

Title IX

Welcome to this presentation on the subject of Title IX, brought to you by Safety Matters, Incorporated. This training course reviews the basic requirements of the United States Department of Education's Title IX regulations regarding the protection of all individuals and/or groups within the educational system from discrimination based on sex. This presentation will focus on providing you with an overview of the standard and the purpose and goals of this law.

This presentation will last approximately 30 minutes and will be followed by a short test to ensure your comprehension of the material.

Introduction

This training on Title IX is intended to provide an overview of the historical facts about sexual discrimination, harassment, and violence; the impact of the law; and resources for victims. You may not be an expert after this training, but you will learn a significant amount regarding the law and your own civil rights. In 1972, the Department of Education issued Title IX, which affects schools and other entities that receive government funding. It is intended to protect groups of people and to provide a safe learning environment and culture.

If you look at the more than 40 years since Title IX was put into effect, you will see some dramatic changes as well as some areas that still need improvement. This training gives guidance on what Title IX coordinators, school counselors, school employees and students are required to do when they are made aware of an incident under Title IX. You may even find yourself questioning, "What would I do if I witnessed or heard about an incident of discrimination or sexual violence?" This training provides some guidance and offers suggestions about how to report claims and what resources are available for those seeking more information. The intent is that this training will give you some insight into the history, facts and resources of Title IX.

Training Objectives

In this presentation, we will cover many aspects of Title IX including its history beginning when Congress passed the law in 1972. We will discuss different types of discrimination covered by this law and several specific cases regarding discrimination under Title IX. We will define sexual harassment and violence and provide some examples of these issues. A comprehensive look at the impact of this law will be discussed as well as the reporting obligations for the people and institutions that are covered by Title IX. Finally, several resources will be identified for interested parties.

History of Title IX

In this section, we are going to provide you with historical data, definitions of Title IX, some examples of what Title IX means to certain groups of people, and specific court cases to show

the legal battle of Title IX. So you can understand how Title IX has evolved, we will give you a short history lesson.

In June of 1972, Title IX of the Education Amendments of 1972 was signed into law. Title IX is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity. There have been many challenges to the scope and application of this law over the years.

Congress passed the Civil Right Restoration Act in 1988, that required any program, including all sports programs, within any institution receiving federal funds to comply with Title IX. This solidified compliance and enforcement of the act. Further, in 2014, the Department of Education issued guidance on how Title IX protects transgender students and established best practices for handling cases involving these students, but this guidance was rescinded in 2017. There have been many revisions and other challenges over the years to Title IX that make this an evolving and challenging law to enforce and comply with. Overall, Title IX has been successful in supporting students nationwide by reducing the amount of discrimination and creating awareness of the problems students face in regard to sexual harassment or violence.

Interactive Question #1:

Currently, all athletic programs in institutions that receive federal funds are subject to compliance under Title IX.

True or **False**

That is incorrect. Title IX applies to all federally funded education programs or activities.

What is Title IX and Discrimination?

Title IX 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.” Please keep in mind that this should not be confused with Title VII, which is a similar federal law that focuses more on discrimination only within employment on the basis of sex, as well as race, color, national origin and religion. Title IX is within the Department of Education, while Title VII is within the Department of Labor.

Now let’s discuss what discrimination means for different groups of individuals. For pregnant students, discrimination revolves around being pregnant, so it relates specifically to female individuals. Pregnant individuals should be allowed a choice to continue involvement in, or exclude themselves from, any activity or program they were participating in before becoming pregnant. They have the right to return from medical leave to the same activity or program

after they are no longer pregnant and to make up work while they were out. If someone is pressuring a pregnant individual to leave a program or activity, or doesn't allow them to return after medical leave, there is ground for an investigation of discrimination. Discrimination against pregnant or parenting women is in a way two-fold because it is based on their current condition, as well as their sex, which leads to our next example of sex-based discrimination.

Sex-based discrimination is typically thought of as discrimination against women, only because there may be more documented cases of female-based discrimination historically. The Department of Education gives some examples of sex discrimination problem areas such as providing equal opportunities for both sexes within athletic programs, and discrimination within a school's science, technology, engineering and math programs, known as STEM. For example, certain athletic programs tend to give advantages toward one sex versus the other. There should be equal opportunities for a male to join a cheerleading team as for a female to join a wrestling team. Also, in programs that tend to be gender biased, there should be equal opportunities for a female to be accepted into an engineering program as for a male to be accepted into a nursing program. Again, if there is evidence that these programs are not providing equal opportunities, then an investigation is warranted.

Cases of Sex Discrimination

The US Department of Education's Office of Civil Rights handles a multitude of cases regarding schools, from elementary level to higher level education. Initially, cases involved mostly women's rights to be involved in athletics. Some schools that tried to fight compliance with Title IX claimed there were budget issues that did not allow them to be compliant, which was not accepted. Now a significant number of these cases involve institutions where students have been sexually harassed; typically, these institutions are found to be in violation of Title IX. Title IX is a living law that is constantly being challenged and reviewed, which makes it a difficult law for individuals to stay well informed of the current requirements.

