

# Without Regard to Gender



**Tennessee State Agencies and  
Title IX of the Education  
Amendments of 1972**

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## Executive Summary

Title IX of the Education Amendments of 1972 requires that:

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...<sup>1</sup>

During the 1998 legislative session, the Tennessee General Assembly passed Public Chapter 758, which requires each state government entity subject to Title IX to develop an annual Title IX implementation plan. Plans are to be submitted to the Department of Audit beginning June 30, 1999. Public Chapter 758 also required the Comptroller of the Treasury to conduct a study to determine “what special actions should be taken by state entities to implement the requirements of Title IX and regulations promulgated pursuant to Title IX.”

Public Chapter 758 is similar to Public Chapter 502 of 1993, which requires state agencies subject to Title VI of the Civil Rights Act to develop annual implementation plans. In fact, Congressional sponsors patterned Title IX after Title VI. The two laws are both intended to prohibit certain types of discrimination in programs that receive federal money, although Title VI is much broader in application. Title VI prohibits discrimination on the basis of race, color, or national origin in *all* programs that receive federal funding, while Title IX prohibits discrimination on the basis of gender in federally funded *education programs and activities*.

This report reviews the federal requirements under Title IX of the Education Amendments Act of 1972 and its accompanying regulations, and discusses which state agencies are subject to the law. It briefly describes some of the major issues related to Title IX, such as sexual harassment, athletics, teenage pregnancy, vocational education, and other gender equity issues. The report offers suggestions for the contents of the state implementation plans required by P.C. 758, based on the federal law and regulations. In addition, it describes some other states’ implementation of Title IX. Finally, the report offers recommendations for consideration in implementing Title IX and includes a list of resources that interested persons, particularly educators, might find useful in learning more about Title IX and related issues. The report concludes:

**The federal government has not fully implemented and enforced Title IX. In recent years, the federal government has sent “mixed signals” to states about Title IX.** Although Title IX became law more than 25 years ago, federal implementation and enforcement have been somewhat uneven. Some federal agencies that should have issued federal regulations addressing Title IX have failed to do so. In addition, critics contend that many educational institutions, having embraced Title IX in some respects, still do not comply with the law in many areas. (See page 20.)

**Even without vigorous federal enforcement of Title IX, most recipients of federal funding that conduct educational programs and activities are still subject to its provisions.** As a condition for receiving federal funding, state departments and agencies are required to sign written assurances stating that they agree to comply with Title IX and other

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<sup>1</sup> 20 U.S.C. 1681(a).

applicable civil rights laws. These assurances obligate recipients to comply with civil rights laws for the entire period covered by the federal assistance. Therefore, whether or not the federal department providing assistance has issued the appropriate regulations or actively enforces Title IX, a recipient of its funding for educational programs and activities is still obligated and has agreed in writing to comply with Title IX. (See pages 20-21.)

**Public Chapter 758 (1998) requires state entities that are subject to Title IX to submit annual implementation plans to the Department of Audit beginning June 1, 1999.** A sample implementation plan begins on page 32. Before beginning a plan, entities should evaluate their current policies and practices regarding Title IX. Once an entity has performed a self-evaluation of its processes and developed a plan to ensure enforcement of Title IX, it can begin the process of designing an implementation plan for submission as required by Public Chapter 758. (See pages 21-22.)

**School systems' current knowledge and implementation of Title IX vary throughout the state.** In the fall of 1998, the Office of Education Accountability conducted a survey of the 138 school systems to determine whether they have grievance procedures for handling civil rights complaints, whether they have designated Title IX coordinators, how they notify students and employees of their rights under Title IX, how they maintain documentation of Title IX complaints, and the amount of Title IX training employees have received. In general, most of 131 responding systems indicated that they have adopted some type of grievance procedure for handling civil rights complaints; most have designated a coordinator; and many use student and employee handbooks, and posters, as well as other methods to disseminate information. Some systems conducted or received training within the last two years, but some conducted or received none. Only 10 respondents indicated that they train all employees annually. (See pages 22-23.)

**Some school systems in Tennessee have been sued for peer sexual harassment under the provisions of Title IX.** Memphis City Schools settled a lawsuit out of court in 1998, paying \$330,000 to the family for a first-grader who was allegedly sexually assaulted on her school playground by a group of classmates and \$50,000 to the family's attorney. In July 1998, a suit was brought against Metropolitan-Davidson County Schools by a 12-year-old female student who alleges harassment by two male classmates in a local elementary school. The suit has been postponed because of a pending Supreme Court case with similar issues. (See page 23.)

**The Tennessee Secondary School Athletic Association does not proactively inform school systems about their responsibilities under Title IX. TSSAA has taken the position that it is each school's responsibility to meet Title IX requirements.** Association officials indicate that its written policies are gender-sensitive, but do not necessarily incorporate Title IX requirements. In addition, TSSAA staff does not conduct training for schools regarding Title IX and engages in only informal means of surveying to determine students' interest levels in specific sports. (See page 24.)

**A review of several universities' and colleges' web pages indicates that information about students' and employees' rights under Title IX is not always readily accessible or easily found.** Although some of the institutions' websites include their sexual discrimination and

harassment policies, as well as inform students and employees how to make complaints, some provide limited information or none at all. In some cases, the information may exist, but is difficult to locate. (See pages 24-25.)

**Data for 1996-97 indicates that of the nine Division I state institutions in Tennessee, only Tennessee Technological University provides participation opportunities for female athletes in numbers proportionate to the general student body—one of the tests used to assess whether intercollegiate athletics comply with Title IX.** The institutions generally spent amounts proportionate to the percentage of male and female athletes for operating expenses, recruiting, and financial aid. However, female athletes' programs receive significantly fewer dollars than men's programs. (See pages 25-28.)

**For the most part, state agencies appear to be unaware of responsibilities they may have to comply with Title IX.** In October 1998, the Office of Education Accountability surveyed state agencies (other than the Department of Education and the university systems) that receive federal funding to determine whether the agencies conducted educational programs or activities and, if so, whether they were implementing Title IX. The results were varied, with several state agencies indicating that they conduct some type of educational program or activity, but few indicating familiarity with or implementation of Title IX. (See page 28.)

**A recent state Attorney General's opinion confirms that state agencies that receive federal funding and conduct any educational program or activity must comply with Title IX.** Federal financial assistance does not have to originate with the U.S. Department of Education. According to the opinion, as a general rule, if a state agency directly or indirectly receives federal financial assistance and conducts an educational program or activity that benefits from the assistance, the state agency must comply with Title IX throughout the operations of the entire agency (although there may be exceptions). Title IX will apply even if the agency receives federal financial assistance from a source other than the United States Department of Education. The federal financial assistance need not be earmarked for the education program or activity for Title IX to apply. (See page 28.)

**In September 1998, the Department of Finance and Administration released details of Policy 22, a state-developed approach to uniform monitoring of subrecipients of state and federal funding. The department developed core areas to ensure uniformity in monitoring efforts, including the verification that civil rights requirements are being met.** The adoption of Policy 22 should improve state agencies' awareness of their civil rights responsibilities, including Title IX. (See page 29.)

## **Recommendations**

The report suggests both legislative and administrative recommendations, listed below. (See pages 29-31.)

### ***Legislative Recommendations***

- The General Assembly may want to add Title IX responsibilities to the duties of the Human Rights Commission.
- The General Assembly may want to consider adopting more specific gender equity legislation.

- The General Assembly may want to allow state agencies to amend their Title VI plans to include Title IX activities.
- The General Assembly may want to require that schools comply with Title IX as a condition of membership in the Tennessee Secondary Schools Athletic Association.

***Administrative Recommendations***

- The Department of Education should ensure that school systems receive adequate training related to Title IX.
- The Department of Education should revise its Title VI data collection system to include information relevant to Title IX.
- All school systems should adopt administrative procedures that would ensure compliance with Title IX.
- School systems should train all their employees, including school bus drivers, cafeteria workers, and custodians, about their noncrimination policies and grievance procedures.
- Tennessee's universities and colleges should prominently feature information regarding their nondiscrimination policies and grievance procedures, as well as their responses to the Equity in Athletics law, on their websites.

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## Introduction

Title IX of the Education Amendments of 1972 requires that:

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...<sup>1</sup>

During the 1998 legislative session, the Tennessee General Assembly passed Public Chapter 758, which requires:

- each state government entity subject to Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681, et seq.) to develop a Title IX implementation plan “with participation by protected beneficiaries as may be required by such law or regulations.” The plans are to be submitted annually to the department of audit beginning June 30, 1999. In addition, the Department of Audit is to publish at least annually a cumulative report of its findings and recommendations concerning compliance with the requirements of this section.
- the Comptroller of the Treasury to undertake a study to determine “what special actions should be taken by state entities to implement the requirements of Title IX and regulations promulgated pursuant to Title IX.”

Public Chapter 758 is similar to Public Chapter 502 of 1993, which requires state agencies subject to Title VI of the Civil Rights Act to develop annual implementation plans. In fact, Congressional sponsors patterned Title IX after Title VI. The two laws are both intended to prohibit certain types of discrimination in programs that receive federal money, although Title VI is much broader in application. Title VI prohibits discrimination on the basis of race, color, or national origin in *all* programs that receive federal funding, while Title IX prohibits discrimination on the basis of gender in federally funded *education programs and activities*.

This report reviews the federal requirements under Title IX of the Education Amendments Act of 1972 and its accompanying regulations, and discusses which state agencies are subject to the law. It briefly describes some of the major issues related to Title IX, such as sexual harassment, athletics, teenage pregnancy, vocational education, and other gender equity issues. The report offers suggestions for the contents of the state implementation plans required by P.C. 758, based on the federal law and regulations. In addition, it describes some other states’ implementation of Title IX. Finally, the report offers recommendations for consideration in implementing Title IX and includes a list of resources that interested persons, particularly educators, might find useful in learning more about Title IX and related issues.

## Methodology

The conclusions reached and recommendations made in this report are based on the following:

- a review of the federal law and accompanying regulations.

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<sup>1</sup> 20 U.S.C. 1681(a).

- a literature review of articles and reports about Title IX, particularly in educational journals.
- a review of other states' methods concerning Title IX compliance.
- interviews with appropriate federal officials, including the U.S. Department of Justice and the Department of Education's Office for Civil Rights.
- interviews with appropriate state officials, including staff of the Department of Education, the U.T. Board of Trustees, and the Tennessee Board of Regents.
- interviews with staff of local education agencies.
- a survey of local education agencies to determine their current level of responsiveness to and knowledge of Title IX.
- a survey of state departments and agencies receiving federal funding to determine whether they are subject to Title IX.
- a review of reports and brochures provided by the U.S. Department of Education's Office for Civil Rights.
- attendance at a training workshop conducted for the Tennessee Department of Education by the U.S. Department of Education's Office for Civil Rights.

## Background

***Purpose of Title IX*** The law is intended to prohibit discrimination on the basis of gender in any educational program or activity that receives federal funds. It ensures legal protection against discrimination based on gender for both students and employees, and includes protection against sexual harassment.<sup>2</sup> Title IX covers all aspects of an educational program or activity, and prohibits discrimination in:

- admissions
- treatment of students, including:
  - access to programs and courses
  - access to and use of school facilities
  - counseling and guidance materials, tests, and practices
  - vocational education
  - physical education
  - competitive athletics
  - graduation requirements
  - students rules, regulations, and benefits
  - the treatment of married and/or pregnant students
  - housing
  - financial assistance
  - health services
  - school-sponsored extracurricular activities
  - most other aid, benefits, or services

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<sup>2</sup> Title IX does not apply to educational institutions controlled by a religious organization; to military and merchant marine educational institutions; or to the membership practices of social fraternities and sororities, the YMCA, the YWCA, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations that are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954. 34 CFR 106.12-14 (1997).

- employment, including  
access to employment  
hiring and promotion  
compensation  
job assignments  
leaves of absence  
fringe benefits  
labor organization contracts or professional agreements<sup>3</sup>

***Application and Federal Regulations*** The law applies to “every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.” For example, Title IX applies to the Tennessee Department of Education (the recipient of federal funding from the U.S. Department of Education) and Tennessee’s local education agencies (the subrecipients of federal funding from the U.S. Department of Education) because all of these benefit from federal assistance. The law also applies to the Tennessee Board of Regents (TBR) and the University of Tennessee Board of Trustees and their subrecipients—the state’s colleges and universities.

Although Title IX is more commonly associated with K-12 and higher education programs, the law applies to the recipients of funding from *any* federal department or agency that extends assistance to any education program or activity through grants, loans, or contracts. Title IX requires these federal departments and agencies to issue regulations implementing the law.<sup>4</sup> However, more than 25 years after Title IX’s passage, only four federal departments have done so: Education, Agriculture, Energy, and Health and Human Services.<sup>5</sup>

Because Title IX is usually linked with K-12 and higher education programs, the regulations issued by the Department of Education are the most widely cited. The federal departments’ Title IX regulations differ in some respects because of the various programs administered, but all contain at least the following components, modeled after the Department of Education’s regulations:

- *required written assurances*—Prior to obtaining federal money, an applicant must provide written assurance to the federal government that it will comply with Title IX, as well as other civil rights laws.
- *designation of an employee to coordinate investigations*—Each recipient must designate at least one employee to coordinate its Title IX compliance efforts, including conducting complaint investigations. Recipients are to notify all students and employees of the name, office address, and telephone number of the designated coordinator.

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<sup>3</sup> List adapted from *Title IX Grievance Procedures: An Introductory Manual* published by U.S. Department of Education, Office of Civil Rights.

<sup>4</sup> 20 U.S.C. 1682.

<sup>5</sup> Federal regulations for these departments may be found as follows: Education at 34 CFR 106.1 *et seq.*; Agriculture at 7 CFR 15a.1 *et seq.*; Energy at 10 CFR 1040.1 *et seq.*; and Health and Human Services at 10 CFR 1040.1 *et seq.* In addition, the U.S. Department of Labor has issued regulations for the Job Training Partnership Act that contain Title IX and other anti-discrimination provisions at 29 CFR 34.1 *et seq.*

- *regular dissemination of nondiscriminatory policy to applicants, students, and employees*—Each recipient must notify applicants for admission and employment, students and parents, employees, sources that refer applicants, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, of its policy not to discriminate on the basis of sex in its educational programs and activities.
- *adoption of grievance procedures for complaints*—Recipients must adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints under Title IX.

For the purposes of compliance with federal and state laws, state departments and agencies should be aware that:

- Recipients of federal funding for educational programs or activities are subject to Title IX, even if the federal agency that provides their funding has failed to issue implementing regulations.
- State departments or agencies that receive federal funding and have any type of educational program or activity, *whether or not the federal money is used directly for that educational program or activity*, are subject to the provisions of Title IX.

**Implementation and Enforcement** Executive Order 12250<sup>6</sup> authorizes the U.S. Attorney General to coordinate the implementation and enforcement by executive agencies of the nondiscrimination provisions of Title IX of the Education Amendments Act of 1972.<sup>7</sup>

The U.S. Department of Education’s Office for Civil Rights (OCR) is authorized to investigate Title IX complaints or conduct compliance reviews within agencies that receive funding from the Department or agencies that have delegated authority to it.<sup>8</sup> Three federal agencies have implemented formal delegation agreements with the Department of Education to refer Title IX complaints to its Office for Civil Rights: the Environmental Protection Agency, the Department of Energy, and the Department of Health and Human Services.<sup>9</sup>

The Department of Education’s Title IX regulations adopt the procedural provisions applicable to Title VI of the Civil Rights Act of 1964.<sup>10</sup> These regulations set out procedural requirements for:

- providing information to the Department of Education, as well as to beneficiaries and participants

<sup>6</sup> Executive Order 12250, November 2, 1980. See 45 FR 72995, 1980 WL 66789 (Pres.).

<sup>7</sup> The order also applies to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and any other provision of federal law that prohibits discrimination based on race, color, national origin, handicap, religion, or sex in federally funded programs.

<sup>8</sup> General Accounting Office, Health, Education, and Human Services Division, *Intercollegiate Athletics: Status of Efforts to Promote Gender Equity*, October 1996, GAO/HEHS-97-10, pp. 1, 39.

<sup>9</sup> List of Delegation Agreements supplied by Barbara Shannon, Chief Regional Attorney, U.S. Department of Education, Office for Civil Rights, Region IV. Many more federal agencies have delegation agreements with OCR for Title VI and Section 504.

<sup>10</sup> These regulations are at 34 CFR 100.6-100.11 and 34 CFR Part 101.

- compliance reviews conducted by the Department of Education
- allowing persons to make complaints directly to the Department of Education, thus bypassing an agency's internal grievance process
- resolution of complaints that result in investigations

The regulation provides two means of initiating enforcement: compliance reviews and complaints. The Department of Education is required to select a number of recipients and conduct investigations to determine whether the recipients comply with Title IX. In addition, the Department must investigate all valid complaints alleging discrimination on the basis of sex in a recipient's programs. Such complaints must generally be made within 180 days of the alleged violation and the Department must conduct a prompt investigation.

The Department is required to inform the recipient and the complainant of the results of its investigation. If the investigation indicates that a recipient is in compliance, the Department states this, and the case is closed. If the investigation indicates noncompliance, the Department outlines the violations found.

If violations are discovered during an investigation, OCR initially must attempt voluntary means to achieve compliance. If these fail, OCR may institute administrative proceedings to terminate federal funds or refer the case to the U.S. Department of Justice for court action. The regulations also set out procedures that must be followed for conducting hearings and judicial proceedings related to Title IX.<sup>11</sup> If during negotiation, the violator and the Department reach an acceptable agreement, the Department must review the implementation of the plan periodically to assure its adoption.

According to regulations adopted by the U.S. Department of Justice and the authority given it by Executive Order 12250, public officials or private citizens may make civil rights complaints directly to its Civil Rights Division.<sup>12</sup> Therefore, a state agency that receives funding for an educational program or activity from a federal department or agency that lacks either Title IX regulations or a delegation agreement could be subject to investigation and enforcement by the U.S. Department of Justice if a complaint is made.

***The Practical Effects of Title IX*** In June 1997, on the 25<sup>th</sup> anniversary of Title IX, the U.S. Department of Education's Office for Civil Rights published *Title IX: 25 Years of Progress*, an overview of the law's accomplishments.<sup>13</sup> Although Title IX prohibits discrimination for both males and females, since women traditionally have been the underrepresented sex, the report focuses on improvements in women's opportunities and achievements since Title IX was enacted. In general, it found significant improvements for women in many areas. For example:

- In 1994, 63 percent of female high school graduates aged 16-24 were enrolled in college, up 20 percentage points from 43 percent in 1973.

