

# THE EVOLUTION OF TITLE IX

## 50 YEARS OF INCLUSION



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Michael is the Managing Partner at Pattison Sampson Ginsberg & Griffin PLLC.

Mr. Ginsberg was Interim General Counsel at RPI in 2016 and has served as External and Chief Litigation Counsel since 2003. He has also served as External and Chief Litigation Counsel for the City of Troy since 2004.

For 25 years Mr. Ginsberg has been instrumental in developing Title IX policies for the Firm's clients and has vast litigation experience with Title IX matters.

Michael is the Managing Partner at Pattison Sampson Ginsberg & Griffin PLLC. One of the oldest law firms in the U.S. dating back to 1813.

He was honored in 2021 and named to The National Trial Lawyers Top 100 as well as U.S. Lawyers of Distinction.

Mr. Ginsberg was Interim General Counsel at Rensselaer Polytechnic Institute in 2016 and has served as

External and Chief Litigation Counsel for the Institute since 2003. He has also served as External and Chief Litigation Counsel for the City of Troy since 2004.

The Pattison Firm has been instrumental in developing and implementing Title IX policies for its clients for more than 25 years. There are currently four certified Title IX investigators on staff.

The team has also won countless trial victories including the recent successful defense of a \$27.5 Million college-based claim and the successful defense of a \$30 Million municipal claim. Michael and the Firm also handle corporate defense matters relating to discrimination, sexual harassment, employee claims, and most other litigation matters, before both courts and administrative agencies.



#### Q: What is Title IX?

**A:** Title IX of The Education Amendments of 1972 prohibits discrimination on the basis of sex (gender.) It 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....”

#### Q: How did Title IX originate?

**A:** It is hard to believe that Title IX had its 50th Anniversary this year. In order to understand today's Title IX, we have to look at its history and intended purpose.

In 1963 The Commission on the Status of Women found widespread discrimination against women in the U.S. and in 1970 Congress held the first hearings on sex discrimination in higher education.

Although there was strong support it took until 1972 for Congress to enact Title IX and President Nixon to sign it into law.

The primary goal at the time was to grant equal access to education for women since Title VI of the Civil Rights Act of 1964, which prohibits discrimination in federally assisted programs, specifically omitted sex-based discrimination.

#### Q: How did Title IX become applicable to sports?

**A:** In 1975 President Ford, signed off on the Title IX Athletics Regulations. They required equal opportunities in educational activities including all sports activities. Exactly what “equal opportunities” meant was the subject of much litigation and debate.

#### Q: How did Title IX become the mechanism for protection against sexual misconduct in schools and universities?

**A:** In the 1980 case *Alexander v. Yale* the U.S. Court of Appeals for the Second Circuit first established the precedent that sexual harassment is a form of sex-based discrimination and thus illegal. Sexual harassment includes sexual assault, dating violence, domestic violence, stalking

and quid pro quo demands. The majority of Title IX complaints and litigation now revolve around the sexual harassment component. They range from assertions of “deliberate indifference” regarding complaints of sexual misconduct and protection of those affiliated with universities to failure to adhere to Title IX Regulations and school policies.

#### Q: How is Title IX enforced?

**A:** In 1979 The U.S. Supreme Court, in the *Cannon* case, ruled for the first time, that individuals had the right to sue under Title IX. In 1980 the U.S. Education Department, Office for Civil Rights (OCR) was created and charged with overseeing Title IX.

Enforcement of Title IX violations can be through individually brought lawsuits, complaints to OCR or on OCR's own initiative.

#### Q: Have the goals of Title IX been reached?

**A:** To the extent that the original goal was to enhance access for women in higher education, yes there has

been great success in that regard. However, the financial cost and demand on resources and personnel placed upon institutions of higher education pertaining to the sexual misconduct component have been crippling. Schools are required to staff and maintain Title IX offices, employ Title IX coordinators to manage the process, submit required annual reports, and foot the cost of investigations into complaints.

#### Q: How can colleges and universities protect against Title IX claims?

**A:** In order to be successful in traversing the current Title IX landscape schools must have legally compliant policies in place, and they must religiously adhere to those policies. All parties are entitled to a fair unbiased process (Due Process in State schools.) This is no easy task since the regulatory scheme has changed with every presidential administration since Nixon. In fact, we are now in the comment period for the proposed Biden regulations.