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The Hazards and Opportunities Presented by Title IX

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It is no secret that higher-education's senior leadership is crucial to fulfilling Title IX's basic mission — stopping sex discrimination on campus in all its aspects, including sports, salary, responses to sexual assault and workplace harassment, and more. Yet surprisingly, senior leaders have received little direct guidance from the federal government. A seminal "[Dear Colleague](#)" letter in 2011 offered guidelines to college leaders, but there has been little specific guidance *for* them.

Nonetheless, we know that Title IX compliance involves both hazards and opportunities for upper-level administrators. Here are some areas they should focus on:

Effective reporting and supervision: The federal Office for Civil Rights directed in 2015 that each college must have a properly positioned and supported, fully functioning Title IX coordinator who reports directly to "senior leadership," which ordinarily means the president. Realistically, many coordinators will routinely find themselves working with provosts on operational matters; nonetheless, it is important that the president and the coordinator have an open line of communication.

Proper first responses: Title IX requires timely responses to violations; individuals must have a way to report concerns, and victims and respondents must have access to confidential resources like counselors and advocates. Federal guidance gives institutions some latitude to determine the mix of who is required to report sexual assaults (so-called responsible employees), and who must protect a victim's confidentiality.

Senior leadership should work with the Title IX coordinator when designating and managing those reporters and resources. The quality of first responses in Title IX matters mightily because victims or survivors who receive inappropriate initial responses are more likely to report poor outcomes and even become adversarial toward the institution. Most important, they are not getting the response they deserve.

Keep in mind that there are classes of individuals — including fellow students and friends, families, and others — who may play an important role but are not required to report sexual harassment or assault or to remain confidential. Senior leadership can explore opportunities to improve the knowledge and skills base of these responders.

For example, friends may dissuade a fellow student from reporting a sexual assault based on misperceptions about what will occur in the Title IX process (perhaps based on experiences with previous Title IX requirements). Powerful messages from senior leaders toward students and their families can significantly improve overall Title IX response efforts.



Appropriate levels of response: The temptation to become too directly involved in Title IX compliance work can be a hazard for senior leaders. Some institutions still cling to models in which such leaders are the final decision makers, and federal regulators may insist that they have extensive training and significant experience with the decision-making process.

But the direct involvement of senior leaders may expose them and their institutions to litigation risks, especially where direct intervention violates policies. Generally, Title IX coordinators and staff members should perform operational duties, although the pressure for, say, a president to become directly involved may be almost overwhelming at times.

This could happen with an exceptionally high-profile incident; a controversial decision by a hearing panel; or a campus calling for the president, provost, or even board members to speak publicly. Senior leaders should carefully weigh the risks involved in personally responding and determine whether relying on Title IX staff is preferable.

Equal rights for all: Don't forget: The accused have rights, too, and many courts have been concerned that they may have been compromised. It is never appropriate to sacrifice one civil-rights standard for another.

Moreover, some people affected by Title IX are not necessarily well protected. Consider the roommate who spends all night consoling a friend who has been sexually assaulted. Senior leaders should work with the Title IX coordinator to answer the question, "Who is being affected by Title IX but is not receiving a sufficient response?"

Respect for the process: Sooner or later, every institution may be investigated or audited for Title IX compliance. Criticism can come from every direction at once.

Senior leaders can help their students, faculty, and staff understand that effective Title IX compliance is everyone's job, and requires a commitment to an inherently controversial, continuing process. They should be particularly vigilant about issues of retaliation and interference with compliance efforts. Finally, senior leaders themselves should expect to be scrutinized closely, and should embrace such accountability as a model for everyone on campus.

Widespread training: Federal guidance directs institutions to train faculty, staff, and students about Title IX. But leaders, including board members, should insist on regular training for themselves as well. Increasingly, boards invite conversations about Title IX compliance during regularly scheduled meetings.

Senior leaders should accompany staff in training exercises on and off campus and ensure that everyone understands the various jobs being performed in connection with compliance. The days of a mysterious compliance office down the hall are over; federal regulators expect colleges to make their Title IX compliance efforts highly visible and well understood.

Nimble preparation: Virtually every week, courts produce new mandates for Title IX compliance, some of which are inconsistent with federal guidelines. Congress is considering legislation that could alter compliance efforts, and both the new White House and the Supreme Court may significantly alter future requirements. As if living on the legal equivalent of the San Andreas fault were not enough, Title IX personnel turnover rates are very high. Senior leaders must prepare their staffs for life in "Compliance University," where every day is a new day.

Forward thinking: Wise college leaders will seize the opportunity to publicize their successful Title IX compliance — attracting more students who want to feel and be safe. Even more fundamentally, senior leaders can guide broad academic conversations toward vigorous consideration of what needs to be taught and learned to reduce, or even eliminate, sexual violence and discrimination in higher education.

Ultimately, we lead educational institutions, not compliance units. It's time to recast Title IX in positive and inspiring ways and in so doing to fulfill its original mission: Reducing sex discrimination and improving educational opportunities.

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