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Q: An institution is currently not in compliance with Title IX. What strategic steps should be taken to reduce its risk exposure?

A: What is the educational institution's risk if its athletics program is not in compliance with Title IX? With regard to the possibility of a Title IX complaint to the U.S. Department of Education Office of Civil Rights, such an action would involve a three-to six month investigation by that office and the University would be required to enter into a compliance agreement. The complaint would probably receive extensive media coverage and put the image and reputation of the institution at risk. The compliance agreement with OCR would most likely require improvements that require substantial financial resources. If a lawsuit is brought by athletes who have not received equal treatment or whose participation opportunities were unequal and such complaint is upheld by the Court, such judgment would generally require the immediate and full implementation of remedies to bring the institution into complete compliance, no matter what the cost. In addition, the institution would need to pay its own legal fees and be required to pay the fees of the complaintant's attorneys - both of which are usually considerable sums in the six to seven figure realm. In addition, the staff time and effort required to respond to a Title IX complaint or a lawsuit are significant.

Strategically it is doubtful whether either of these challenges would occur if the University (1) establishes a gender equity plan that would solve these issues over the next three to five years, showing parents and student-athletes that the institution is working to be responsive, and (2) adopts a policy position that if a student or parent raises a valid gender equity concern prior to the completion of that plan, that concern would be remedied immediately. The mistake made by most institutions is to either ignore these such complaints or deny their validity. The angered parent then files an OCR complaint or lawsuit and the original relatively narrow equality concern becomes a full-blown Title IX case that examines every aspect of the program.

-- by Donna Lopiano, SMR President

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