



## **Office of General Counsel: Title IX Briefing**

**November 2022**

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### **Title IX 50 Years in the Making: A Time for Celebration, Contemplation and Action**



Greetings! As Vice President for Legal Affairs and General Counsel for Kansas State University (K-State), it is my pleasure to launch our first Office of the General Counsel (OGC) legal briefing since my tenure began in June 2020. This issue will focus on the barrier-breaking legislation Title IX. This week, through its signature event KSUnite, K-State will host a series of programming with a great panel of speakers to celebrate all aspects of this landmark provision highlighting what this federal civil rights law has done to promote equal access and gender equity in education and beyond.

Fifty years ago, on June 23, 1972, the Education Amendments Act was signed into law with this significant clause which revolutionized gender access and equity in education:

*"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."*

These 37 words changed the education course for millions of women and girls in the United States. We have come a long way since the pre-Title IX era. Imagine a young female high school student with stellar credentials being denied the ability to attend her preferred university simply because she is a woman. That was Marvella Hearn's story; she attended and graduated from another university and married Birch Bayh, who eventually became the Senator of Indiana. Marvella's experience shaped her husband's legislative priorities, which included cosponsoring legislation with representatives Edith Green of Oregon and Patsy Takemoto Mink of Hawaii (the first woman of color to serve in the House of Representatives), which we know as simply Title IX. The legislation passed with little notoriety, nestled between two landmark provisions meant to bestow rights to women all within 12 months: The Equal Rights Amendment and Roe v. Wade. Fifty years later, only one of the three remains.

Senator Bayh was realistic about Title IX's limits, remarking that *"Title IX is not a panacea; it is, however, an important first step in the effort to provide for the women of America something that is rightfully theirs—an equal chance to attend the schools of their choice to develop the skills they want and to apply those skills with the knowledge that they will have a fair chance to have equal pay for equal work."*

## University Title IX Resources

### Office of Institutional Equity

785-532-6220

equity@k-state.edu

### Center for Advocacy, Response and Education

785-532-6444

ksucare@ksu.edu

### Crisis Center

Manhattan 785-539-2785

Junction

City 785-762-8835 800-727-

2785

### Office of Student Life

785-532-6432

stulife@k-state.edu

### K-State Police Department

785-532-6412

police@k-state.edu



What a first step it was. The impact on access and opportunity in education was immediately felt. In 1971, the year before Title IX was the law, approximately 1.2 million more men than women attended colleges and universities; a decade later, that gap had closed. Today, Title IX [applies](#) to more than 17,600 local school districts and over 5,000 postsecondary institutions. Historically, K-State's enrollment has reflected its commitment to gender equity, with women representing 50% of its student population when the doors opened in September 1863. That K-State tradition of gender accessibility continues today thanks to Title IX, with over 10,435 female students enrolled, or 53% of its total student population. These bright, hardworking young women excel in science, technology, engineering, and mathematics.

The expansiveness of Title IX also created a broad umbrella and catalyzed other equity protections. In the late 1990s, the Supreme Court recognized that sexual harassment and sexual assaults are also forms of sex discrimination prohibited by Title IX. Then approximately two years ago, the Supreme Court held in its landmark decision *Bostock v. Clayton County*, 140 S.Ct. 1731, 590 U.S. \_\_ (2020), that sex discrimination under Title VII of the Civil Rights Act of 1964 encompasses discrimination on the basis of sexual orientation and transgender status. Following the *Bostock* ruling, the U.S. Department of Justice issued a [Memorandum](#) declaring that the Title IX prohibition on discrimination includes gender identity and sexual orientation.

It is important to remember that Title IX is gender-neutral and, most notably, does not contain the words sport or athletics. However, perhaps its most visible achievement has been the inclusion of women in interscholastic sports, leading to an explosion in numerous youth sports for girls. The year before Title IX was enacted, fewer than 300,000 girls participated in high school athletic programs. This number has grown more than tenfold, with over 3.5 million girls participating in high school sports last year. Title IX has also triggered the expansion of athletics participation opportunities for women and girls at the collegiate level. The NCAA reports that over the past 50 years since Title IX's enactment, female participation in college sports has increased by nearly 200%. Today, women make up 44% (215,000) of all NCAA athletes compared to 15% (30,000) before Title IX. During that same period, women's collegiate teams rose by 125%. Because of Title IX, there is Serena, Simone Biles, Diana Taurasi, Sue Bird and Ayoka Lee. At K-State, over 50% of its student-athletes are women competing in various sports teams and clubs.

The OGC is committed to equal access to education and its programs and activities for all people and genders, providing training and focusing on practical solutions that are legally compliant. We play an integral role in enforcing K-State's Title IX and Title VII policies, working collaboratively with internal stakeholders like the Office of Student Life, Office of Institutional Equity, and Kansas State Athletics, and leveraging external support, e.g., the Kansas Women Attorneys Association (KWAA). Their members are presenting during this week's Title IX commemoration.

Even as we acknowledge Title IX's impressive impact, we must address its critics, including reports of an increase in sexual assault and harassment at colleges and universities and whether they handle sexual violence appropriately in the quasi-judicial environments, the due process rights of the accused individuals, protections for LGBTQIA+, and trauma-informed practices. When it comes to sports, there are also concerns over what equity is and whether there is a zero-sum game - if women gain, men lose.

