

An Update on Title IX of the 1972 Education Amendments:

ADMISSIONS, ATHLETICS, SEXUAL HARASSMENT,
AND BULLYING IN HIGHER EDUCATION

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RESUMEN

Este artículo es una revisión de la literatura sobre las tendencias, avances e impacto en los pasados 40 años de las Enmiendas Educativas de la Ley Título IX de 1972 y de las Regulaciones del 1975 de la misma. Dicha ley, enfatiza tres áreas que tienen que ver con admisiones a instituciones de educación superior, acoso sexual en escuelas públicas e instituciones universitarias y atletismo. Se incluyen las premisas básicas de la ley, el papel del coordinador(a) del Título IX y procedimientos y recomendaciones sobre cómo proveer un ambiente educativo libre de acoso sexual.

Palabras clave: acoso, acoso sexual, admisión a la universidad, atletismo, escuela pública, Título IX

ABSTRACT

This paper is a review of recent literature of the trends and advances of the impact made over the past 40 years of Title IX of the 1972 Education Amendments and the Title IX Regulations of 1975. The law highlights three of the areas that Title IX covers pertaining to college admissions, collegiate athletics, sexual harassment and bullying on campuses. This includes basic provisions of the law, the Title IX Coordinator, policies and procedures and

recommendations in providing an educational environment free of sex discrimination.

Keywords: bullying, college admission, collegiate athletics, sexual harassment, public school, Title IX

■ Introduction

Forty years ago on June 23, 2012 the United States Congress passed Title IX of the 1972 Education Amendments (Title IX), that was signed into law on July 1, 1972 by President Nixon (Sandler, 2002). This law provided equal access opportunities to all educational programs for men and women, girls and boys from pre-K 12 through graduate school. This paper will present an overview the basic requirement of the Title IX law, with an emphasis on the gains in college admissions, sexual harassment on college campuses, and collegiate athletics. This landmark piece of legislation ushered in a new era of civil rights legislation ensuring equal opportunities and access for all students regardless of sex to all educational programs and offerings. The ramifications of this legislation have been far reaching for all students from pre-kindergarten through higher education and graduate school. Many gains have been made in education concerning the areas Title IX covers, but there is still room for growth and improvement.

■ The Law: Title IX of the 1972 Education Amendments

The Title IX law simply and clearly states: “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 (USDOE, 1998).” Little did educators and even the law makers at that time realized what impact Title IX would have on education in the following areas that the law covers: admissions, access to courses or programs, counseling, student rules and policies, treatment of pregnant or parenting students, financial assistance, student housing, athletics, extra-curricular and co-curricular activities, employment practices, and sexual harassment of employees and students.

The Civil Right Act of 1965 put in place legislation with accompanying indicators for complying with the law that hold educational institutions accountable for meeting requirements of non-discrimination based on race, color, religion, and national origin. The writers of the Title IX legislation looked at many of the indicators and compliance regulations outlined in the 1965 act and added some specific requirements to the Title IX Regulations that were released ten years later. When they were passed in 1975, the regulations covered three general areas pertinent to education: admissions of students to institutions and programs, the treatment of students and employees, and employment. The regulation also contained three requirements to help implement the law: to conduct a self-evaluation, appointment of a responsible person (also known as the Title IX Coordinator), the development of a policy of non-discrimination and supporting grievance procedure (Nash, et al., 2007).

A requirement was established for educational institutions of higher education and school districts to conduct a self-evaluation or survey measuring and assessing to what degree were they considered to be gender fair or having created a working and educational environment that was free of discriminatory practices based on gender. This self-evaluation of the institution and school districts was to have taken place once the regulations were issued in 1975. It is now recommended that institutions and school districts conduct a self-evaluation on a regular basis. Yet, today most school districts and institutions of higher education most likely have not re-administered a self-evaluation since the mid 1970's to discern if their school climate or environment is considered gender fair on the areas the law covers. The self-evaluation for Title IX can cover the following areas: admissions and recruitment, educational programs and activities, housing, comparable facilities (restrooms and locker rooms), access to classes and schools, access to vocational education, counseling and counseling materials, employment assistance to students, health and insurance benefits, marital and parental status, athletics, sexual harassment and employment (USDOE, 1998).

