuss the following objectives.

- What is Title IX?
- 10 Key Areas Addressed by the Law -Who Enforces Title IX?
- How to File a Complaint -Grievance Procedures
- Filing with the OCR

What is Title IX?

According to Title IX regulations: "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." According to the U.S. Department of Education, federally-backed educational agencies include approximately 16,500 local school districts, 7,000 post-secondary institutions as well as charter schools, for-profit schools, libraries, and museums. These agencies must operate in a nondiscriminatory manner.

Scope of Title IX

Some key issue areas in which recipients have Title IX obligations are: Recruitment, admissions and counseling; financial assistance; treatment of pregnant and parenting students; discipline; single-sex education; and employment. A recipient may not retaliate against any person for opposing an unlawful educational practice or policy, or make charges, testify or participate in any complaint action under Title IX. For a recipient to retaliate in any way is considered a violation of Title IX.

10 Key Areas Addressed by the Law

Title IX covers the following 10 key areas: The following slides will discuss these key areas in more detail.

- Access to Higher Education
- Athletics
- Career Education
- Education for Pregnant Students
- Employment
- Learning Environment
- Math and Science
- Sexual Harassment
- Standardized Testing
- Technology.

Access to Higher Education

Prior to the 1970s, some colleges and universities refused to admit women into their programs or maintained artificially depressed caps or "ceilings" on the number of women who could be admitted to the program, arguing that women's concerns are more about marriage and children than higher education. The passing of Title IX has allowed greater access to higher education for women. Women now earn more undergraduate and graduate degrees than in previous years, including in male-dominated fields such as law and medicine. This growth has contributed to the economic progress of women.

Recruitment

Title IX prohibits recipient institutions of vocational education, professional education, graduate higher education, and public colleges and universities from discriminating on the basis of sex in the recruitment or admission of students. The Department's Title IX regulations also prohibit all recipients from discriminating on the basis of sex in counseling or guiding students or applicants for admission.

Financial Assistance

Generally, a recipient may not:

(a) provide different amounts or types of financial assistance, limit eligibility for such assistance, apply different criteria or otherwise discriminate on the basis of sex in administering such assistance; or

(b) assist any agency, organization, or person which offers sex restricted student aid.

Exceptions to Financial Assistance

The Department's Title IX regulations provide three exceptions to these general prohibitions. Recipients are permitted to administer or assist in the administration of scholarships, fellowships, or other awards that are restricted to members of one sex if the award is:

- (a) created by certain legal instruments, including wills or trusts, or by acts of a foreign government, provided the overall effect is nondiscriminatory;
- (b) (b) for study at foreign institutions if the recipient provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex; or
- (c) (c) athletic financial assistance.

Athletics

The regulation on women's participation in athletics is the most discussed of the Title IX key areas. Aiming to provide equal access to athletics for women, Title IX requires federally-backed programs to demonstrate any ONE of the following:

- The percentages of male and female athletes correlate to the percentages of the male and female students enrolled;
- The school has a history and continuing effort to expanding athletic opportunities for the underrepresented gender;
- The school is effectively meeting the athletic interests and abilities of female students.

Effectively Meeting the Athletic Interests and Abilities of Female Students

In evaluating whether the school is effectively meeting the interest and abilities of female students, the Office of Civil Rights will consider the following:

- Whether there is unmet interest in a particular sport?

- Whether there is sufficient ability to sustain a team sport?

- Whether there is a reasonable expectation of competition for the team?

OCR will typically find the school is not meeting or fully accommodating the interests of female students if the answer to all 3 of the above questions is yes.

Career Education in Schools

Prior to Title IX, it was not uncommon for schools to deny female students the option of taking career courses that were traditionally dominated by males like woodworking or automotive repair.

Vocational courses such as home economics and cosmetology were considered more appropriate for women, but they often resulted in limited and low-wage career options after high school.

Title IX regulations mean that schools cannot legally deny or limit access to career training on the basis of gender. Females and males alike must be free to pursue vocational training in the field of their own choosing.

Education for Pregnant and Parenting Students

Under Title IX, schools must provide pregnant and parenting students with options to continue their education. Access to education is important not only to the retention, graduation, self-sufficiency and economic progress of the student but also to the health and development of the child.

Schools are permitted to have a separate program for these students, but enrollment must be voluntary and comparable to regular school programs.

Accommodating the Pregnant Student

Title IX has been interpreted by OCR to require a number of routine accommodations (or prohibitions) related to the treatment of pregnant students, including:

- Excusing any absences due to pregnancy as long as the student's doctor finds them medically necessary;
- - Providing special services (such as homebound or hospital-based instruction) to pregnant students under the same conditions as these are provided to other students with temporary disabilities;
- - Requiring pregnant students to submit medical certification only if this is also required of all students receiving similar medical attention (for example, hospitalization).

