

BOOK REVIEW

TITLE IX

Linda Jean Carpenter

R. Vivian Acosta

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Prolific writers and researchers, Carpenter and Acosta's most recent text simply titled *Title IX* is perhaps one of their finest, and another in their lasting and important contributions to the professional literature. Within a single text, Linda Jean Carpenter, Ph.D., J.D., and R. Vivian Acosta, Ph.D., have managed to compile not only authoritative information on the structure and requirements of Title IX of the Education Amendments of 1972 (Title IX), but they also provide a comprehensive discussion of the historical and social context that precipitated the enactment of Title IX.

Few authors are as uniquely qualified as Carpenter and Acosta to write an authoritative text or primer on Title IX. Dr. Carpenter is a member of the New York State and United States Supreme Court bars. Furthermore, Carpenter has acquired over thirty years of physical education and athletic administration experience including a Ph.D. in sport administration. Likewise, Dr. Acosta is a nationally recognized sport administrator, teacher, researcher and speaker with over thirty years of experience. Acosta and Carpenter are also co-authors of the frequently cited *Women in Intercollegiate Sport*, a 27-year longitudinal national study on the status of women in intercollegiate sport. Both Acosta and Carpenter have received national recognition for their sport equity research, service, and advocacy and they are highly regarded authors and requested speakers on Title IX and gender issues in sport.

The authors' unique blending of expertise and experience enables them to write effectively for a wide range of readers. Attorneys, legal educators, and students of sport law will find the concise yet comprehensive presentation of Title IX, the regulations, policy interpretations, the investigator's manual, letters of clarification, and the discussion of significant case law invaluable. Prior to the publication of this text, readers desiring to read original documents related to Title IX would need to consult a variety of resources to piece

together the sources of statutory-based Title IX information that can be found in the fifty-seven pages of appendices in the text. *Title IX* is written with sufficient detail allowing non-United States readers to fully grasp the anatomy of law-making and enforcement issues in the U. S. as well as the historical and social significance of Title IX.

Additional audiences for this text include school administrators who wish to know more about compliance with Title IX. Sport historians and sociologists will discover rich resources in the chapters that address the social context that gave birth to Title IX legislation. On page four the authors introduce their Title IX timeline that incorporates social, political, athletic, and scientific events of significance. The inclusion of this timeline with many events that appear to be unconnected with Title IX serves as an early indication that the authors have a strong sense of history. They place importance on remembering and considering the environment in which Title IX was enacted, resisted, deflated, restored, litigated, complied with, and continues to be challenged. The authors provide a second timeline at the conclusion of the book that strictly addresses action directly involving Title IX.

Researchers, students, and faculty will appreciate the inclusion of the 1996, 1998, and 2003 Clarification Letters as well as the Regulations and Policy Interpretations found in the five appendices. *Title IX* is also ideal for athletic and recreational sport directors, coaches, and teachers as the authors include information regarding the application of Title IX to physical education classes and intramural, recreation, interscholastic, and intercollegiate sport.

In *Title IX*, Carpenter and Acosta provide readers with a concise (183 nine by six inch pages plus appendices) yet complete examination of this Law. Following each chapter are related questions and answers that could serve as an assessment instrument if educators so desire. There are a total of 79 content rich questions and answers included in *Title IX*. Carpenter and Acosta also provide volumes of detailed chapter notes commonly associated with legal journals. These historical references and examples add significant value to this text and will be of interest to faculty, students, and researchers. The nine chapters of *Title IX* are divided into three Parts, Part I: Title IX and Its Applications, Part II: Title IX in Society and in the Courts (Social, Legislative, and Judicial History of Title IX), and Part III: Title IX in the 21st Century. Chapters 1, 2, 3, and 4 comprise Part 1 and are simply titled "The Law," "The Law as Applied to Physical Education," "The Law as Applied to Intramural Sport and Recreational Sport Programs," and "The Law as Applied to Athletics."

