

# **SPECIAL REPORT**

**Status of Submission of Title IX Implementation Plans**

**September 2006**

**John G. Morgan  
Comptroller of the Treasury**



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Comptroller of the Treasury**

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John G. Morgan  
Comptroller

September 28, 2006

The Honorable John S. Wilder  
Speaker of the Senate  
The Honorable Jimmy Naifeh  
Speaker of the House of Representatives  
and  
Members of the General Assembly  
State Capitol  
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the report on the status of submission of Title IX implementation plans. This review was conducted pursuant to the requirements of Section 4-4-123, *Tennessee Code Annotated*.

Sincerely,

John G. Morgan  
Comptroller of the Treasury

JGM/jkt  
05-022

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September 2006**

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# **Status of Submission of Title IX Implementation Plans September 2006**

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## **INTRODUCTION**

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### **AUTHORITY**

Section 4-4-123, *Tennessee Code Annotated*, (Chapter 758 of the Public Acts of 1998) requires state agencies subject to the requirements of Title IX of the Education Amendments Act of 1972, as codified in 20 U.S.C. 1681 et seq., to develop a Title IX implementation plan. These plans were to be submitted to the Department of Audit by June 30, 1999, and are to be submitted each June 30 thereafter. The section further requires the Department of Audit to publish, at least once a year, a cumulative report of its findings and recommendations concerning compliance with the statute's requirements. This report is intended to fulfill that requirement.

### **OBJECTIVES**

The objectives of the review were to summarize the purpose and scope of Title IX and to detail agencies' compliance with the reporting requirements in Section 4-4-123, *Tennessee Code Annotated*.

### **SCOPE AND METHODOLOGY**

Each agency drafts its own Title IX implementation plan and submits it to the Division of State Audit. The division's review of the plans is limited to determining whether the plans are submitted and interviewing the Title IX coordinator of each agency to determine the number of Title IX complaints filed against the agency between July 1 and June 30 of the fiscal year. We do not attempt to express an opinion on the implementation of the provisions in the plans. The dates of submission of the plans for recent fiscal years are in Appendix A of this report.

### **PURPOSE AND APPLICABILITY OF TITLE IX**

Title IX of the Education Amendments of 1972 states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." The law is intended to prohibit gender-based discrimination in any educational program or activity that receives federal funds. It ensures legal protection against this discrimination for both students and employees, and includes protection against sexual

harassment. With some exceptions, Title IX covers all aspects of an educational program or activity, and prohibits discrimination in

- admissions;
- treatment of students, access to programs and courses, access to and use of facilities, counseling and guidance materials, tests, practices, vocational education, physical education, competitive athletics, graduation requirements, student rules and regulations, benefits, treatment of married and/or pregnant students, housing, financial assistance, health services, school-sponsored extracurricular activities, and most other aid or services; and
- employment, including access to employment, hiring and promotion, compensation, job assignments, leaves of absence, fringe benefits, and labor organization contracts or professional agreements.

Title IX does not apply to educational institutions controlled by religious organizations; 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.

At the request of the Comptroller's Office, on February 19, 1999, the Office of the Attorney General issued Opinion No. 99-035 to clarify the responsibilities of state agencies. 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 received federal financial assistance from a source other than the U.S. Department of Education.
3. One criterion for application of Title IX is that the federal financial assistance directly or indirectly benefits 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.

Title IX 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 (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 and the University of Tennessee Board of Trustees and their subrecipients, the state's colleges and universities.

According to the Comptroller of the Treasury Offices of Research and Education Accountability's (OREA) 1999 report *Without Regard to Gender, Tennessee State Agencies and Title IX of the Education Amendments of 1972*, for the purpose of compliance with federal and state laws, state departments and agencies should be aware of the following:

- 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; and
- state agencies that receive federal funding and have any type of educational program or activity are subject to the provisions of Title IX, whether or not the federal money is used directly for that educational program or activity.

The Title IX legislation is similar to Public Chapter 502 of the Public Acts of 1993, which requires state agencies subject to Title VI of the U.S. Civil Rights Act to develop annual implementation plans. 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.

