U.S. Department of Education Issues Long Awaited Final Title IX Regulations

April 29, 2024

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TITLE IX

Agenda

- Changes to:
  - Definitions
  - Grievance Process
  - Reporting Obligations
  - Training Requirements
- Previous 2020 Requirements that Remain in Effect
- Recommendations

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Changes to Definitions
Complaints

- A "complaint" is defined as an oral or written request that can objectively be understood to be a request to investigate and prepare a decision regarding discrimination based on sex, including harassment.
  - Sex-based discrimination also now includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
  - Comments shared at "public awareness events" at a postsecondary educational institution do not constitute complaints.

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Changes to Definitions
Hostile Environment Harassment

- A hostile environment occurs when there is unwelcome sex-based conduct that, given the totality of the circumstances, is subjectively and objectively offensive and so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity.
  - Significant change from the 2020 regulations where the "or" was an "and."
  - Whether a hostile environment has been created remains a fact-specific inquiry.

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Changes to Grievance Process

Single-Investigator Model

- One person may now be both the investigator and decisionmaker, or the Title IX Coordinator and the decisionmaker.
  - A local educational agency ("LEA") may still choose to have a separate investigator and decisionmaker.
  - Note: If the investigator and decisionmaker are different individuals, the entity must develop a process that allows the decisionmaker to question the parties and all witnesses for the purpose of determining credibility when credibility is in dispute and relevant.

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Changes to Grievance Process

Conduct Outside of School/Educational Program or Activity

- An LEA must address allegations of a sex-based hostile environment in its education program or activity, even if some of the alleged conduct occurred outside of the educational program or activity or outside the United States.
- NOTE: consistent with the (current) 2020 Title IX regulations, an LEA is not required to investigate conduct that occurred solely outside the educational program or activity or outside the United States.

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Changes to Grievance Process
Dismissal of a Complaint

- No mandatory dismissal grounds for complaints.
- Complaints may be dismissed if
  - (1) the respondent is unidentifiable even after a reasonable attempt to identify the respondent;
  - (2) the respondent is not participating in the educational program or activities or is not employed by the LEA;
  - (3) the complainant voluntarily withdraws some or all of the allegations and any remaining allegations would not constitute discrimination under Title IX; or
  - (4) the allegations, even if proven, would not violate Title IX after reasonable efforts have been made to clarify the allegations with the complainant.
- Dismissals may be appealed.

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Changes to Grievance Process
District-Initiated Complaint

- If the complainant fails to submit a complaint or withdraws all allegations in the complaint, the Title IX Coordinator must decide whether to initiate a complaint.
- NEW: The Title IX Coordinator has several factors they must consider when determining whether to initiate a complaint:
  - (1) the complainant's wishes; (2) the complainant's reasonable safety concerns; (3) risk of additional discrimination; (4) severity of the allegations, including whether they would justify removing the respondent; (5) age and relationship of the parties; (6) scope of the discrimination; (7) availability of evidence; and (8) whether the LEA can end the discrimination and prevent reoccurrence without a complaint. If the Title IX Coordinator initiates a complaint, the complainant must first be notified, and any safety concerns must be addressed.

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Changes to Grievance Process
Supportive Measures

- Parties may now appeal any decisions regarding supportive measures to an impartial employee.
- If a student has a disability, Title IX Coordinators must coordinate with the Individualized Education Program ("IEP") or 504 plan team(s) to determine how to comply with IDEA (20 USC 1400 et seq.) and Section 504 (29 USC 794) requirements throughout the implementation of the Title IX grievance procedures, including, but not limited to, the implementation of supportive measures.

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Changes to Grievance Process
Emergency Removal

- Removal is no longer limited to threats of physical safety.
- A student respondent may be removed from campus if the removal can be justified by determining through an individualized safety and risk analysis that there is an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations.
- A student respondent must still be provided with notice and an opportunity to challenge the decision immediately following removal from campus.

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Changes to Grievance Process
Informal Resolution

- Informal resolution may now be offered before a formal complaint is filed, whereas previously, the process could not be offered until a formal complaint had been filed.
- Note: Information Resolution still may not be utilized when a K-12 student alleges sex-based harassment against an employee.

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Changes to Grievance Process
Evidence Review

- The LEA must review all evidence and provide both parties with equal opportunity to review the relevant evidence or to review an accurate description of the evidence.
- The two evidence review periods in the 2020 Title IX Regulations were replaced with a requirement to provide the parties "a reasonable opportunity to respond" to the evidence or the accurate description of the evidence.
  - If a description of the evidence is provided, the parties shall be notified of the right to review the evidence upon which the description was based.