The law also required public institutions of higher education, state educational agencies (SEA's), and local educational agencies

(LEA's) or school districts to designate a person responsible for implementing and addressing concerns and complaints regarding Title IX and discrimination based on sex or gender. This employee is known as the Title IX Coordinator, whose responsibilities are to inform or educate people at their institutions of higher education and district levels about the policies and procedures of the law. The coordinator often assists in the self-evaluation process of the areas Title IX covers and also receives complaints of discrimination.

Today the majority of teachers and educators are unaware of who has been identified as the school district's or institution's Title IX Coordinator. Having a well-informed coordinator does help to counteract the neglect in the implementation of the law in all of the eleven areas it covers. It also helps all students and educators learn about their rights to be educated and work in an environment free of discrimination based on sex. The law does require that information be disseminated, of who is the designated Title IX Coordinator, how this person can be contacted via phone, e-mail, or post, to be widely publicized and disseminated. This representative can be a key component in the reduction of gender based bullying and sexual harassment, and is the person most likely to be involved with informal and formal investigations, be it sexual harassment or other forms of gender discrimination.

The Title IX law also requires that each institution of higher education, SEA, and LEA develop a policy of non-discrimination based on sex and to make public the notification of this policy. In other words, just as educational entities make it known that they do not discriminate on the basis of race, color, religion, creed, or national origin, they also have to inform the public that they do not discriminate on the basis of sex. The notification needs to be made available if needed in the languages the students and parents can understand. This may mean translating the policies and procedures into the languages spoken by students' families and employees in the school district or institution of higher education.

The third requirement of the law is the development and publicizing of a grievance procedure. This routine is for filing a complaint of sex discrimination and needs to be made available and accessible. There should be a formal and informal process for students and

employees to file a complaint if they feel they have been discriminated or denied the benefits of the educational program because of their sex or gender. As case law has developed over the years around Title IX and in particular sexual harassment and same sex harassment, it would be advantageous for the educational institution to periodically review their grievance policies and procedures and enlist the expertise of their legal counsel. Often the Title IX Coordinator will be the person with whom a complaint is filed and then according to the policy and procedures would either move the complaint forward or begin an investigation.

■ Title IX and Admissions

Since 1972 admissions to institutions of higher education was very different for men and women. Believe it or not, the latter were not admitted or allowed to apply to many colleges and universities. When this happened, they were often required to have higher entrance scores than the males. If they met the entrance requirements women still may not have been able to gain access to the field of study they were interested in or that particular field may have had a quota limit of the number of seats or spaces designated for women. The stigma of gender specific majors and careers can still be seen on college campuses.

Today the unfairness associated with admissions and financial aid is less common than it used to be. Women now earn college and advance degrees at a much higher rate than men and have made significant gains in the traditionally male dominated fields of medicine and law. The higher enrollment of females into post-secondary programs also reflects the fact that more males than females fail to complete high school. According to the National Center for Educational Statistics (NCES) (Ross, et al., 2012) indicated that the difference in high school completion for males to females was 15% compared to 11% and when disaggregated by race, 36% of Hispanic males compared to 29% of Hispanic females had not completed high school.

However, women still lag behind men in earning professional doctoral degrees in the math and science fields. The fact remains that the enrollment numbers for women and men of color is still comparably low. According to Corbett, Hill and Rose (2008),

women receive about 18% of undergraduate engineering degrees and 12% of the doctoral degrees in engineering. In the recent release of *Title IX at 40*, Maatz and Graves (2012) indicate that barriers still remain for women and girls, and in particular women and girls of color, in enrolling and completing programs in science, technology, engineering, and math (STEM).