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<sup>11</sup> 34 CFR 100.7—100.11 (1997).

<sup>12</sup> 28 CFR 0.50 (b).

<sup>13</sup> U.S. Department of Education, Office for Civil Rights, *Title IX: 25 Years of Progress*, Washington, D.C., June 1997. Available February 27, 1998, at <http://www.ed.gov/pubs/TitleIX>.

- In 1994, 27 percent of both men and women had earned a bachelor’s degree. In 1971, 18 percent of young women and 26 percent of young men had completed four or more years of college.
- In 1994, women received 38 percent of medical degrees. When Title IX was enacted in 1972, only nine percent of medical degrees went to women.
- In 1997, more than 100,000 women participated in intercollegiate athletics—a fourfold increase from 1971.
- In 1995, women comprised 37 percent of college student athletes, compared to 15 percent in 1972.
- In 1996, 2.4 million high school girls represented 39 percent of all high school athletes, compared to only 300,000 or 7.5 percent in 1971.
- Women won a record 19 Olympic medals in the 1996 Summer Olympic Games.

Many of these achievements are related to the passage of Title IX. However, OCR’s report also noted that “...today as we acknowledge the many advances women have made in academics, employment, and athletics, we still need to recognize some dismaying facts in our efforts to reach equity.” In particular, the report indicated concern about continued reports of sexual harassment, which “show that freedom from threats to learning still has not been achieved.” Other concerns acknowledged by OCR include:

- Women now earn half of all college degrees, but are less likely than men to earn bachelor’s degrees in computer science, engineering, physical sciences, or mathematics. Women account for only 17 percent of doctoral degrees in math and physical science, 14 percent in computer science, and seven percent in engineering. This is significant because in the labor market salaries are among the highest in mathematics/computer science and engineering.
- Women make up half of the labor market, but are underrepresented in jobs in scientific fields, and are often paid less than men. In 1993, only 18 percent of recent female science and engineering graduates who were employed worked in science and engineering occupations, compared to 35 percent of their male counterparts. In the same year, women who had majored in the natural sciences earned 15 percent less than men who majored in the same field.
- On average, women earn about 20 percent less than their male counterparts with the same education— \$26,000 vs. \$32,000, respectively, for graduates of four-year colleges in 1993.
- Disparities still exist between males and females in interscholastic and intercollegiate sports. There are still about 24,000 more high school boys’ varsity teams than girls’ teams. In college, women receive only one-third of all athletic scholarships. Between 1992 and 1997, overall operating expenditures for women’s college sports programs grew only 89 percent, compared to 139 percent for men, representing only 23 percent of the total operating expenses.<sup>14</sup>

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<sup>14</sup> U.S. Department of Education, Office for Civil Rights, *Title IX: 25 Years of Progress*, June 1997. Available February 27, 1998, at <http://www.ed.gov/pubs/TitleIX>.

The National Coalition for Women and Girls in Education (NCWGE) formed similar conclusions regarding Title IX's effectiveness. In a 1997 report, *Title IX at 25: Report Card on Gender Equity*, NCWGE gave the nation a "C" average in eliminating sex discrimination in education. Although the report concedes that Title IX has increased opportunities for women, it also notes barriers that still exist, including pay inequities between males and females, low math and science participation rates for women in higher education, and pervasive sexual harassment in schools.<sup>15</sup>

**Issues of Concern** Title IX prohibits sex discrimination in all areas of the educational environment. Following are brief explanations of issues in education that are affected by Title IX's provisions. See Appendix B for ways to access further information on topics related to Title IX.

### **Sexual Harassment**

The Office for Civil Rights reports that in fiscal year 1997 it received 209 new complaints of sexual harassment in schools—nearly half of the total 431 Title IX complaints received by OCR in FY97.<sup>16</sup> Three national surveys conducted between 1992 and 1994 indicated that sexual harassment is widespread in secondary schools, students consider sexual harassment a serious problem, incidents often occur in public places, and students frequently experience difficulty in getting help even when they report incidents to school personnel.<sup>17</sup>

The topic of sexual harassment is unavoidably a complicated one, and one about which there is substantial misunderstanding. In 1981, OCR issued a memo stating that sexual harassment is prohibited by Title IX, and providing the following definition: "Sexual harassment consists of verbal or physical contact of a sexual nature, imposed on the basis of sex, by an employee or agent of a recipient that denies, limits, provides different, or conditions the provision of aid, benefits, services or treatment protected under Title IX."<sup>18</sup>

In 1992, a U.S. Supreme Court decision in *Franklin v. Gwinnett County School District* established that students could recover money damages in sexual harassment cases under Title IX, but did not solidly establish the circumstances under which a school district could be held liable.

In a later case, *Gebser v. Lago Vista Independent School District*, the Supreme Court limited school districts' liability for teacher-student harassment under Title IX. The Court said that districts cannot be held liable for damages in a private lawsuit over teacher-

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<sup>15</sup> National Coalition for Women and Girls in Education, *Title IX at 25: Report Card on Gender Equity*, June 23, 1997. Available October 19, 1998, at <http://www.edc.org/WomensEquity/title9/report.html>.

<sup>16</sup> U.S. Department of Education, Office for Civil Rights, *Annual Report to Congress: Fiscal Year 1997*. Available October 28, 1998, at <http://www.ed.gov/offices/OCR/AnnRpt97/>.

<sup>17</sup> Nan Stein, "Sexual Harassment in School: The Public Performance of Gendered Violence," *Harvard Educational Review*, Vol. 65, No. 2, Summer 1995. Available December 30, 1998, at <http://www.edreview.org>.

<sup>18</sup> NOW Legal Defense and Education Fund, Mid-Atlantic Equity Consortium, Inc. and the NETWORK, Inc., *An Annotated Summary of the Regulation for Title IX, Education Amendments of 1972*, September 1993, p. 2.

student harassment unless an official in a position to take corrective action knew of the harassment and was deliberately indifferent to it. Following the ruling, Secretary of Education Richard Riley issued a memo urging school districts to remain vigilant in preventing and eliminating sexual harassment in schools and not to interpret the *Lago Vista* decision as a reason to ignore such incidents.

In 1997, OCR issued a guidance document concerning sexual harassment of students by school employees, other students, or third parties. The purpose of the document is to better enable school employees and officials to identify instances of sexual harassment and take steps to prevent its occurrence. The document indicates that OCR will hold schools to a stricter liability standard than the *Gebser* decision—for example, a school could be held liable if officials should have known about the misconduct. (The guidance does not address sexual harassment of employees, although Title IX prohibits that conduct. In such instances, case law applicable to sexual harassment in the workplace under Title VII of the Civil Rights Act of 1964 and Equal Employment Opportunity Commission guidelines apply.<sup>19</sup>)

After *Gebser*, the U.S. Department of Education indicated that it would consider districts out of compliance with Title IX “if they failed to take reasonable steps to prevent and eliminate sexual misconduct.”<sup>20</sup> Such steps include publishing anti-harassment policies and complaint procedures and acting quickly when students make complaints.

Sexual harassment generally falls into one of two categories: *quid pro quo* (“this for that”) or hostile environment. In *quid pro quo* types of harassment, the harasser requires sexual favors of a victim in return for some action by the harasser, or the harasser retaliates against the victim for refusing sexual favors. This type of harassment is equally unlawful whether the student resists and suffers the threatened harm or submits and avoids the threatened harm.<sup>21</sup> Sexual harassment that is termed “hostile environment” is more subtle, and may or may not be intentional. Such behavior must be pervasive or persistent to rise to the level of sexual harassment. It includes repeated unwanted sexual behavior by an employee, by another student, or by a third party that has the intent or the effect of creating an intimidating, hostile, or offensive working or learning environment.

Sexual harassment can be difficult to define. OCR’s guidance document notes that it is not possible to formulate rules applicable to all instances of sexual harassment—the document seeks to provide information that will allow school officials to make appropriate judgments. It is also important to note that some of the instances widely reported in the media—such as a kiss on the cheek by a first-grader—do not constitute sexual harassment. According to OCR, the goal is to end sexual harassment and to prevent its recurrence. Title IX permits the use of a general student disciplinary procedure

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<sup>19</sup> U.S. Department of Education, Office for Civil Rights, Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, *Federal Register*, Vol. 62, No. 49, Thursday, March 13, 1997, p. 12046.

<sup>20</sup> Caroline Hendrie, “Shifting Legal Ground on Harassment Has Made It Harder for Victims To Win,” *Education Week*, December 8, 1998, p. 18.

<sup>21</sup> Sexual Harassment Guidance, p. 12038.

if it is successful in ending sexual harassment or preventing its escalation. If not, schools must take additional steps.<sup>22</sup>

Sexual harassment is determined on a case-by-case basis—however, the following examples could constitute a hostile environment when sexual behavior, or behavior targeted at a person because of his/her gender, creates a hostile or intimidating working or learning environment:

- Negative or offensive comments, jokes, suggestions, or gestures directed to an individual's or group's sex.
- Unwanted sexual looks, leers, or gestures.
- Sexual comments, personal questions, sexual rumors.
- Sexual visuals, posters, graphics, pornography.
- Unwanted touching, hugging, patting, grabbing, or groping.
- Comments about body parts, sexual innuendo, sexual “put-downs.”
- Third-party harassment—consensual behavior that is offensive to other persons who must tolerate it as part of their job or schooling.
- Patterns of classroom conversation about sexual activities of students or teachers, innuendo directed at students or adults because of their gender.

Some of the more important points concerning sexual harassment as noted in the guidance document follow:

- Title IX protects any person from sex discrimination—it applies, in other words, to both males and females.
- It prohibits sexual harassment regardless of the sex of the harasser, even if the harasser and the person being harassed are of the same sex.
- Schools are required by Title IX regulations to have grievance procedures through which students can complain of alleged sex discrimination, including sexual harassment.
- A school is always liable for quid pro quo harassment by a school employee in a position of authority, such as a teacher or administrator, whether or not school officials knew, should have known, or approved of the harassment at issue.<sup>23</sup>
- A school is liable under Title IX for peer sexual harassment if (i) a hostile environment exists in the school's program or activities, (ii) the school knows or should have known of the harassment, and (iii) the school fails to take immediate and appropriate corrective action.<sup>24</sup>
- Grievance procedures should be written in language appropriate to students' ages, easily understood, and widely disseminated. The document notes that simply distributing procedures to administrators or including them in the school's administrative or policy manual may not be an effective way of providing notice, since such publications are usually not widely circulated among all members of the school community.<sup>25</sup>

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<sup>22</sup> Ibid., p. 12034.

<sup>23</sup> Ibid., p. 12039.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid., p. 12045.

- A school is not relieved of its responsibility to respond to a sexual harassment complaint filed under its grievance procedures by the fact that a complaint has been filed with OCR.<sup>26</sup>

The guidance document indicates that if OCR is asked to investigate or resolve incidents of sexual harassment of students, it will consider whether:

1. the school has a policy prohibiting sex discrimination under Title IX and effective Title IX grievance procedures;
2. the school appropriately investigated or otherwise responded to allegations of sexual harassment; and
3. the school has taken immediate and appropriate corrective action responsive to *quid pro quo* or hostile environment harassment.

According to OCR, if the school has taken each of these steps, the case is considered resolved and OCR will take no further action other than monitoring compliance with any agreement between the school and OCR. This holds true whether or not the school was in violation of Title IX.

OCR also suggests that schools make sure that *all* employees—from faculty to school bus drivers and cafeteria workers—are trained to understand what constitutes sexual harassment and how the adopted grievance procedure works. Because most employees have some contact with students, such training could contribute to the prevention of problems.

The issue of peer sexual harassment has been receiving increased attention as several cases have been brought in the last several months, including some in Tennessee. The U.S. Supreme Court in January 1999 began hearing arguments in a Georgia case, *Davis v. Monroe County Board of Education*, and is expected to decide by the end of June whether schools may be sued for peer sexual harassment. In the case, a female student's mother sued the school board over months of sexual harassment and abuse her daughter allegedly received from another fifth grader at her elementary school. The lawsuit states that the student and her mother reported every incident to school officials, but that the boy was never disciplined. After the mother complained to the county sheriff, the boy pleaded guilty to sexual battery.

In addition, the Department of Education and the National Association of Attorneys General have published *Protecting Students from Harassment and Hate Crime*, a guidebook for school districts to follow in designing procedures for the prevention of sexual, physical, and emotional abuse in schools and for the punishment of students and teachers who violate the procedures. The guidebook contains checklists for school officials who are writing policies and provides model policies that have been adopted by state agencies and school districts.<sup>27</sup>

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<sup>26</sup> Ibid.

<sup>27</sup> The guidebook is free from the U.S. Department of Education, 400 Maryland Ave. S.W., Washington, D.C. 20202, (800)872-5327.

### ***Interscholastic and Intercollegiate Athletics***

According to OCR officials, the office receives relatively few complaints each year regarding athletics. However, several related court cases have focused public and media attention on Title IX in the last few years. As a result, athletics is probably the issue most frequently associated with Title IX.

Title IX requires that equal athletic opportunities must be provided for both male and female students. The regulations supporting Title IX specifically prohibit discrimination on the basis of sex in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient. Specifically, the regulations list the following factors as those to be considered in determining whether equal opportunities are available for male and female athletes:

- whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes
- the provision of equipment and supplies
- scheduling of games and practice time
- travel and per diem allowance
- opportunity to receive coaching and academic tutoring
- assignment and compensation of coaches and tutors
- provision of locker rooms, practice, and competitive facilities
- provision of medical and training facilities and services
- provision of housing and dining facilities and services
- publicity

*Intercollegiate Athletics*—In 1979, OCR issued a policy interpretation of the intercollegiate athletic provisions of Title IX and the implementing regulations. The interpretation provided three ways to assess whether intercollegiate athletic programs comply with Title IX:

1. whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments;
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 that sex; or
3. where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.<sup>28</sup>

In January 1996, OCR issued a document entitled “Clarification of Intercollegiate Athletics Policy Guidance” specifically addressing the three-part test in response to

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<sup>28</sup> U.S. Department of Education, Office for Civil Rights, Office of the Secretary, *Federal Register*, “Intercollegiate Athletics: Sex Discrimination,” Tuesday, December 11, 1979, p. 71416.

requests from higher education institutions and from congressional members.<sup>29</sup> The clarification elaborates on the three ways institutions can comply with Title IX.

Beginning October 1, 1996, the Equity in Athletics Disclosure Act requires coeducational colleges and universities that receive federal assistance and sponsor intercollegiate athletics programs to disclose information by gender regarding the number and proportion of athletes compared to the student body, number of athletes in each sport, head and assistant coaches' assignments and salaries by gender, operating expenses, recruiting expenses, sports-related aid, overall revenues and expenses, and total net budget.<sup>30</sup> Institutions must supply the information to anyone who requests it and must make it available to students, prospective students, and the public.<sup>31</sup>

*Interscholastic Athletics*—Although the number of girls participating in high school sports nationally increased from about 294,000 in 1971-72 to about 2.4 million in 1995-96, many people contend that female athletes still have fewer opportunities to participate in interscholastic athletics than their male classmates, and that female athletes are often provided inferior coaching, equipment, and practice facilities.<sup>32</sup> According to advocates like the Women's Sports Foundation, the problems at the intercollegiate level exist at the interscholastic level as well.

Most litigation concerning Title IX has been at the college level, but according to the National Women's Law Center in Washington, D.C., the number of lawsuits at the high school level is increasing.<sup>33</sup> One reason for increasing litigation may be OCR's limited resources. Generally, OCR does not investigate a school's athletic program unless it receives a complaint. Critics argue that the lack of proactive enforcement decreases the motivation for out-of-compliance schools to make their programs more equitable for males and females unless forced to do so.

In Tennessee, as in all other states, an athletic association—Tennessee Secondary School Athletic Association (TSSAA)—serves as the regulatory agency for school athletics. TSSAA administers junior and senior high athletic programs for about 374 schools throughout Tennessee, most of which are public schools. TSSAA is a voluntary, nonprofit, and self-supported organization, which has been in existence since 1925. The association is considered an instrument of the state and its employees are eligible for the same retirement benefits as state teachers.<sup>34</sup>

According to TSSAA officials, it offers the same or comparable sports to both male and female athletes in cross-country, golf, basketball, soccer, track, tennis, and wrestling. The association also offers baseball and girls' softball. If a school doesn't have a girls'

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<sup>29</sup> GAO Report, pp. 5-6.

<sup>30</sup> 34 CFR 668 (1995).

<sup>31</sup> Code of Federal Regulations, Title 34, Part 668.

<sup>32</sup> Kerry A. White, "25 Years After Title IX, Sexual Bias in K-12 Sports Still Sidelines Girls," *Education Week*, June 18, 1997. Available November 17, 1998, at <http://www.edweek.org/ew/vol-16/>.

<sup>33</sup> *Ibid.*

<sup>34</sup> See *Kelley v. Metropolitan County Board of Education*, 293 F. Supp. 485 and *T.C.A.* 8-35-118.

softball team and girls want to play, they are allowed to play baseball with the boys' team.<sup>35</sup>

### Athletic Participation by Gender in Tennessee High Schools, 1997-98

<b>Sport</b>	<b>Males</b>	<b>Females</b>
Baseball	7,848	0
Softball Fast Pitch	0	5,883
Basketball	8,664	6,262
Competitive Spirit Squads	15	962
Cross Country	3,066	2,442
Football	16,115	0
Golf	2,724	1,045
Soccer	4,956	3,648
Tennis	2,148	2,347
Track and Field, Outdoor	4,893	4,809
Volleyball	0	4,140
Wrestling	3,612	0
<b>TOTALS</b>	<b>54,041</b>	<b>31,538</b>

**Source:** Survey conducted by National Federation of State High School Associations (NFHS). Information supplied by the Tennessee Secondary Schools Athletic Association. See [www.nfhs.org](http://www.nfhs.org).

