

## Title IX turns 50 – a Q&A with law professor Tammi Walker

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Title IX, the landmark legislation designed to eliminate sex discrimination in education marks its 50th anniversary this year. Since it was signed into law on June 23, 1972, Title IX has been the subject of debate, interpretation and change, but it has also opened the door to more opportunities for women in education and athletics at the University of Arizona and beyond. **Tammi Walker** <sup>[1]</sup>, associate professor in the James E. Rogers College of Law, spoke with LQP about the creation, evolution and impact of Title IX.

### Many people think of Title IX just in relation to athletics. What is Title IX, and how does it differ from that common perception?

Title IX is federal legislation enacted in 1972 that prohibits discrimination based on sex in education. Most people think of Title IX as the law that increased opportunities for girls in sports, and it is. But, it is also responsible for so much more. Title IX broadly prohibits sex discrimination in education, with a few exceptions. The **main text of Title IX** <sup>[2]</sup> has just 37 words. It defines neither "sex" nor "discrimination." Yet, Title IX obligates schools that receive federal funding to be free of discrimination based on sex, which can include sexual orientation and gender identity. And Title IX encompasses protection against unequal treatment in recruitment, admissions, financial assistance, athletics, discipline, sex-based employment discrimination and sexual misconduct, among other things. With the passage of Title IX, Congress wanted to avoid supporting discriminatory practices with federal resources. It also wanted to protect individuals from sex-based discrimination effectively. Educational institutions failing to comply with Title IX can lose federal funding, which includes the ability to receive student loans, research grants and more.

### Has Title IX evolved over the years?

Title IX has changed significantly over the last five decades, but not in the way you may think. The 37 words have virtually remained the same, but the meaning has undergone quite a metamorphosis. Judicial interpretation plus instruction and guidance from the federal agency responsible for enforcing Title IX explain the changes in scope. For example, agency regulations issued in 1975 clarified that Title IX extended to athletic participation even though there is no reference to "athletics" in the main text. Similarly, Title IX's language regarding whether private individuals could sue schools to enforce its regulations was unclear. Nevertheless, in 1979 the U.S. Supreme Court in *Cannon v. University of Chicago* determined that Title IX implied such a right. Likewise, the Supreme Court paved the way for victims of sexual harassment to receive monetary damages from schools in a decision made 20 years after Title IX's passage.

### Have recent administrations continued to alter the interpretation of Title IX?

The most dramatic changes have taken place within the past few years. The Department of Education's Office for Civil Rights provides guidance and enforces Title IX through investigations and compliance reviews. Under the Obama administration, the OCR obligated schools to adopt specific procedures, emphasizing transparency and the due process rights of students involved in campus sexual misconduct. Possible Title IX violations that the OCR investigated **rose from 55 in May 2014 to 496 in 2017** <sup>[3]</sup>. President Trump's education secretary, Betsy DeVos, proposed regulations that arguably narrow the scope of behavior that Title IX can address. DeVos' regulations, among other things, formalized the definition of sexual harassment and limited actionable conduct to that perpetrated by persons in the United States. And the OCR under DeVos emphasized the need to equally protect victims and students accused of sexual harassment. President Biden took office just eight months after the announcement of the new regulations. Biden called for the issuance of new guidance and has begun the process of making yet more changes to Title IX regulations. New proposed regulations exist but have not been made public. The changes likely include protections based on **sexual orientation and gender identity** <sup>[4]</sup>.

### So, 50 years in, what has Title IX's impact been?

Describing the effects of Title IX feels like trying to prove a negative. It is nearly impossible to characterize all the outcomes we see and those we don't. But, I can explain the intent of the law. Title IX was an effort to close a gap after the passage of the 1964 Civil Rights Act. Initially drafted by Rep. Edith Green of Oregon, the original focus of the legislation was to eliminate barriers for women in postsecondary education. More specifically, Rep. Green wanted to end quotas limiting women's admission to law and medical schools. When the bill was introduced in the Senate, Birch Bayh of Indiana clarified that "our national policy should prohibit sex discrimination at all levels of education."

Opportunities for women to participate in sports have undoubtedly increased dramatically over the past 50 years. Nevertheless, Title IX does not require parity. Few collegiate athletic directors are women, and most football, basketball and baseball coaches are men. Since the 1990s, most bachelor's degrees have been awarded to women. Yet, women with bachelor's degrees **earn 74 cents on the dollar compared to men with the same degree** <sup>[5]</sup>. Women now outnumber men in medical, law and graduate school. However, few women hold leadership roles within these professions. So, perhaps we should ask whether Title IX, as the primary federal legislation to address gender equality in education,

has gone far enough.

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Athletics will celebrate the anniversary of Title IX with a **field day, keynote speaker and panel**<sup>[6]</sup> on June 23 at the Cole and Jeannie Davis Sports Center. The day will begin with sports activities during which children from kindergarten through eighth grade can participate alongside Arizona student-athletes. The morning's keynote speaker will be **Rocky LaRose**, who held various leadership positions with Athletics for 35 years. A lunchtime panel will include former Arizona softball player and current ESPN softball analyst Jenny Dalton-Hill, women's basketball coach **Adia Barnes**, and **Lacey John**, director of alumni career and professional development with the University Alumni and Development program and **2009 NCAA Woman of the Year**<sup>[7]</sup>.

The department has also put together a webpage featuring **interviews, photos, facts and figures**<sup>[8]</sup> celebrating the achievements of women athletes at the University.

#### Additional University Title IX Resources:

- **Title IX FAQ**<sup>[9]</sup>
- **Nondiscrimination Statement**<sup>[10]</sup>
- **Athletics Title IX Policy**<sup>[11]</sup>

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