

TITLE IX

Presented to



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“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 educational program or activity** receiving Federal financial assistance”
 20 U.S.C. § 1681(a) (emphasis added).

- Title IX: It's About More Than Sports**
- Sex discrimination in access to educational programs and activities
 - Opportunity to study particular subjects or pursue a particular program
 - Faculty benefits, e.g. sabbaticals
 - Financial support for staff or teacher training or other benefits
 - Sex and gender-based harassment and violence
 - Gender identity and sexual orientation based discrimination and harassment
 - Can reach off-campus conduct

The Enforcement Model

- Title VII – private plaintiffs bring lawsuits for money
- Title IX – focus on federal investigation and enforcement

XI Amendment: Sovereign Immunity The State Waives It By Accepting Federal Funds

- 42 U.S.C. § 2000d-7

Department of Education, Office of Civil Rights

- Regulations (34 C.F.R. Part 106)
- “Dear Colleague” Letters
- Investigations and litigation

Hot Topics/Enforcement Priorities

- Athletics
- Access to STEM courses and training
- Retaliation
- Sexual harassment and violence
- Gender identity discrimination and harassment
- Rights of pregnant and parenting students

Hot Topic: Athletics

How Can A Sports Program Go Wrong?:

Fail all three tests

- Proportionality test
- History and continuing practice test
- Fully and effectively accommodated test

Hot Topic: STEM Access

- <18% of bachelor's degrees in computer and information sciences earned by women
- <7% earned by women from underrepresented minorities
- <17% of bachelor's degrees in engineering awarded to women
- <4% awarded to women from underrepresented minorities

STEM Access Example Aviation Maintenance

- One female student
- Hazing and harassment
- Repay tuition and costs
- Eradicate culture of hostility

Hot Topic: Retaliation

- *Emeldi v. University of Oregon*
- Current Ninth Circuit law

Emeldi v. University of Oregon

- Allegations re:
- Female role models
 - Support and attention from dissertation chair
 - Office space
 - Data collection technology

Emeldi continued

- CLAIM: University prevented plaintiff from completing Ph.D. program in retaliation for having complained of sex discrimination
- HELD: Loss of a dissertation chair constitutes adverse action, like constructive discharge
- HELD: Emeldi could proceed to trial because she set forth circumstantial evidence of retaliation

Hot Topic: Harassment and Violence

- *Davis v. Monroe County Board of Education (1999)*
- 2011 Dear Colleague Letter
- Violence Against Women Act (2013)

Davis v. Monroe County Bd. Of Ed.

- Fifth-grade girl sexually harassed by peer
- Numerous complaints by girl and parent to school
- Complaints believed, but nothing done to help
- Other girls complained

2011 Dear Colleague Letter

“Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX.”

(April 4, 2011 Dear Colleague Letter)

2011 Dear Colleague continued

- Sexual violence includes lack of consent because victim used drugs or alcohol
- High schools, not just colleges
- Off-campus
- Must inform students of rights and establish grievance procedures
- FERPA and Clery Act compliance
- Prevention and healing
- Burden of proof

VAWA 2013

- Informed by themes of 2011 Dear Colleague letter
- Campus SaVE
- Recordkeeping and reporting (Clery)
- Expanded categories of covered offenses (Clery)
- Prevention and awareness programming
- Annually trained personnel to conduct hearings
- Determine sanctions in advance
- Resources for victims

Hot Topic:
Gender Identity and Sexual Orientation

- *Price Waterhouse v. Hopkins* (1989)
- Arcadia School District settlement
 - ▣ Provide student with access to sex-specific facilities for male students, at student's option
 - ▣ Update district policies/train administrators
 - ▣ California statute
- Bullying based on gender identity and/or sexual orientation is a form of sex discrimination

Hot Topic:
Pregnancy and Parenting

- 34 C.F.R. § 106.40 Marital or parental status.
 - (a) Status generally. A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.
- June 25, 2013 Dear Colleague Letter
- Entrance to a separate program or class must be completely voluntary
- Includes termination of pregnancy

Thank You!



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