We must also focus on the intersectionality of race, gender and socioeconomic status in access and exposure to sports. Access to sports has progressed, but inequity remains. The National Women's Law Center [Report](#) finds that as our nation's schools remain highly segregated along racial and economic lines, majority-minority schools typically have fewer resources and provide fewer spots for girls on teams than majority-white schools. They also unequally allocate spots so that girls of color get fewer opportunities to play high school sports at those majority-minority schools. [Other reports](#) find that only 14% of college athletes are women of color. Those statistics underscore the importance of intentional inclusivity efforts. Women's athletics programs have won countless national titles, sent hundreds of talented athletes to compete on the international stage, and demonstrated the market power that fans of women's sports hold. At the same time, there is a continuing debate on the prevention, investigation and adjudication of gender-based violence in education settings.

In late June, President Biden's administration's department of education released proposed changes to the 2020 Title IX regulations, which may go into effect for the 2023 – 2024 academic year. As General Counsels at education institutions across the country prepare for the forthcoming changes to Title IX, we grapple with how to draft legally compliant and trauma-informed policies and procedures and assist with adjudications of sexual misconduct matters in today's rapidly changing legislative and political environment.

Undoubtedly, Title IX has galvanized national discussions around athletics participation, sex- and gender-based violence, and access to educational opportunities. There must be continued discussion and determination to address these legitimate concerns and criticisms.



## [KSUnite 20 DEIB Conference](#)

K-State students, faculty, staff, and surrounding communities will join for the sixth KSUnite Conference! KSUnite 2022 will be a three-day conference open to our colleagues and communities throughout the state and beyond. It will be held Nov. 14-16 at the Kansas State University Student Union.

**Please note: Classes at K-State will be canceled from 1:30-4:30 p.m. Monday, Nov. 14, for the plenary session and breakout sessions.**

For additional information and to register please check out KSUnite 2022 DEIB Conference website. We hope to see you there!



Although Title IX has not fully addressed all forms of gender inequity, it has been [described](#) as "the most important law passed for women and girls in Congress since women obtained the right to vote in 1920." Absent Title IX, women and girls may not have had the opportunities and successes in education, sports, politics, the military, STEM, entrepreneurship, and private business. Personally, Title IX allowed me to participate in academics and sports, which ultimately drew me to the law.

If you are interested in continuing the discussion and learning more about Title IX's impact over the past 50 years and what its future portends, I encourage you to participate in this week's KSUNITE programming. Specifically, **on Tuesday, November 15, 2022, at 2:00 pm, Erin Sommer Good, Associate General Counsel at K-State, and Sara Zafar, attorney and former Title IX Coordinator at Wichita State University, will present on the topic "More than Athletics: How Title IX Impacts All Campus Community Members."** You don't want to miss it!

Fifty years later, Title IX impacts all aspects of education, including recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment, which encompasses sexual assault and other forms of sexual violence; treatment of pregnant and parenting students; treatment of LGBTQIA+ students; discipline; single-sex education; and employment. Title IX has inarguably altered the landscape of American education. In this 50th anniversary year, the K-State community should celebrate and contemplate Title IX achievements and commit to promoting a more equitable future!

## [What Title IX Means to the OGC Team](#)



### [Robert Large:](#)

In addition to prohibiting discrimination on the basis of sex, Title IX has helped move the needle toward diversity in professions where either men or women have traditionally dominated the workforce. Work in the Title IX space has had a tremendous impact on inspiring new generations of women to enter professions where women historically have been underrepresented, such as engineering. Likewise, these same efforts have led to more men in careers where men have traditionally been underrepresented, such as nursing. I am thankful that Title IX exists to not only prohibit wrongdoing, but also inspire diversity and inclusion, where individuals can pursue their passions without regard to any sex-based stigmas that may stand in their way.



### [Erin Sommer Good:](#)

For me, Title IX is a powerful recognition that sexual violence is more than a crime and more than a policy violation. It's a tragedy that turns the victim's life upside down. Instead of focusing solely on a person's victimhood, Title IX looks to the whole of the person and asks how educational institutions can help victims rebuild. By ensuring those who are subject to sexual harassment can still access educational opportunities, Title IX offers those impacted the most powerful remedy—a path toward healing.



### [Aaron Good:](#)

Title IX to me is about fairness and opportunity in the classroom and on the field. Gender equity in collegiate athletics competition is what many associate with Title IX, even though that is just an aspect of the larger legislation. Title IX is about doing what is right and not just what the free market dictates from time to time. Providing the opportunity to showcase talents and worth that previous generations were denied. These protections are just as important today, if not more so, as when they were enacted 50 years ago.



Blake Billings:

Title IX is emblematic of the immense power of *the law*—even the most brief and seemingly-mild legal provisions—to effectuate significant, meaningful, and lasting change. Through only 37 words, Title IX’s prohibition of sex-based discrimination has afforded millions of women and girls access to classrooms, scholarships, and athletic competition that were previously reserved only for a privileged few. Over the past 50 years, these brief and seemingly-mild words have swelled to hundreds of pages of federal regulations and have become the centerpiece of thousands of court cases—the collective impact of which have transformed the values and structure of our institutions. I have no doubt that over the next 50 years, the continued application and evolution of Title IX and other civil rights laws will challenge and empower each of us as we strive to expand educational access, equity, inclusion, and justice to all persons regardless of their sex, sexual orientation, gender identity, or gender expression.