The table above can provide only limited information concerning interscholastic athletics in Tennessee. It would be more instructive to examine a school system's entire athletic program or the program of a specific school within a system. Unlike intercollegiate athletic investigations, when OCR investigates a complaint within an interscholastic athletic program, the investigation may be limited to the program area in which the complaint has been made. To determine a school's or system's compliance with Title IX, OCR would consider one or more of the following areas:<sup>36</sup>

- accommodation of athletic interests and abilities—the three-part test as used for intercollegiate athletics applies here; OCR may request documentation of whether students have been surveyed to determine this.
- equipment and supplies—OCR looks at five factors: quality, amount, suitability, maintenance and replacement, and availability of equipment and supplies.
- scheduling of games and practice time—OCR considers: the number of competitive events per sport; the number and length of practice opportunities; the time of day competitive events are scheduled; the time of day practice opportunities are scheduled; and opportunities to engage in available pre-season and post-season competition.
- travel and per diem allowance—including modes of transportation; housing furnished during travel; length of stay before and after competitive events; per diem allowances; and dining arrangements.
- assignment and compensation of coaches—information collected for this component includes how coaches are assigned and compensated; a comparison of the number of

<sup>35</sup> Interview with Bob Baldrige, Assistant Executive Director, TSSAA, September 1, 1998.

<sup>36</sup> Valerie M. Bonnette and Lamar Daniel, *Title IX Athletics Investigator's Manual*, Washington, D.C.: Office for Civil Rights, U.S. Department of Education, 1990.

coaches and assistant coaches available to each team in the boys' and girls' programs and the ratio of the total number of coaches to the total number of participants.

- locker rooms, practice, and competitive facilities—considerations include: the quality and availability of the facilities provided for practice and competitive events; exclusivity of the use of facilities provided for practice and competitive events; availability of locker rooms; maintenance of practice and competitive facilities; and preparation of facilities for practice and competitive events.
- medical and training facilities and services—items include: the availability of medical personnel and assistance; health, accident, and injury insurance coverage; availability and quality of weight and training facilities; availability and quality of conditioning facilities; and availability and qualifications of athletic trainers.
- publicity—availability and quality of sports information personnel; access to other publicity resources for girls' and boys' programs; and quantity and quality of publications and other promotional devices featuring boys' and girls' programs. (One consideration here is the provision of cheerleaders, pep bands, drill teams, etc.).
- support services—the amount of administrative assistance provided to girls' and boys' programs; the amount of secretarial and clerical assistance provided to boys' and girls' programs.

OCR urges its investigators to learn about state athletic associations when reviewing interscholastic athletics programs because "...it will assist the investigator to be aware that institutions may be following certain athletics associations' rules and procedures, and that these rules and procedures may have the effect of encouraging or discouraging an institution in complying with the Title IX regulation."<sup>37</sup>

### ***Teenage Pregnancy***<sup>38</sup>

Recent data indicates that the U.S. has one of the highest teenage birthrates in the industrialized world and that women in the U.S. who do not finish high school are more than six times as likely to give birth by their 18<sup>th</sup> birthdays than those with a diploma.<sup>39</sup> In Tennessee, the birth rate among teenagers ages 15 to 17 increased about 10 percent between 1985 and 1994.<sup>40</sup> In 1996, Tennessee ranked eighth in the U.S. for the number of births to teenage mothers.<sup>41</sup>

Although most schools have probably ceased blatant discrimination toward pregnant teens and teenage mothers following passage of Title IX, according to the American Association of University Women, "considerable evidence still exists...that many schools avoid making special efforts to retain pregnant teens and teen mothers, and continue to

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<sup>37</sup> Ibid., p. 12.

<sup>38</sup> Much of the information in this section is quoted from a brochure published in 1991 by the U.S. Department of Education, Office for Civil Rights, titled "Teenage Pregnancy and Parenthood Issues Under Title IX of the Education Amendments of 1972."

<sup>39</sup> Jessica Portner, "U.S. Teenage Birthrate Tops Industrial Nations," *Education Week*, May 20, 1998. Available November 9, 1998, at <http://www.edweek.org/ew/vol-17/36birth.h17>.

<sup>40</sup> The Annie E. Casey Foundation, *Kids Count Data Book: State Profiles of Child Well-Being, 1997*, p.119. Also available at <http://www.aecf.org>.

<sup>41</sup> Information from the U.S. Census Bureau, State Rankings, Births to Teenage Mothers. Available January 14, 1999, at <http://www.census.gov/statab/ranks/pg07.txt>.

limit the opportunities available to them.”<sup>42</sup> The U.S. Department of Education has stated that encouraging pregnant or married students to stay in school will benefit the students, their families, and their children, as well as the nation as a whole by ensuring that a generation of young adults is better educated and more economically self-sufficient.

Title IX regulations issued by the U.S. Department of Education specifically prohibit a recipient of federal funding from discriminating against any student on the basis of a student’s pregnancy or childbirth. The regulation prohibits a school from applying any rule concerning a student’s parental, family, or marital status that treats students differently on the basis of sex. Schools may not prohibit pregnant students from participating in any part of their educational program, including specific classes (such as an honors class or program), or from any extracurricular programs (such as interscholastic sports or the debate team).

Students may not be expelled from school because of pregnancy. Schools may implement special instructional programs or classes for these students, but they must be offered on a voluntary basis and be comparable to regular classes. When a student returns to school after giving birth, she must be allowed to return to the same academic and extracurricular status as before.

The law requires that male and female students who may require medical certification for participation in certain activities must be treated equally. A student who is pregnant or has given birth may be required to submit medical certification for school participation only if this type of certification is required for all students who have been under the care of a doctor. A student who has been hospitalized because of childbirth, for example, should not be required to submit a medical certificate for re-entry to school if a certificate is not required of a student who has been hospitalized for other types of medical treatment.

If special programs or special schools exist for students who are pregnant or who have children, schools may not require these students to enroll in or transfer to these programs. Additionally, recipients that offer these special schools or programs must ensure that they provide educational quality and academic offerings similar to those in the regular program.

Although not required by Title IX or the supporting regulations, the Office for Civil Rights suggests encouraging school boards to set policy that clarifies the intention of schools to be responsive to the needs of pregnant, married, or parenting students. The Tennessee School Boards Association has developed a model policy for the treatment of married and/or pregnant students that conforms to Title IX requirements.

### ***Vocational Education***

When the Carl C. Perkins Vocational Education Act of 1984 was amended in 1990, one of its goals was to provide special groups—defined as economically disadvantaged,

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<sup>42</sup> American Association of University Women, *How Schools Shortchange Girls: the AAUW Report, A Study of Major Findings on Girls and Education*, New York: Marlowe and Company, 1992, p. 67.

disabled, limited English, and female students—with necessary services to ensure their participation in vocational education.<sup>43</sup> Under provisions designed to increase opportunities and decrease sex stereotyping and bias for women, Tennessee’s Department of Education has provided competitive grants under the Carl Perkins Act to school systems and to regions for single parent, displaced homemakers, and gender equity programs since 1990. In addition, a statewide program was also funded through a competitive grant process.

In fiscal year 1998, the grants totaled about \$2.1 million, of which about \$500,000 funded sex bias programs. Programs include services such as counseling, testing, training in basic skills, assistance in placement, transportation, and child care. The statewide program largely focused on encouraging students to follow nontraditional courses of study, in addition to providing teacher training in equity issues.

The Tennessee Department of Education audits vocational education programs for compliance with Title IX under the authorization of the Carl Perkins Act. Staff focuses on those programs that have a low percentage of females and audits one special state school annually. All school systems also must complete an annual self-audit that checks compliance with all civil rights laws.

In 1993, the Tennessee Department of Education’s Division of Vocational-Technical Education, published an *Equity Manual*, that provided gender equity information and resources for vocational educators. The report compared enrollment data by gender for 1981-82 and 1990-91. It indicated that vocational enrollment declined significantly for both males and females by 1990-91 and that girls in vocational education were still gravitating toward traditional fields of study, such as health occupations, home economics, and office education.

In October 1998, the reauthorized Carl Perkins Act deleted provisions in the previous law that set aside funds for sex bias and stereotyping and single parent programs.<sup>44</sup> Under the previous law states were required to designate a staff person whose sole job was to coordinate programs to eliminate sex bias and stereotyping in vocational education and to promote enrollments in nontraditional occupational career programs. In addition, the coordinator was to gather, analyze, and disseminate data on the “adequacy and effectiveness of vocational education programs in the State in meeting the education and employment needs of women.”

The new vocational legislation still requires that at least \$60,000 of the vocational education block grant awarded to a state be “available for services that prepare individuals for nontraditional training and employment.”<sup>45</sup> Other provisions require that states measure “student participation in and completion of vocational and technical education programs that lead to nontraditional training and employment.” However, no references to gender equity or sex bias remain in the federal law. Department of

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<sup>43</sup> Ibid., p. 76.

<sup>44</sup> H.R. 1853, Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998.

<sup>45</sup> Ibid.

Education officials are uncertain how current programs will change following the year of transition the federal government provides. It is possible that some local systems or nonprofit agencies will choose to extend current programs absent federal money to do so.

***Other Gender Equity Issues Related to Title IX***

*Bias in Testing*—The regulations supporting Title IX prohibit testing that favors one sex, as well as discrimination in the use of tests:<sup>46</sup>

A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

According to the American Association of University Women, that groups score differently on a test does not necessarily lead to the conclusion that the test is biased. However, a test may be considered biased when score differences are related to its validity—that is, if boys and girls know about the same amount of math but boys’ scores are always much higher, the test can be considered biased. The content of tests may also be biased, if, for example, references to one sex exceed those represented by the other sex, or if the sexes are portrayed stereotypically.<sup>47</sup>

*Course selection*—According to the Office for Civil Rights, with certain exceptions, elementary and secondary schools may not assign students to separate classrooms or activities, or prevent them from enrolling in courses of their choice, on the basis of sex. Segregation of students is allowed under certain circumstances:

- In music classes, schools may have requirements based on vocal range or quality, which may result in all-male or all-female choruses.
- In elementary and secondary schools, portions of classes that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.
- In physical education classes or activities, students may be separated by sex when participating in sports where the major purpose or activity involves bodily contact (for example, wrestling, boxing, rugby, ice hockey, football, and basketball).
- Students may be grouped in physical education classes by ability, if objective standards of individual performance are applied. This may result in all-male or all-female ability groups.
- If the use of a single standard to measure skill or progress in a physical education class has an adverse effect on members of one sex, schools must use appropriate

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<sup>46</sup> 34 CFR 106.38(b).

<sup>47</sup> American Association of University Women, p. 91.

standards that do not have such an effect. For example, if the ability to lift a certain weight is used as a standard for assignment to a swimming class, application of this standard may exclude some girls. The school would have to use other, more appropriate standards to make the selection for that class.

- If a school system operates separate educational programs or activities for members of each sex in accordance with these exceptions, it must ensure that the separate courses, services, and facilities are comparable.<sup>48</sup>

Schools must ensure that counseling materials and procedures do not discriminate on the basis of sex. Schools may not use tests and other materials that are different or require different treatment on the basis of sex, unless the materials cover the same occupations and interest areas and are essential to eliminate sex bias. If a particular class or course of study has a substantially disproportionate number of members of one sex, schools must ensure that the disproportion is not the result of discrimination in counseling or appraisal materials by counselors.<sup>49</sup>

*Female students in math and science classes*—Some researchers have expressed concern that females frequently score lower than males in mathematics and science and that females may choose not to take advanced mathematics and science courses. According to the Office of Educational Research and Improvement, girls in high school are less likely to receive the necessary academic preparation for college study in math and the physical sciences.<sup>50</sup> A recent study published by the American Association of University Women found that although similar numbers of high school boys and girls take math and science classes, boys still outnumber girls in physics classes; in school-to-work programs, girls still tend toward traditional female occupations; and on exams such as the National Assessment of Educational Progress, boys still score higher than girls.<sup>51</sup>

### ***Other States' Enforcement of Title IX and Gender Equity Issues***

***Florida*** may have the most detailed state laws concerning educational equity. The Florida Educational Equity Act became law in June 1984, and was amended in 1993 to mandate stronger monitoring and enforcement for gender equity in athletics. The law affects grades K-12, as well as post-secondary schools. It prohibits discrimination on the basis of race, national origin, sex, handicap, or marital status against a student or an employee in the state system of public education. Much of the content of the U.S. Department of Education's Title IX regulations is reiterated in the Florida law.

The law initiated a planning process conducted in three-year cycles. The first cycle required local agencies to develop a general overview of their compliance status in the areas of policy, enrollment patterns, staffing patterns, financial aid, and athletics. The

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<sup>48</sup> Office for Civil Rights, *Student Assignment in Elementary and Secondary Schools and Title IX*, Washington, D.C.: U.S. Department of Education, 1988.

<sup>49</sup> 34 CFR 106.38(c).

<sup>50</sup> Patricia B. Campbell, Ph.D. and Jennifer N. Storo, *Whose Responsibility is it? Making Coeducation Work in Math & Science: The Administrator's Role*, Office of Educational Research and Improvement, U.S. Department of Education: Washington, D.C., 1994, p. 1.

<sup>51</sup> Debra Viadero, "AAUW Study Finds Girls Making Some Progress, But Gaps Remain," *Education Week*, 10/14/98. Available December 9, 1998, <http://www.edweek.org/ew/vol-18/>.

second three-year cycle focused on mathematics, and the third on chemistry, physics, and biological sciences. The fourth cycle concentrated on high school and middle school mathematics; the fifth on bringing athletics programs into compliance with gender equity requirements; and the sixth on student performance gaps in reading.

Florida's law creates an Office of Equal Educational Opportunity within the Department of Education. The law requires all local boards of education to develop and submit plans during each three-year cycle for implementation of the law, as well as data and information necessary to determine compliance. The law allows the Commissioner of Education to revoke colleges' or districts' eligibility for competitive state grants if found to be out of compliance.<sup>52</sup>

**California** state law requires the Superintendent of Public Instruction to review and revise the policies and practices of department programs that provide services to school districts in order to promote improved gender equity, and requires school districts or community college districts to submit timely, complete, and accurate compliance reports to the Department of Education as required. Beginning in 1993, the Department of Education began producing an annual Coordinated Compliance Review Manual, which includes information on compliance with sex discrimination provisions. The superintendent is to review 20 school districts annually for compliance with sex discrimination laws and regulations.

California's law also prohibits the use of public funds in connection with athletic programs that do not provide facilities and opportunities for participation by both sexes on an equitable basis.

**Michigan** state law requires boards of education, prior to accreditation of all schools in a district, to ensure that all information regarding each school building is disaggregated by gender and that gender equity issues are addressed as part of the planning, development, implementation, evaluation, and updating of the school improvement plan of each school. The law also requires the state department of education to provide advice and technical assistance to districts or schools on request. Several years ago the state had an Office for Sex Equity in Education, but the office was disbanded.

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<sup>52</sup> The Florida Educational Equity Act may be found at [http://www.state.fl.us/citizen/documents/statutes/1997/ch0228/E2001\\_.HTM](http://www.state.fl.us/citizen/documents/statutes/1997/ch0228/E2001_.HTM). The rules implementing the act may be found at <http://www.firn.edu/doe/eeop/FEEARules.html>.

## Analysis and Conclusions

### ***Federal Implementation and Enforcement of Title IX***

**The federal government has not fully implemented and enforced Title IX. In recent years, the federal government has sent “mixed signals” to states about Title IX.** Although Title IX became law more than 25 years ago, federal implementation and enforcement have been somewhat uneven. Some federal agencies that should have issued federal regulations addressing Title IX have failed to do so. (See page 3.) In addition, critics contend that many educational institutions, having embraced Title IX in some respects, still do not comply with the law in many areas.

The Clinton Administration has indicated a renewed interest in Title IX, but federal agencies have been slow to respond. On June 17, 1997, the 25<sup>th</sup> anniversary of Title IX’s passage, President Clinton issued a memorandum directing the heads of executive departments and agencies to “develop vigorous, new Title IX enforcement plans.” The memorandum directed the executive departments and agencies to consult with the Attorney General’s office and then report to the president within 90 days “on measures to ensure effective enforcement of Title IX. This should include a description of department or agency priorities for enforcement, methods to make recipients of Federal financial assistance aware of their obligation not to discriminate, and grievance procedures to handle Title IX complaints.” The Department of Justice refused to disclose whether or which departments had complied with this direction.

Within months, the Department of Justice began drafting new Title IX regulations. According to Justice staff, the new regulations, which have not been finalized, likely will be similar to the current Department of Education regulations. The real significance of the new regulations may be that they will address all entities that are subject to Title IX, rather than just traditional educational institutions.<sup>53</sup> The Department of Justice was unable to release information regarding which federal agencies had fulfilled the president’s directive and, to date, the White House has issued no new statements regarding Title IX.

Another federal communication indicates some renewed Title IX concerns. In an August 1998 letter to state departments of education, Richard Riley, Secretary of Education, emphasized the “fundamental obligations of schools and their employees to take prompt action to address instances of sexual harassment.” The letter, written in response to a recent Supreme Court decision that limited the availability of damages to a student in a Title IX lawsuit against a school district,<sup>54</sup> reiterates school districts’ responsibilities in preventing and eliminating sexual discrimination.

**Even without vigorous federal enforcement of Title IX, most recipients of federal funding that conduct educational programs and activities are still subject to its provisions.<sup>55</sup>** As a condition for receiving federal funding, state departments and agencies are required to

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<sup>53</sup> Interview with Andrew Strojny, Deputy Chief, Coordination and Review Section, U.S. Department of Justice, October 1, 1998. Interview with Beth Pinkus, U.S. Department of Justice, November 6, 1998.

<sup>54</sup> *Gebser v. Lago Vista Independent School District*, 1998 WL 323555 (U.S.).

<sup>55</sup> See footnote 2 for exceptions.

sign written assurances stating that they agree to comply with Title IX and other applicable civil rights laws. These assurances obligate recipients to comply with civil rights laws for the entire period covered by the federal assistance.<sup>56</sup> Therefore, whether or not the federal department providing assistance has issued the appropriate regulations or actively enforces Title IX, a recipient of its funding for educational programs and activities is still obligated and has agreed in writing to comply with Title IX.

***Tennessee's Implementation and Enforcement of Title IX*** With little federal oversight, many state agencies may have overlooked their responsibilities under Title IX.