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Changes to Grievance Process
Optional Live Hearing

- Postsecondary institutions may, but are no longer required to, have a live hearing.
  - For postsecondary institutions in California the holding from *Doe v. Keegan Allee* (30 Cal.App.5th 1036 (2019)) may be applicable, as well as the requirements of SB 493 as set forth in Education Code sections 66281.8 and 67385.7.
- If a postsecondary institution opts not to have a live hearing, it must still provide the decisionmaker with an opportunity to assess a party's or witness's credibility when credibility is in dispute and relevant.
  - May meet with parties separately and subsequently share a recording or transcript of that meeting with the other party(ies), solicit their follow-up questions, and then go back to another set of meetings to pose those questions.

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Changes to Grievance Process
Appeals

- Grounds for appeals established in the 2020 Title IX Regulations (procedural irregularity, new evidence, or a conflict of interest or bias) remain in place.
- At a minimum, an LEA must also provide an appeal process comparable to similar proceedings relating to other discrimination complaints.
  - California K-12 institutions include the appeal procedures under the UCP (BP/AR 1312.3) and the policies prohibiting discrimination in employment typically found in BP/AR 4030/4031.
  - Appeal options for California postsecondary institutions may include the appeal procedures found under an institution's complaint policies which are compliant with Title 5 and SB 493.

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Changes to Reporting Obligations

Obligation to Report

- K12: All non-confidential K-12 employees must notify the Title IX Coordinator when they have information about conduct that may reasonably constitute sex discrimination.
- Postsecondary Institutions:
  - Non-confidential employees who (1) have the authority to take corrective action, (2) hold administrative leadership responsibilities, or (3) hold teaching or advising responsibilities must notify the Title IX Coordinator.
  - All other non-confidential employees at postsecondary institutions have the option to either notify the Title IX Coordinator or to provide the potential complainant with the Title IX Coordinator's contact information and instructions on how to file a complaint.

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Changes to Reporting Obligations

Pregnancy or Related Conditions

- Regulations now prohibit discrimination against students, employees, or applicants, based on pregnancy or related conditions.
  - To prevent sex discrimination and ensure equal access to its education program or activity, an LEA should take steps such as providing reasonable modifications for students, reasonable break time for lactation for employees, and lactation space for students and employees.
  - LEAs are prohibited from requiring documentation from students to obtain reasonable modifications unless documentation is necessary and reasonable.
- Employees must promptly inform a pregnant student, or person who has a legal right to act on behalf of the student, of the Title IX Coordinator's contact information and inform them that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the recipient's education program or activity.

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Changes to Training Requirements
All Employees

- The 2024 Title IX Regulations require all employees to be trained on the LEA's obligation to address sex discrimination in its education program or activity, the scope of conduct that constitutes sex discrimination under Title IX, including the definition of "sex-based harassment," and all applicable notification and information requirements.

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Changes to Training Requirements
Investigators/Decisionmakers/Other Employees Implementing Grievance Procedures

- The 2024 Title IX Regulations require training for all investigators, decisionmakers, and other persons responsible for implementing the Title IX grievance procedures or who have the authority to modify or terminate supportive measures on the following items:
  - the recipient's obligations under Title IX;
  - the grievance procedures;
  - how to serve impartially by avoiding prejudgment, conflicts of interest, and bias;
  - understanding the meaning and application of the term "relevant" in relation to questions and evidence; and the types of evidence that are impermissible regardless of relevance.

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Changes to Training Requirements
Informal Resolution Process Facilitators

- Facilitators of the informal resolution process must also be trained on:
  - the rules and practices associated with the recipient's informal resolution process; and
  - how to serve impartially, including avoiding conflicts of interest and bias.

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Changes to Training Requirements
Title IX Coordinators

- Title IX Coordinators and their designees must be trained on:
  - their specific responsibilities;
  - the recipient's recordkeeping system, and Title IX recordkeeping requirements; and
  - any other training necessary to coordinate the recipient's compliance with Title IX.

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Previous 2020 Requirements that Remain in Effect

- Regulations still apply to sexual assault, dating violence, domestic violence, and stalking based on sex;
- Notice of allegation requirements remain the same;
- Employee respondents still may be placed on paid administrative leave in accordance with state law and district policy during the investigation;
- All records must be maintained for seven years; and
- Grievance policies still must be in writing.

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Recommendations

- Review the 2024 Title IX Regulations and your existing institutional policies to determine what policies and practices should be amended to ensure compliance with the 2024 Title IX Regulations by August 1, 2024.
- Adherence to the various requirements under the new regulations will require collaboration with your educational institution's Superintendent/President, Title IX Coordinators, student services administrators, special education administrators, board policy subcommittees, and/or legal counsel to determine how to effectively implement the 2024 Title IX Regulations.
- OCR has indicated that they do expect LEAs to comply by the August 1st deadline.