The enrollment and completion patterns are culturally specific, and an example that doesn't comply with the normative patterns of enrollment for women is the University of Puerto Rico at Mayaguez's engineering program, where 40% of the students are women (Maatz & Graves, 2012). Unfortunately in most fields within STEM, with the exception of biological and biomedical science, according to the Institute for Women's Policy Research (Costella, 2012), the completion of degrees for women have declined in the areas of physical science, mathematics and statistics, science technologies, computer and information sciences, as well as engineering and engineering sciences. Even more recent data from the NCES report Higher Education: Gaps in Access and Persistence Study (Ross, et al., 2012) report that Hispanic males when compared to Hispanic females received a Bachelor's degree in STEM fields at a 7% higher rate.

Increased access to higher education and higher paying jobs has helped to fuel women's economic progress, but pay discrepancies still remain. When in 1970 women were paid 59 cents for every dollar a man was paid, the current rate of pay for women is 77 cents for every dollar a man makes (DeNavas-Walt, Proctor & Smith, 2011). The median earnings, according to NCES report Higher Education: Gaps in Access and Persistence Study (Ross, et al., 2012), indicate that males who were STEM graduates entered the field earning more than 8,200.00 dollars per year than their female counterparts. When males do enroll in higher education and in particular STEM fields, they not only enroll at higher rates than their female counterpart regardless of race, but also earn more upon degree completion and employment.

■ Collegiate Athletics

Most people when asked about Title IX may or may not know anything about it, but if they do, one of the first things that usually

comes to mind will be athletics, either at the high school or college levels. Some have been known to refer to it as “the girls law”. Athletics is but one of the eleven areas covered by Title IX and may well be the area that girls and women have seen the most gain. This may in part be due to the fact that the disparity gap was so large in 1972 when compared by gender. Prior to that year girls were limited to participating in cheerleading, basketball and square dancing.

Since 1972 the increase in girls’ and women’s participation in interscholastic and intercollegiate athletics has been amazing. In 1971, according to Maatz and Graves (2012), fewer women participated in sports at the college level. However, by 2010, more than 190,000 women participated on collegiate teams. These numbers are impressive, but women still lag behind men in participation opportunities, scholarships, budgets, facilities, and recruiting at the college level. Though gains were steadily being made up until the Bush years 2001-2008, progress has been stalled (Hogshead-Makar & Zimbalist, 2011).

During the Clinton administration the Office of Civil Rights (OCR) issued new implementation guidelines and letters of interpretation in clarification on the three part test of compliance for athletic programs under Title IX:

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a history and continuing practice of program expansion, as described above, whether it can be demonstrated that the interests and abilities of the member of that sex have been fully and effectively accommodated by the present program.

Along with the three prong test for compliance, the areas to be reviewed at program levels became known as the “laundry list”: equipment, supplies, scheduling of games and practice times, travel and daily per diem allowances, access to tutoring, coaching, locker rooms, practice and competitive facilities, medical and training facilities and services, publicity, recruitment of student athletes and support services. According to the Women’s Sports Foundation (2012) using the three prong test and the accompanying laundry list, 80%-90% of educational institutions are not in compliance with Title IX.

The National Women’s Law Center on the Title IX information website listed the following as why Title IX Is Still Critical (2012). The general perception is that women now have equal opportunities in all areas of athletics. But that’s just not true.

- In 2005-2006 there were 171,000 women participating in college athletics. Women represent only 42% of college athletes, even though they represent over 50% of the college student population nationwide.
- Each year male athletes receive over \$136 million more than female athletes in college athletic scholarships at NCAA member institutions.
- Women in Division I colleges are over 50% of the student body, but receive only 32% of athletic recruiting dollars and 37% of the total money spent on athletics.
- In 2008, only 43% of coaches of women’s teams were women. In 1972, the number was over 90 percent (Wulf, 2012).

