



SPECIAL REPORT

**Annual Report on the Status of
Submission of Title IX Implementation Plans**

December 2020

Justin P. Wilson
Comptroller of the Treasury



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JUSTIN P. WILSON
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December 3, 2020

The Honorable Randy McNally
Speaker of the Senate
The Honorable Cameron Sexton
Speaker of the House of Representatives
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the annual report on the status of submission of Title IX implementation plans. This review was conducted pursuant to the requirements of Section 4-4-123, *Tennessee Code Annotated*.

Sincerely,

A handwritten signature in black ink that reads "Katherine J. Stickel".

Katherine J. Stickel, CPA, CGFM
Director
Division of State Audit

KJS/js

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INTRODUCTION

AUTHORITY

Section 4-4-123, *Tennessee Code Annotated*, requires state agencies subject to the requirements of Title IX of the Education Amendments Act of 1972 to develop a Title IX implementation plan. By statute, state agencies are required to submit these plans to the Department of Audit by October 1 every year. The statute requires the Department of Audit to publish, at least once a year, a cumulative report of its findings and recommendations concerning compliance with the statute's requirements. This report is intended to fulfill that requirement.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our review were to summarize the purpose and applicability of Title IX, to evaluate the state agencies' compliance with the statutory reporting requirements, and to report the number of Title IX complaints filed against the state agencies for the fiscal year. We have included the state agencies' plan submission dates for the past four fiscal years in the conclusions section of this report.

PURPOSE AND APPLICABILITY OF TITLE IX

Title IX of the Education Amendments of 1972 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." The law is intended to prohibit gender-based discrimination in any educational program or activity that receives federal funds, including protection against sexual harassment. With some exceptions, Title IX covers all aspects of an educational program or activity, and prohibits discrimination in

- treatment of students, access to programs and courses, access to and use of facilities, counseling and guidance materials, vocational education, physical education, athletics, graduation requirements, student rules and regulations, benefits, treatment of married and/or pregnant students, housing, financial assistance, health services, and school-sponsored extracurricular activities;
- admissions; and

- employment, including access to employment, hiring and promotion, compensation, job assignments, leaves of absence, fringe benefits, and terms of collective bargaining agreements.

According to Tennessee Attorney General Opinion No. 99-035,

1. As a general rule, if a state agency directly or indirectly receives federal financial assistance and conducts an education program or activity that benefits from the assistance, the state agency must comply with Title IX throughout the operations of the entire agency.
2. Title IX will apply even if the agency received federal financial assistance from a source other than the U.S. Department of Education.
3. The federal financial assistance must benefit an agency's education program or activity, but need not be earmarked for that program or activity.

Title IX applies to “every recipient and to each education program or activity operated by such recipient which receives or benefits from federal financial assistance.” For example, Title IX applies to the Tennessee Department of Education (the recipient of federal funding) and Tennessee's local education agencies (subrecipients of federal funding) because all of these benefit from federal assistance. The law also applies to the Tennessee Board of Regents, the six locally governed institutions' Board of Trustees, the University of Tennessee Board of Trustees, and their subrecipients.

- According to the report *Without Regard to Gender: Tennessee State Agencies and Title IX of the Education Amendments of 1972*, published in 1999 by the Comptroller Office of Research and Education Accountability, for the purpose of compliance with federal and state laws, state entities should be aware of the circumstances that require compliance with Title IX (even if not officially notified by the federal agency), such as receiving federal funding and having any type of educational program or activity, whether or not the federal funding is used directly for the educational program or activity.

Similar to agencies subject to Title VI of the U.S. Civil Rights Act, entities subject to the provisions of Title IX are required to develop annual implementation plans. Title VI prohibits discrimination on the basis of race, color, or national origin in all programs that receive federal funding, while Title IX prohibits discrimination on the basis of gender in education programs and activities that benefit from federal assistance.

FEDERAL DEPARTMENT OF EDUCATION

Because Title IX is often linked with K–12 and higher education programs, the regulations issued by the U.S. Department of Education are the most widely cited regulations. The other federal departments’ Title IX regulations differ in some respects because of the various programs administered, but all contain at least the following components, modeled after the U.S. Department of Education’s regulations:

- written assurances required;
- designation of an employee to coordinate investigations;
- regular dissemination of nondiscriminatory policy to applicants, students, and employees; and
- adoption of grievance procedures for complaints.

CONCLUSIONS

SUBMISSION OF TITLE IX IMPLEMENTATION PLANS

The table below presents the submission dates of Title IX implementation plans for the most recent four fiscal years, 2018 through 2021.