In Chapter 1: "The Law," the authors present an in-depth and chronological presentation of the evolution of the jurisdiction, requirements, and enforcement protocol of Title IX. The thoroughness of this chapter coupled with the easy reading style that Carpenter and Acosta use throughout *Title IX* results in what is arguably the best chapter of the text. Chapter 1 is the reference to direct people towards when they confess or convey a lack of understanding of Title IX. The narrative aspects of this chapter complement the recording of dates and events related to Title IX and distinguish this text from other condensed discussions of Title IX. Carpenter and Acosta lead readers through the full unfolding of Title IX from the 37 words enacted on June 23, 1972 to the current sources of Title IX requirements.

Carpenter and Acosta's treatment of the role of the executive branch in enforcement of Title IX through the development of regulations and then the enforcement of the regulations is clearly written. Readers unfamiliar with the origins of the Title IX Regulations will learn the process the Office of Civil Rights (OCR), used to craft the regulations, including review and assimilation of over 10,000 comments, and many drafts, leading to the regulations being given the "force of law" by Congress.

The authors provide a balanced and objective examination of the regulations and their lack of specificity regarding ways to measure or determine compliance. The Javits amendment to Title IX is addressed as well as Department of Health, Education, and Welfare's policy interpretations. Carpenter and Acosta provide periodic summaries throughout this chapter that indicate, as of a specific date, where Title IX stood in regard to expanding sources of regulations. These periodic reviews will help readers monitor the development of Title IX from 1972 to present. The authors dovetail this information with discussion regarding what precipitated the need for each new source of regulation. For example, Carpenter and Acosta identify the timeliness of the policy interpretations. By July 1978 the OCR had received nearly 100 complaints of alleged discrimination that the existing regulations lacked sufficient detail to address; however, the policy interpretations (1979) provided specificity and clarity for the OCR and educational institutions.

The authors continue providing effective, concise, and detailed accounting of the Title IX sources that have been developed over the years, while conveying why they were developed. Further discussions in this chapter address the following Title IX sources of requirements: *Interim Title IX Investigator's Manual* (1980), the *Guidance on Writing Title IX Intercollegiate Athletic Letters of Findings* (1982), *Policy Clarification Concerning Coaching Compensation* (1983), the *Title IX Athletics Investigator's Manual* (1990), the *1996 Letter of Clarification* (Proportionality), the *1998 Letter of Clarification*

(Financial Aid), the 2003 *Letter of Clarification* (Proportionality and Reaffirmation), and letters of findings and letters of resolution.

Chapters 2, 3, and 4 are significant resources as the authors examine Title IX applications in the specific settings of physical education, intramural, recreational, interscholastic and intercollegiate sport. While much has been written on interscholastic and intercollegiate sport and Title IX, minimal published research addresses these other areas that Carpenter and Acosta elected to include in *Title IX*.

The middle section, Part II: Title IX in Society and in the Courts (Social, Legislative, and Judicial History of Title IX), consists of chapters 5, 6, and 7. In Part II Carpenter and Acosta provide a reasoned and balanced discussion of the social and political context that gave birth to Title IX. For example, in 1964, a mere eight years before the United States Congress enacted Title IX, President Johnson signed the Civil Rights Act into law. Issues of discrimination and definitions of protected classes of individuals were hotly contested. Within collegiate sport the Association of Intercollegiate Athletics for Women (AIAW) and the National Collegiate Athletic Association (NCAA) had differing visions of the future of competitive sport for women.

The authors appropriate and enjoyable use of humor is most visible in Part II as they address the pre-Title IX history of females in sport and physical education. In Chapter 5: "Title IX in Social and Legislative Context," Carpenter and Acosta speak personally of the roadblocks they encountered as women attempting to register for physics and athletic training courses or reflecting on their college yearbooks "two inches thick with not a single photo of a female participating in any sport-related activity except being a cheerleader for males" (p. 93).