In 1996, there was a case of sexual discrimination, *Pederson v. Louisiana State University*, where women proved discrimination of a sports program and gained ground. In this case, Beth Pederson and other female students at Louisiana State University brought a Title IX class action against LSU seeking to force it to establish and support women's sports teams, specifically fastpitch softball and soccer. The court held that a proportionality test could be used to determine whether LSU violated Title IX. The proportionality test found that the student population at LSU was 49% female, but the athletic participation was only 29% female. This fact helped find LSU in violation of Title IX. The court also held that these students could recover attorney fees for certain discovery violations. So, not only did they get their desired sports teams, with all the evidence presented, but they were also awarded monies to refund some expenses.

What Is Sexual Harassment and Violence?

Sexual harassment is defined as unsolicited, offensive behavior that uses sexuality to disadvantage another; unwelcome sexual advances; or requests for sexual favors. This behavior could be seen in women harassing men, men harassing women, or same-sex harassment. Conversely, sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. You may have heard of, or remember, the anti-rape slogan, "no means no." That slogan shouldn't need much explanation in regard to Title IX. Someone who says "no" does not give consent to anything, and actually means "no." Sexual violence can be carried out by school employees, other students, or other third parties. All these examples are forms of sex discrimination and would be in violation of Title IX. For pregnant individuals, sexual harassment could mean making comments or spreading rumors about their sexual activities due to the condition of being pregnant.

While sexual violence refers mostly to aggressive behavior, such as rape or aggressive physical contact, sexual harassment can mean any of the following: unwanted sexual advances, threats about education status and sexual favors, unnecessary touching, using technology to transmit sexual images, or falsifying stories about sexual incidents. For any student, it could mean other students creating false stories about sexual activities that a student did not participate in. It could also mean students feeling pressured to perform sexual favors for teachers to get extra credit, pass a class, or make up for declining grades. For teachers, it could mean a student that requires sexual favors so that the teacher will be rated well by the class. This may seem ridiculous, but a teacher that is not well-liked, has been with a school for a while, and is worried about losing their job may be placed in an undesirable position. Sexual harassment can also come into play in the locker room at athletic activities. These incidents can be harassment about how someone looks or may involve certain body parts exposed only in locker room environments. There are so many situations that students encounter where they can be vulnerable and taken advantage of. That is why it is important that students, teachers, administration members and those in all other school positions understand Title IX and why having a Title IX coordinator is imperative.

Cases of Sexual Harassment or Violence

In some cases, a student started the inappropriate situation by sending sexually explicit photos to a teacher to receive extra credit. Then, later in the semester, the teacher escalated it to sexual touching and finally, when the incident was reported, the student claimed rape by a teacher. The incident should have been reported when the photos were initially received, not after a semester of inappropriate behavior. This is what Title IX is intended to help stop.

Doe v. Lhamon is a case where one student had sexual relations with another student. A year and a half later after the relationship began, there were claims of rape and non-consensual sex. The student who brought forward the claims said they were intoxicated and did not consent. This case was famous for the Office of Civil Rights' and the Department of Education's definition of required evidence for claims. The student that the charges were brought against was ultimately banned from the school and mandated to attend counseling. Everyone needs to be

careful, especially when drugs and/or alcohol are present in a sexual situation. Any of these may tamper with your perception of what should or is happening in a situation.

The 1992 Franklin v. Gwinnett County Public Schools case was an interesting case where a student had filed reports that a teacher was engaged in sexual harassment, and the school took no action. The student took the school to court, and the lower court dismissed the student's case. However, when it reached the Supreme Court, the lower court ruling was overturned and the student was awarded monetary damages. After this ruling, the Supreme Court now allows for monetary awards for violation under Title IX.

Impacts of Title IX

Cheryl Miller, who was a college basketball star at the University of Southern California and led the US women's basketball team to the 1984 Olympic gold medal said, "Without Title IX, I'd be nowhere." There is no doubt that Title IX has driven the most progress in regard to equality within women's sports. Without a doubt, Title IX has made a difference as a symbol of commitment to equality as well as in its actual effects. Change didn't happen immediately, but within a few years after Title IX was put in place, there was significant progress.

An article in the *New York Times* found that there are lasting benefits for women through sports because of Title IX. For example, participation in sports increased both education and employment opportunities for girls. Furthermore, athletic participation by girls and women spurred by Title IX was also associated with lower obesity rates. No other civil rights law could really claim that!