The following are myths about Title IX as discussed by Maatz and Graves (2012) that are commonly heard in discussions about Title IX:

- Title IX requires quotas. This is in reference to the three prong tests and in actuality it requires that schools allocate participation opportunities in nondiscriminatory ways. The federal courts have consistently rejected arguments that Title IX requires quotas.
- Title IX forces schools to cut sports for boys and men. The law does not require or encourage the cutting of any sport. It does allow schools to make choices about how to structure athletic programs as long as they do not discriminate.

- Men's sports is declining because of Title IX. Opportunities for men in sports have continued to increase since the passage of Title IX in 1972, as measured by the number of teams and athletes. Teams that have been added and dropped reflect trends in men's sports and interests, often reflecting the results of the interest and abilities survey as part of the three prong test of compliance.
- Title IX requires schools to spend equally on male and female sports. The fact is that spending does not have to be exactly equal as long as the benefits and services of the programs are equal overall.
- Men's football and basketball programs subsidize female sports. The truth is that high profile programs don't even pay for themselves at most schools. Even the programs among the elite divisions, nearly half of men's football and basketball programs spend more money than they generate.

One of the downfalls of the expansion of athletic opportunities for women and girls at the college and high school levels was the decrease in the number of female coaches. When Title IX was passed women made up 90% or more of the coaches of women's teams at colleges and universities and 2% of men's teams. In 2006 they were only 40% of collegiate coaches of women's teams and still comprised 2% of coaches of men's teams. As for the change in the number of women who were Athletic Directors, in 1972 they lead 90% of the women's programs and in 2006 they accounted for only 18%. Along with the change in the number of teams coached by women, as males coached women's team their salaries increased, but the salaries for women coaching women's teams their salaries did not increase (Hanson, Guilfooy, & Pillai, 2009). Today the 2% of women who coach men's teams may not receive comparable salaries as their male counterparts who coach men's teams.

■ Sex Discrimination, Sexual Harassment, and Bullying

Prior to Title IX those women who were in college and university tenured positions were far and few. Those who managed to stay in their faculty positions and even receive tenure often did so in very hostile work environments. According to MacKinnon (1979), the

term sexual harassment was used in reference to behaviors that were sexual in nature and happened in the workplace. It wasn't until the mid-1980's that the term became part of our everyday vocabulary. In the 1986 case *Meritor Savings Bank, FSB v. Vinson*, the United States Supreme Court first recognized the term and behaviors associated with "sexual harassment" as a violation of Title VII. It was with this case that standards were established for analyzing whether the behavior was welcomed or unwanted and the levels of liability that would be applied to the employer in allowing a hostile working environment to exist. The early court cases coming out of public schools such as; *Lyle v. Duluth School District, Duluth, MN* and *Franklin v. Gwinnett County School District, GA*, established the precedent that educational institutions could be sued for damages under Title IX in cases of sexual harassment or sex discrimination. This sent shock waves through the education community and spurred school districts and institutions of higher education to review grievance procedures in making sure they covered, reported and resolved incidences of sexual harassment. This also brought about training and professional development of what sexual harassment is, institutional liability, and the responsibility of educators and students in reporting incidences of harassment.

Sexual harassment is defined as in the US Department of Education Revised Guidance on Sexual Harassment (2001):

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program. Sexual harassment of students is, therefore, a form of sex discrimination prohibited by Title IX.

Early research by Dziech and Weiner (1984) of sexual harassment on college campus indicated that at least 30% of undergraduate women experienced sexual harassment from at least one of their instructors or professors. Adams, Kottke, and Padgitt (1983), as well as Bailey and Richards (1985) report that the type

of sexual harassment women experienced ranged from: sexual advances, jokes of a sexual nature, sexist comments demeaning women, physical advances of a sexual nature, sexual bribes, and sexist comments about clothing, body, or sexual activities. In a more recent study by Hill and Silva (2005) it was found that women were physically harassed by professors who touch, grabbed and forced women to do something sexual. This report also shows that women experience sexual comments and gestures more often than men, where men were more likely to experience homophobic comments or were more likely than women to harass others.