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Question & Answer Session

Thank You

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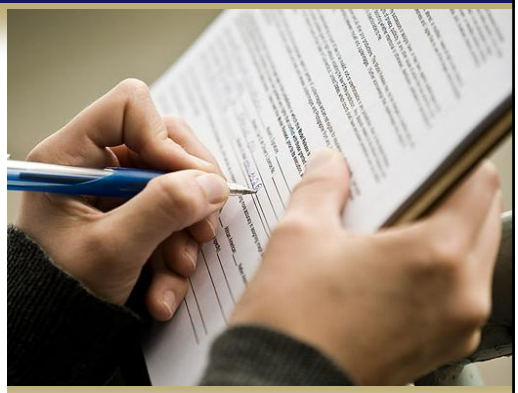

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I feel privileged to have the opportunity to assist people with their problems.

Georgelle Cuevas regularly assists school districts, county offices of education, and community colleges in navigating the requirements of the Education Code, Public Records Act, the Brown Act, and conflict of interest laws. Ms. Cuevas is experienced in counseling and representing public and private sector employers in all aspects of labor and employment law, including discrimination/harassment, wrongful termination, disability, reasonable accommodation, wage and hour requirements, leave requirements, discipline and dismissal. She has significant experience conducting thorough and effective investigations concerning workplace issues and student complaints.

In addition to being a licensed attorney, Ms. Cuevas is also a certified Senior Professional in Human Resources (SPHR). Ms. Cuevas gained experience in employment law, retirement, education and civil rights at previous firms. Her prior experience also includes internships with the Equal Employment Opportunity Commission and the National Labor Relations Board.

During law school, Ms. Cuevas served as the Vice-President of External Affairs for the Moot Court Honors Society. In addition, she won a CALI award for receiving the highest grade in her Immigration Law class.

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Events & Speaking Engagements

Ms. Cuevas conducts engaging and interactive workshops and training seminars on such topics as collective bargaining, Title IX Grievance Process, preventing sexual harassment, the FRISK® Employee Documentation Model, employee leaves and accommodations, and maintaining public and student records. Some of the many sessions she has led include:

Publications

Ms. Cuevas is a contributor to the firm's education publications and blog.

Community & Professional

Ms. Cuevas volunteered as an attorney coach of the Amador Valley High School Mock Trial Team for the 2018-2019 competition season. She previously served as an attorney scorer for Contra Costa County's moot court and mock trial programs for high school students from 2012-2015.

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Mellissa Gallegos represents and advises California school districts, community college districts, and county offices of education in all education and employment law matters, including employee evaluation, discipline and dismissal, reasonable accommodation, interactive meetings, and restraining orders. She also assists with California Public Records Act responses; collective bargaining issues; and defending employers against allegations of discrimination with the Civil Rights Department and the Equal Employment Opportunity Commission. Ms. Gallegos' state-wide practice also includes conducting prompt and effective investigations, including complaints of discrimination, harassment and retaliation, including Uniform Complaints, Office of Civil Rights, Title 5, and Title IX investigations for both K-12 school districts and higher education institutions. She also serves as a hearing officer for Title IX hearings.

Ms. Gallegos is the Co-Chair of the AALRR's Women's Leadership Committee. She regularly presents at conferences for state-wide educational organizations, including the California School Board Association (CSBA), the California Latino School Boards Association (CLSBA), the California Association of Latino Superintendents and Administrators (CALSA), the Association of Chief Human Resource Officers/Equal Employment Officers (ACHRO/EEO), and the Community Colleague League of California (CCLC).

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Ms. Gallegos is proficient in

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AALRR Commemorates the 50th Anniversary of Title IX
06.23.2022

AALRR Hosts Inaugural Civil Rights Conference
09.21.2018

Events & Speaking Engagements

Ms. Gallegos has co-presented on topics such as sexual harassment, mandated reporting, and workplace investigations. She has spoken before an audience of over 400 staff and administrators at a district-wide meeting and has presented at ACSA (Association of California School Administrators) Personnel Academy.

An Administrator's Guide to Investigations for Educational Institutions
At Your Desk (Via Zoom), 07.24.2024

2024 Shell Beach Conference for **Higher Education Leaders**
The Cliffs Resort at Shell Beach, April 10-12, 2024

Alerts & Articles

Title IX Proposed Rulemaking Addresses Athletic Participation Consistent with California Law
05.04.2023

2022-2023 Requirements of NCAA Board of Governors Policy on Campus Sexual Violence and Disclosure of Student Information
09.06.2022

Newly Proposed Title IX Regulatory Amendments Explicitly Clarify That Title IX Prohibits Discrimination on the Bases of Sexual Orientation and Gender Identity
07.18.2022

SB 493 Will Require Colleges and Universities to Revise Sexual Harassment Complaint Procedures in 2022
12.14.2021

2021-22 Rules For K-12 Schools Come Into Focus
07.20.2021

Spanish.

