UNDERSTANDING THE IMPLICATIONS OF TITLE IX IN HIGHER EDUCATION
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As of July 22, 2015, the U.S. Department of Education’s Office for Civil Rights had 140 open investigations into alleged violations of Title IX, and the number continues to grow. In fact, the agency plans to increase staffing in its Civil Rights division by 30 percent to handle the record number of complaints pouring in from colleges and universities around the country.

Some of the nation’s most respected universities have been the focus of high-profile Title IX cases, and the consequences are devastating. From reputational damage to enormous financial loss, schools are learning that the cost of non-compliance is significantly higher than the initial expenditure necessary for a proactive approach towards Title IX regulations.

Title IX Overview

Enacted in 1972, Title IX of the Education Amendments explicitly prohibits gender discrimination in any federally funded education program or activity, from pre-school to post-graduate programs. Originally, this regulation was intended to close the gap between men’s and women’s athletic programs, and the results were positive. As a direct consequence of Title IX, six times as many women are now participating in college sports, and the number of elementary and high school athletes has increased even more rapidly. Other areas of education opened up to women, as well. The percentage of doctorate degrees in science, technology, engineering and math awarded to female students increased from 11 percent in 1972 to 25 percent in 2014.

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Today, complaints filed under Title IX are most often related to gender-based harassment and violence, including sexual assault. While such incidents have a long history of being kept
secret, victims are gaining confidence and more are coming forward to hold the perpetrators accountable. They expect that the college or university will provide support, conduct a thorough and fair investigation, and take appropriate action.

**Clery Act Overview**

The Higher Education Act of 1965, also known as the Clery Act, took on new importance in college and university handling of certain crimes with the Violence Against Women Reauthorization Act of 2013. Working hand in hand with Title IX regulations, the Clery Act mandates that schools maintain statistics of certain crimes and include these in annual security reports, which must be distributed to current and prospective students. Crimes covered by this law include dating violence, domestic violence, stalking, and sexual assault, as well as hate crimes in any form. Educational institutions must also publicly disclose details of policies pertaining to these crimes, actions taken towards prevention, and investigation procedures.

Colleges and universities should create emergency notification procedures that offer students and staff timely warning of serious threats to safety, and they include specific requirements that schools develop programming to integrate an expectation of safe, respectful behavior in the campus culture. There are updates to methods of handling grievances, and the law provides for financial damages -- up to $35,000 for each violation.

**Current Climate**

The number of colleges and universities defending against allegations of Title IX violations continues to increase, and many complainants are winning their cases. In fact, six of the federal investigations completed in 2014 resulted in findings of non-compliance by the school.

These are just some of the recent charges:

- **University of Virginia (UVA):** It was determined that UVA failed to appropriately handle nearly 50 reports of sexual violence. In 2015, UVA signed an agreement resolving to overhaul its Title IX policies and processes under the supervision of the Office of Civil Rights.

- **Quinnipiac University (QU):** Over the course of a four-year investigation, it was determined that QU has systematically enacted and enforced policies denying female students athletic opportunities equal to those offered to male students. The case settled in 2013, when QU agreed to invest millions into women’s athletic programs.

- **Oregon State University:** In 2015, a former student filed suit against the school and the former head football coach, alleging that a pervasive culture of sexual discrimination and hostility among members of the football team contributed to her rape in 1999. The case is under investigation, and the former student is seeking $7.5 million in damages.
This new influx of cases is only the tip of the iceberg, as incidents of sexual misconduct are notoriously underreported. One report tallied responses to a survey of Northwestern University students, which indicated that a formal complaint was filed in just 7 percent of sexual assaults.

Analysts also expect additional cases from members of the LGBT community. While Title IX protections apply to students of both genders regardless of gender identity and sexual orientation, same-gender sexual misconduct and harassment has historically gone unreported. Students who identify themselves as LGBT indicate they are reluctant to risk exposure to stereotypes and additional discrimination based on their sexual orientation or gender identity. As LGBT students grow more comfortable in the college environment and more confident that their reports will be handled respectfully, the number of formal complaints is expected to increase.

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Responsibilities Under Title IX

Title IX outlines specific responsibilities required of educational institutions. There are various duties involved in both proactively creating a culture of equality and safety, and reacting appropriately to reports of gender-based discrimination, harassment and violence. On the proactive side, schools are required -- at a minimum -- to designate a Title IX Coordinator and develop policies and procedures for setting clear expectations, resolving complaints promptly and equitably, and training students, faculty, and administrators regularly.