According to Hill and Silva (2005) in the American Association of University Women's study, *Drawing the line: Sexual harassment on college campus*, indicated that nearly two thirds of students experience some sort of sexual harassment on campuses and one third happens during the first year. We know that sexual harassment can be visual, verbal, and physical. As reported by these researchers the most common forms of sexual harassment students reported were: unwanted sexual comments, jokes, gestures, or looks. Unfortunately another form of sexual harassment that was reported was being called gay, lesbian or other homophobic slur.

As recently as 2010, President Obama's administration, through the Office for Civil Rights (OCR) issued a "Dear Colleague letter" providing guidance and clarification that harassment of students and employees motivated by gender is considered unlawful under Title IX. This includes the harassment of students' who are perceived by their peers as not conforming to "stereotypic" roles on femininity and masculinity. The letter also covers harassment that may be directed to students of the same sex or different sex, reminding us that although Title IX does not specifically address discrimination on the basis of sexual orientation or gender identity, when students are subjected to harassment because of failure to conform to gender stereotypes, Title IX does apply.

What is important to remember is that harassment based on gender or sex is covered under federal law, whereas bullying may be covered under state and local laws. According to Espelage and Swearer (2011), bullying is defined as repeated unwanted behavior that involves an imbalance of power through which the bully intends to harm the bullied student or students. Often times it

is not sexual in nature and may not rise to the standard used in determining sexual harassment. This is an area that institutions Title IX Coordinators can help to educate the school community on the difference between bullying and sexual harassment and the required responsibilities of reporting, in particular when the behavior is gender or sex based. Informing the education community be it staff, students, administrators, support staff, parents and the community at large, what the district or institutions policies and procedures are regarding bullying that is gender based and sexual harassment can work to create a more gender fair environment.

It is important to know that when gender based bullying crosses the line and rises to level of sexual harassment, the Title IX policies and procedures come into play. All students and employees of the educational institution need to know the policies and procedures of reporting incidences of bullying and harassment that is gender based. With the prevalence of cyberbullying, students and adults need to know that this too is an area that could become sexual in nature and if conducted on school grounds or with school equipment could be part of a pattern associated with hostile environment sexual harassment at the institutional level. The 2010 Dear Colleague Letter or guidance prohibits sex-based bullying and harassment that interferes with a student's education, whether it is conducted in electronic form or in person. It states, "bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential."

■ Implications

Title IX is a piece of federal legislation governing pre-K-12 through higher education that could be better utilized in creating school climates and environments that are free from discrimination based on sex and or gender. In looking at three of the areas Title IX covers (collegiate admissions, sexual harassment on college campuses and collegiate athletics) there is room for improvement.

There has been a lot of information written about the decline in girls' interest in math and science beginning at the middle grade

years. In order to increase the number of women who choose STEM programs in higher education, a review of programs in schools and efforts of Title IX Coordinators could inform practices that would increase the number of women entering STEM programs at the college level. By assessing the school climate based on gender and areas that gender bias have been known to occur, many of which are areas covered by Title IX, access to courses or programs (including those in math and science), counseling, student rules and policies (discipline), treatment of pregnant or parenting students, financial assistance, student housing, extra-curricular and co-curricular activities, and employment practices, at the K-12 level can influence girls and women attending institutions of higher education and entering STEM fields. In the area of admissions and retention of women in academia, the efforts to recruit girls and women need to be reviewed, and an analysis of the climate on college campuses would need to be assessed to determine if it is gender fair and free from discrimination based on sex. Here again the institutions Title IX Coordinator could assist in analyzing the campus climate and provide education about gender equity. The assessment of women professors who make up tenured faculty, their rank and their representation in higher education administration, when assessed can also add to information on the gender equity climate of the institution that can add to information in recruiting students to the institution.