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Key Considerations in Addressing "Sexual Harassment" Under the New Title IX Regulations and California Law
09.11.2020

Issues to Consider While Implementing Distance Education: Part 2 - Protecting Student Information in the Cloud
04.15.2020

Issues to Consider While Preparing for Distance Education: Part I – Privacy, Notice, and Consent
03.30.2020

SB 89, SB 117, and CDE Guidance: What Local Educational Agencies Need to Know About the State's Response to the Coronavirus (COVID-19)
03.21.2020

Blog Posts

U.S. Department of Education Issues Proposed Amendments to Title IX Regulations
EdLawConnect Blog, 07.28.2022

Leading and Managing Employees Remotely: Telecommuting in Education
EdLawConnect Blog, 04.09.2020

Community & Professional

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- Mexican American Bar Association, Member

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Anna Miller represents public school districts and California community college districts in all areas of general education law; labor relations; employment matters such as discrimination, dismissal and harassment; student issues such as fraudulent receipt of federally issued financial aid, grade disputes, student discipline and harassment charges; and First Amendment rights. She is active in the firm's Title IX group, conducting Title IX investigations and giving presentations on Title IX issues.

Ms. Miller conducts complex workplace investigations for both public and private sector entities, including universities and colleges, school districts, public safety entities, counties and cities; and provides legal counsel on matters involving safety, campus police and human resources. In addition, she has a wealth of experience representing clients in court, arbitration proceedings and administrative hearings.

During law school, Ms. Miller held an externship in Sacramento at the California Senate Office of Research, where her focus was on higher education/community college issues.

Firm News

AALRR Announces 2024 Equity and Non-Equity Partners
01.23.2024

Just Published: Updated Pocket Guide to the Educational Employment Relations Act
05.12.2016

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Student Discipline

Workplace Training

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AALRR Launches Title IX Compliance Initiative Focused on Addressing Sexual Violence..
04.17.2015

Events & Speaking Engagements

Ms. Miller frequently gives presentations about Title IX, employment issues, student matters, and other legal topics.

Employee Absenteeism: Managing Attendance Issues (K-12)
At Your Desk (Via Zoom), 11.21.2024

Making the Interactive Process a Success (Part 2): Leaves of Absence, Telework and Other Reasonable Accommodations (K-12)
At Your Desk (Via Zoom), 10.17.2024

Making the Interactive Process a Success (Part 1): Tips for Effective Communication and Problem Solving When Employees Request Accommodation (K-12)
At Your Desk (Via Zoom), 09.19.2024

2024 Leaves Boot Camp K12
At Your Desk (Via Zoom), 08.15.2024

Managing and Understanding Leaves (K-12)
At Your Desk (Via Zoom), 08.15.2024

Employee Absenteeism: Managing Attendance Issues (Higher Education)
At Your Desk, Winter 2024

U.S. Department of Education Issues Long-Awaited Final Title IX Regulations
At Your Desk, 04.29.2024

Alerts & Articles

U.S. Department of Education Issues Long-Awaited Final Title IX Regulations
04.24.2024

S.B. 791 – Required Disclosure of Sexual Harassment Decisions for Certain Postsecondary Applicants
04.05.2024

2022-2023 Requirements of NCAA Board of Governors Policy on Campus Sexual Violence and Disclosure of Student Information
09.06.2022

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SB 493 Will Require Colleges and Universities to Revise Sexual Harassment Complaint Procedures in 2022
12.14.2021

New Title IX Regulations on Campus Sexual Harassment Finally Issued by U.S. Department of Education
05.08.2020

School Districts Should Consider Including Title IX Information in Their Back-To-School Packages
08.10.2017

Federal Government Issues Guidance to Ensure Gender Equity in Career and Technical Education Program
06.17.2016

Employees May Present Evidence that Their Acts Were Within the Scope of Employment, Triggering the
05.18.2016

Publications

Ms. Miller has co-authored several American Bar Association publications, including:

- ABA Midwinter Meeting Report on 2013 Cases – FMLA
- ABA 2014 FLSA Midwinter Meeting Report
- 2015 Supplement to the ABA/BNA FMLA Treatise
- 2016 version of the CPER Pocket Guide to the Educational Employment Relations Act

Blog Posts

Obama Administration's White House Task Force to Protect Students from Sexual Assault Releases Guide for Universities and Colleges in Preventing and Addressing Campus Sexual Misconduct
EdLawConnect Blog, 01.27.2017

Summer Jobs for Students Require Work Permits Issued by the School District
EdLawConnect Blog, 07.10.2015

Pumping: Teacher Requests to Express Breast Milk During the School Day
EdLawConnect Blog, 08.25.2014

Community & Professional

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- American Bar Association, Labor and Employment Section, Member