Chapter 6

Title IX and Sexual Harassment

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ABSTRACT

This chapter addresses the application of Title IX to protect students from sexual harassment and assault in schools and human service organizations. The United States continues to need this legislation to protect students and other vulnerable populations. Title IX recognizes that sexual harassment can happen between males and females or within genders. Age is not a limiting factor in sexual harassment cases. The law is designed to protect victims regardless of the source of the alleged abuse. Institutions must designate a Title IX Coordinator, create and publicize policies and procedures, and regularly train students and employees. When a complaint is being investigated, the institution must protect the privacy of the victim, protect the victim’s safety, document the steps taken, and act promptly. Students can sue for damages if the school does not comply with Title IX procedures. This chapter was meant as an overview of this topic. The authors strongly recommend seeking legal counsel for any specific questions about a violation of Title IX.

INTRODUCTION

We shouldn’t need a law such as Title IX. Everyone should do what he or she is supposed to do, and there should not be discrimination based on gender. Though Title IX applies equally to both men and women, as this chapter will highlight, Title IX came about because of significant problems with how women were being discriminated against in hiring, access to activities, opportunities for participation, and most notably due to sexual harassment. The history of unequal treatment is long and pervasive, and in many places still exists. In fact, an important point about Title IX is while it applies to institutions receiving federal financial assistance there are still many businesses and educational centers that do not receive federal financial assistance and therefore are not required to follow the edicts and guidelines issued in the Title IX regulations. The purpose of this chapter is to highlight research related to Title IX in the history of the development of the law, highlight the different components of the law, and end with a specific list of suggestions for educational institutions.

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This chapter is not intended as legal advice, only as discussion related to the search related to Title IX and the role it plays in our educational institutions receiving federal financial assistance. For specific questions relating to Title IX, the reader should contact an attorney trained in dealing with the specifics of Title IX. A list of questions to ask a consulting attorney is included at the end of the chapter.

WHAT IS TITLE IX?

Title IX is a comprehensive federal law that has removed many barriers that once prevented people, on the basis of sex, from participating in educational opportunities and careers of their choice. It 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 (20 U. S. C. §1681, et seq).

Title IX applies to all aspects of education programs or activities operated by recipients of federal financial assistance. In addition to educational institutions such as colleges, universities, and elementary and secondary schools, Title IX also applies to any education or training program operated by a recipient of federal financial assistance (20 U. S. C. §1681, et seq).

The Office of Civil Rights has provided the rules relating to Title IX as they relate to sexual misconduct and guidance for Civil Rights in the US Department of Education. In 2011 they issued a Dear Colleague Letter on student-on-student sexual harassment and sexual violence. It explained a school’s responsibility to respond promptly and effectively to sexual violence against students in accordance with the requirements of Title IX (Office for Civil Rights, 2011).

Specifically, Title IX:

- Provides guidance on the unique concerns that arise in sexual violence cases, such as a school’s independent responsibility under Title IX to investigate (apart from any separate criminal investigation by local police) and address sexual violence.

HISTORY OF TITLE IX

In 1964, President Lyndon Johnson signed the Civil Rights Act. The purpose of this law was to end discrimination in multiple areas based on religion, race, color, or national origin (Hanson, Guilfoy, & Pillai, 2011). The employment part of the Civil Rights Act also prohibited sex discrimination. Prohibitions on discrimination based on sex in federally assisted programs was not a part of the Civil Rights Act, but many women’s groups became enthused about the possibility of an expansive prohibition on the basis of sex and pushed for changes through the 1960’s (Hanson, Guilfoy, & Pillai, 2011).

President Lyndon Johnson signed executive order 11375 in 1967 requiring all institutions receiving federal contracts to end discrimination on the basis of sex in hiring and employment. This later became much of the basis for Title IX (Ware, 2006). In 1970, an early draft was authored by Representative Patsy Mink, with the assistance of Representative Edith Green (Ware, 2006). Their focus was more specifi-