Whether or not the school is successful in investigating incidents and resolving complaints promptly and equitably is often the subject of Title IX complaints to the Office for Civil Rights. One of the most complex issues is understanding when an investigation is required, as schools often have a responsibility even when no formal report is made. There are a variety of situations in which an educational institution is considered “on notice” and must look into concerns, though the victim has not requested a review.

Some of these situations include, but are not limited to, the following:

- Administration, faculty, staff or other responsible employee knew or should have known about the misconduct
- Those who knew about the misconduct failed to report it
- Victim reported the misconduct to an individual that he or she believed had authority to act on it
- There is a pattern of violations or a systemic issue with gender-based discrimination in the school’s culture that the administrator knew or should have known about
In some cases, schools believed they fulfilled their responsibilities through public awareness events and other proactive activities, only to discover that they didn’t do enough to meet the standards required by Title IX. The law requires that education be followed by careful monitoring of the school’s environment to ensure that policies and procedures are followed.

Whether harassment or discrimination comes to the school’s attention formally or informally, Title IX requires direct action and a thorough, fair investigation. Adding to the complexity, schools must design a method for students to make anonymous reports. Administrators investigating Title IX concerns are obliged to maintain confidentiality as much as possible, limiting disclosure of sensitive information to those with a need to know, and Title IX sets an expectation that schools will use a “preponderance of evidence” standard of proof during investigations.

When a report is received, the school has an obligation to immediately stop harassment and violence to prevent further damage, and then it is responsible for remediating effects of the incident and preventing recurrences. In some cases, it can be determined that there is a campus-wide problem with hostile or discriminatory behavior, in which case the school must act to eliminate this from the institution’s culture. When comprehensive remedial measures require an extended period of time, schools are expected to impose interim remedial measures to ensure an immediate end to discriminatory, harassing and violent behavior.

Consequences of Non-Compliance

The consequences of a formal Title IX complaint can be devastating to an educational community, regardless of the investigation’s findings. First, the amount of time involved in an Office of Civil Rights probe can be extensive. Due to the increase in cases and the limited amount of staff available, the current goal of completing investigations in 180 days is rarely met.

In 2014, the average length was 1,469 days, which kept administrators on edge and prevented students from finding the closure needed to focus on their studies. So far, 2015 numbers stand at 940 days. Throughout the investigation and long after, schools are placed under heavy tracking and reporting requirements, and they are subject to uncompromising monitoring requirements.

Awards for findings in favor of the complainant can cost universities millions of dollars in direct expenses and far more in indirect expenses. In one 2014 case, the University of Connecticut settled a lawsuit alleging sexual assault for $1.3 million, though there was no formal finding that the school failed to comply with Title IX. In another, Ohio State University paid out more than $1 million to investigate and defend an incident involving band hazing.

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These costs have multiplied so quickly that many colleges and universities have started purchasing insurance against Title IX liability. The primary insurer, United Educators, has paid out $36 million on behalf of universities to resolve 262 sexual assault cases that occurred between 2006 and 2010. Schools found in violation of Title IX can be stripped of their federal funding, can be required to reimburse victims for tuition and related expenses, and may be responsible for paying the victims’ attorneys’ fees. Under certain circumstances, the case can be referred to the U.S. Department of Justice.

For example, in a highly publicized 2014 investigation, Princeton University was found to be out of compliance with Title IX requirements for handling student allegations of sexual assault. Among other penalties, the school was required to reimburse part of the tuition paid by each of the three complainants.

Damage to a school’s reputation is no small problem. Extensive news coverage of high-profile cases has a direct impact on applications for enrollment. The University of Virginia experienced its first decrease in applications in a dozen years after media coverage of the Title IX allegations mentioned earlier, and 2014 applications for Dartmouth College were down by 14 percent after allegations of mishandling sexual assault complaints surfaced. In addition to the time and expense involved in looking into allegations from victims of assault and harassment, colleges and universities have found that once the case is complete, they are likely to face a new set of allegations -- this time from the individual accused of misconduct.

In 2015, a University of California student accused of sexual assault was expelled. He denied any wrongdoing and sued to be reinstated. He won his case and returned to school, after the judge stated that the school was overzealous in their investigation. The general theme of these cases is that the investigations were mishandled, and schools did not observe due diligence by interviewing all of the parties involved. Instead, those accused allege that schools treated them as guilty unless they could prove their innocence. There are 50 more cases like this working their way through the courts, and some request financial compensation from the schools.