In addition to signing written assurances that obligate compliance with Title IX, regulations require recipients of federal funds:

- to adopt and publish grievance procedures “providing for the prompt and equitable resolution of student and employee complaints” under Title IX.
- to designate at least one employee to coordinate Title IX compliance, including investigating complaints. Recipients must inform students and employees of the coordinator’s name, office address, and phone number.
- to regularly notify students, employees, and others that it does not discriminate on the basis of sex in the educational programs or activities it operates, and that it is required by Title IX not to discriminate in this manner. Others who must be informed include applicants for admission and employment, parents of elementary and secondary students, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient.<sup>57</sup>

The regulations supporting Title VI of the Civil Rights Act of 1964 specifically prohibit denying a person on the basis of race, color, or national origin the opportunity to participate as a member of a planning or advisory body that is an integral part of the program. Title IX and its implementing regulations do not specifically refer to denial of participation on the basis of sex on planning or advisory bodies, such as local boards of education or other decision-making bodies. However, such action would constitute discrimination on the basis of sex, which Title IX expressly prohibits.

**A recent state law, Public Chapter 758 (1998), requires state entities that are subject to Title IX to submit annual implementation plans to the Department of Audit beginning June 1, 1999.** A sample implementation plan begins on page 32. Before beginning a plan, entities should evaluate their current policies and practices regarding Title IX. The first Title IX federal regulations issued in 1975 required educational institutions to conduct self-evaluations within one year of the regulations’ effective date. The same initial steps could be taken by entities that are subject to Title IX today to determine whether they are complying with the federal law. As a preliminary step to developing an implementation plan, an affected entity should:

- evaluate its current policies and practices with regard to sex discrimination, and the effects concerning admission of students, treatment of students, and employment of

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<sup>56</sup> 34 CFR 106.4.

<sup>57</sup> 34 CFR 106.8 and 106.9.

both academic and non-academic personnel working with its education program or activity;

- modify any of these policies and practices that do not meet the requirements of Title IX;
- and take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to the previous policies and practices.

Once an entity has performed a self-evaluation of its processes and developed a plan to ensure enforcement of Title IX, it can begin the process of designing an implementation plan for submission as required by Public Chapter 758.

#### ***Tennessee Department of Education***

As a state entity that receives federal funding, the Tennessee Department of Education is subject to the provisions of Title IX and is required under state law in Public Chapter 758 (1998) to develop an implementation plan, including implementation plans of any subrecipients of federal funds. The department's subrecipients are the local education agencies.

**School systems' current knowledge and implementation of Title IX vary throughout the state.** In the fall of 1998, the Office of Education Accountability conducted a survey of the 138 school systems to determine:

- whether they have adopted required grievance procedures for handling civil rights complaints
- whether they have designated Title IX coordinators
- the methods used to notify students and employees of their rights under Title IX
- whether the systems keep a central log of Title IX complaints and/or maintain a separate log at each school within the system
- the amount of Title IX training employees have received in the last two years

A total of 131 of the 138 local education agencies responded to the survey. The results are summarized below. (See Appendix D for results by system.)

*Grievance Procedures.* Most school systems have adopted some type of grievance procedure for handling civil rights complaints. Federal regulations do not require that separate grievance policies be used for various types of complaints. Therefore, systems that have adopted procedures for other civil rights laws, such as Title VI, can use them for Title IX complaints as well. However, survey results indicated that about 20 of the responding systems attached policies that contained no grievance procedures or addressed employees only, with no reference to students. Some systems failed to attach a copy of their procedures as requested. Grievance procedures that were received vary in quality.

*Title IX Coordinators.* The majority of responding systems indicate that they have designated Title IX coordinators as required by Title IX regulations (125 of the 131 respondents).

*Methods of Notification.* Systems were asked how they notify students and employees of their rights under Title IX and were asked to select any of the following: student handbooks, employee handbooks, posters, brochures, and other. Most respondents publish information about Title IX in student handbooks (108 systems) and/or use posters

(84 systems); 62 systems publish pertinent information in employee handbooks; and 58 systems indicate that they use “other” methods. Other methods included administrative bulletins/notices to staff, board policies, newspaper notices, employee applications, video presentations, school newsletters, school assemblies, staff meetings, policies/procedures given to all employees and sent home to all parents/guardians, notice given in all student materials, inservice activities for teachers, public bulletin boards, and report card inserts.

*Title IX Complaint Logs.* Systems were asked whether they keep a log of Title IX complaints at the system level or whether each school within the system maintains its own log. Most respondents indicated that they maintain a central log (113 systems); 19 systems indicated they maintain separate school logs. A few systems use both methods. Many systems noted that they have never received any Title IX complaints.

*Training.* Systems were asked whether they have conducted or received Title IX training within the last two years. If so, they were asked to indicate what type of employee received the training and who conducted it. According to the respondents, 82 systems conducted or received some type of training concerning Title IX within the last two years; 49 systems indicated that they did not receive or conduct any Title IX training during that time. Respondents indicated the following persons attended Title IX training: teaching staff, professional and administrative staff, students, supervisors, guidance counselors, board members, new employees, non-certified staff, vocational directors, bus drivers, students, and custodial employees. Only 10 respondents indicated that they train all employees annually. Training was conducted by a variety of persons: system personnel, supervisors of instruction, Department of Education personnel, guidance counselors, superintendents, Title IX coordinators, Tennessee School Boards Association staff, personnel from the federal Office for Civil Rights, transportation directors, and personnel from the Southeastern Equity Center. (See Appendix B for information on accessing training resources.)

**Some school systems in Tennessee have been sued for peer sexual harassment under the provisions of Title IX.** Memphis City Schools settled a lawsuit out of court in 1998, paying \$330,000 to the family of a first-grader who was allegedly sexually assaulted on her school playground by a group of classmates and \$50,000 to the family’s attorney. In the suit against the school system, the girl’s family said the school board and the school failed to protect her against sexual harassment that led to a sexual assault. As part of the settlement, the school system has implemented measures to ensure that students, parents, and employees are aware of their rights under Title IX.

In July 1998, a suit was brought against Metropolitan-Davidson County Schools by a 12-year old female student who alleges harassment by two male classmates in a local elementary school. The suit further alleges that the school system was aware of the harassment and did nothing to prevent it. District Court Judge Robert Echols refused to dismiss the lawsuit and ruled that Title IX “gives sweeping protection against sexual discrimination from any source.”<sup>58</sup> The suit has been postponed because of a pending Supreme Court case with similar issues.

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<sup>58</sup> Catherine Trevison, “Pupil gets day in court in sex case,” *The Tennessean*, July 22, 1998, p. 1A.

**The Tennessee Secondary School Athletic Association does not proactively inform school systems about their responsibilities under Title IX.** TSSAA has taken the position that it is each school's responsibility to meet Title IX requirements. Association officials indicate that its written policies are gender-sensitive, but do not necessarily incorporate Title IX requirements. In addition, TSSAA staff does not conduct training for schools regarding Title IX and engages in only informal means of surveying to determine students' interest levels in specific sports.<sup>59</sup> However, since the association is considered an instrument of the state, it would seem appropriate for TSSAA to take some responsibility for ensuring that the schools under its direction are in compliance with Title IX. Unlike Tennessee, Kentucky state regulations mandate that member schools of its state athletic association be in compliance with Title IX as a condition of membership.

### ***Higher Education in Tennessee***

The Tennessee Board of Regents (TBR), which governs 21 higher education state institutions, has adopted guidelines that supplement board policies for sexual discrimination and sexual harassment of both students and employees. The guidelines and policies are applicable to all TBR institutions and technology centers, as well as TBR offices. A review of TBR institutions indicates that campuses have used the guidelines and policies extensively in developing their own policies. Similarly, the University of Tennessee Board of Trustees, which governs all UT institutions, adopts university-wide policy statements; campuses then implement these with separate procedure statements. For nondiscrimination and affirmative action policies, for example, each UT school has a campus-specific procedure for receiving and acting on complaints.

Institutions inform students and employees of their rights under Title IX by including their policies and procedures in student and faculty handbooks, as well as other university publications; some also include them on their websites. All TBR and UT institutions have designated Title IX coordinators—many also serve as affirmative action director, human resources director, and/or Title VI coordinator.

The University of Tennessee, Knoxville, established the Office of Diversity Resources and Educational Services (DRES) to receive and investigate complaints of discrimination by students, employees, applicants for employment, applicants for admission, and other participants of university programs or activities. DRES receives complaints of discrimination on the basis of race, sex, religion, national origin, age, disability, or veteran status. In addition, the organization provides educational programs and workshops for faculty, staff, and students concerning diversity issues. DRES also works with faculty and staff volunteers who serve as information contacts and referral sources between the various departments and DRES.

**A review of several universities' and colleges' web pages indicates that information about students' and employees' rights under Title IX is not always readily accessible or easily found.** Although some of the institutions' websites include their sexual discrimination and harassment policies as well as inform students and employees how to make complaints, some provide limited information or none at all. In some cases, the information may exist, but is difficult to locate. Providing easily accessed information on a website is one

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<sup>59</sup> Interview with Bob Baldrige, Tennessee Secondary Schools Athletic Association, September 1, 1998.

method of notifying students and employees of their rights under Title IX and other civil rights laws.

**Data for 1996-97 indicates that of the nine Division I state institutions in Tennessee only Tennessee Technological University provides participation opportunities for female athletes in numbers proportionate to the general student body—one of the tests used to assess whether intercollegiate athletics comply with Title IX. The institutions generally spent amounts proportionate to the percentage of male and female athletes for operating expenses, recruiting, and financial aid. However, female athletes' programs receive significantly fewer dollars than men's programs.** The information for all Division I state universities in Tennessee, taken from information the universities supplied under the Equity in Athletics Disclosure Act, is located on pages 26-27.

According to several sources, including the Women's Sports Foundation and data reported under the Equity in Athletics Disclosure Act, despite the fact that Title IX has been in existence for more than 25 years, few institutions provide participation opportunities for female athletes in numbers proportionate to the general student body. In 1995-96, women comprised 53 percent of all undergraduate students, but made up only 37 percent of National Collegiate Athletic Association (NCAA) athletes. A survey conducted by the Women's Sports Foundation found that female athletes in the study received significantly fewer dollars in terms of scholarship aid, recruitment spending, operating expenditures, and coaching resources than male athletes during 1995-96.<sup>60</sup>

A recent study conducted by *The Chronicle of Higher Education* found that women athletes made slight gains during 1996-97 in participation and athletic budgets. Men still received almost twice as much money as women for operating expenses, recruiting, and sports-related aid, but women's athletic programs and budgets grew at a faster rate.<sup>61</sup> According to the survey results, 36 NCAA Division I institutions achieved "substantial proportionality" in 1996-97, up from 27 in 1995-96.

It has been difficult for institutions that sponsor Division I-A football to achieve substantial proportionality because of the large expense required to sponsor football programs. Some critics blame football programs, because of their large rosters and high expenses, for skewing the data in favor of men's programs. Some also claim that football programs subsidize institutions' entire athletic programs, but data provided through the Equity in Athletics Disclosure Act confirms that most college football programs actually lose money. Of all Division I programs at state institutions in Tennessee, for example, only the University of Tennessee, Knoxville, receives profits from its football program.

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<sup>60</sup> Women's Sports Foundation, *Gender Equity Report, Executive Summary*. Available July 23, 1998, at <http://www.lifetimetv.com/WoSport/stage/GENEQ97/>.

<sup>61</sup> Jim Naughton, "Women's Teams in NCAA's Division I See Gains in Participation and Budgets," *The Chronicle of Higher Education*, April 3, 1998. Available January 11, 1999, at <http://chronicle.com/che/data/articles.dir/art-44.dir/issue-30.dir/30a00101.htm>.

**Austin Peay State University**

	Undergraduate Enrollment		Athletes		Operating Expenses		Recruiting Expenses		Sports-related Aid		Football		Total budget net (000)
	Number	Proportion	Number	Proportion	Amount (000)	Proportion	Amount (000)	Proportion	Amount (000)	Proportion (000)	Revenues (000)	Expenses (000)	
Men	879	41%	154	67%	\$1,384	77%	\$27	66%	\$1,133	69%	\$498	\$1,441	-\$1,590
Women	1,278	59%	76	33%	\$421	23%	\$14	34%	\$513	31%			-\$864

**East Tennessee State University**

	Undergraduate Enrollment		Athletes		Operating Expenses		Recruiting Expenses		Sports-related Aid		Football		Total budget net (000)
	Number	Proportion	Number	Proportion	Amount (000)	Proportion	Amount (000)	Proportion	Amount (000)	Proportion (000)	Revenues (000)	Expenses (000)	
Men	3,816	42%	188	75%	\$1,997	72%	\$78	72%	\$941	71%	\$449	\$1,057	-\$1,204
Women	5,344	58%	63	25%	\$774	28%	\$30	28%	\$383	29%			-\$768

**Middle Tennessee State University**

	Undergraduate Enrollment		Athletes		Operating Expenses		Recruiting Expenses		Sports-related Aid		Football		Total budget net (000)
	Number	Proportion	Number	Proportion	Amount (000)	Proportion	Amount (000)	Proportion	Amount (000)	Proportion (000)	Revenues (000)	Expenses (000)	
Men	5,685	45%	193	65%	\$617	71%	\$110	67%	\$891	71%	\$1,854	\$939	\$1,249
Women	6,950	55%	104	35%	\$249	29%	\$55	33%	\$370	29%			-\$821

**Tennessee State University**

	Undergraduate Enrollment		Athletes		Operating Expenses		Recruiting Expenses		Sports-related Aid		Football		Total budget net (000)
	Number	Proportion	Number	Proportion	Amount (000)	Proportion	Amount (000)	Proportion	Amount (000)	Proportion (000)	Revenues (000)	Expenses (000)	
Men	2,701	39%	173	67%	\$473	69%	\$78	84%	\$724	71%	\$773	\$1,231	-\$972
Women	4,312	61%	86	33%	\$211	31%	\$15	16%	\$299	29%			-\$742

**Tennessee Technological University**

	Undergraduate Enrollment		Athletes		Operating Expenses		Recruiting Expenses		Sports-related Aid		Football		Total budget net (000)
	Number	Proportion	Number	Proportion	Amount (000)	Proportion	Amount (000)	Proportion	Amount (000)	Proportion (000)	Revenues (000)	Expenses (000)	
Men	3,280	54%	188	59%	\$419	65%	\$71	76%	\$747	64%	\$228	\$899	-\$1,063
Women	2,835	46%	129	41%	\$221	35%	\$22	24%	\$420	36%			-\$723

<b>University of Memphis</b>													
	Undergraduate Enrollment		Athletes		Operating Expenses		Recruiting Expenses		Sports-related Aid		Football		Total budget net (000)
	Number	Proportion	Number	Proportion	Amount (000)	Proportion	Amount (000)	Proportion	Amount (000)	Proportion (000)	Revenues (000)	Expenses (000)	
Men	4,236	43%	222	73%	\$1,046	73%	\$224	74%	\$1,475	72%	\$4,217	\$4,416	\$1,490
Women	5,573	57%	83	27%	\$384	27%	\$79	26%	\$569	28%			-\$1,921

<b>University of Tennessee, Chattanooga</b>													
	Undergraduate Enrollment		Athletes		Operating Expenses		Recruiting Expenses		Sports-related Aid		Football		Total budget net (000)
	Number	Proportion	Number	Proportion	Amount (000)	Proportion	Amount (000)	Proportion	Amount (000)	Proportion (000)	Revenues (000)	Expenses (000)	
Men	2,373	44%	222	71%	\$625	71%	\$86	75%	\$1,018	69%	\$193	\$1,315	-\$1,721
Women	3,029	56%	92	29%	\$252	29%	\$29	25%	\$462	31%			-\$966

<b>University of Tennessee, Knoxville</b>													
	Undergraduate Enrollment		Athletes		Operating Expenses		Recruiting Expenses		Sports-related Aid		Football		Total budget net (000)
	Number	Proportion	Number	Proportion	Amount (000)	Proportion	Amount (000)	Proportion	Amount (000)	Proportion (000)	Revenues (000)	Expenses (000)	
Men	9,474	50%	342	60%	\$3,876	78%	\$774	85%	\$1,702	57%	\$26,352	\$7,340	\$12,335
Women	9,351	50%	224	40%	\$1,123	22%	\$141	15%	\$1,272	43%			-\$3,806

<b>University of Tennessee, Martin</b>													
	Undergraduate Enrollment		Athletes		Operating Expenses		Recruiting Expenses		Sports-related Aid		Football		Total budget net (000)
	Number	Proportion	Number	Proportion	Amount (000)	Proportion	Amount (000)	Proportion	Amount (000)	Proportion (000)	Revenues (000)	Expenses (000)	
Men	2,322	43%	171	65%	\$219	65%	\$44	73%	\$820	66%	\$57	\$871	-\$1,250
Women	3,046	57%	92	35%	\$118	35%	\$16	27%	\$424	34%			-\$732

Source: *The Chronicle of Higher Education*, data taken from information supplied by the members of Division 1 of the National Collegiate Athletic Association under the Equity in Athletics Disclosure Act, which took effect October 1, 1996. Data is for the 1996-97 school year. This information is available at <http://chronicle.com/che-data/infobank.dir/factfile.dir/ncaa/98/ncaa8.htm>, available 10/20/98.

A 1996 General Accounting Office report found that women continue to achieve incremental gains in intercollegiate athletics, but that many women's programs trail behind men's programs in areas such as the percentage of female head coaches, coaches' salaries, and the proportion of women student athletes to the total undergraduate enrollment.<sup>62</sup>

GAO researchers conducted a survey during the course of the study to identify state gender equity initiatives and found a variety of approaches among states. The report noted the conditions that respondents believed facilitate gender equity: a commitment from those in leadership positions, state gender equity legislation, and a high participation by girls in K-12 athletics. Respondents believed that conditions that could hinder gender equity were: insufficient funds; the presence of football programs, in which women generally do not participate; and the perception that women lack the enthusiasm for athletics that men possess.<sup>63</sup>

***Other state departments and agencies subject to Title IX***

**For the most part, state agencies appear to be unaware of responsibilities they may have to comply with Title IX.** In October 1998, the Office of Education Accountability surveyed state agencies (other than the Department of Education and the university systems) that receive federal funding to determine whether the agencies conducted educational programs or activities and, if so, whether they were implementing Title IX. The results were varied, with several state agencies indicating that they conduct some type of educational program or activity, but few indicating familiarity with or implementation of Title IX.

