

# educationaladvisory

Information and Risk Management Ideas for Educational Institutions

## Title IX's Reach

### Law Imposes Broad Obligations on Colleges, Universities

The 1996 gold-medal winning U.S. women's soccer team was the stuff of legends. The story of its star athletes and their feats had millions of little girls dreaming they could grow up and do anything they wanted. But as team captain Julie Foudy has often said, she was "lucky. It's because of a law called Title IX, which provides equal opportunities for girls and boys in education, that I was able to play soccer in college."

Title IX of the Education Amendments of 1972 gave new opportunities to women like Foudy and teammates Mia Hamm and Brandy Chastain. And it's the reason the Women's National Basketball Association exists today. Yet the focus on whether collegiate women's athletics are appropriately funded or are taking away dollars from more lucrative men's sports takes attention from the fact that Title IX's reach is far broader than athletics. Colleges and universities that fail to understand this fact risk running afoul of the law in areas as diverse as housing, approaches to teaching and career counseling.

The language of Title IX is simple—*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 educational program or activity receiving federal financial assistance.*—And its reach is considerable. The Congressional Research Service spelled out the requirements in an April 28, 2005,

report. The regulations CRS wrote, "bar recipients from discriminating on the basis of sex in student admissions, recruitment, scholarship awards and tuition assistance, housing, access to courses and other academic offerings, counseling, financial assistance, employment assistance to students, health and insurance benefits and services, athletics, and all aspects of education-related employment, including recruitment, hiring, promotion, tenure, demotion, transfer, layoff, termination, compensation, benefits, job assignments and classifications, leave and training."

"Congress always intended Title IX to be exceptionally broad and ban discrimination in every aspect of federally funded education," Jocelyn Samuels, vice president of education and employment at the National Women's Law Center, told **Educational Advisory**. "It created a mandate for parity for women to attend institutions of higher education, study what they want, and be treated as equals both in the classroom and on the athletic field."

The federal guidelines are clear about what colleges and universities must do to

comply with the requirements of the law.

Every covered institution must publish a notice that states it does not discriminate on the basis of sex in its educational programs or the other activities it operates. Colleges and universities must also designate a Title IX coordinator, and both students and faculty must be given the coordinator's name and contact information. Institutions must also adopt and disseminate a nondiscrimination policy. In addition, colleges and universities must put in place and publish grievance procedures to address complaints of discrimination on the basis of sex in educational programs and activities.

The record on compliance with these requirements is mixed. An April 2004 letter by the assistant secretary for civil rights at the U.S. Department of Education cited an investigation into compliance with Title IX found several deficiencies. "The most frequently cited problem," wrote Kenneth Marcus, "was the failure to effectively disseminate notice of the Title IX coordinator's identity and contact information." Other deficiencies cited in

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the letter include the failure to:

- Designate and/or adequately train a Title IX coordinator
- The failure to have and/or disseminate notice of the nondiscrimination policy, and
- The failure to adopt or publish required Title IX grievance procedures to address sex discrimination claims.

Regarding sexual harassment, the American Association of University Women points out in a policy brief that the law "protects both male and female students from sexual harassment, regardless of who the harasser is." The AAUW adds, "schools are responsible for recognizing and remedying sexual harassment. Further, schools are potentially liable for failing to recognize or remedy such harassment."

### The Debate Over Athletics

In 1979, the Department of Education established a three-pronged test for determining compliance with regard to intercollegiate athletics. An institution is in compliance if:

1. The intercollegiate-level participation opportunities for male and female students at the institution are "substantially proportionate" to their respective full-time undergraduate enrollments;
2. The institution has a "history and continuing practice of program expansion" for the under-represented sex, or
3. The institution is "fully and effectively" accommodating the interests and abilities of the under-represented sex.

That test is under attack today, according to Jocelyn Samuels. "The Department of Education issued an additional clarification in March 2005 that would undermine the

principles of equal opportunity," says Samuels. "It would allow schools to assess whether women are interested in additional opportunities to play sports by administering a single online survey. Among other things, this inappropriately shifts the burden to women to show they're interested in more opportunities." Under the department's prior approach, as laid out in a policy document it issued in 1996 and reaffirmed as recently as 2003, schools were required to interview students, coaches, and athletic directors, and they also needed to look at their feeder high schools to see what sports were being played and what opportunities they might need to provide at the post-secondary level.

Members of Congress have also expressed concern, and there have reportedly been at least two bipartisan letters asking the secretary of education to reconsider the policy clarification. In addition, members have taken to the House and Senate floors to express their concerns. For example, Senator Maria Cantwell (D-WA) said in a June 21, 2005, statement that "e-mail surveys will likely underestimate the need to expand athletic opportunities for women. The growth of opportunity for women and girls should not hang on the outcome of such informal means of data collection."

### The Implications of Policy Changes

Colleges and universities are not required to adopt the new standard, but can choose instead to continue to probe more deeply in setting budgets and athletic program priorities.

*So why all the fuss?*

The answer, according to Samuels, is that "the underlying presumption of this attack on women's opportunities in sports is that

women are inherently less interested in participating in athletics than men." This assumption has been disproved time and again, she says. Samuels also argues that the renewed focus on the topic is itself "reflective of a burgeoning trend to pigeonhole people according to gender." To illustrate her point, Samuels looks at women in the sciences—an issue often in the news since Harvard University President Larry Summers' January 2005 speech suggested that women and men may have different aptitudes for math and science—and gave rise to a firestorm of controversy. Samuels points out that women in technical careers (including engineering and the sciences) often confront ongoing barriers to career advancement, including sexual harassment, exclusion from high-profile research teams and the unconscious bias that people want to work and interact with people who remind them of themselves. Her message is clear: if colleges and universities don't encourage and support women in these fields, you won't find their numbers increasing on teaching rosters or research staffs.

Whether you agree with Samuels' point of view or not, her argument certainly offers food for thought. And it's also a reminder of why Title IX was enacted in the first place—to provide equal opportunities for both men and women, from elementary school through postgraduate programs.

Controversies aside, colleges and universities have broad legal obligations under Title IX. Comply with them, and you should be on safe legal ground whether you're developing new curricula, assigning dorms, or counseling students on their career paths.