

# **SPECIAL REPORT**

## **Annual Report on the Status of Submission of Title IX Implementation Plans**

**February 2012**

**Justin P. Wilson  
Comptroller of the Treasury**



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February 23, 2012

The Honorable Ron Ramsey  
Speaker of the Senate  
The Honorable Beth Harwell  
Speaker of the House of Representatives  
and  
Members of the General Assembly  
State Capitol  
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the annual 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,

Arthur A. Hayes, Jr., CPA  
Director

AAH/js  
12-066

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**TABLE OF CONTENTS**

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	<u>Page</u>
<b>INTRODUCTION</b>	1
Authority	1
Objectives, Scope, and Methodology	1
Purpose and Applicability of Title IX	1
Federal Department of Education	3
<b>CONCLUSIONS</b>	3
Submission of Title IX Implementation Plans	3
Summary of Title IX Findings	4
Complaints Under Title IX	4

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**INTRODUCTION**

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**AUTHORITY**

Section 4-4-123, *Tennessee Code Annotated*, requires state agencies subject to the requirements of Title IX of the Education Amendments Act of 1972 to develop a Title IX implementation plan. By statute, these plans were originally due to the Department of Audit by June 30 of each year. In 2008, legislative action changed the due date to October 1 for 2008 and every year thereafter. The section 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, SCOPE, AND METHODOLOGY**

The objectives of this review are to summarize the purpose and scope of Title IX and to detail agencies' compliance with the statutory reporting requirements. Each agency affected by Title IX develops its own implementation plan and submits it to the Division of State Audit. The division determines whether the plans are submitted on time and determines the number of Title IX complaints filed against the agency during the fiscal year. The status of submission of the plans for recent fiscal years is in the conclusions section 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 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, vocational education, physical education, athletics, graduation requirements, student rules and regulations, benefits, treatment

of married and/or pregnant students, housing, financial assistance, health services, and school-sponsored extracurricular activities; and

- employment, including access to employment, hiring and promotion, compensation, job assignments, leaves of absence, fringe benefits, and terms of collective bargaining agreements.

According to Tennessee Attorney General Opinion No. 99-035,

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.
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. The federal financial assistance must benefit an agency's education program or activity, but need not be earmarked for that program or activity.

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) and Tennessee's local education agencies (subrecipients of federal funding) because all of these benefit from federal assistance. The law 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 report *Without Regard to Gender: Tennessee State Agencies and Title IX of the Education Amendments of 1972* published in 1999 by the Comptroller of the Treasury's Offices of Research and Education Accountability, 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.

Similar to agencies subject to Title VI of the U.S. Civil Rights Act, agencies subject to the provisions of Title IX are required 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 education programs and activities that benefit from federal assistance.

## FEDERAL DEPARTMENT OF EDUCATION

Because Title IX is often 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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## CONCLUSIONS

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### SUBMISSION OF TITLE IX IMPLEMENTATION PLANS

The table below presents the submission dates of Title IX implementation plans submitted for the most recent four years, fiscal years 2009-2012.

#### Submission Dates of Title IX Implementation Plans

<b><u>State Entity</u></b>	<b><u>FY 09 Plan</u></b>	<b><u>FY 10 Plan</u></b>	<b><u>FY 11 Plan</u></b>	<b><u>FY 12 Plan</u></b>
Administrative Office of the Courts	6/30/2008	10/1/2009	10/1/2010	10/6/2011
Department of Children's Services	*	9/30/2009	10/7/2010	10/4/2011
Department of Correction	10/1/2008	9/25/2009	12/8/2010	1/9/2012
Department of Education	10/1/2008	9/10/2009	10/1/2010	10/3/2011
Department of Environment and Conservation	7/2/2008	7/31/2009	6/30/2010	6/30/2011
Department of Finance and Administration	9/25/2008	9/29/2009	10/4/2010	11/21/2011
Department of Finance and Administration - TennCare	10/1/2008	9/16/2009	9/15/2010	9/7/2011
Department of Finance and Administration - Division of Intellectual Disabilities Services	9/30/2008	9/30/2009	11/23/2010	Not req.**
Department of Intellectual and Developmental Disabilities**	Not req.	Not req.	Not req.	9/30/2011

<b><u>State Entity</u></b>	<b><u>FY 09 Plan</u></b>	<b><u>FY 10 Plan</u></b>	<b><u>FY 11 Plan</u></b>	<b><u>FY 12 Plan</u></b>
Department of Human Services	9/29/2008	10/1/2009	11/24/2010	10/3/2011
Department of Labor and Workforce Development	9/29/2008	9/21/2009	9/21/2010	9/27/2011
Department of Mental Health**	7/1/2008	10/1/2009	10/1/2010	Not req.
Tennessee Board of Regents	10/1/2008	10/2/2009	11/30/2010	10/3/2011
Tennessee Bureau of Investigation	6/26/2008	6/25/2009	9/30/2010	9/30/2011
Tennessee Student Assistance Corporation	7/1/2008	10/1/2009	10/4/2010	10/3/2011
Tennessee Wildlife Resources Agency	6/24/2008	6/26/2009	6/25/2010	9/23/2011
University of Tennessee	9/12/2008	9/29/2009	9/28/2010	10/18/2011

\* No plan submitted for that year.

\*\* On January 15, 2011, the Department of Finance and Administration's Division of Intellectual Disabilities Services became the Department of Intellectual and Developmental Disabilities. The Department of Mental Health and Developmental Disabilities transferred certain responsibilities to this new department and became the Department of Mental Health.

## **SUMMARY OF TITLE IX FINDINGS**

The risk of failure to comply with the requirements of Title IX is the loss of federal funds. In addition to each state agency assigning staff to monitor compliance and investigate complaints, the Division of State Audit reviews the status of Title IX activities during its audits.

For the most recent calendar year, 2011, no audit reports released by the Division of State Audit contain findings related to Title IX.

## **COMPLAINTS UNDER TITLE IX**

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 of the Civil Rights Act of 1964 may be able to use the same grievance procedures for Title IX and other civil rights laws. A table showing the number of Title IX complaints over the most recent four years appears below.

### **Title IX Complaints Reported During Fiscal Years 2008-2011** (Agencies not listed have not reported any Title IX-related complaints.)

<b><u>State Entity</u></b>	<b><u>FY 08</u></b>	<b><u>FY 09</u></b>	<b><u>FY 10</u></b>	<b><u>FY 11</u></b>
Department of Education	6	8	7	6
Department of Finance and Administration – TennCare	1	4	2	5
Tennessee Board of Regents	24	9	4	10
University of Tennessee	0	0	0	1