Title IX Compliance Training

PALOMAR COLLEGE®
Learning for Success

October 16, 2026

Presented by:

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The Title IX Team and Process for Community College Districts

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Agenda

- Legal Update
- Review Title IX Regulations: Scope and Definitions
- Roles of Title IX Team
- Intake Process for Reports of Sexual Harassment
- Title IX Grievance Process
- Retaliation
- Practical Application



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Current Legal Landscape of Title IX: Nationwide

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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"
- *Jan. 31, 2025; Feb. 4, 2025* – 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
- *June 25, 2025* – OCR issues finding that CDE and CIF violated Title IX
- *July 9, 2025* – U.S. Dept. of Justice filed a civil lawsuit against CIF and CDE

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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).)

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2020 Title IX Regulations

1. **Regulations and Guidance**
   - Text of regulations contained in ***34 CFR Part 106*** have the full force and effect of law
2. **Overall Intent of Changes**
   - Strengthen/Clarify Title IX protections for survivors of sexual misconduct & provide due process protections to those facing accusations of sexual misconduct
3. **New Scope Under Title IX Regulations**
   - Amended sexual harassment definitions, clarified jurisdiction, & confirmed that Title IX sex discrimination includes sexual harassment and other sexual misconduct
4. **Live Hearing Required for Post-Secondary Institutions**

- A live hearing required under the Title IX grievance process complies with the 2019 California court decision in ***John Doe v. Kegan Allee,*** (30 Cal. App. 5th 1036), which requires a fair hearing and an opportunity for direct or indirect cross-examination before a neutral adjudicator who has independent power to find facts and make credibility assessments.

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Davis v. Monroe County Board of Education 526 U.S. 629 (1999)

- Ruling: For student-on-student sexual harassment, the educational institution will be liable for damages when:
  - The institution has ***"actual notice"*** of the harassment; and
  - The institution responded to the harassment with "deliberate indifference."
  - Harassment must be ***"severe, pervasive, and objectively offensive,"*** and the institution's indifference was "systemic" so that the victim is deprived of educational opportunities or services.
  - ***Deliberate indifference*** defined as a response that is ***"clearly unreasonable in light of the known circumstances."***
- The Regulations apply the *Davis* standard for OCR compliance reviews ***and*** for finding institutional liability

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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.)

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Actual Knowledge

- In **Post-Secondary Institutions,** per **§106.30, *actual knowledge*** occurs when:
  - (1) the ***Title IX Coordinator*** or
  - (2) any ***official*** of the recipient who has ***authority to institute corrective measures*** on behalf of the recipient
  - (3) Has notice of sexual harassment or notice of allegations of sexual harassment.
- The Institution must identify who those officials are in the organization and notify them of their status as an Official With Authority or "OWA"

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Actual Knowledge, continued

The Institution should:

- Provide ***written*** notice and guidelines to OWAs
- ***Train*** all OWAs in their responsibilities, such as:
  - Promptly providing a verbal or written report to the Title IX Coordinator, likely within 1-2 business days
  - Prohibited from filing anonymous reports to the Title IX Coordinator
  - Provide the Title IX Coordinator all known information
  - Not required to evaluate the complaint or information received unless the OWA is the Title IX Coordinator

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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, and also includes any ***building owned or controlled by a student organization that is officially recognized*** by a postsecondary institution.
- At time of filing the formal complaint, the Complainant must be ***participating or attempting to participate*** in recipient's education program or activity.

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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

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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)

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Other Sexual Acts as Sexual Harassment under Title IX

1. Sexual Assault

- **Forcible:**
  - Any sexual act directed against Complainant, forcibly, against Complainant's will, or without consent, including rape, sodomy, sexual assault with an object, and fondling
- **Nonforcible:**
  - Offenses that do not involve force where the Complainant is incapable of giving consent, including statutory rape and incest

NOTE: Under Education Code §67386 a Complainant is ***unable to consent if the Complainant was incapacitated*** due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity.

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Other Sexual Acts

2. Dating Violence (34 U.S.C. 12291(a)(10))

- Violence (on the basis of sex) committed by Respondent:
  - who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
  - where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - (i) The length of the relationship
    - (ii) The type of relationship
    - (iii) The frequency of interaction between the persons involved in the relationship

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Other Sexual Acts

3. Domestic Violence (34 U.S.C. 12291(a)(8))

Felony or misdemeanor crimes of violence (on the basis of sex) committed by:

- A current or former spouse or intimate partner of the Complainant
- A person with whom the Complainant shares a child in common
- A person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner
- A person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- Any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

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Other Sexual Acts

4. Stalking (34 U.S.C. 12291(a)(30))

The term "stalking" means engaging in a course of conduct (on the basis of sex) directed at Complainant that would cause a reasonable person to:

- **Fear** for their safety or the safety of others; or
- Suffer substantial **emotional distress**

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ROLES OF THE TITLE IX TEAM

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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 new Title IX Regulations.***

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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

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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

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Title IX Team: Investigator(s)

Investigator Role:

- Trained and Knowledgeable
- Impartial, unbiased, & free from general or specific conflicts of interest
- Investigates formal complaint
  - Reviews complaint and relevant policies
  - Interviews parties and witnesses
  - Gathers, reviews, weighs, and synthesizes evidence
  - Assesses relevance and credibility
- Coordinates two review processes for parties and assesses responses
- Prepares a written investigative report about the evidence
- Investigator does ***not*** make decision about whether the Respondent is "responsible" for violation of sexual harassment policy

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Title IX Team: Decision Maker

Decision Maker Role:

- Reviews Final Investigative Report with "fresh eyes" to see if information is missing or incomplete
- May be a hearing officer or a hearing panel
- Facilitates "live cross-examination" for parties through the parties' advisors
- Makes conclusions about whether alleged conduct occurred and the decision about responsibility for a policy violation
- Prepares written determination with findings of fact, conclusions, and rationale for the result as to each allegation
- If applicable, recommends sanctions for Respondent and remedies for Complainant

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Title IX Team: Appeals Officer

Appeal Officer Role:

- Provides written notice to both parties about the right to appeal based on three grounds for appeal
- If an appeal is filed, the Appeal Officer evaluates the appeal request(s) to determine if within the scope of appeal
- Provides a written Notice of Appeal to both parties
- Reviews both written statements and arguments from the parties
- Renders written decision on appeal and explains rationale for the result
- Provides the written decision to parties at same time

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Title IX Team: Informal Resolution Process Facilitator

Informal Resolution Process Facilitator Role:

- Cannot require the parties to participate in informal process or to waive the right to an investigation
- Obtains voluntary, written consent of the parties to resolve the matter anytime before a determination of responsibility is made
- Process does not involve full investigation or adjudication, but includes a written notice to the parties disclosing the allegations, the requirements of the process, and notice that the parties can withdraw and resume the grievance process
- May consider the use of a trained mediator or trained restorative justice facilitator, if requested and appropriate
- Process cannot be used where an employee is alleged to have sexually harassed a student

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INTAKE PROCESS FOR REPORTS OF SEXUAL HARASSMENT

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Meeting with Complainant

The Title IX Coordinator:

- Promptly schedules a meeting with Complainant and listens to allegations and concerns
- If Complainant describes sexual harassment allegations, the Title IX Coordinator explains the Title IX grievance process
- Informs Complainant of the right to file or ***not*** to file a formal complaint and the right to supportive measures even if a formal complaint is not filed
- If ***no*** formal complaint is filed, the Title IX Coordinator informs Complainant of right to file a formal complaint at a later time. The Title IX Coordinator also assesses, despite Complainant's decision, whether to independently initiate a complaint if the failure to initiate an investigation would be clearly unreasonable considering the circumstances (e.g. based on a safety threat)

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Meeting with Complainant

The Title IX Coordinator:

- If a formal complaint is filed, Title IX Coordinator gathers the signature of Complainant, parent/guardian and/or Title IX Coordinator
- Informs Complainant of right to request an informal resolution process after submission of a formal complaint and the right to exit informal resolution process at any time
- If a formal complaint is filed, Title IX Coordinator determines if the complaint falls within the scope of mandatory dismissal and informs Complainant and Respondent
- Best practice to provide a written summary of the meeting

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Supportive Measures

1. Requirement to Offer Supportive Measures per §106.30 & §106.44

– Must be offered to Complainant as soon as CCD has notice of possible Title IX issue and to Respondent after complaint filed

2. Avoid Burden on Parties

– Supportive Measures must be non-punitive, non-disciplinary, and not unreasonably burdensome to the other party

3. Individualized

– Supportive Measures must ensure equal educational access, protect safety, and/or deter sexual harassment

4. Examples of Supportive Measures

– Counseling, course-related adjustments, modify schedule, extend deadlines, campus escort, increased security and monitoring, and/or mutual restrictions on contact between the parties

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Discuss Advisor of Choice

- The Title IX regulations provide the Complainant and Respondent with the same opportunities to have "others present" during any grievance proceeding
  - An advisor may be a parent, family member, attorney, or other person
  - The advisor may be present for any meeting, interview, and/or hearing and may inspect and review any evidence obtained as part of the investigation
  - The advisor ***shall*** ask the cross-examination questions in the live hearing process
    - If a party does not have an advisor to conduct cross-examination at a live hearing, the institution must provide one to the party
  - The institution may establish restrictions on the extent of an advisor's participation, if restrictions apply equally to both parties
    - Since advisors will have access to inspect and review pupil, employee and/or other confidential documents, consider having advisor(s) sign an agreement not to release copies of or information from those records to the public