## **FEDERAL DEPARTMENT OF EDUCATION**

Because Title IX is usually linked with K-12 and higher education programs, the regulations issued by the U.S. Department of Education are most widely cited. The other 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 U.S. Department of Education's regulations:

- written assurances required;
- designation of an employee to coordinate investigations;
- regular dissemination of nondiscriminatory policy to applicants, students, and employees; and
- adoption of grievance procedures for complaints.

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## OBSERVATIONS AND COMMENTS

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The 1999 OREA report mentioned above, *Without Regard to Gender*, noted that for the most part, state agencies were unaware of their responsibility to comply with Title IX. According to the report, the federal government has not fully implemented and enforced Title IX, and in recent years 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 all areas.

In October 1998, OREA surveyed state agencies that receive federal funding, other than the Department of Education and the university systems, to determine whether the agencies conducted educational programs or activities. If so, OREA asked whether they were implementing Title IX. Several agencies indicated they conducted some type of educational program or activity, but few indicated familiarity with or implementation of Title IX. Currently, it appears that the majority of state agencies required to comply with Title IX are doing so.

### RESOLVING COMPLAINTS UNDER TITLE IX

Federal Order 12250, issued November 2, 1980, authorizes the U.S. Attorney General to coordinate the federal implementation and enforcement of Title IX. The U.S. Department of Education’s Office for Civil Rights is authorized to investigate Title IX complaints or conduct compliance reviews within agencies that either receive funding from the department or delegated authority to it. 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. Entities that have adopted grievance procedures for Title VI may be able to use the same grievance procedures for Title IX and other civil rights laws. We reviewed the status of Title IX complaints filed over the last five fiscal years.

#### *Fiscal Year 2002*

During fiscal year 2002, there were no Title IX complaints filed.

#### *Fiscal Year 2003*

During fiscal year 2003, one state agency received a Title IX complaint. The **Tennessee Board of Regents** received a complaint from a student at the **University of Memphis** who alleged sexual discrimination by being treated differently regarding hotel accommodations during a class trip abroad. The complaint was investigated and no discrimination was found, but confusion arose from differences in expectations and available cultural accommodations.

### ***Fiscal Year 2004***

During fiscal year 2004, one state agency, the **Tennessee Board of Regents**, received four Title IX complaints.

A student worker at **Austin Peay State University** alleged that she had been subjected to discriminatory and harassing conduct by a university employee. The university investigated the complaint and found no evidence that the employee's inappropriate behavior was motivated by race or gender. The complaint did not mention if the employee suffered any consequences.

A student at **Tennessee Technological University** alleged gender discrimination by a faculty member. Interviews with students did not support the allegation. The university, in consultation with legal counsel, investigated but did not find a violation of policy.

At **Columbia State Community College**, an anonymous telephone caller filed a complaint on behalf of another student against a faculty member, alleging gender discrimination. The university investigated and found no evidence to support the allegation.

A student at **Columbia State Community College** alleged gender discrimination by nursing faculty members. Most of the allegations were academic concerns. The complainant verbally alluded that the nursing faculty was trying to get older students of a certain gender out of the nursing program. The university investigated and found no violation of policy.

### ***Fiscal Year 2005***

During fiscal year 2005, there were no Title IX complaints filed.

### ***Fiscal Year 2006***

During fiscal year 2006, there were 8 complaints filed within the Department of Education and 19 complaints filed within the Tennessee Board of Regents (all at institutions, none at the central office).

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## **CONCLUSIONS**

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### **SUBMISSION OF TITLE IX IMPLEMENTATION PLANS**

Most state agencies that are required to submit a Title IX implementation plan had done so. Appendix A presents the submission dates of Title IX implementation plans submitted for fiscal years 2000 through 2007.

## **SUMMARY OF FINDINGS**

The true measure of compliance is not so much whether plans have been prepared and submitted but rather whether the provisions contained in the plans are carried out. Currently, there is no central agency with the responsibility to receive and resolve complaints. Each state agency assigns staff to monitor compliance and investigate complaints. The Division of State Audit's financial and compliance audit reports include violations of Title IX requirements noted during the audit. Audit reports issued for fiscal years 2002 through 2006 contain the following findings related to Title IX.

### ***Fiscal Year 2002***

- The Department of Finance and Administration did not submit its Title IX implementation plan by June 30, 2002. The audit follow-up showed the department filed the plan on August 21, 2002.
- The Department of Human Services did not include the department's subrecipients in the implementation plan, nor did the department submit a Title IX compliance report. The following year, auditors limited work to Single Audit related issues, and this finding was not pursued.