Given the impact of sports, let's look at some of the facts regarding the advancement of women's sports since the enactment of Title IX. In 1973, the University of Miami awarded 15 of the country's first women's athletic scholarships within several different sports. This may seem common practice now, but it was headline news at the time. Currently, college women receive about one-third of all athletic scholarship dollars offered across the country. In 1971, the year before Title IX became law, less than 1 in 27 girls participated in high school sports, only 300,000 across the entire country. By 30 years later, that number reached 1 in 2.5 girls participating, or just below 3 million girls. That is an incredible increase in participation. The number of women participating in intercollegiate sports in those same years has gone from about 30,000 to more than 150,000—a 500% increase! In the last 20 years alone, the number of women's college teams has nearly doubled. Before Title IX, only tennis and golf had established professional tours for women. Today, there are also women's professional leagues for soccer, volleyball, bowling and basketball. In addition, a 2008 study of intercollegiate sports showed that women's collegiate sports had grown to over 9,000 teams. The five most frequently offered college sports for women are, in order: basketball, volleyball, soccer, cross country, and softball. Since Title IX, women have also competed in traditionally male sports such as wrestling, weightlifting, rugby and boxing. Parents now watch their sons and daughters on playing fields, on courts and on television.

However, in 2011, on the law's 40th anniversary, many athletic programs in high schools, colleges, and universities were still in violation of Title IX's requirements. The NCAA's 1999–2000 Gender Equity Study stated that, while women made up 54% of the enrollment in schools, they accounted for only 41% of the athletes. This conflicted with Title IX's premise that the ratio of female athletes and male athletes should be roughly equal to the overall proportion of female and male students. Men's college sports programs still maintain significant advantages over women's in average scholarships at about 60%, operating expenses at slightly higher than 64%, recruiting expenses over 68% and head coaching salaries of just under 60%. However, the progress in women's sports participation has been phenomenal as we have seen a 545% increase in female participation in college sports and a 979% increase in female participation in high school sports since Title IX was passed. Some say Title IX has even rippled into other arenas, such as the increase in full-time working women or in women choosing traditionally male-dominated career paths.

It would be naive to expect that a civil rights law could end sex discrimination and sexual violence completely. Discrimination and violence have always been threats to equality and to the rights of both sexes to participate fully in public lives and to return safely to our homes. Our civil rights laws are a start, as both a tool and a symbol, to strive to end all forms of violence.

Interactive Question #2

When a classmate you find attractive says "no" to your advances, they are probably just flirting and really do want to engage in a sexual relationship.

True or False

That is incorrect - Someone that says "no" does not give consent to anything, and actually means "no".

Reporting Obligations of Employees and Others

An interesting detail of this law is that the only people who are required to report incidents are responsible employees and Title IX coordinators. School counselors have a reporting exception because of the confidentiality of their work. The Office of Civil Rights defines a responsible employee as any employee who has the authority to act to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or any other appropriate school designee; or whom a student could reasonably believe has this authority. You will know if you've been given this responsibility or tasked as a responsible employee by your employer or institution. These employees must obtain training from the Title IX coordinator or attend Title IX training outside of work that would give greater insight into reporting obligations. Some schools publish their responsible employees on their website so that students know which staff members are

required to take action. Other students may wish to remain anonymous and therefore will talk to external sources or to a counselor to ensure confidentiality.

Interactive Question #3:

Who has a reporting exception when a student reports an incident of sexual discrimination directly to them?

- a) Teacher
- b) Professor
- c) Dean of Students
- d) Counselor**

That is incorrect - School counselors have a reporting exception because of the confidentiality of their work.

Resources

So, how do you report discrimination, sexual harassment or violence? There are multiple ways you can do so. Both local and national resources are available. Local schools have trained personnel to handle this type of a concern. There are staff members, such as human resources, the student affairs office, school counselors, a Title IX coordinator, a dean of students, or even a student employment office that can help in many ways. Anyone who has been a victim of, or believes they have observed or been made aware of discrimination, sexual harassment or violence should never hesitate to report it and always take it seriously. Contact your local resources, or if you don't feel comfortable doing that, then there are also national resources that can help. Any law enforcement officer will help you and will also direct you to more local school officials if needed. Also, the Young Woman's Christian Association, known as the YWCA, has resources like a crisis hotline, a nurse on staff, or counseling available. You can also contact the Office of Civil Rights within the state the claim happened and file a complaint directly. For example, in Michigan, the Department of Civil Rights works out of many large cities within the state. Check with your local or state government for resources. They have an online form to file a complaint, as well as a phone number, fax, toll free number and teletypewriter which is a device that helps people who are deaf, hard of hearing, or speech-impaired use the telephone to communicate. Keep in mind that reporting an incident or filing a complaint is not considered a lawsuit and the proper fact-finding will be done following the filing of a complaint to ensure that the complaint has merit. It is important for any individual to report an incident to protect themselves and others.

Summary

So, what should we know about Title IX? We know that Title IX was intended to improve the protection and equality of all people. We know that sexual discrimination and violence can come in various forms with various impacts. It can be extremely harmful and should never be

taken lightly. Title IX has been in place since 1972. The effects of Title IX have evolved over time. We will continue to strive towards complete equality, but we know there will always be challenges. Let's continue towards equality amongst all people.

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