Title IX in a Nutshell

"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"

(Title IX of the Education Amendments of 1972, P.L. 92-318,20 U.S. C. S. section 1681 et seq.)

- Title IX became **law** on June 23, 1972. Its language was patterned after Title VI.
- Title IX jurisdiction requires the presence of three elements:
    - education program,
    - Federal financial aid,
    - allegations of sex discrimination
- Title IX does NOT require that the education program be public, nor even a school *per se*. Among the non-school entities which have been drawn within the reach of Title IX are athletic leagues and city recreation programs.
- The one sentence above represents the "**Law**". Its details were spelled out in **Regulations** (the goals) which gained the force of law on July 21, 1975. In effect, the Regulations spelled out the goals of what it means to act in nondiscriminatory ways within the scope of Title IX. The Regulations were NOT specific about Title IX's requirements in sport Remember, Title IX affects all education programs, not just athletics.
- In 1979 an additional document joined the Title IX package. It is known as the **Policy Interpretations.** The Policy Interpretations, in effect, becomes the yardstick with which to measure the attainment in sport programs of the goals found in the Regulations. The Policy Interpretations do NOT have the force of law but must be given great deference by the courts. It is within the Policy Interpretations that the "Three Pronged Test" is found. The "Three Pronged Test" has been the subject of considerable debate over the years but its validity has been upheld by the courts and by the Department of Education and its Office for Civil Rights (charged with the administrative enforcement of Title IX).
    - The Law (Mission Statement)
    - Regulations (Goals)
    - Policy Interpretations (Yardstick for measuring attainment of goals)

Where to Look for Problems

There are many ways to organize Title IX's requirements but the most common way is to look at 13 areas. The 13 are: accommodating the interests and abilities of members of both sexes, equipment and supplies, scheduling of games and practices, travel and per diem allowance, opportunity to receive coaching and academic tutoring,assignment and compensation of coaches and tutors, provision of locker rooms and practice and competitive facilities, medical and training facilities and services, housing and dining facilities and services, publicity, recruitment, support services, and financial assistance.

Enforcement Avenues

- In house complaint
- Office for Civil Rights complaint
- Lawsuit

There are three avenues of enforcement and their selection is totally within the inclination of the complainant. In house complaints, tendered to the institution's required 'Title IX designated employee' may be made by anyone. OCR complaints similarly may be made by anyone. Both carry only the potential for a promise from the school to go forth and sin no more; the OCR complaint also carries the never-yet-used possibility of the removal of federal $$. A lawsuit may only be filed by a plaintiff who has legal standing (ex: coach or athlete) but carries with it the potential for money damages (compensatory AND punitive)

Significant Lawsuits and Legislation Having an Impact on Title IX

- *Grove City v Bell, 1984:* This case grew out of the 1978 requirement that all schools sign a statement saying they were in compliance with Title IX. Almost all schools did so, even though few were actually in compliance. Grove City College refused to do so based on its long standing rejection of any federal intrusion on its campus. There was no allegation of sex discrimination on campus but Grove City's refusal to sign the letter triggered a move to withdraw the only federal money anywhere near campus (BEOG grants given to its students directly who then, indirectly, used the money to pay Grove City's tuition). Grove City College sued the federal government to block the withdrawal. Two points of significance were the result of the Grove City decision. 1). The US Supreme Court ruled that even indirect funding was sufficient to trigger Title IX jurisdiction and 2) Title IX's jurisdiction extended only to the sub unit of the institution which actually received federal money. The impact of the first point maintained Title IX's broad jurisdiction of education programs but the second, in effect removed its jurisdiction over physical education and athletics programs. Physical education and athletics programs almost never enjoy federal dollars and thus were NOT institutional sub units which would fall within Title IX's reach. Almost instantly after the Grove City decision was handed down, many colleges withdrew scholarship aid for their female athletes and some terminated women's teams. High school programs were not impacted by the Grove City decision because their federal money is mixed into the entire operating budget.

- *Civil Rights Restoration Act of 1987* (enacted over presidential veto in 1988). The CRRA, in effect, corrected the second part of the Grove City decision; basically it said that Congress had indeed intended Title IX's jurisdiction to be triggered for the ENTIRE institution whenever one dollar of federal money appeared anywhere on campus. Thus, in 1988 college athletics and physical education programs were again within the sweep of Title IX.

- *Franklin v Gwinnett Public Schools, 1992.* Prior to this case, the best that a complainant to OCR or the plaintiff in a Title IX lawsuit could hope for was the withdrawal of all federal money from the campus of a non-complying education program. OCR has never withdrawn any federal money for a Title IX violation; Title IX's teeth were dull prior to Franklin. The Franklin unanimous Supreme Court decision found that both compensatory and punitive damages were available to the successful plaintiff who proved intentional discrimination under Title IX. The court further indicated that any school which had an athletics program which violated Title IX was most likely doing so intentionally because Title IX was, at the time twenty years old. The Franklin decision provided very sharp teeth for those seeking to enforce Title IX via the courts and many schools decided that it was fiscally sound to move to compliance rather than to spend their money on attorneys defending the indefensible.

- *Jackson v Birmingham, 2005.* The 5-4 decision in this Supreme Court case was handed down in March, 2005. If decided differently it would have had a significant negative impact on Title IX enforcement. Jackson is a high school coach of a girls team. He discussed potential Title IX violations with this superiors and was fired in retaliation. Title IX includes a prohibition against retaliation. Title IX covers employees as well as students (although for most issues, employees find better help from Title VII or the Equal Pay Act). The issue in the case was whether Coach Jackson's remedies are limited to filing a complaint with OCR which has no meaningful value to an employee who was fired or if Coach Jackson (who was later rehired) has access to a'private right of action' (the right to use a lawsuit , not just a complaint) which would carry the potential of money damages (both compensatory and punitive). The decision means that when an employee is fired in retaliation for talking about Title IX, the employee has a remedy available which has significance. If Jackson had lost (which he didn't) coaches and teachers who value their continuing employment would likely be have been silenced on Title IX topics.

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