Best Practices for Proactive Title IX Compliance

Creating a campus culture that embraces both the letter and the spirit of Title IX regulations is best done before serious allegations arise. An effective approach is to learn from the extensive information available as a result of other schools’ settlements with the Department of Justice and the Office for Civil Rights. These agreements spell out clear, current expectations for compliance, which can be applied proactively to protect students from Title IX violations.
For example, the University of Montana - Missoula settlement agreement lists key actions required of the school, all of which could be duplicated by other schools as proactive measures:

- Assessment of the University’s climate, policies, and practices by an Equity Consultant
- Dissemination of contact information for the Title IX Coordinator
- Delivery of mandatory Title IX training to all faculty and staff
- Creation and distribution of a regular climate survey
- Clarification and distribution of policies related to gender equality, sexual harassment and sexual assault, reporting grievances, and the process for handling grievances
- Gathering of data on the educational climate and specific action planning to resolve any issues identified

Though not under investigation, some college and university administrators that are rolling out a new or enhanced Title IX program choose to improve their understanding of gaps in compliance by retaining an Equity or Title IX Consultant. These advisors partner with the existing Title IX Coordinator, if available, as well as athletic program directors, faculty, staff, and students, to examine relevant aspects of campus culture and sports programming. Consultants follow up with recommendations for developing best-in-class policies and practices that are specifically tailored to the school’s needs.

However, these specialists can be costly, leading some administrators to rely exclusively on a self-assessment. At one time, completing a self-assessment essentially involved reading and interpreting the regulation’s requirements, gathering the data listed, and completing all necessary calculations by hand. Fortunately, high-quality online resources are now available to train evaluators on key points, as well as support data and information gathering, minimizing the time required from staff members.

Schools seeking a proactive approach to Title IX compliance, with or without an Equity Consultant, typically begin by focusing on the role of Title IX Coordinator. This position can be standalone in larger schools, or the responsibilities can be integrated into the Dean of Students function for smaller schools. Ideally, Title IX Coordinators have education and experience in administering successful Title IX programs, and the position’s duties are clearly outlined in the job description. These staff members handle the majority of Title IX work, including policy maintenance and staff training.

Each institution has a responsibility to create and regularly update a package of comprehensive Title IX policies, which typically include -- at minimum -- the following points:

- Prohibition of sex-based discrimination and retaliation in all aspects of learning,
including the classroom, athletic programs, and day-to-day campus life.

- Definition of sexual assault and detailed discussion of consent, as well as examples of prohibited conduct
- Clear explanation of grievance procedures
- The name and contact information of the school’s Title IX Coordinator

Once the policy has been finalized, forward-thinking institutions ensure that it is clearly communicated to the student population, easily accessible in hard copy and online, and regularly updated. Many schools elect to create a dedicated website for Title IX-related information, and there is regular training of students, faculty and administrators.

Training programs are often the focus of investigations related to Title IX complaints, and nearly all case resolutions include a stipulation that greater resources be devoted to providing high-quality training to all staff members, faculty, and students. While some cases specify that such training must be in-person, most proactive reviews offer the option of online training.

For example, in the Office for Civil Rights’ review of Ohio State University, online training modules were an approved solution to training needs. Administrators in search of an efficient and economical training platform often select web-based options for training in order to quickly disseminate critical information in a comprehensive, cost-effective manner.

The goal is to incorporate Title IX compliance into the campus culture, which minimizes incidents by removing explicit and implicit permission to violate policies. Regular review and assessment of Title IX policies, training and processes keeps content fresh and accurate, and expectations stay at the forefront of student consciousness.

Careful training in handling grievances and conducting thorough, fair investigations is critically important in protecting schools from financial and reputational damage. Investigations have to carefully balance respectful handling of the victim’s perspective, while still protecting the rights of the accused.

Title IX regulation is complex, and meeting all of its requirements requires specialized knowledge and skills. Many schools have attempted to maintain a diverse and harassment-free campus through well-intentioned but ineffective means, such as occasional awareness-raising events.

Effective methods of prevention are comprehensive, in-depth and highly visible, making them far more powerful. The path to this increased success is increased commitment of time and resources, as well as greater utilization of the many technological resources now available.

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About Symplicity

Symplicity is committed to providing its clients with innovative solutions and services that enable them to streamline business processes, improve performance and cultivate positive relationships with their students, customers, and communities.

Built from the ground up, Symplicity’s Title IX Manager for Advocate was developed alongside its partner colleges and universities with the sole purpose of streamlining Title IX case management. The specific workflows and process management of our Title IX Manager were shaped from the Department of Education Office for Civil Rights (OCR) standards, making it an unparalleled solution for meeting and maintaining Title IX compliance.

To learn more, please visit www.symplicity.com.

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