Employment

Title IX also made way for employment for women in high schools and universities as faculty members, instructors, professors and administrators.

Prior to 1972, women were often passed over for jobs in higher education, could not earn tenure, and received lower wages than males. Despite continuing under-representation in top educational positions and in equal wages, Title IX has allowed these gaps to narrow.

Learning Environment

To be conducive to academic success, the learning environment must be free of harmful gender stereotypes. Female and male students should be given equal attention and support in all subjects. They should be encouraged to think about their futures in careers of all types.

Single-Sex Classrooms and Schools

Title IX regulations generally prohibit single sex education, though one long-standing exception to this rule permits single-sex classrooms for sex education classes. In 2007, the Department of Education amended this rule to allow additional single-sex classes to meet specific, identified needs of a school's students or to improve overall educational achievement.

Enrollment in Single-Sex Classrooms and Schools

Enrollment in any such class must be voluntary and a substantially equal coeducational class must be offered (a substantially equal single sex class of the excluded sex may also be required). In December of 2014, the Department updated these materials to require that schools show a "substantial relationship" between the single sex program and either of the two objectives mentioned above.

Science

Traditional stereotypes such as "women just aren't as good at math and science" are detrimental to their educational possibilities and career options. Careers as doctors, lawyers, scientists, engineers, etc. require upper-level mathematics and science.

Under Title IX, females take these upper-level courses at the same rate as males. As a result, they are better prepared to continue their studies in these areas and qualify for a larger range of career options.

Technology

The role of technology today is undeniable. According to a study by the Department of Labor, approximately 75% of future jobs will require computer use. Title IX keeps the playing field equal by assuring that women have the same opportunities and access to computer courses, training and equipment.

Definition of Sexual Harassment

Title IX requires schools to prevent and address sexual harassment against their students. Sexual harassment includes any unwanted conduct of a sexual nature that is sufficiently severe, persistent or pervasive as to limit a student's ability to participate in, or benefit from, the educational program, or which creates a hostile educational environment

It is the school's responsibility to address any and all instances of sexual harassment. It is important to note that sexual harassment happens to males as well as females and can also take place between members of the same sex.

Definition of Sexual Harassment (updated)

The definition of sexual harassment has been updated to include acts of:

- Sexual assault
- Dating violence
- Domestic violence
- Stalking

Examples of Sexual Harassment

Examples of sexual harassment or conduct include:

- Making sexual propositions or pressuring students for sexual favors;
Touching or writing graffiti of a sexual nature;
- Displaying or distributing sexually explicit drawings, pictures, or written materials;
- Performing sexual gestures or touching oneself sexually in front of others;
- Telling sexual or dirty jokes;
- Spreading sexual rumors or rating other students as to sexual activity or performance;
- Circulating or showing e-mails or websites of a sexual nature

Updates to Title IX Protections

As of May 2020, there have been updates to Title IX protections for all students. Those provisions are as follows:

- Requires schools to offer clear, accessible options for any person to report sexual harassment
- Empowers survivors to make decisions about how a school responds to incidents of sexual harassment
- Requires the school to offer survivors supportive measures, such as class or dorm reassignments or no-contact orders

Updates to Title IX Protections -- Part II

Protects K-12 students by requiring elementary and secondary schools to respond promptly when any school employee has notice of sexual harassment

Holds colleges responsible for off-campus sexual harassment at houses owned or under the control of school-sanctioned fraternities and sororities

Restores fairness on college and university campuses by upholding all students' right to written notice of allegations, the right to an advisor, and the right to submit, cross-examine, and challenge evidence at a live hearing

Updates to Title IX Protections -- Part III

- Shields survivors from having to come face-to-face with the accused during a hearing and from answering questions posed personally by the accused
- Requires schools to select one of two standards of evidence, the preponderance of the evidence standard or the clear and convincing evidence standard – and to apply the selected standard evenly to proceedings for all students and employees, including faculty
- Provides "rape shield" protections and ensures survivors are not required to divulge any medical, psychological, or similar privileged records

Updates to Title IX Protections -- Part IV

- Requires schools to offer an equal right of appeal for both parties to a Title IX proceeding
- Gives schools flexibility to use technology to conduct Title IX investigations and hearings remotely
- Protects students and faculty by prohibiting schools from using Title IX in a manner that deprives students and faculty of rights guaranteed by the First Amendment

Sexual Harassment - Part I

In a lawsuit, the courts require a complainant to show that a school official with the ability to stop the harassment was actually aware of the behavior which violated Title IX.

While OCR has adopted a "knew or should have known [about the harassing behavior] standard" in their enforcement criteria, in practice that Office has stated that the school is always given actual notice and an opportunity to take corrective action.

Sexual Harassment - Part II

Schools are required to investigate and take action in a prompt and fair way; taking steps to end and prevent the harassment from reoccurring.