In the area of athletics, despite the gains in the past 40 years barriers still remain for women on college campus. The access and opportunity to play a sport at the college level trickles down to K-12 opportunities and access for girls in sports. Maatz and Graves (2012) mentioned that girls have 1.3 million fewer opportunities to play sports at the high school level than do boys, and when broken down by race, girls of color are underrepresented. Colleges in their recruitment efforts could highlight the advantages and benefits to girls and the opportunities available at the collegiate level for them to participate in sport. This of course would mean that institutions of higher education would need to review their own compliance with Title IX and their athletic programs, including scholarships and financial assistance available to women. By administering the interest and abilities survey at least every three

years, as part of the three prong test of compliance, institutions can better assess if they are meeting the needs and interests of their students and athletes.

Sexual harassment and bullying that is gender based continues to occur at alarming rates on college campuses. Two-thirds of students aged 18-24 experienced some form of sexual harassment (Maatz & Graves, 2012). Hollis (2012) reported that up to 62% of college students had either been bullied or witnessed incidents of bullying. She also goes on to say that LGBT students and men also reported more frequently than expected, having been bullied. The Title IX Enforcement Highlights (USDOE, 2012) reaffirms the importance of the 2010 *Dear Colleague letter* and the U.S. Department of Education's stance on bullying and LGBT:

The 2010 guidance document also made clear that schools may violate Title IX by failing to effectively respond to bullying or harassment of LGBT students. Although Title IX does not cover discrimination based solely on sexual orientation, harassment of LGBT students constitutes sex-based discrimination if it is based on the student's failure to conform to sex stereotypes. For example, a student may be bullied because he or she does not act or dress according to his or her classmates' gender-based expectations for boys or girls. In addition, the guidance makes it clear that Title IX prohibits sexual harassment of all students, regardless of their actual or perceived sexual orientation or gender identity. The guidance reminds schools and universities that when harassment targets LGBT students, includes anti-gay comments, or is partly based on a target's actual or perceived sexual orientation, Title IX obligates the institution to investigate and remedy any overlapping sexual or gender-based harassment of those students.

When sexual harassment and gender based bullying occur, Title IX requires that the educational institution take immediate action. here again the Title IX Coordinator can assist in educating the campus community as to what sexual harassment is, the institutions policies and procedures in reporting incidences of harassment, and how they can be contacted. The Title IX Coordinator along with campus Gay and Straight Associations can educate the

campus community that harassment of lesbian, gay, bisexual, or transgender (LGBT) students' failure to conform to gender stereotypes is covered by Title IX. Institutions of higher education should proactively disseminate information on their policies and procedures regarding sexual harassment and conduct trainings for the college community at large.

■ Conclusion

Over the past forty years there have been many positive changes in the education of boys and girls, men and women because of Title IX, but there are still many more advances to be made. Institutions and public school districts can advance their efforts in complying with the law as well as advancing a school climate free of harassment based on sex in its utilization of their Title IX Coordinator. By accessing their school climate and culture in conducting an evaluation using the eleven areas of Title IX, schools and institutions can see how they measure up in providing equal access and opportunities based on sex. To periodically review and revise current policies and grievance procedures, institutions will be able to effectively and promptly address complaints of harassment.

It is only fitting to end with a quote from one of the mothers of Title IX.

Bernice “Bunny” Sandler, who helped draft the legislation and now works as a senior scholar for the Women’s Research and Education Institute in Washington DC. “We had no idea how bad the situation really was — we didn’t even use the word sex discrimination back then — and we certainly had no sense of the revolution we were about to start (Wulf, 2012, p.1)” The revolution is not over and both men and women still have gains to made in education with the guidance of Title IX.

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