

ATIXA Statement on the Penn State Sexual Abuse Scandal -- November 11th, 2011 -- Malvern, PA

Much has been said and will be written about Jerry Sandusky and the sex abuse scandal involving Penn State University. ATIXA, the Association of Title IX Administrators, is dedicated to advancing information about and compliance with the federal Title IX statute, and will address the Title IX implications of this case.

Our thoughts are with the victims and their families who will never be the same. We are also transfixed, as are so many of us, by the human tragedy of university administrators entrusted with a public duty who sacrificed uncounted young boys to misplaced loyalties. What they knew will come out and we will continue to examine the Title IX implications of the information.

Much is being made of the criminal acts of Sandusky and those who covered for him. In the coming weeks and months, Penn State will be investigated for violating the Clery Act, a federal campus crime reporting law that requires reporting of forcible sex offenses. Lawsuits are likely, and will likely allege that the university -- and perhaps collaborating local officials -- were negligent and exposed countless boys to foreseeable harm by failing to fulfill their duties to report and to act.

Will much be made of the Title IX implications of this case? We hope so. Title IX will celebrate its 40th anniversary in June of 2012. Title IX has for nearly 40 years been a tool to assure gender equity in educational programs at schools and colleges. Far beyond equalizing teams, athletic facilities and resources spent on athletics, Title IX can be used to hold school districts and colleges liable for failing to remedy gender discrimination, sexual harassment and sexual assault.

Liability for Title IX is premised on notice of discriminatory conduct to high-ranking school or campus officials who then respond to that notice with deliberate indifference -- failing to take reasonable actions to put an end to the behavior and prevent it from recurring. Title IX also imposes a duty to remedy the effects of the discrimination on the victims. Courts commonly find that a single act of rape is enough to create a discriminatory effect on the basis of gender.

Title IX has no statute of limitations. Courts implied the right to sue under Title IX, and when they did, they never specified a time limitation for filing. In this case, we might see whether acts dating back to 1998 (or earlier) and 2002 that were known to campus officials are still actionable by the victims and their families in the courts. In the case of child victims, courts can be very lenient on tolling the right to file suit, as happened in many of the clergy abuse cases filed against the Catholic Church.

The 40+ count indictment of Sandusky makes clear that the highest ranking officials of Penn State had knowledge of his pattern of abuse and even rape. That is why they have lost their jobs and some are facing prosecution for failing to report the abuse as a crime to authorities. Their failure to act can also form the basis for allegations of deliberate indifference under Title IX. Forcing Sandusky's early retirement, allegedly taking away the keys to the locker room, and sending him off to run a camp in Erie may not be enough to shield Penn State from Title IX liability. Perhaps Sandusky wasn't an employee at the time, but was he an agent? The acts occurred on university property. The victims weren't students at Penn State, but they may have been lured there through its programs.

What we do know is that the proper application of Title IX -- stopping discriminatory behavior through reporting and action -- could likely have prevented what has become a large-scale tragedy. And this is why ATIXA continues to strive for a standard where all K-12 schools, colleges and universities -- not just departments within these institutions -- properly apply the law. ATIXA hopes that the lessons learned from this case permeate our culture to lessen any tolerance for sexual harassment, assault and abuse in any form.

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