Practice Pointer: If the School learns that their initial response has not prevented the harassment from continuing to occur, then the School may well be expected to implement escalating measures to attempt to stop the harasser's behavior.

Sexual Harassment - Part III

If the School's investigation finds that student-to-student misconduct occurred, but was NOT sufficiently severe to amount to sexual harassment as defined above, there may well be other applicable rules under the Student Code of Conduct which may be considered as a basis for action, including:

- Obscene, profane or vulgar language
- Inappropriate physical contact or assault
- Possession of pornography (including on electronic devices)
- Disrespectful behavior

Standardized Testing

Under Title IX, standardized testing must be developed as an unbiased predictor of academic success. The types of questions and their wording must reasonably reflect the areas which are being tested. If a test doesn't meet that standard and yields disproportionately lower test results among members of one gender, the test may be unlawful.

Who Enforces Title IX?

The Office of Civil Rights (OCR) in the U.S. Department of Education enforces Title IX. The primary enforcement activity is the investigation and resolution of complaints filed by people alleging sex discrimination. OCR is unable to investigate all federally-backed institutions due to the high number; instead, it provides information and guidance to assist institutions in voluntarily complying with the law.

Title IX Coordinator

Title IX requires that a district designate at least one employee by name and title as a "Title IX Coordinator" to ensure that the school is in compliance.

Practice Pointer: Schools should be sure to review and update this information annually and to provide multiple points of contact for the designated

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How to File a Complaint - Part I

Schools are required to adopt and publish internal grievance procedures in handling violation complaints promptly and fairly. Anyone who believes there has been an act of sex discrimination, including sexual harassment or sexual violence, may file a complaint with their Title IX Coordinator within 180 days of the last act of alleged discrimination.

How to File a Complaint - Part II

This complaint can come from a victim of discrimination or on behalf of another person or group.

Practice Pointer: Educators with a certificate or license from their State may under their Codes of Ethics, as well as child abuse reporting laws, have an independent duty to report some actions by students or staff which also violate Title IX.

Grievance Procedures - Part I

In the April 2011 "Dear Colleague Letter", the OCR outlined the requirements of internal grievance procedures and the rights of the complainant. That letter has since been rescinded because the document ignored notice and comment requirements creating a system that lacked elements of due process, failing to ensure fundamental fairness. Institutional grievance procedures will vary between districts but must provide the following rights.

Grievance Procedures - Part II

1. Every complainant has the right to present his or her case. This includes the right to adequate, reliable, and impartial investigation of complaints, the right to have an equal opportunity to present witnesses and other evidence, and the right to the same appeal processes, for both parties.

Grievance Procedures - Part III

2. Every complainant has the right to be notified of the time frame within which: (a) the school will conduct a full investigation of the complaint; (b) the parties will be notified of the outcome of the complaint; and (c) the parties may file an appeal, if applicable

Grievance Procedures - Part IV

3. Every complainant has the right for the complaint to be decided using a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred). 4. Every complainant has the right to be notified, in writing, of the outcome of the complaint. Practice Pointer: The Title IX Coordinator should also remain mindful of the confidentiality rights of other students as they document their investigation, decision and finding in any Title IX complaint. Remember that notice of the outcome of the complaint is not necessarily equivalent to receiving a complete copy of the Coordinator's investigation and finding.

Grievance Procedures - Part V

5. Grievance procedures may include voluntary informal methods (e.g., mediation) for resolving some types of sexual harassment complaints. However, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In cases involving allegations of sexual assault, mediation is not appropriate.

Filing with the OCR

While internal grievances are preferred, a complainant is not required by law to use these procedures prior to filing with the OCR. If a complainant uses an institutional grievance process and also chooses to file the complaint with OCR, the complaint must be filed with OCR within 60 days after the last act of the institutional grievance process. Otherwise, a complaint with OCR should be filed within 180 days of the incident that is the basis of the complaint. And in addition to or in the alternative to either of the above (internal grievance or OCR complaint), a complainant may also file a lawsuit seeking money damages.

Additional Information

For additional information about Title IX, filing a complaint directly with the OCR, or a copy of the regulations which detail the requirements of Title IX, write or phone the OCR enforcement office which serves your state or territory, or you may call 1-800-421-3481. Or you can visit the following websites:

http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html
www.titleix.info/

Summary

Under Title IX of the Education Amendments of 1972 and its implementing regulations, an institution that receives federal funds must ensure that no student suffers a deprivation of his or her access to educational opportunities on the basis of sex. In this tutorial, you learned:

- What is Title IX, scope and key areas addressed in Title IX.
- Enforcement of Title IX
- Definition of sexual harassment
- How to file a complaint for alleged acts of discrimination.

Title IX Training Materials

<https://site.gcctraining.com/assets/documents/tutorials/title-ix.htm>

Global Compliance Network

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