



ACSA Presentation: **Managing Title IX Issues: An** **HR Perspective**



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PRESENTED BY:
Melissa E. Gallegos, Partner
Anna J. Miller, Partner

Cerritos • Fresno • Irvine • Marin • Pasadena • Pleasanton • Riverside • Sacramento • San Diego • Westlake Village



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Agenda

- Title IX- Legal Updates
- Title IX and HR Considerations
 - Training
 - Intake
 - Management/Coordination
 - Other issues



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Title IX – LEGAL UPDATE

- *August 2020* – 2020 Title IX Regulations go into effect
- *August 1, 2024* – 2024 Title IX Regulations go into effect
- *January 9, 2025* – *Cardona* Decision (Vacatur of 2024 Title IX Regulations)
- *January 20, 2025* – E.O. 14168: “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”
- *January 31, 2025* – DCL confirmed the return to 2020 Title IX Regulations
- *February 4, 2025* – Second DCL confirmed return to 2020 Title IX Regulations
- *February 5, 2025* – E.O. 14201: “Keeping Men Out of Women’s Sports”
- *February 12, 2025* – U.S. Dept of Ed. Office for Civil Rights (OCR) opened an investigation into the California Interscholastic Federation (CIF)s
- *July 9, 2025* – U.S. Dept. of Justice filed a civil lawsuit against CIF and CDE
- *June 30, 2026* – SCOTUS Decision *West Virginia v. BPJ* and *Little v. Hecox* regarding exclusion of transgender athletes from girls’ and women’s sports

Why HR matters in Title IX

- HR plays an important role in preventing discrimination and harassment through policies, training, internal investigations and in overseeing employee discipline.
- At most districts HR is responsible for maintaining and enforcing anti-discrimination, anti-harassment, and anti-retaliation policies; providing reporting channels; documenting compliance activities; and serving as the Title IX coordinator.

What You Should Know as an HR Administrator

1. What?
 - a) What Acts Are Considered Sexual Misconduct?
 - b) What Are Districts Required to Do After a Complaint or Incident?
2. Who?
 - a) Who Is Responsible for Complying with Title IX?
 - b) Who is Protected by Title IX?
3. Where?
 - a) Where Can Title IX Violations Occur?
 - b) Where Should You Go to Address Violations?
4. Why?
 - a) Why Is Compliance So Difficult?
 - b) Why Should All Employees Be Aware of Title IX?

TITLE IX SCOPE AND DEFINITIONS

Federal Law - Title IX

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.

(Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681 et seq.) and related regulations (34 C.F.R. Part 106).)

Sexual Harassment Defined

According to **§ 106.30**, Sexual Harassment means conduct on the ***basis of sex*** under one or more of following:

1. Quid Pro Quo Harassment

- **Employee** conditions the provision of an aid, benefit, or service of the recipient on the Complainant's participation in unwelcome sexual conduct

2. Hostile Environment Sexual Harassment

- Unwelcome conduct determined by a reasonable person to be **so severe, pervasive and objectively offensive** that it effectively denies Complainant equal access to the recipient's education program or activity

Sexual Harassment Defined, Cont.

Conduct on the **basis of sex** under one of following:

3. Other Sexual Acts

- **Sexual assault** per 20 U.S.C. 1092(f)(6)(A)(v): Includes Forcible and Nonforcible Sex Offenses
- **Dating violence** per 34 U.S.C. 12291(a)(10)
- **Domestic violence** per 34 U.S.C. 12291(a)(8)
- **Stalking** per 34 U.S.C. 12291(a)(30)

Who Must Comply?

Response to Sexual Harassment

According to **34 CFR §106.44(a)**: A recipient with **actual knowledge** of sexual harassment in an education program or activity of the recipient against a person in the United States must **respond promptly in a manner that is not deliberately indifferent** (e.g., clearly unreasonable in light of the known circumstances).

Actual Knowledge

- Actual knowledge for **K-12 Educational Institutions** occurs when **any employee** has notice of sexual harassment or allegations of sexual harassment.
- Best practice to provide annual training to K-12 employees about reporting responsibilities to the Title IX Coordinator or other designated Title IX Team Member.

What to Report

- Employees must report **observations, reports or complaints** from students, parents/guardians, employees or third persons:
 - Regarding allegations of sexual harassment, sexual violence and/or inappropriate conduct of a sexual nature
 - Against students, employees or third parties
 - Which take place in the educational setting
 - Which take place off campus
 - If during District program or activity
 - Connection to District

Where Can Violations Occur?

Education Program or Activity

- Per § 106.44(a): An education program or activity includes locations, events, or circumstances over which the recipient exercised **substantial control over both the Respondent and the context in which the sexual harassment occurs....**
- At time of filing the formal complaint, the **Complainant must be participating or attempting to participate** in recipient's education program or activity.

Where Can Title IX Violations Occur?

- ANY Educational Program or Activity
 - All District Programs
 - Educational
 - Extracurricular
 - Athletic
 - Off-Campus Programs
 - Field Trips
 - Outside conduct?