**A recent Attorney General's Opinion confirms that state agencies that receive federal funding and conduct an education program or activity must comply with Title IX. Federal financial assistance does not have to originate with the U.S. Department of Education.** The Comptroller of the Treasury requested an attorney general's opinion in the fall of 1998 in an attempt to clarify state agencies' Title IX responsibilities. (See Appendix C for a complete copy of the resulting opinion issued in February 1999.) According to the opinion:

1. As a general rule, if a state agency directly or indirectly receives federal financial assistance and conducts an education program or activity that benefits from the assistance, the state agency must comply with Title IX throughout the operations of the entire agency, although there may be exceptions to this rule. To determine whether and how Title IX applies to a state agency will require a fact-specific inquiry.
2. Title IX will apply even if the agency receives federal financial assistance from a source other than the United States Department of Education.
3. One criterion for application of Title IX is that the federal financial assistance directly or indirectly benefit an agency's education program or activity. The federal financial assistance need not be earmarked for the education program or activity for Title IX to apply.<sup>64</sup>

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<sup>62</sup> GAO Report, p. 3.

<sup>63</sup> Ibid., p. 12.

<sup>64</sup> Attorney General Opinion 99-035, February 19, 1999.

**In September 1998, the Department of Finance and Administration released details of Policy 22, a state-developed approach to uniform monitoring of subrecipients of state and federal funding. The department developed core areas to ensure uniformity in monitoring efforts, including the verification that civil rights requirements are being met.** In addition, Policy 22 will require each state agency that funds subrecipients to develop a plan to address their monitoring needs. Plans should identify subrecipients, describe the process and risk criteria used to select and prioritize subrecipients for monitoring purposes, include sample monitoring manuals for each state and/or federal program, and identify a staffing plan. Once an agency has identified whether subrecipients are low, medium, or high risk, Policy 22 directs them to perform various tests to determine compliance. Under the civil rights component, tests for low-risk subrecipients include:

Observing whether notices or non-discrimination are posted in conspicuous places, available to all employees and applicants.

Reviewing training provided to subrecipient staff on nondiscriminatory issues and policy.

In addition, tests for medium and high risk subrecipients include the above, in addition to the following:

Reviewing subrecipients' policies and procedures relevant to all Civil Rights laws.

Reviewing assurance of compliance signed by the subrecipient.

Confirming with appropriate agencies if any formal complaints against the subrecipient have been filed.

Conducting interviews with program participants regarding the subrecipient's nondiscrimination practices.

Reviewing program participants' records to determine that eligibility requirements are applied uniformly, applications for assistance are processed equally, outside referrals are made on a non-discriminatory basis, and records are maintained uniformly for all individuals.

Testing to determine how the subrecipient disseminates information concerning the program and services to effectively reach minority communities.<sup>65</sup>

The adoption of Policy 22 should improve state agencies' awareness of their civil rights responsibilities, including those under Title IX.

## **Recommendations**

### ***Legislative Recommendations***

**The General Assembly may want to add Title IX responsibilities to the duties of the Human Rights Commission.** The Commission is already responsible for investigating Title VI and other civil rights complaints. Title IX complaints could be filed with state or federal departments, but would be reviewed by the Human Rights Commission. State departments would still be responsible for ensuring that they comply with their Title IX responsibilities.

**The General Assembly may want to consider adopting more specific gender equity legislation.** The General Accounting Office indicates that this type of legislation may

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<sup>65</sup> Department of Finance and Administration, *Tennessee Subrecipient Monitoring Manual*, 1998, Nashville: Resource Development and Support, pp. 1-11.

better facilitate gender equity in education programs. More specific gender equity legislation could require that school districts examine various programs with regard to their progress in achieving gender equity, create plans to implement the law, and provide specific data to the Department of Education on a regular basis. The state of Florida adopted such legislation in 1984. Currently, T.C.A. 49-6-3109 requires only that no person shall be refused admission to or excluded from any Tennessee public school because of race, creed, color, sex, or national origin.

**The General Assembly may want to allow appropriate state agencies to amend their Title VI plans to include Title IX activities.** Although Title VI and Title IX cover different types of complaints, both address matters of equity. Title IX was actually based on Title VI and Title IX regulations adopt the procedural provisions applicable to Title VI. Title IX regulations do not require the adoption of separate grievance procedures—an agency that is subject to both federal laws may be able to use the same set of grievance procedures. Similarly, the methods already being used to notify recipients and subrecipients of their rights under Title VI could be modified to include Title IX rights. In addition, regulations do not prohibit persons designated as Title VI coordinators from handling Title IX issues as well. Finally, if the Tennessee Human Rights Commission is designated to handle Title IX complaints, allowing existing plans to be revised would require fewer staff resources for both the Commission and the state agencies submitting plans.

**The General Assembly may want to require that schools comply with Title IX as a condition of membership in the Tennessee Secondary Schools Athletic Association.** The state of Kentucky requires compliance with Title IX prior to membership in its state athletic association. Such a requirement would require both schools and TSSAA to be more aware of Title IX responsibilities, and could decrease the possibility of litigation.

#### ***Administrative Recommendations***

**The Department of Education should ensure that school systems receive adequate training related to Title IX.** Training is important for all staff who come in regular contact with students. The Office of Education Accountability's Title IX survey indicated that few schools conduct training to that extent and that some schools conduct no training.

**The Department of Education should revise its Title VI data collection system to include information relevant to Title IX.** The department, in September 1998, adopted a policy statement on data collection and analysis for measuring compliance with Title VI. The policy established procedures that the department and subrecipients of federal and state funds are required to use in assessing programs and activities to ensure access and opportunity for all students. The department should include appropriate measures to ensure Title IX compliance. Such measures might include, for example, athletic participation by gender and sport, the number of male and female students in nontraditional areas of study, and the number of male and female students in advanced math and science classes.

**All school systems should adopt administrative procedures that would ensure compliance with Title IX.** Some Tennessee school systems have adopted procedures that require, for example, principals to sign a standard form that informs the local board of education of

the steps taken to comply with civil rights policies. Some require that all employees sign a compliance training record that indicates they have received Title IX training and understand their responsibilities. Some systems that include civil rights policies in their student handbooks require parents to sign and return a form indicating that they have read the policies and understand them.

**School systems should train all their employees, including school bus drivers, cafeteria workers, and custodians, about their nondiscrimination policies and grievance procedures.** Several school systems provide training for administrators and principals; some provide training for teaching staff. According to the OEA survey, however, few provide training for other employees. The Office for Civil Rights suggests that such training is important for all employees who come into contact with students.

**Tennessee's universities and colleges should prominently feature information regarding their nondiscrimination policies and grievance procedures, as well as their responses to the Equity in Athletics law, on their websites.** Doing so would better ensure that both students and faculty/staff are aware of their rights under Title IX.

## A Sample Title IX Implementation Plan

The following sample manual is based partly on the Title VI implementation plan in *Tennessee State Agencies and Title VI of the Civil Rights Act of 1964* published in 1994. Language in italics is explanatory concerning what each section of an implementation plan should contain. Each state agency or department that is subject to Title IX must tailor the plan to fit its programs.

### Part 1: Overview of Title IX Enforcement Program

- I. **Overview of (name of entity)**—*Provide a general overview of the entity’s programs and activities.*
  - A. **Budget information:** *Supply information about the entity’s budget, including the amount of state and federal dollars it receives for various programs.*
  
- II. **Organization and Designation of Title IX Coordinator**—*Provide an overview of the entity’s organization and the name of the person designated as the Title IX coordinator for the entity, including a brief description of the coordinator’s duties. Also, reference any other persons designated to assist in the enforcement of Title IX and briefly describe their roles.*
  
- III. **Statement of Policies and Applicability**—*Provide the entity’s nondiscrimination policy. The policy statement should include students and staff, and should cover educational programs and activities, as well as employment policies and practices. An entity is required to provide regular and continuing notification of its policy to students, staff, applicants, and the general public. The notification should include the name, address, and telephone number of the person designated as the Title IX coordinator, as well as information about the entity’s grievance procedure. A policy statement should contain a reference to all types of discrimination that are prohibited. A sample policy statement follows:*

It is the policy of *(name of entity)* not to discriminate against any student, employee, or applicant on the basis of sex, race, religion, color, national origin, age, or disability. *(Name of entity)* will ensure that no student will be excluded from participating in or having access to any course offerings, student athletics, counseling services, employment assistance, extracurricular activities, or other school resources based on unlawful discrimination. *(Name of entity)* will take all necessary steps to ensure that each employee’s work environment is free of unlawful discrimination based on sex, race, religion, color, national origin, age, or disability.

**Other Related Policies**— *Indicate other related policies that have been adopted, concerning issues such as sexual harassment, interscholastic athletics, and rights of married and/or pregnant students. Although Title IX does not require adoption of a policy specifically prohibiting sexual harassment, according to the Office for Civil Rights, an entity’s nondiscrimination policy and grievance procedures for handling discrimination complaints “ must provide effective means for preventing and responding to sexual harassment. Thus, if, because of a lack of a policy or*

*procedure specifically addressing sexual harassment, students are unaware of what kind of conduct constitutes sexual harassment or that that conduct is prohibited sex discrimination, a school's general policy and procedures relating to sex discrimination complaints will not be considered effective.”<sup>66</sup>*

**IV. Definitions**—*Define pertinent words and phrases depending on the entity and its programs. Following is a partial list of terms.*

Assurance  
Applicant  
Beneficiaries  
Complaint  
Discrimination  
Educational program or activity  
Federal assistance  
Gender equity  
Grievance  
Noncompliance  
Post award / compliance review  
Primary recipient  
Secondary recipient  
Sex discrimination  
Sexual harassment

**V. Staff and Budgetary Resources**—*Describe the duties of committees and individuals who devote all or part of their work time to implementing or enforcing Title IX for the entity. In addition, address budgetary resources devoted to Title IX compliance.*

**VI. Civil Rights Training**

**A. Department-level**—*Address training that department staff have attended and plan to attend regarding Title IX. Possible sources of such training could include the U.S. Department of Justice, the U.S. Department of Education's Office for Civil Rights, and the Southeastern Equity Center, for example.*

**B. Subrecipient-level**—*List training that the agency has provided and plans to provide for subrecipients regarding Title IX. Also list any training that a subrecipient has arranged for on its own. Identify by title the groups or individuals who participated in training, the topics addressed, the organization or persons who conducted the training, and the geographic location of the training.*

**VII. Discriminatory Practices**—*List discriminatory practices that the entity has determined are prohibited under Title IX. The list need not be exhaustive, but should provide enough information to indicate that the entity has carefully considered how Title IX could be violated in the course of conducting agency business.*

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<sup>66</sup> Sexual Harassment Guidance, p. 12044.

**VIII. Federal Assistance/Guidance**—*Address any contact with a federal agency related to compliance with Title IX, particularly any assistance provided, such as technical training provided by or any kind of formal agreement made with the federal agency.*

**Part 2: Approach to Major Civil Rights Functions**

**I. Statements of Assurance**—*Assurances should be a part of all contracts extending federal financial assistance from a state agency onto a state agency's subrecipients. The Department of Education uses the following assurance statement, including a reference to sex discrimination, in all grant/contract documents:*

No person on the grounds of handicap, disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant or in the employment practices of Grantee. The Grantee shall, upon request, show proof of such nondiscrimination, and shall post in conspicuous places, available to all employees and applicants, notices of non-discrimination.

*Financial assistance is conditioned on the applicant providing assurances that the program or facility to be benefited will be operated without discrimination. Although the particular form of assurance will need to be specified by each state department, in substance, the assurance is a contractual obligation through which the recipient promises to comply with Title IX and other civil rights laws and regulations, and to take immediate and continuing steps to effectuate the compliance.*

**II. Public Notification**—*Title IX regulations require entities to provide regular and continuing notification of their anti-discrimination policies to students, staff, applicants, and the general public. The notification should include the name, address, and telephone number of the person designated as the Title IX coordinator, as well as information about the entity's grievance procedure.*

*In addition, the entity should indicate the specific methods it uses to disseminate the nondiscrimination policy statement, such as inclusion in student and employee handbooks, posters, brochures, and training sessions. Where possible, samples of the materials used for notification should be attached.*

The following information will be included in all posters, brochures, and relevant materials that are distributed to students, parents, and employees:

Any person who wishes to make a complaint involving gender discrimination against a student, employee, or official of (*name of entity*), should contact the Title IX coordinator as follows:

*(list name, address, phone number)*

*(The names of other people to contact regarding other types of discrimination*

*should be listed here as well. If the coordinator is the same for all forms of discrimination, that should be noted.)*

Retaliation against any person who files a charge of discrimination, who participates in an investigation, or who opposes an unlawful employment practice is prohibited by federal law.

**III. Compliance Reviews**— *Public Chapter 758 of 1998 requires state agencies that are subject to Title IX to develop implementation plans for its enforcement. The U.S. Department of Education’s Title IX regulations adopt procedural provisions applicable to Title VI of the Civil Rights Act of 1964, found at 34 CFR 100.6—100.11 and 34 CFR Part 101. These regulations provide information regarding compliance reviews, conducting investigations, procedures for effecting compliance, and the conduct of hearings.*

*A. Types of Reviews:*

*1. Pre-Award Compliance Review. Agency officials must determine that program applicants (potential recipients who have not previously participated in a program) are in compliance with Title IX and other civil rights laws prior to approval for program assistance. Compliance determinations should be made in writing and based on written information provided by the applicant. An on-site compliance review should be conducted if the information provided is inadequate. If the pre-award review reveals weaknesses in the applicant’s program, approval/disapproval action should be deferred pending prompt remedial action on the part of the applicant to resolve the areas of noncompliance. The applicant must be notified of the areas of apparent noncompliance and given the opportunity to take timely corrective action.*

*2. Routine Compliance Reviews. The agency will conduct routine compliance reviews. The selection of a particular recipient for a routine review is based on, but not limited to, such factors as:*

- a. A periodic assessment of compliance;*
- b. An increase in complaints;*
- c. Community patterns of discrimination;*
- d. Failure of recipient to file compliance reports or reports show patterns of discrimination;*
- e. Recipient receiving federal money under other programs and found to be in noncompliance by other agencies;*
- f. Staffing patterns that may present a problem;*
- g. Previously unreviewed recipients.*

*B. Compliance Enforcement Plan. Agencies should develop written compliance enforcement plans detailing the policies and procedures for implementing compliance reviews in their programs. A plan should specify:*

- 1. The frequency and number of reviews.*
- 2. Entities to be reviewed and criteria to be used in selecting the entities.*

3. A procedure for maintaining a log of reviewed entities to ensure that a sufficient number and type of reviews are completed.
4. Examples of noncompliance in the program.
5. A training plan to ensure that persons implementing Title IX compliance are competent in their duties.
6. That the assurance of nondiscrimination is included in all appropriate documents.
7. The state agency personnel responsible for conducting civil rights functions.
8. That the composition of planning or advisory bodies reasonably represents program participation by gender and that adequate public notification of the existence of such bodies has been made.
9. Record maintenance for proper lengths of time.
10. Procedures for the prevention of acts of retaliation or intimidation.

*C. Resolution of Noncompliance. The regulations supporting Title VI that were adopted in the Title IX regulations require that efforts be made to the fullest extent practicable to obtain voluntary compliance before there can be a refusal, suspension, or termination of federal financial assistance. Attempts to gain compliance should not be unduly prolonged, however. Probable noncompliance results when any civil rights compliance reviewer, federal or state, finds that any civil rights law or regulation is not being adhered to.*

1. Procedures for achieving voluntary compliance.
  - a. In cases where a complaint investigation or compliance review results in findings of noncompliance, the department shall notify the recipient through certified mail of the apparent noncompliance. The notice shall clearly identify the conditions of noncompliance and offer a reasonable time to willingly comply.
  - b. The department shall record the date the recipient received notice, and shall note and record the last day afforded the recipient for voluntary compliance before initiating an administrative process to terminate assistance.
  - c. The recipient may request a meeting for the purpose of discussing the problem areas or requirement for compliance. The principal investigator should be involved in the discussion process.
  - d. The department head or designee shall approve the recipient's voluntary compliance plans, methods, procedures, and proposed actions if such approval will result in compliance with the act. Such a plan should be reduced to writing. Failure to achieve compliance through voluntary means will result in termination or suspension of assistance.

*2. Termination or suspension of assistance. Any action to terminate or suspend assistance shall be limited to a particular recipient against whom finding of noncompliance has been made and shall be limited in its effect to the particular program, or part thereof, in which noncompliance has been found. General conditions for termination or suspension of assistance shall not become effective until:*

- a. The department has advised the recipient of its failure to comply and it has been determined that compliance cannot be secured through voluntary means.

- b. There is a documented finding that after opportunity for a hearing, the recipient has failed to comply with the requirements of Title IX and applicable state and federal regulations.*
- c. Approval has been given by the department head.*

#### **IV. Complaints of Discrimination**

**A. Adoption of Grievance Procedures**—*This section should include a copy of the entity’s grievance procedures that are used to resolve Title IX complaints. Title IX regulations require that entities adopt grievance procedures “providing for the prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited” by Title IX. (34 CFR 106.8(b)) The law does not necessarily require separate grievance procedures for Title IX and other civil rights laws. Entities that have adopted grievance procedures for Title VI, for example, may be able to use the same grievance procedures for Title IX and other civil rights laws. The procedures should address a timeline for filing, receipt of complaints, the elements of a complaint, the complaint receipt and reporting process, and the procedures for analyzing and investigating complaints.*

*To determine whether existing procedures may be used for Title IX complaints, agencies should consider:*

- whether the procedures provide coverage, either separately or together, for administrators, faculty, all staff (including nonteaching professional and nonprofessional staff), and students*
- whether each of the procedures provides for the resolution of complaints or grievances rather than just a means of making a complaint*
- whether each of the procedures specifies timelines that assure the prompt resolution of complaints or grievances,<sup>67</sup> and*
- whether each of the procedures is free from language that would prohibit its use for the resolution of Title IX complaints.<sup>68</sup>*

*If an entity has separate grievance procedures for Title IX and other civil rights laws, the Office for Civil Rights suggests that it would be helpful to make all procedures as similar as possible to facilitate administration and coordination.*

*An entity’s grievance procedures should:*

- make it clear that discrimination will not be tolerated*
- give notice of the procedure to students, parents of students, and employees, including where complaints can be filed*
- assign an impartial investigator to the complainant, and give the parties involved the opportunity to present witnesses and other evidence*
- describe how a grievance is initiated, whether orally, written, or using a*

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<sup>67</sup> Federal regulations require that Title IX complaints submitted to the Office for Civil Rights be filed within 180 calendar days of the alleged violation. According to the Office for Civil Rights, all agency procedures should require that significant processing steps are required within 180 calendar days, and that the procedures specify reasonable expectations for promptness.

<sup>68</sup> U.S. Department of Education, Office for Civil Rights, *Title IX Grievance Procedures: An Introductory Manual*, Washington, D.C., revised 1987, p. 12.