In Chapter 5 Carpenter and Acosta continue to trace the growth and development of professional organizations related to sport and physical education. The highlighted associations include the modern day American Alliance for Health, Physical Education, Recreation, and Dance (AAHPERD), and the National Association for Girls and Women in Sport (NAGWS). *Title IX* also includes a detailed account of the philosophical and legal conflicts between the AIAW and the NCAA over the governance of intercollegiate athletics for women.

Within Chapter 6: "Title IX in the Courts, 1972 to 1992," and Chapter 7: "Title IX in the Courts After *Franklin v Gwinnett*," Carpenter and Acosta examine Title IX related case law and the significance of questions answered by each of the following cases; *Cannon v. University of Chicago* (1979), *North Haven Board of Education v. Bell* (1982), *Grove City College v. Bell* (1984), *Blair v. Washington State University* (1987), *Franklin v. Gwinnett County*

Public Schools (1992), *Cook v. Colgate University* (1993), *Favia v. Indiana University of Pennsylvania* (1993), *Gonyo v. Drake University* (1993), *Roberts v. Colorado State University* (1993), *Lowrey v. Texas A&M University System dba Tarleton State University* (1997), *Cohen v. Brown University* (1997), *Boucher v. Syracuse University* (1999), *Pederson v. Louisiana State University* (2000), and *Mercer v. Duke University* (2002). In Chapter 7 the authors also address the following two cases concerning the termination of men's teams; *Neal v. Board of Trustees of California State Universities* (1999), *Chalenor et al v. University of North Dakota* (2002), and four other cases concerning sexual harassment and Title IX.

Carpenter and Acosta address each of these cases in a mere forty pages of text that includes lengthy notes, and yet their treatment of each case is commendable. Readers are provided with enough context to understand the discussion but it is the authors' presentation of what questions are answered and demonstrated by each case that is most noteworthy. The authors successfully communicate complex legal decisions in terms that can be understood by non-attorneys. Due to the simplicity of writing in these chapters it is likely that readers with a legal background will not find much use for these chapters other than the notes or perhaps to gain an awareness of cases they may have missed over the years.

The third and final section of the text, Part III: Title IX in the 21st Century, includes Chapter 8: "Numbers: Effects of Title IX" and Chapter 9: "Issues and Cases in Transit." The authors use these chapters to explore the benefits and disappointments regarding increased sport participation rates among girls and women, including girls and women of color, and the declining numbers of females found in leadership positions within sport. They also discuss financial aid, budget growth and salaries since the enactment of Title IX.

Furthermore, Carpenter and Acosta discuss the use of the 11th Amendment "to bar non-Title IX cases based on other forms of federal antidiscrimination legislation from being litigated in federal court" (p. 183). They also provide a detailed discussion of the class-action lawsuits against the Department of Education, including the wrestlers' suit that was dismissed in June, 2003. The authors discuss at length the involvement of Representative and Speaker of the House Dennis Hastert (former President of the Wrestling Coaches Association and inductee to the Wrestling Hall of Fame), in the formation of a federal Commission on Opportunities in Athletics. Again, they deliver a well reasoned and balanced presentation of the Commission's final report *Open to All: Title IX at Thirty* as well as the minority report filed by two members of the Commission, and the Department of Education's final report

2003 Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance that reinforced the validity of the proportionality prong for access to participation opportunities.

It is likely that this book will be nominated for a few "book of the year" awards, as it is unparalleled in the presentation of content and the thoroughness of review of Title IX from 1972 through 2004. Individuals wondering why a law enacted in 1972 is still simultaneously despised, challenged, ignored, complied with, and praised, will benefit from reading this book. *Title IX* will provide readers with the legal, social and historical context that will help to illuminate the wide-ranging and strongly emotional responses received when Title IX is merely mentioned.

Rebecca J. Mowrey

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