### ***Fiscal Year 2003***

- The Department of Safety did not submit its Title IX implementation plan by June 30, 2002.

### ***Fiscal Year 2004***

- The Department of Safety did not submit its Title IX implementation plan by June 30, 2003. The follow-up report noted that the department submitted the 2004 Title IX implementation plan on February 5, 2004.
- A finding is included in the not-yet-released report for the Department of Correction because its 2005 implementation plan was not submitted by the deadline.

### ***Fiscal Year 2005***

- The Department of Safety did not submit its Title IX implementation plan by June 30, 2004.

### ***Fiscal Year 2006***

- The Department of Safety did not submit its Title IX implementation plan by June 30, 2005.

## Appendix A

### Submission Dates of Title IX Implementation Plans

<u>State Entity</u>	<u>FY 00 Plan</u>	<u>FY 01 Plan</u>	<u>FY 02 Plan</u>	<u>FY 03 Plan</u>	<u>FY 04 Plan</u>	<u>FY 05 Plan</u>	<u>FY 06 Plan</u>	<u>FY 07 Plan</u>
Administrative Office of the Courts	No plan submitted	No plan submitted	08/14/01	7/15/02	06/20/03	06/21/04	06/28/05	06/22/06
Department of Correction	06/30/99	No plan submitted	07/03/01	7/05/02	07/07/03	No Plan	06/30/05	06/28/06
Department of Education	06/29/99	06/30/00	06/29/01, Rev. 07/03/01	7/26/02	06/27/03	06/30/04	07/08/05	06/30/06
Department of Environment and Conservation	No plan submitted	No plan submitted	07/13/01	No plan submitted	10/09/03	06/29/04	07/14/05	06/23/06
Department of Finance and Administration	No plan submitted	06/30/00	06/29/01	8/21/02	06/30/03	06/29/04	06/30/05	06/30/06
Department of Human Services	No plan submitted	06/28/00	10/01/01	6/28/02	07/01/03	06/30/04	06/30/05	08/15/06
Department of Labor and Workforce Development	No plan submitted	No plan submitted	No plan submitted	6/24/02	06/03/03	05/28/04	06/30/05	06/30/06
Department of Mental Health and Developmental Disabilities	No plan submitted	No plan submitted	No plan submitted	6/28/02	06/30/03	06/30/04	06/29/05	06/30/06
Department of Safety	No plan submitted	No plan submitted	No plan submitted	No plan submitted	02/05/04	No plan submitted	08/11/05	No plan submitted
Tennessee Board of Regents	No plan submitted	07/05/00	07/24/01	8/12/02	07/22/03	06/30/04	06/28/05	08/30/06
Tennessee Student Assistance Corporation	No plan submitted	06/30/00	06/29/01	6/28/02	06/30/03	06/30/04	10/04/05	06/28/06
Tennessee Wildlife Resources Agency	No plan submitted	No plan submitted	08/21/01	6/21/02	07/01/03	06/28/04	06/21/05	06/23/06
University of Tennessee	No plan submitted	06/26/00	07/03/01	6/27/02	06/30/03	06/30/04	07/12/05	09/07/06

## **Appendix B**

### **Agencies Not Subject to Title IX Requirements**

The following agencies reported that they are not subject to Title IX requirements:

Alcoholic Beverage Commission	Department of Transportation
Board of Probation and Parole	Department of Veterans Affairs
Commission on Aging and Disability	District Attorneys General Conference
Commission on Children and Youth	District Public Defenders Conference
Council of Juvenile and Family Court Judges	Health Services and Development Agency
Department of Agriculture	Military Department
Department of Children's Services	Office of the Attorney General and Reporter
Department of Commerce and Insurance	Tennessee Arts Commission
Department of Economic and Community Development	Tennessee Bureau of Investigation
Department of General Services	Tennessee Corrections Institute
Department of Health	Tennessee Higher Education Commission
Department of Revenue	Tennessee Housing Development Agency
Department of State	Tennessee Human Rights Commission
Department of the Treasury	Tennessee Regulatory Authority
Department of Tourist Development	