*standard form*

- set time frames for the major stages of the complaint process*
- give notices to the parties of the outcome of the complaint*
- give an assurance that the entity will take steps to prevent recurrence of any harassment and that it will correct its discriminatory effects on the complainant and others, where appropriate.*

*Although not required by Title IX, entities may find that their grievance procedures are more effective if the procedures:*

- provide an opportunity to appeal the findings and/or remedy*
- prohibit retaliation for filing a complaint or participating in an investigation or inquiry*
- include a voluntary and informal means for resolving complaints*
- keep students informed of the status of their complaints.*

## **V. Data Collection and Analysis**

*Data collection and reporting requirements. Accurate data collection and analysis is vital in determining whether entities are complying with Title IX and other civil rights laws. The department shall provide for and maintain a system to collect, analyze, and report the eligible population and participation data by gender for each program on an annual basis. For example, where pertinent, the following information should be collected and analyzed by gender:*

- 1. participation rates in interscholastic or intercollegiate athletics*
- 2. enrollment in selected classes such as advanced math and science, and vocational education*
- 3. employees in administrative positions*

*The department should develop other measures tailored to its programs. A good resource in designing a data collection system is the Title VI Data Collection and Analysis Policy Statement developed by the Tennessee Department of Education (see [www.state.tn.us/education/pfia980904.htm](http://www.state.tn.us/education/pfia980904.htm) ).*

## **VI. Compliance Reporting**

*This section of the plan should contain a list of records the department will maintain to demonstrate its compliance with Title IX. Such records should include, but not be limited to, copies of assurances, training materials, data collection and participation records, monitoring records, and pertinent correspondence.*

## **VII. Coordination with Other Agencies**

*Indicate whether the entity has delegated any of its Title IX compliance responsibilities to any other agency, or whether and how it is coordinating its compliance activities with other federal, state, and local agencies.*

## **VIII. Effecting Compliance**

*Supply policies and procedures to be followed when it is determined that a Title IX violation has occurred.*

***Self-Evaluation Checklists***

Entities may want to use the checklists provided in Appendix E to assist in their self-evaluations.

***Selecting a Title IX Coordinator***

Appendix F contains information taken from an Office for Civil Rights publication about Title IX coordinators and their responsibilities.

**Appendix A**

**United States Code Title 20 – Education**

**Chapter 38 – Discrimination Based on Sex or Blindness**

**Sec. 1681. Sex**

- (a) Prohibition against discrimination; exceptions

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, except that:

- (1) Classes of educational institutions subject to prohibition

in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

- (2) Educational institutions commencing planned change in admissions

in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

- (3) Educational institutions of religious organizations with contrary religious tenets

this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

- (4) Educational institutions training individuals for military services or merchant marine

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

- (5) Public educational institutions with traditional and continuing admissions policy

in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

- (6) Social fraternities or sororities; voluntary youth service organizations

this section shall not apply to membership practices -

- (A) of a social fraternity or social sorority which is exempt from taxation under section [501](#)(a) of title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or
- (B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

- (7) Boy or Girl conferences

this section shall not apply to -

- (A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or
- (B) any program or activity of any secondary school or educational institution specifically for -
  - (i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or
  - (ii) the selection of students to attend any such conference;

- (8) Father-son or mother-daughter activities at educational institutions

this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

- (9) Institution of higher education scholarship awards in "beauty" pageants

this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of

factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

- (b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance

Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: Provided, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

- (c) "Educational institution" defined

For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

### **Sec. 1682. Federal administrative enforcement; report to Congressional committees**

Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section [1681](#) of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected

- (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or
- (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the

appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

#### Sec. 1683. Judicial review

Any department or agency action taken pursuant to section [1682](#) of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section [1682](#) of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter [7](#) of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

#### **Sec. 1684. Blindness or visual impairment; prohibition against discrimination**

No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity, but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

#### **Sec. 1685. Authority under other laws unaffected**

Nothing in this chapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

#### **Sec. 1686. Interpretation with respect to living facilities**

Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

#### **Sec. 1687. Interpretation of "program or activity"**

For the purposes of this chapter, the term "program or activity" and "program" mean all of the operations of -

- (1)
  - (A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or
  - (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

- (2)
  - (A) a college, university, or other postsecondary institution, or a public system of higher education; or
  - (B) a local educational agency (as defined in section [8801](#) of this title), system of vocational education, or other school system;
- (3)
  - (A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship -
    - (i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
    - (ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
  - (B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section [1681](#) of this title to such operation would not be consistent with the religious tenets of such organization.

**Sec. 1688. Neutrality with respect to abortion**

Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

**Appendix B**

**Resource List for Training and Accessing Information  
About Title IX and related issues**

Training/Technical Assistance  
Southeastern Equity Center  
Dr. Nancy Peck, Director  
8603 Dixie Highway, Suite 304  
Miami, Florida 33143  
305/669-0114

[www.southeastequity.org](http://www.southeastequity.org)

The Southeastern Equity Center, which is federally funded, promotes equal educational practices and opportunities for female and male students and assists school districts with civil rights matters, including Title IX compliance and related issues.

U.S. Department of Education, Office for Civil Rights  
Region IV (Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee)  
P.O. Box 2048, 04-3010  
Atlanta, GA 30301-2048  
404/331-2954

[www.ed.gov/index.html](http://www.ed.gov/index.html)

[www.ed.gov/offices/OCR](http://www.ed.gov/offices/OCR)

The Office for Civil Rights in the U.S. Department of Education is a law enforcement agency charged with enforcing the federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex, disability and age in programs and activities that receive federal financial assistance. OCR also provides technical assistance to individuals and institutions. It provides outreach through onsite consultations, training classes, workshops, and meetings, as well as by telephone.

U.S. Department of Justice  
Coordination and Review Section  
Merrily A. Friedlander, Chief  
P.O. Box 66560  
Washington, D.C. 20035-6560  
202/307-2222

[www.usdoj.gov/crt/crt-home.html](http://www.usdoj.gov/crt/crt-home.html)

The Coordination and Review Section of the U.S. Department of Justice coordinates enforcement by federal agencies of various statutes that prohibit discrimination in programs that receive federal financial assistance. It also investigates certain complaints of discrimination on the basis of race, color, sex, and national origin against certain recipients of assistance.

Tennessee School Boards Association  
1130 Nelson Merry Street  
Nashville, TN 37203  
615/741-4706  
Toll-Free: 800/448-6465

The Tennessee School Boards Association provides technical assistance to local school boards in several areas, including compliance with civil rights laws. TSBA produces and annually distributes model policies to all school systems.

National School Boards Association (NSBA)

1680 Duke Street  
Alexandria, VA 22314  
703/838-6722  
[www.nsba.org](http://www.nsba.org)

NSBA's mission is to further excellence and equity in public schools through local school leadership. Activities include participation in public forums relevant to federal and national education issues, representing school board perspectives before federal government agencies, and providing information and services to school boards throughout the country, including information on activities to prevent and address harassment in schools.

Teaching Tolerance

400 Washington Ave.  
Montgomery, AL 36104  
334/264-0286  
[www.splcenter.org](http://www.splcenter.org)

Teacher Tolerance, a project of the Southern Poverty Law Center, is a national education project dedicated to helping teachers foster equity, respect, and understanding. Numerous activities and publications are available.

National Coalition for Sex Equity in Education (NCSEE)

P.O. Box 534  
Annandale, NJ 08801-0534  
908/735-5045

NCSEE was founded in 1979 to provide training and support for gender equity specialists in regional, state, and local education programs. The organization now provides leadership in the identification and infusion of sex equity in all education programs and within parallel equity concerns, including, but not limited to, age, disability, national origin, race, religion, and sexual orientation.

National Women's Law Center

11 Dupont Circle, NW, Suite 800  
Washington, D.C. 20036  
202/588-5180  
[www.nwlc.org](http://www.nwlc.org)

This organization has worked to advance and protect women's rights since 1972. The center focuses on major policy areas of importance to women and their families, including education. It recently published two publications on preventing and addressing sexual harassment.

Facing History and Ourselves (FHAO)

16 Hurd Road  
Brookline, MA 02146  
617/232-1595

[www.facing.org](http://www.facing.org)

With regional offices in Chicago, Memphis, Boston, New York, and Los Angeles, FHAO provides resources, speakers, workshops, and teacher institutes with the goal of teaching students the lessons of history necessary to be responsible and involved citizens. Workshops help teachers to design their own courses or lessons.

Wellesley College Center for Research on Women  
106 Center Street  
Wellesley, MA 02481  
781/283-2500

[www.wellesley.edu/WCW/](http://www.wellesley.edu/WCW/)

Founded in 1974, the center is home to an interdisciplinary community of scholars engaged in research designed to generate and shape public policy. It is a major source of expertise, training, professional development, and publications on sex equity, sexual harassment, gender violence, and bullying.

Study Circles Resource Center (SCRC)

P.O. Box 203  
Pomfret, CT 06258  
860/928-2616

SCRC helps communities use study circles (small, democratic, discussion groups) to discuss and problem-solve on issues such as race, education, and crime. Materials are available for use in middle schools and upper grades.

Green Circle Program  
1300 Spruce Street  
Philadelphia, PA  
215/893-8400

Programs developed by Green Circle for students ages 12-18 to promote awareness and appreciation of diversity in school and other settings. Looks at language, stereotypes, and the impact of historical and current events.

## **Internet Resources**

### ***Information about civil rights***

[www.state.tn.us/education/pfia981008.htm](http://www.state.tn.us/education/pfia981008.htm) The Tennessee Department of Education's links to civil rights Internet sites

### ***Math and Science***

[nhse.cs.rice.edu/CRPC/Women/GirlTECH](http://nhse.cs.rice.edu/CRPC/Women/GirlTECH) a teacher training program to encourage girls in the study of mathematics and science

[www.korrnet.org/amse/ttu](http://www.korrnet.org/amse/ttu) provides information about Tennessee Women in Science

[www.awsem.com](http://www.awsem.com) Advocates for Women in Science, Engineering, and Mathematics: outlines math and science programs geared toward girls ages 12 to 18

[www.cs.wisc.edu/~karavan/afl/home.html](http://www.cs.wisc.edu/~karavan/afl/home.html) Exploring Your Future in Math and Science, sponsored by the University of Wisconsin-Madison women's studies program

[www.beloit.edu/~gwisci/gws.html](http://www.beloit.edu/~gwisci/gws.html) Girls and Women in Science Project: a long-term networking and teaching enhancement project where middle school science teachers interact with college science faculty and other educators, college students, and sixth grade students and their parents

[www.sig.net/~scicom/twist/twist.html](http://www.sig.net/~scicom/twist/twist.html) TWIST: Tomorrow's Women in Science and Technology: a nonprofit company based in Texas: describes one-day math/science conferences designed to encourage middle school girls to pursue math, science, engineering, and other technology-based careers  
[nces.ed.gov/pubs97/97982.html](http://nces.ed.gov/pubs97/97982.html) Findings from *The Condition of Education 1997: Women in Mathematics and Science*

### **Athletics**

[www.aahperd.org/nagws/nagws](http://www.aahperd.org/nagws/nagws) National Association of Girls and Women in Sport  
[www.wsu.edu:8080/~athletic/gender/index.htm](http://www.wsu.edu:8080/~athletic/gender/index.htm) Washington State University: example of university website supplying data under the Equity in Athletics Disclosure Act  
[www.arcade.uiowa.edu/proj/ge](http://www.arcade.uiowa.edu/proj/ge) University of Iowa website providing information on Title IX and intercollegiate athletics  
[www.kcstar.com/ncaa](http://www.kcstar.com/ncaa) Series of articles about the NCAA published by the Kansas City Star

### **Testing and Gender Bias**

[www.fairtest.org](http://www.fairtest.org) gender issues related to testing

### **Gender Equity**

[www.aauw.org](http://www.aauw.org) American Association of University Women, position papers on equity issues  
[www.edc.org/WomensEquity](http://www.edc.org/WomensEquity) Women's Educational Equity Resource Center: dedicated to reducing educational disparity for women and girls; provides gender-fair multicultural materials, training, consulting, and referrals  
[www.academic.org](http://www.academic.org) Expect the Best From a Girl: provides facts about girls, women, and careers; a sampling of programs for girls; and tips on what parents can do at home and at school to promote gender equity

### **Curriculum Aids / Teacher Training / Education Research**

[uta.marymt.edu/~wominst/](http://uta.marymt.edu/~wominst/) Marymount Institute for the Education of Women and Girls: a national center for teacher training and education research for the specific purpose of improving education for all women and girls.  
[www.ncrel.org/ncrel/sdrs/pathwayg.htm](http://www.ncrel.org/ncrel/sdrs/pathwayg.htm) Pathways to School Improvement: sponsored by the North Central Educational Laboratory in cooperation with the Regional Educational Laboratory network: addresses curriculum, teaching methods, and school environment  
[www.cs.yale.edu/homes/tap/tap-junior.html](http://www.cs.yale.edu/homes/tap/tap-junior.html) TAP Junior: a one-stop directory of various sites related to K-12 girls and computing  
[www.legacy98.org](http://www.legacy98.org) information about women's history, including curriculum aids

### **Information about Florida's Equal Educational Opportunity Program**

[www.firn.edu/doe/eeop/eeop.html](http://www.firn.edu/doe/eeop/eeop.html) Florida Department of Education, Equal Educational Opportunity Program

**Appendix C**

**STATE OF TENNESSEE**  
OFFICE OF THE  
ATTORNEY GENERAL  
SECOND FLOOR CORDELL HULL BUILDING  
425 FIFTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37243-0488

February 19, 1999

Opinion No. 99-035

Application of Title IX (20 U.S.C.A. §§ 1681, *et seq.*) in State Agencies

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**QUESTIONS**

1. What are the specific legal criteria that subject a state agency to Title IX of the Education Amendments Act of 1972?
2. Does the applicability of Title IX to a state agency depend on that agency's receipt of any federal funding regardless of source, or is Title IX applicable only when such federal funds are dispersed through the United States Department of Education?
3. Is Title IX applicable only when federal funds are used in support of an agency's sponsorship of education programs or activities?

**OPINIONS**

1. As a general rule, if a state agency directly or indirectly receives federal financial assistance and conducts an education program or activity that benefits from the assistance, the state agency must comply with Title IX throughout the operations of the entire agency, although there may be exceptions to this rule. To determine whether and how Title IX applies to a state agency will require a fact-specific inquiry.
2. Title IX will apply even if the agency receives federal financial assistance from a source other than the United States Department of Education.
3. One criterion for application of Title IX is that the federal financial assistance directly or indirectly benefit an agency's education program or activity. The federal financial assistance need not be earmarked for the education program or activity for Title IX to apply.

**ANALYSIS**

Congress enacted Title IX to eliminate gender discrimination in educational programs and activities receiving federal funding. 20 U.S.C. § 1681-1688.<sup>1</sup> The statute is read broadly to effectuate

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<sup>1</sup> The United States Court of Appeals for the Sixth Circuit has concluded that Congress had the authority to pass Title IX pursuant to Section 5 of the Fourteenth Amendment and has successfully abrogated the states' Eleventh

its purpose. *See North Haven Board of Education v. Bell*, 456 U.S. 512, 521, 102 S.Ct. 1912, 1918, 72 L.Ed.2d 299 (1982). The statute reads in pertinent part as follows:

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 . . . .<sup>2</sup>

20 U.S.C.A. § 1681(a) (1990).

Thus, the basic factors required for the application of Title IX to a state agency<sup>3</sup> are (1) an educational program or activity, (2) that receives, (3) federal financial assistance. These factors require explanation and must be applied to the specific factual situation of each agency receiving federal funds before it can be determined whether Title IX applies.

1. “Any education program or activity”

For Title IX to apply, the agency must have an education program or activity. *See, e.g., Jeldness v. Pearce*, 30 F.3d 1220 (9th Cir. 1994) (Title IX applicable to state prison education programs). Title IX will not apply if there is no education program or activity. *See O’Connor v. Davis*, 126 F.3d 112, 117-18 (2nd Cir. 1997), *cert. denied*, \_\_\_\_ U.S. \_\_\_\_, 118 S.Ct. 1048 (1998) (State hospital was not transformed into an administrator of an education program or activity under Title IX by permitting a student to perform volunteer field work at its facility.); *Lam v. Curators of the University of Missouri, at Kansas City Dental School*, 122 F.3d 654, 656 (8th Cir. 1997) (Private dental practice operated by University clinical instructor was not a University education program or activity and could not serve as a foundation for Title IX liability.).

The term “education program or activity” is partially defined in Title IX, Section 1687:

For the purposes of this chapter, the term “**program or activity**” and “**program**” mean **all the operations of --**

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Amendment immunity from Title IX lawsuits. *Franks v. The Kentucky School for the Deaf*, 142 F.3d 360, 363 (6th Cir. 1998).

The United States Supreme Court, however, in discussing whether recipients of federal financial assistance should be liable in monetary damages for noncompliance with Title IX, indicated that Title IX was passed under Congress’s spending power. *Gebser v. Lago Vista Independent School District*, ----- U.S.-----, 118 S.Ct. 1989, 1998 (1998) (“Title IX’s contractual nature has implications for our construction of the scope of available remedies. When Congress attaches conditions to the award of federal funds under its spending power, U.S. Const., Art. I, § 8, cl. 1, as it has in Title IX . . .”).

<sup>2</sup> The statute goes on to exempt religious schools, military and merchant marine schools, fraternities, sororities, voluntary youth organizations, and beauty pageants, among others. 20 U.S.C.A. § 1681(a)(3)-(9).

<sup>3</sup> For convenience, throughout this opinion we use “agency” to refer to any agency, institution, or other entity that might be covered by Title IX.

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government . . . .

(Emphasis supplied)

20 U.S.C.A. § 1687 (1990). These terms must be read in the context of Section 1681 (quoted above) where they are modified by the word “education.” See *O’Connor v. Davis*, 126 F.3d at 117-18.

Once it is been established that the agency conducts an education program or activity, and the other statutory criteria are met (see discussion below), Title IX is likely to apply institution-wide. Congress added Section 1687 when it passed the Civil Rights Act of 1987 (Pub. L. No.100-259, § 3). Section 1687 was in response to the United States Supreme Court’s decision that the application of Title IX was program-specific. The case involved a college that accepted no federal financial assistance, but enrolled students who received federal educational grants. The Supreme Court concluded that the college had received federal financial assistance sufficient for the application of Title IX. It went on to decide, however, that the students’ receipt of federal education grants did not trigger institution-wide coverage under Title IX, that Title IX was “program specific” and applied to the College’s financial aid program, not to the entire college. See *Grove City College v. Bell*, 465 U.S. 555, 590, 104 S.Ct.1211, 1220, 79 L.Ed.2d 516 (1984).