Submission Dates of Title IX Implementation Plans

State Entity	<u>FY 2018</u> Plan	<u>FY 2019</u> Plan	<u>FY 2020</u> Plan	<u>FY 2021</u> Plan
Administrative Office of the Courts	9/29/2017	10/1/2018	10/1/2019	10/1/2020
Austin Peay State University*	11/29/2017	9/27/2018	10/3/2019	10/20/2020
Department of Children’s Services	9/26/2017	10/1/2018	9/30/2019	9/18/2020
Department of Correction	9/25/2017	9/26/2018	10/25/2019	9/30/2020
Department of Education	9/15/2017	9/24/2018	9/26/2019	10/1/2020
Department of Environment and Conservation	11/17/2017	11/2/2018	No report	10/26/2020
Department of Finance and Administration	11/15/2017	10/1/2018	9/27/2019	9/28/2020
Department of Finance and Administration – TennCare	9/28/2017	9/26/2018	9/27/2019	9/28/2020
Department of Human Services	10/2/2017	10/1/2018	10/1/2019	9/17/2020
Department of Labor and Workforce Development	9/29/2017	9/27/2018	9/30/2019	10/9/2020
East Tennessee State University*	9/29/2017	11/1/2018	11/1/2019	10/22/2020
Middle Tennessee State University*	9/29/2017	9/27/2018	9/26/2019	9/30/2020

<u>State Entity</u>	<u>FY 2018 Plan</u>	<u>FY 2019 Plan</u>	<u>FY 2020 Plan</u>	<u>FY 2021 Plan</u>
Tennessee Board of Regents	9/28/2017	9/26/2018	9/20/2019	9/28/2020
Tennessee Bureau of Investigation	10/2/2017	10/1/2018	10/1/2019	10/1/2020
Tennessee State University*	11/30/2017	9/28/2018	10/1/2019	10/1/2020
Tennessee Technological University*	9/29/2017	9/28/2018	9/27/2019	9/30/2020
Tennessee Wildlife Resources Agency	9/20/2017	9/6/2018	8/29/2019	9/22/2020
University of Memphis*	10/3/2017	9/28/2018	9/30/2019	11/3/2020
University of Tennessee	10/13/2017	9/19/2018	9/30/2019	9/28/2020

* Until 2017, Title IX activities for the six universities formerly governed by the Tennessee Board of Regents were described in the board's Title IX plan.

SUMMARY OF TITLE IX FINDINGS

The risk of failure to comply with the requirements of Title IX is the loss of federal funds. In addition to each state agency assigning staff to monitor compliance and investigate complaints, the Division of State Audit reviews the status of Title IX activities during its audits.

For the most recent calendar year, 2020, the Division of State Audit released the following audit reports that contained findings related to Title IX.

- Austin Peay State University Board of Trustees, November 2020, contained a finding that APSU management did not design and implement internal controls to ensure the Annual Security and Fire Safety Report included all required components, including a statement that these cases could be reported to anyone other than campus police, including Title IX Coordinators and Campus Security Authorities.
- Middle Tennessee State University Board of Trustees, November 2020, contained a finding that MTSU management did not design and implement internal controls to ensure the Clery daily crime log was complete and accurate, including that the Title IX Coordinator communicated crime reports made to the Title IX Office to the Clery Coordinator at the end of each semester instead of as the office received reports.

COMPLAINTS UNDER TITLE IX

Title IX regulations require that entities adopt grievance procedures “providing for the prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited” by Title IX. Entities that have adopted grievance procedures for Title VI of the Civil Rights Act of 1964 may be able to use the same grievance procedures for Title IX and other civil rights laws. A table showing the number of Title IX complaints reported over the most recent four years appears below.

Title IX Complaints Reported During Fiscal Years 2017 Through 2020
 (Agencies not listed below have not reported any Title IX-related complaints.)

State Entity	<u>FY</u> <u>2017</u>	<u>FY</u> <u>2018</u>	<u>FY</u> <u>2019</u>	<u>FY 2020</u>
Austin Peay State University*	25	43	31	31
Department of Education	1	3	3	3
Department of Finance and Administration – TennCare	13	21	9	10
Department of Labor and Workforce Development	0	10	0	0
East Tennessee State University*	27	22	8	7
Middle Tennessee State University*	29	38	23	16
Tennessee Board of Regents	21	48	47	39
Tennessee State University*	9	37	60	60
Tennessee Technological University*	23	13	24	18
University of Memphis*	152	153	39	40
University of Tennessee	166	162	172	154

* Until 2017, Title IX activities for the six universities formerly governed by the Tennessee Board of Regents were described in the board's Title IX plan.