Some Possible Title IX Scenarios

1. Sexting/Instagram/X/, etc.
2. “Slut-shaming”
3. Employee-Employee sexual harassment or sexual misconduct
4. Employee-student sexual harassment or sexual misconduct
5. Student-student sexual harassment or sexual misconduct
6. Hazing
7. Stalking in person or online

How Should Districts Respond?

Who's on the Title IX Team?

1. Title IX Coordinator, per §106.8(a)
 2. Investigator(s)
 3. Decision Maker(s)
 4. Appeal Officer(s)
 5. Informal Resolution Process Facilitator(s)
- *All team members must be impartial, unbiased, and free from conflicts.*
 - *All team members must be trained in the 2020 Title IX Regulations.*

Title IX Team: Title IX Coordinator

Title IX Coordinator Duties:

- Coordinates Title IX compliance and training
- Conducts intake meeting with Complainant
- Offers supportive measures to Complainant & Respondent
- Explains grievance process, accepts formal complaint & determines mandatory dismissal
- Evaluates emergency removal
- Evaluates use of informal resolution process
- Assigns unbiased investigator free from conflicts
- Sends notices (e.g., Notice of Allegations)
- Considers permissive dismissal of complaint

Title IX Team: Title IX Coordinator

Title IX Coordinator duties, continued:

- Reviews investigative reports, written decision, & appeal decision, but **does not make decision** about responsibility
- Drafts letter of outcome after written decision issued
- *Likely does not* determine sanctions
- If applicable, ensures effective implementation of remedies for Complainant, sanctions for Respondent, and overall corrective plan
- *May* investigate when needed
- *May* act as facilitator of an informal resolution process

Title IX Grievance Process

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|-----------------------------------|------------------------------------|
| 1. Basic Requirements | 6. Written Questions By Parties |
| 2. Intake & Notice of Allegations | 7. Determination of Responsibility |
| 3. Dismissal of Formal Complaint | 8. Appeals |
| 4. Consolidation | 9. Informal Resolution |
| 5. Investigation | 10. Recordkeeping |

See 34 CFR § 106.45(b)

Emergency Removal Option for Students

1. Institution may remove Respondent per § 106.44(c) by undertaking an individualized safety & risk analysis of Respondent:
 - The analysis determines if there is an **immediate threat to the physical health or safety** of any student or other individual arising from the allegations to justify removal
2. Notice to Respondent of Emergency Removal and opportunity to challenge decision immediately following the removal
3. Process **cannot** modify Respondent rights under IDEA, Section 504, or ADA
4. Emergency removal under Title IX is a safety measure; suspension under Ed. Code § 48900 et seq. is a disciplinary measure
5. **MUST** Provide education to Respondent while removed

Administrative Leave Option

1. Institution may place a non-student employee Respondent on administrative leave, per §106.44(d) during the pendency of a grievance process that complies with §106.45
2. This administrative leave option cannot be construed to modify any rights under Section 504 or the Americans with Disabilities Act.

Summary: HR/Title IX Coordinator Responsibilities

- Intake
- Supportive measures
- Provide Notice of Allegations to each party
- Provide Notice of any changes/updates in the process (e.g., new allegations, delays, interviews, extensions, etc.)
- Coordinate the team
- Manage the investigation (issue spotting)
- Manage the decision making process
- Discipline considerations
- Recordkeeping
- Training

Why is Compliance so Difficult?

Why Is Compliance So Difficult?

1. Ambiguous Nature of Complaints
2. Roadblocks to Reporting
3. Coordination Among Departments
4. Lack of Awareness
5. Anonymous complaints
6. Reluctant complainants/witnesses
7. Rumors/gossip
8. Off-campus speech
9. Off-campus conduct
10. Law enforcement investigations
11. Incidents involving younger elementary students

Additional Considerations: Overlap with Other Laws/Policies

1. Uniform Complaint Procedure
2. Child Abuse and Neglect-Reporting Requirements
3. Bullying
4. Student Discipline for Sexual Harassment, Sexual Assault
5. Internal Complaints of Employment Discrimination
6. Employee Discipline for Sexual Harassment, Grooming, Sexual Assault
7. Law enforcement investigations

Other Issues

- Significant amount of **training & time** required of school and district administrators
- How to comply with **Title IX and Education Code** prohibitions of sexual harassment
- Mandatory dismissals under Title IX, but may resume investigation under UCP or other policies
- Potential **retaliation** claims against educational entity if deliberately follow a different complaint process instead of Title IX grievance process

Internal Questions Regarding Title IX

Does your District have:

- Updated policies?
- Regular training?
- Students who understand how to seek help?
- Employees who understand their responsibilities?
- A trained Title IX team?

If the answer is NO to any of the questions, your district could be at risk.

Question & Answer Session

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For questions or comments, please contact:

Melissa E. Gallegos
(562) 653-3200
MGallegos@aalrr.com

Anna J. Miller
(916) 923-1200
AMiller@aalrr.com

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