In this context, Congress added Section 1687 to Title IX, finding that

(1) certain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of title IX . . . and

(2) legislative action is necessary to restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws as previously administered.

Quoted in *Doe v. Claiborne County*, 103 F.3d 495, 513 (6th Cir. 1996). A Senate Report accompanying the amendment adding Section 1687 explained

[T]he revision is meant to “include, but is not limited to . . . traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities.”

S.Rep. No. 100-64, at 17 (1987), quoted in *Lam v. Curators of the University of Missouri, at Kansas City Dental School*, 122 F.3d at 656.

Indeed, in the cases decided since Congress added Section 1687, the courts have consistently applied Title IX institution-wide. *See, e.g., Horner v. Kentucky High School Athletic Association*, 43 F.3d 265 (6th Cir. 1995). Many of these cases have involved educational entities: universities and colleges, public schools, a high school athletic association. Title IX will, however, apply to more than traditional education institutions. *See Jeldness v. Pearce*, 30 F.3d at 1226 (state prisons education programs).

It is clear that for Title IX to be applicable, a state agency must have an “education program or activity.”

## 2. “Receiving” or “Recipient”

Title IX does not apply if an agency does not receive federal financial assistance. The question is what constitutes receiving or being a recipient of federal financial assistance. United States Department of Education regulations<sup>4</sup> define “recipient” as

any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which **receives or benefits** from such assistance, including any subunit, successor, assignee, or transferee thereof. (Emphasis supplied.)

34 C.F.R. § 106.2(h) (1998).

As noted earlier, in keeping with Congress’s intent of a broad application, the Supreme Court found that students’ receipt of federal assistance through Basic Educational Opportunity Grants was sufficient for Title IX purposes even though the college itself did not receive federal funds. *Grove City College v. Bell*, 465 U.S. at 569-70 (“We have little trouble concluding that Title IX coverage is not foreclosed because federal funds are granted to Grove City’s students rather than directly to one of the College’s educational programs.”). The courts are likely to read “benefit” as similarly broad. *See Haffer v. Temple University*, 688 F.2d 14, 16 (3rd Cir. 1982) (Title IX was applicable to Temple’s athletic program because, even though the program did not receive federal assistance directly, it nonetheless indirectly benefitted from the receipt of federal financial assistance furnished to the University in the forms of grants and contracts).

Thus, to be subject to Title IX, an agency must receive federal financial assistance, directly or indirectly, from some federal source.

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<sup>4</sup> Generally, every federal department and agency which can extend federal financial assistance to any program or activity is authorized to promulgate regulations to effectuate § 1681. 20 U.S.C. § 1682.

3. "Federal financial assistance"

Title IX does not define or limit the source of "federal financial assistance." We have found no indication that Title IX applies only to agencies receiving federal assistance from the United States Department of Education. Several federal agencies have regulations relating to Title IX and its application to recipients of the federal agency's financial assistance. *E.g.*, 7 C.F.R. § 15a.1 (Department of Agriculture); 10 C.F.R. § 1040.1 (Department of Energy); 28 C.F.R. § 42.201 (Department of Justice). Also, federal financial assistance may take many forms: for example, a grant or loan, certain scholarships, a grant of federal real or personal property, a contract or agreement that has as one of its purposes the provision of assistance to any education program or activity. *E.g.*, 34 C.F.R. § 106.2(g).

A factual inquiry may be necessary to determine whether the assistance the agency receives constitutes federal financial assistance for the purposes of Title IX.

The Office concludes that a state agency that receives federal financial assistance, directly or indirectly, and conducts an education program or activity that benefits from the assistance, will be subject to the requirements of Title IX. The application of Title IX to a particular state agency will be a fact-specific inquiry.



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Deputy Attorney General

Requested by:

The Honorable John G. Morgan  
Comptroller of the Treasury  
State Capitol  
Nashville, TN 37243-0264

**Appendix D**  
**Title IX Survey of Local Education Agencies and**  
**Survey Responses by System**



STATE OF TENNESSEE  
**COMPTROLLER OF THE TREASURY**  
**OFFICE OF EDUCATION ACCOUNTABILITY**  
505 Deaderick Street, Suite 500  
Nashville, Tennessee 37243-0268  
Phone 615/532-1111  
Fax 615/532-9237

**Title IX Survey of Local Education Agencies**

**School System**  
**Survey Respondent**  
**Title**  
**Address**

\_\_\_\_\_

**Phone Number**  
**e-mail address** \_\_\_\_\_

*Note: Please attach additional pages as needed to complete the survey.*

1. Has the school system adopted and published an internal grievance policy that can be used for the resolution of complaints both from students and employees under Title IX of the Education Amendments of 1972?

\_\_\_\_\_Yes    \_\_\_\_\_No

If yes, please attach a copy (or copies) to this survey.

2. Has the school system designated a staff person whose responsibilities include coordinating investigations of Title IX complaints from both students and employees?

\_\_\_\_\_Yes    \_\_\_\_\_No

If yes, provide name, title, address, and phone number: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

2. Does the system inform students and employees of their rights under Title IX of the Education Amendments of 1972?

Yes  No

If yes, what methods are used? Check all that apply.

- student handbooks  
 employee handbooks  
 posters (located \_\_\_\_\_)  
 brochures (distributed to \_\_\_\_\_)  
 other (please describe) \_\_\_\_\_

3. Does the system centrally maintain a log of civil rights complaints from all schools, including Title IX complaints?

Yes  No

If yes, please provide the name, title, address, and phone number of the employee whose responsibilities include maintenance of the log. Note if this person is the same as in question #2.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

If no, is a log maintained by each separate school within the system?

Yes  No

4. Please provide as much of the following information as possible. Has training regarding Title IX issues (including, but not limited to, sex discrimination, sexual harassment, and gender equity) been provided within the past two years?

Yes  No

If yes, please complete the table below.

Date(s) of Training	Training <i>attended</i> by (titles of training participants, such as teaching staff, principals, etc.)	Training <i>conducted</i> by (agency/ individual name, address, phone number, if known)

**Thank you for your assistance. Please complete and return this survey and any materials requested within the survey by October 16, 1998 using the enclosed postage-paid envelope. If you have questions about the survey, please call Kim Potts at 615/532-1111, ext. 507.**

LEA	Title IX Grievance Policy	Title IX Coordinator	Means of Notification							School Log	Training
			Student handbooks	Employee handbooks	Posters	Brochures	Other	Central Log			
Anderson Co.			This system did not respond to survey.								
Clinton City	✓	✓	✓	X	X	X	X	X	✓	✓	
Oak Ridge	✓	✓	✓	X	X	X	✓	✓	X	✓	
Bedford County	X	✓	✓	X	X	X	X	X	✓	X	
Benton County			This system did not respond to survey.								
Bledsoe County	✓	✓	✓	✓	✓	✓	✓	X	✓	X	
Blount County	✓	✓	✓	✓	✓	X	✓	✓	✓	✓	
Alcoa	✓	✓	✓	✓	✓	X	✓	✓	✓	✓	
Maryville	✓	✓	✓	✓	✓	X	✓	✓	X	X	
Bradley County	✓	✓	✓	✓	✓	X	X	X	X	X	
Cleveland City	✓	✓	✓	✓	✓	✓	✓	X	✓	X	
Campbell County	✓	✓	✓	✓	✓	✓	X	✓	X	X	
Cannon County	✓	✓	✓	✓	✓	✓	X	✓	X	X	
Carroll County	✓	✓	✓	X	✓	✓	✓	✓	X	✓	
Hollow-Rock Bruceton	✓	✓	✓	✓	✓	X	X	✓	X	✓	

X = system does not have or use  
 ✓ = system has or uses

LEA	Title IX Grievance Policy	Title IX Coordinator	Means of Notification							Central Log	School Log	Training
			Student handbooks	Employee handbooks	Posters	Brochures	Other					
Huntingdon	✓	✓	X	✓	✓	X	X	X	X	✓	✓	
McKenzie	✓	✓	✓	X	✓	X	X	X	X	X	X	
South Carroll	✓	✓	✓	✓	✓	X	X	X	✓	X	X	
West Carroll	✓	X	✓	X	X	X	X	✓	✓	X	✓	
Carter County	X	✓	✓	✓	✓	X	X	X	✓	X	X	
Elizabethton	X	✓	✓	X	✓	✓	X	✓	X	X	X	
Cheatham County	✓	✓	X	X	✓	✓	✓	✓	✓	X	✓	
Chester County	✓	✓	✓	✓	✓	✓	X	✓	✓	X	✓	
Clairborne County	✓	✓	✓	✓	✓	✓	X	X	✓	X	✓	
Clay County	✓	✓	✓	X	✓	X	X	X	✓	X	X	
Cocke County	✓	✓	✓	✓	✓	✓	X	✓	✓	X	X	
Newport	✓	✓	X	X	X	X	X	✓	✓	✓	X	
Coffee County	✓	✓	✓	✓	X	X	X	X	✓	X	✓	
Manchester	✓	✓	✓	X	✓	✓	X	X	✓	✓	X	
Tullahoma	✓	✓	✓	✓	X	X	X	X	✓	X	✓	

X = system does not have or use  
 ✓ = system has or uses

LEA	Title IX Grievance Policy	Title IX Coordinator	Means of Notification						Central Log	School Log	Training
			Student handbooks	Employee handbooks	Posters	Brochures	Other				
Crockett Co.	✓	✓	✓	X	✓	X	✓	X	X	X	
Alamo	✓	✓	X	X	✓	X	X	✓	X	X	
Bells	This system did not respond to survey.										
Cumberland Co.	✓	✓	✓	X	✓	X	X	✓	X	✓	
Davidson Co.	✓	✓	✓	✓	X	X	✓	✓	✓	✓	
Decatur Co.	✓	✓	✓	X	✓	X	X	✓	✓	✓	
DeKalb Co.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Dickson Co.	✓	✓	✓	X	X	✓	✓	X	X	X	
Dyer Co.	✓	✓	✓	✓	✓	X	X	✓	X	X	
Dyersburg	✓	✓	✓	✓	✓	X	X	✓	X	✓	
Fayette Co.	✓	✓	✓	X	X	✓	X	✓	✓	✓	
Fentress Co.	✓	✓	✓	X	✓	X	X	✓	X	✓	
Franklin Co.	✓	✓	✓	✓	✓	X	X	✓	X	✓	
Humboldt	✓	✓	✓	✓	X	X	✓	✓	X	✓	
Milan	✓	✓	✓	X	X	✓	X	✓	X	✓	
Trenton	✓	✓	X	X	✓	X	X	✓	X	X	
Bradford	This system did not respond to survey.										
Gibson Co.	✓	✓	✓	X	✓	X	X	✓	X	✓	

X = system does not have or use  
✓ = system has or uses

LEA	Title IX Grievance Policy	Title IX Coordinator	Means of Notification							Central Log	School Log	Training
			Student handbooks	Employee handbooks	Posters	Brochures	Other					
Gilles Co.	✓	✓	X	X	✓	X	✓	✓	X	✓	✓	
Grainger Co.	✓	✓	✓	✓	✓	X	X	✓	X	✓	✓	
Greene Co.	✓	✓	✓	✓	X	X	✓	✓	X	✓	✓	
Greeneville	✓	✓	✓	✓	✓	✓	✓	X	X	✓	✓	
Grundy Co.	This system did not respond to survey.											
Hamblen Co.	✓	✓	✓	X	✓	✓	X	✓	✓	✓	✓	
Hamilton Co.	This system did not respond to survey.											
Hancock Co.	X	✓	X	X	✓	✓	✓	X	✓	✓	X	
Hardeman Co.	X	✓	X	X	X	X	X	X	X	X	X	
Hardin Co.	X	✓	X	X	X	X	X	X	X	✓	X	
Hawkins Co.	✓	✓	✓	X	X	X	X	✓	X	✓	X	
Rogersville	✓	✓	✓	✓	X	X	X	✓	X	✓	✓	
Haywood Co.	✓	✓	✓	✓	✓	✓	X	X	X	✓	X	
Henderson Co.	This system did not respond to survey.											
Lexington	✓	✓	✓	X	✓	✓	✓	✓	✓	X	X	
Henry Co.	✓	✓	✓	✓	✓	✓	X	✓	✓	✓	✓	

X = system does not have or use  
✓ = system has or uses

LEA	Title IX Grievance Policy	Title IX Coordinator	Means of Notification							Central Log	School Log	Training
			Student handbooks	Employee handbooks	Posters	Brochures	Other					
Paris	✓	✓	✓	X	✓	X	✓	✓	✓	X	X	
Hickman Co.	✓	✓	✓	X	✓	✓	✓	X	✓	X	✓	
Houston Co.	✓	✓	✓	X	✓	X	✓	X	✓	X	X	
Humphreys Co.	✓	✓	X	✓	✓	X	✓	✓	✓	X	✓	
Jackson Co.	✓	✓	✓	X	✓	X	✓	✓	✓	X	✓	
Jefferson Co.	✓	✓	✓	X	✓	X	✓	X	✓	X	X	
Johnson Co.	✓	✓	✓	✓	✓	X	✓	X	✓	X	✓	
Knox Co.	✓	✓	X	X	✓	X	✓	✓	✓	X	✓	
Lake Co.	✓	✓	✓	✓	X	X	✓	X	✓	X	✓	
Lauderdale Co.	✓	✓	✓	✓	✓	X	✓	X	✓	✓	✓	
Lawrence Co.	✓	✓	X	✓	✓	✓	✓	X	✓	X	X	
Lewis Co.	✓	✓	✓	✓	X	X	✓	X	✓	X	X	
Lincoln Co.	✓	X	X	X	✓	X	✓	✓	X	✓	✓	
Fayetteville	✓	✓	✓	X	✓	X	✓	✓	✓	X	✓	
Loudon Co.	✓	✓	✓	X	✓	X	✓	✓	✓	X	✓	
Lenoir City	✓	✓	✓	✓	✓	✓	✓	✓	✓	X	✓	

X = system does not have or use  
✓ = system has or uses

LEA	Title IX Grievance Policy	Title IX Coordinator	Means of Notification							Central Log	School Log	Training
			Student handbooks	Employee handbooks	Posters	Brochures	Other					
McMinn Co.	✓	✓	✓	X	✓	X	X	X	✓	X	✓	
Athens City	✓	✓	✓	✓	X	✓	✓	X	✓	X	X	
Etowah	X	✓	✓	X	✓	✓	X	X	✓	X	X	
McNairy Co.	✓	✓	✓	X	✓	✓	✓	✓	✓	X	✓	
Macon Co.	✓	✓	✓	✓	✓	✓	X	X	✓	X	X	
Jackson-Madison Co.	✓	✓	✓	✓	✓	X	X	X	✓	X	✓	
Marion Co.	✓	✓	✓	X	✓	✓	X	X	✓	X	✓	
Richard City	X	✓	✓	✓	✓	X	X	X	✓	X	✓	
Marshall Co.	X	✓	✓	X	✓	X	X	X	X	X	X	
Maury Co.	✓	✓	✓	X	✓	✓	X	X	✓	X	✓	
Meigs Co.	✓	✓	✓	X	✓	X	X	X	✓	X	X	
Monroe Co.	✓	✓	✓	✓	✓	✓	✓	X	✓	X	✓	
Sweetwater	✓	✓	✓	✓	✓	X	✓	X	✓	X	X	
Montgomery Co.	✓	✓	✓	✓	✓	✓	X	✓	✓	X	✓	
Moore Co.	✓	✓	✓	✓	✓	X	X	X	✓	X	✓	

X = system does not have or use  
✓ = system has or uses

LEA	Title IX Grievance Policy	Title IX Coordinator	Means of Notification							Central Log	School Log	Training
			Student handbooks	Employee handbooks	Posters	Brochures	Other	Brochures	Other			
Morgan Co.	✓	✓	✓	X	X	X	X	X	✓	X	✓	
Obion Co.	✓	✓	✓	✓	✓	✓	X	✓	✓	X	✓	
Union City	✓	✓	✓	X	X	X	X	✓	✓	✓	✓	
Overton Co.	X	X	X	X	X	X	X	X	X	X	X	
Perry Co.	✓	✓	✓	X	X	✓	X	✓	✓	X	✓	
Pickett Co.	X	✓	✓	X	X	✓	X	X	✓	X	✓	
Polk Co.	✓	✓	X	X	X	X	X	✓	X	X	✓	
Putnam Co.	✓	✓	✓	X	X	✓	✓	X	✓	X	✓	
Rhea Co.	✓	✓	✓	✓	✓	✓	✓	X	✓	X	✓	
Dayton	✓	✓	✓	X	X	X	X	✓	✓	X	X	
Roane Co.	✓	✓	✓	X	X	✓	X	X	✓	X	X	
Harriman City	✓	✓	X	X	✓	X	X	X	✓	X	✓	
Robertson Co.	✓	✓	✓	✓	X	X	X	X	✓	X	✓	
Rutherford Co.	✓	✓	✓	✓	X	X	X	X	✓	X	✓	
Murfreesboro	✓	✓	X	X	✓	X	X	✓	✓	X	✓	
Scott Co.	X	X	X	X	X	X	X	X	X	X	X	

X = system does not have or use  
✓ = system has or uses

LEA	Title IX Grievance Policy	Title IX Coordinator	Means of Notification							Central Log	School Log	Training
			Student handbooks	Employee handbooks	Posters	Brochures	Other					
Oneida	✓	✓	✓	X	✓	X	✓	✓	✓	X	✓	
Sequatchie Co.	✓	✓	✓	X	✓	X	✓	✓	✓	X	✓	
Sevier Co.	✓	X	✓	✓	X	X	✓	X	X	X	X	
Shelby Co.	✓	✓	✓	X	✓	X	✓	✓	✓	X	✓	
Memphis	✓	✓	✓	X	✓	X	✓	✓	✓	X	✓	
Smith Co.	✓	✓	X	X	✓	X	✓	✓	✓	X	✓	
Stewart Co.	✓	✓	✓	✓	✓	X	✓	X	✓	X	✓	
Sullivan Co.	✓	✓	✓	✓	✓	X	✓	✓	✓	X	✓	
Bristol	✓	✓	✓	X	✓	✓	✓	✓	✓	X	✓	
Kingsport	✓	✓	✓	✓	✓	X	✓	X	✓	X	✓	
Sumner Co.	✓	X	X	X	X	X	✓	X	✓	X	X	
Tipton Co.	✓	✓	✓	✓	✓	X	✓	X	✓	X	✓	
Covington	✓	✓	✓	✓	✓	X	✓	X	✓	X	✓	
Trousdale Co.	✓	✓	✓	✓	✓	✓	✓	X	✓	✓	✓	
Unicoi Co.	✓	✓	✓	X	X	X	✓	✓	✓	X	✓	
Union Co.	✓	✓	X	X	X	✓	✓	X	✓	X	X	
Van Buren Co.	X	✓	✓	✓	✓	X	✓	X	✓	X	X	

X = system does not have or use  
✓ = system has or uses

LEA	Title IX Grievance Policy	Title IX Coordinator	Means of Notification							Central Log	School Log	Training
			Student handbooks	Employee handbooks	Posters	Brochures	Other					
Warren Co.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Washington Co.	✓	✓	✓	✓	✓	✓	X	X	✓	X	✓	
Johnson City	✓	✓	✓	✓	✓	✓	X	✓	✓	X	✓	
Wayne Co.	✓	✓	✓	✓	X	✓	X	✓	✓	X	X	
Weakley Co.	✓	✓	X	X	✓	X	X	X	✓	X	X	
White Co.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Williamson Co.	✓	✓	✓	X	X	X	X	X	✓	X	X	
Franklin	✓	✓	✓	X	X	✓	X	✓	✓	X	✓	
Wilson Co.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Lebanon	✓	✓	✓	X	✓	✓	✓	✓	X	✓	X	

X = system does not have or use  
 ✓ = system has or uses

**Appendix E**  
**Checklists for Title IX Responsibilities**

Adapted from Shirley McCune and Martha Matthews, *Implementing Title IX and Attaining Sex Equity: A Workshop Package for Elementary-Secondary Educators*, Department of Health, Education, and Welfare, Washington, D.C. (as referred to in *Title IX Training Module*, Mississippi Department of Education, Office of Community and Outreach Services, September 30, 1996).

<b>PROCEDURES FOR TITLE IX COORDINATOR</b>		
Has an employee been designated to coordinate and monitor activities necessary for compliance with Title IX?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have employees and students been notified of the designation of the responsible person(s) and his/her office address(es) and telephone number(s) at least on a yearly basis?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has a written job description for the Title IX coordinator been developed which clearly specifies the tasks and responsibilities of the job?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the Title IX coordinator have full access to the chief executive officer in your district?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are procedures specified for the regular exchange of information between the Title IX coordinator and the chief administrative officer?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has the right of the Title IX coordinator to obtain access to any information necessary to the performance of job responsibilities been clearly specified to all staff?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the Title IX coordinator have responsibility for grievance procedure administration?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the Title IX coordinator have responsibility for grievance advocacy for:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
employees?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
administrators?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
grievance resolution or decision making?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
compliance record keeping?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
program development/decision making?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
program recommendations?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
staff training/assistance/communications?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
student or parent assistance/communications?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If the Title IX coordinator is responsible for functions other than Title IX coordination, have these functions been adjusted to permit the Title IX coordinator to expend adequate time on Title IX responsibilities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>TITLE IX POLICY NOTIFICATION PROCEDURES</b>		
Has policy notification been developed containing a statement of institutional/agency responsibility for compliance with Title IX requirements for nondiscrimination in education programs and employment?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has policy notification been developed containing a statement that any inquiries regarding Title IX and its application may be referred to the employee designated with responsibility for coordinating	<input type="checkbox"/> Yes	<input type="checkbox"/> No

compliance or to the Director of the Office for Civil Rights?		
Have guidelines been routinely and systematically disseminated to inform staff of the implications of the nondiscrimination policy and its relationship to their job responsibilities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has a procedure for continuing notification of policy been implemented to ensure notification of	<input type="checkbox"/> Yes	<input type="checkbox"/> No
students?		
parents of students?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
applicants for admission?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
admissions recruitment representatives?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
employees?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
applicants for employment?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
sources of referral for employment?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
employment recruitment representatives?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
unions or professional organizations holding collective bargaining or professional agreements with the institution or agency?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has notification of the policy been published in	<input type="checkbox"/> Yes	<input type="checkbox"/> No
local newspapers?		
newspapers or magazines produced by the institution or agency, students, or alumni groups?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
memoranda or other written communication distributed to every student and employee?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has a procedure been developed to ensure ongoing publication of the policy of nondiscrimination on the basis of sex in:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
course announcements?		
bulletins?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
catalogs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
application forms?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
student recruiting materials?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
employee recruiting materials?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has a responsibility for publications review been assigned to ensure that institutional or agency publications do not suggest, by text or illustration, differential treatment of applicants, students, or employees on the basis of sex when permitted by regulation?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<b>PROCEDURAL CONCERNS</b>		
Does every person in the system/agency know who the Title IX coordinator is?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Is the Title IX coordinator perceived by people in the system and the community as fair and sensitive to issues of sex bias?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the Title IX coordinator have time to orchestrate the system's compliance efforts and monitor the grievance process?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does every person in the system know that the grievance process is for Title IX complaints?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do all bulletins, catalogs, applications, forms, and faculty and student handbooks contain a statement of the system's policy on nondiscrimination?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Should the system's policy on nondiscrimination be updated or expanded?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>ACCESS TO COURSES</b>		
Have all course titles, course descriptions, curriculum guides, and tests been reviewed for language or illustrations which are biased?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has the system investigated the reasons for enrollment of disproportionate numbers of one sex in certain courses to see if discrimination exists?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have active steps been taken to enroll students of the sex previously excluded from traditionally "one-sex" courses?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are all physical education classes coeducational?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have counseling methods and materials been examined for sex bias?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>ACCESS TO NON-ACADEMIC ACTIVITIES</b>		
Are all clubs other than specifically exempted service clubs open to students of both sexes? Are both sexes encouraged to join and made to feel welcome?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have students' athletic interests and abilities been assessed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are the length of season opportunities to compete the same for male and female teams in the same sport?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is access to locker rooms, practice and competitive facilities comparable?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are traveling arrangements for boys and girls equitable?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>TREATMENT OF STUDENTS</b>		
Are all academic achievement awards made on a nondiscriminatory basis? (For example, outstanding student rather than outstanding boy or girl?)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are pregnant students treated in the same way as students with other temporary disabilities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>EMPLOYMENT PRACTICES</b>		
Have all school district pre-employment forms been revised to eliminate requests for information about marital and parental status?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have questions about marital and parental status been eliminated from oral interviews?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are women in all levels of administration? Are their numbers proportionate to the available pool of qualified women?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has the system taken affirmative steps to encourage, train, and promote women who are interested in being administrators?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are policies, procedures, and criteria for job selection in writing?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Are criteria for all positions specific, objective, and nondiscriminatory?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are salaries equal for persons doing the same or comparable jobs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are maternity leave policies the same as those for other temporary disabilities? Are employees permitted to use sick leave for pregnancy-related needs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do health insurance policies for employees cover pregnancy? Is such coverage available to single as well as married women?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has the system obtained assurances from all employers with whom it places students?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the system refuse to accept employment requests from employers who specify students of only one sex?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the system keep records by sex of students placed with employers, their positions and salaries to check on patterns of discrimination?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>OTHER</b>		
Have staff members been trained to recognize and eliminate discrimination and bias in the classroom?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
educational materials?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
curricular activities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
student activities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Adapted from "Equity in Athletics Self-Review and Corrective Action Plan," Florida Department of Education.

<b>I. ATHLETICS: ACCOMODATION OF INTERESTS AND ABILITIES</b>		
<b>Step 1. Participation Rate</b>		
a. Is the percentage of varsity male and female athletes (using unduplicated county of athletes) substantially proportionate to percentage of male and female students enrolled in the institution?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b. Are the percentages of male and female athletes on junior varsity, freshman, and B-teams (using the unduplicated count of athletes) substantially proportionate to percentage of male and female students enrolled in the institution?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c. (Secondary Schools Only) Is the percentage of varsity male and female athletes (using duplicated counts of athletes) substantially proportionate to percentage of male and female students enrolled in the institution?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d. Based on the answers in a-c, are the opportunities for males and females to participate substantially proportionate?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Step 2. History of Program Expansion (Omit this step if the answers to Step 1 are YES.)</b>		
<b>1. Equal Opportunities to Compete</b>		
a. Did the percentage of athletes who are female increase during the past three years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Did the percentage of athletes who are male increase during the past three years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

b. What year did each male team and each female team begin competing?		
c. Are there plans to add sports? What sports and when?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d. Have any male or female sports been eliminated within the last three years? What sports and when?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e. Based on the answers in a-d, has the institution shown a history and continuing practice of expanding female sports?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Step 3. Interests and Abilities of Females Fully Accommodated (Omit Step 3 if the answers in Step 1 are Yes or if Step 2 shows a history and continuing practice of expanding female sports.)		
a. Was the entire student population surveyed during the past two years to identify athletic interests and abilities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b. Did the survey show a demonstrated interest to establish new sports? If so, what sports?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c. Have there been any requests from students or parents to add sports for females? If so, what sports?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e. Based on your answers in a-d above, are the interests and abilities of females fully and effectively accommodated?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Levels of Competition		
Does the institution provide equivalent levels of teams (varsity, junior varsity, freshman, B-team) per sport for males and females?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<b>II. ATHLETICS: EQUIPMENT AND SUPPLIES</b>		
Equipment and Supplies		
a. Are female teams provided equipment equivalent to male teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b. Are male and female teams provided supplies on an equivalent basis?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c. Is the quality of equipment provided equivalent for female and male teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d. Is the quality of supplies provided equivalent for female and male teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e. Is the amount of supplies provided equivalent for female and male teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
f. Is the amount of equipment provided equivalent for female and male teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
g. Is the equipment provided for each female and male team appropriate?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
h. Is the maintenance and replacement of equipment and supplies provided on an equivalent basis for females and males?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
i. Are equipment and supplies equally available for male and female teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
j. Can any disparities be justified by a nondiscriminatory explanation?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>III. ATHLETICS: SCHEDULING OF GAMES AND PRACTICE TIMES</b>		
a. Are male and female varsity teams provided with the number of competitive events appropriate for their sport and their level of competition?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b. Are male and female junior varsity, freshman, and B-teams provided with the number of competitive events appropriate for their sport and their level of competition?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c. Are male and female varsity teams provided equivalent opportunity regarding the number and length of practices?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d. Are male and female junior varsity, freshmen, and B-teams provided equivalent opportunity regarding the number and length of practices?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e. Is equivalent opportunity provided regarding the time of day games and practices are scheduled for male and female teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
f. Are there differences in opportunities to participate in pre-season and post-season competition based on gender?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
g. Can disparities be justified by a nondiscriminatory explanation?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>IV. ATHLETICS: TRAVEL AND PER DIEM ALLOWANCES</b>		
a. Are male and female teams provided equivalent types of transportation to games?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

b. Are female and male teams provided the same quality lodging during travel?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c. Are the same number of athletes assigned to a room for male and female teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d. Are males and females provided with equivalent meal and dining arrangements during travel?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e. Are pre-game and post-game meals provided equally to athletes of each gender?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
f. Can disparities be justified by a nondiscriminatory explanation?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>V. ATHLETICS: OPPORTUNITIES TO RECEIVE COACHING</b>		
a. Is equivalent opportunity provided regarding the availability of full-time, part-time, and volunteer coaches for male and female teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b. Are assistant coaches equally available to male and female teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c. Is training, experience, and other professional qualifications of coaches equivalent for female and male teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d. Is equity provided regarding the compensation of coaches and terms and conditions of employment subject to consideration of factors such as experience and training?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e. Are benefits received from other sources, including boosters, equal for coaches of male and female teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
f. Are coaches of male and female teams equally encouraged to attend training workshops or participate in professional organizations?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
g. Is there a pattern of assigning coaches to women's teams who are equally experienced and qualified as coaches assigned to men's teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
h. Can disparities be justified by a nondiscriminatory explanation?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>VI. ATHLETICS: LOCKER ROOMS, PRACTICE, AND COMPETITIVE FACILITIES</b>		
a. Does the quality of the facilities for practice or competitive events differ for female and male teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b. How many female teams have higher quality facilities for practice or competition than male teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c. How many male teams have higher quality facilities for practice or competition than female teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d. Do any policies, practices, or criteria used for allocating locker rooms result in less desirable locker rooms for women?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e. How many male teams have exclusive use of locker rooms?		

f. How many female teams have exclusive use of locker rooms?		
g. Do any policies, practices, or criteria for allocating practice facilities result in less desirable practice facilities for women?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
h. Do any policies, practices, or criteria for allocating competitive facilities result in less desirable facilities for women?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
i. Is the maintenance and preparation of facilities for practice and competitive events equitable for female teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
j. How many male teams have higher quality or larger (per athlete) locker rooms?		
k. How many female teams have higher quality or larger (per athlete) locker rooms?		
l. How many male teams have exclusive use of practice or competitive facilities for the season?		
m. How many female teams have exclusive use of practice or competitive facilities for the season?		
n. How many male teams have exclusive use of practice or competitive facilities all year?		
o. How many female teams have exclusive use of practice or competitive facilities all year?		
p. Based on answers to the above, are disparities favoring teams of one gender balanced by disparities favoring teams of the other gender?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>VII. ATHLETICS: MEDICAL AND TRAINING FACILITIES AND SERVICES, INCLUDING WEIGHT TRAINING</b>		
a. Does the quality and availability of medical personnel, including doctors, physiotherapists, nurses, paramedics, differ for female and male teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b. How many male teams have higher quality or more availability of medical personnel than female teams?		
c. How many female teams have higher quality or more availability of medical personnel than male teams?		
d. Does the quality and availability of weight and conditioning facilities differ for men's and women's teams, including exclusive use of certain facilities, priority use of certain facilities, shared facilities, and use of any special facilities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e. How many male teams have higher quality or more availability of weight and conditioning facilities than female teams?		
f. How many female teams have higher quality or more availability of weight and conditioning facilities than female teams?		

g. Does the quality and availability of training facilities differ for men's and women's teams (considering exclusive use, priority use, shared facilities, and specialty facilities)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
h. How many male teams have higher quality or more available training facilities than female teams?		
i. How many female teams have higher quality or more available training facilities than male teams?		
j. Does the availability and qualifications of athletic trainers differ for men's and women's teams (considering professional versus student trainers; part-time versus full-time trainers)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
k. Is equivalent opportunity provided to women athletes for health, accident, and injury insurance?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
l. Based on answers to the above questions, are disparities favoring teams of one gender balanced by disparities favoring teams of other gender?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>VIII. ATHLETICS: PUBLICITY AND PROMOTION</b>		
a. Are publicity services provided female teams equal to services for men's teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b. Is quality of the sports information personnel assigned to female teams equal to quality of sports information personnel for male teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c. Is the time spent on female teams proportionate?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d. Is the number of sports information personnel assigned to the women's program equal to number for men's program?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e. Is the quality and quantity of information provided to the media for women's teams equal to that for men's teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
f. Is the quality and quantity of information about women's teams that is included in promotional materials and institutional publications equal to that about men's teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
g. Are cheerleading squads, bands, pom poms, and other support activities provided to women's teams on an equivalent basis as men's teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
h. Based on the answers above, are disparities favoring teams of one gender balanced by disparities favoring teams of the other gender?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>IX. ATHLETICS: SUPPORT SERVICES</b>		
a. Do policies, procedures, and criteria for providing administrative and clerical support result in less support for female teams than for male teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b. Are female athletic programs provided administrative support equivalent to support provided male programs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c. Are female athletic programs provided secretarial and clerical assistance equivalent to assistance provided male programs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d. Are coaches of female teams provided office space equivalent to	<input type="checkbox"/> Yes	<input type="checkbox"/> No

space for coaches of male teams?		
e. Are coaches of female teams provided office equipment equivalent to equipment provided coaches of male teams?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
f. Based on the answers above, are disparities favoring teams of one gender balanced by disparities favoring teams of another gender?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>X. ATHLETICS: RECRUITMENT, ASSIGNMENT, AND COMPENSATION OF TUTORS</b>		
a. Do policies and practices for making tutors available favor men's athletic programs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b. Do policies and practices for making tutors available favor women's athletic programs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c. Is the amount of time tutors are available to female athletes proportionate to the number of female athletes?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d. Are the qualifications and experience of tutors provided women's programs equivalent to those in men's programs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e. Are tutors of athletes in the women's program paid more?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
f. Are tutors of athletes in the men's program paid more?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
g. Are employment conditions better for tutors working with the women's program than tutors for men?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
h. Do fund source differences limit tutoring for men?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
i. Do fund source differences limit tutoring for women?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
j. Based on the above answers, are disparities favoring one team of one gender balanced by disparities favoring teams of the other gender?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

## ***Appendix F***

### **Selection of a Title IX Coordinator**

Title IX regulations require that at least one employee be designated to coordinate efforts to comply with and carry out the recipient agency's or institution's compliance responsibilities, including investigation of any complaints alleging actions prohibited by the regulation. The regulation further stipulates that the recipient must notify all students and employees of the name, office address, and telephone number of the employees designated as coordinators.

According to the Office for Civil Rights, coordinators should possess:

- in-depth knowledge of the Title IX regulation, interpretive memoranda issued by the federal government, and continuing judicial decisions
- general knowledge of other federal and state nondiscrimination laws and related judicial precedents as they bear upon the interpretation of Title IX requirements
- knowledge of the internal agency/institutional Title IX grievance procedure, including the rationale for its various structural or administrative characteristics and significant grievance decisions or precedents as they emerge
- knowledge of sources of information for continued updating on Title IX and related resources (materials, persons, and organizations), activities, and events. (See resource list in Appendix B.)
- ability to design, implement, and monitor compliance activities
- ability to design and implement relevant training activities, consultation services, and continuing information services
- ability to communicate effectively with a variety of people
- ability to diagnose, clarify, and mediate differences of opinion
- ability to establish a positive climate for Title IX compliance efforts.

For a Title IX coordinator to be effective, the coordinator's functions and responsibilities must be clearly communicated to all levels of agency administration and to all employees and students. In addition, the coordinator must be provided all information and authority, or access to authority, necessary to enforce compliance requirements and mandate compliance programs and activities.