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Emergency Removal Option for Students

1. Institution may remove Respondent per §106.44(c)
2. Institution must undertake individualized safety & risk analysis re 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
3. Notice to Respondent of Emergency Removal
4. Opportunity for Respondent to challenge decision immediately following the removal
5. Process ***cannot*** modify Respondent rights under IDEA, Section 504, or ADA

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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.
3. Note: California Education Code §87623 sets forth additional requirements for involuntary paid administrative leave for academic employees

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TITLE IX
GRIEVANCE PROCESS

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Grievance Process

1. Basic Requirements
2. Notice of Allegations
3. Dismissal of Formal Complaint
4. Consolidation
5. Investigation
6. Hearing/Cross-Examination
7. Determination of Responsibility
8. Appeals
9. Informal Resolution
10. Recordkeeping

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Basic Requirements

1. Per §106.45(b)(1)(i), treat Complainant and Respondent equitably in the grievance process and related to remedies and sanctions, if any
2. Require objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence
3. Cannot make credibility decisions based on a person's status as Complainant, Respondent, or witness
4. Presume that Respondent is not responsible until a determination is made
5. Follow prompt time frames (estimate 60-90 days)
6. State a standard of evidence (preponderance or clear and convincing).
   - Most CCDs use preponderance of evidence, (e.g., Ed Code §67386(a)(3).)
   - Caution: Some post-secondary recipients have a clear and convincing standard for employee discipline, which would affect which standard of evidence to use for Title IX matters

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Notice of Allegations

- **Provide Notice of Allegations to Each Party per §106.45(b)(2)**
  - **Notice of the institution's grievance process and informal resolution process**
    - Identification of relevant Board Policies & Administrative Regulations which contain the grievance process and informal resolution process
    - Identification of standard of evidence
    - Right to inspect and review evidence
  - **Notice of allegations with sufficient details, including:**
    - Identification of the parties
    - Description of alleged conduct allegedly constituting sexual harassment and the date and location of alleged incident
  - **Review Sample Notice of Allegations**

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Notice of Allegations

- **Provide Notice of Allegations to Each Party, continued**
  - **Additional Items in Notice of Allegations**:
    - Identification of potential policy violations (not just Title IX)
    - Identification of the range of possible disciplinary sanctions and remedies
    - Statement that Respondent is presumed not responsible
    - Notification that a determination of responsibility will be made at the conclusion of the grievance process
    - Notification that each party may have an advisor of choice, who may be an attorney
    - Prohibition against parties knowingly making false statements or knowingly submitting false information

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Notice of Allegations

- **If additional allegations are discovered, provide written Notice of *Additional* Allegations**
- **Provide written notice of any changes in the process, including:**
  - Delays
  - Meetings
  - Interviews
  - Hearings
  - Appeals
  - Decisions
  - Other

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Dismissal of Formal Complaint

- **Required Dismissal per §106.45(b)(3)**
  - **Recipient must dismiss the formal complaint *if* the conduct alleged:**
    - Would not constitute sexual harassment as defined in §106.30 even if proved
    - Did not occur in the recipient's education program or activity
    - Did not occur against a person in the United States
  - Such dismissal does **not** preclude action under another provision of recipient's Code of Conduct, Board Policy/Administrative Procedure or California law

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Dismissal of Formal Complaint

- **Permissive Dismissal per §106.45(b)(3)**
  - **Recipient may dismiss the formal complaint or allegations any time during the investigation or hearing, *if* :**
    - The Complainant notifies the Title IX Coordinator in writing to withdraw the complaint
    - The Respondent is no longer enrolled or employed
    - Special circumstances prevent the recipient from gathering evidence in order to reach a determination
- **All dismissals require written notice & reasons delivered to the parties at the same time**

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Consolidation of Formal Complaints

- **A recipient may consolidate formal complaints as to allegations of sexual harassment where the allegations arise out of the *same facts or circumstances***
  - Against more than one Respondent;
  - By more than one complainant against one or more respondents; or
  - By one party against the other party (cross-claims)

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Investigation

1. **Trained Investigators**

   - Additional training may include how to conduct a thorough and impartial interview, what types of questions to avoid, how to weigh evidence, and how to prepare witness summaries

2. **Presumption**

   – The institution must presume Respondent is *not responsible* for the alleged conduct

3. **Evidence Gathering**

   – Investigator has the burden to gather sufficient evidence; the burden to gather evidence is not on the Complainant or Respondent

   – Investigator cannot gather privileged information without voluntary, written consent (e.g., physician or psychiatrist records, confidential counseling records, etc.)

4. **Written Notice with Time to Prepare**

   – Provide written ***notice for interviews*** with sufficient time for the person to prepare to participate

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Investigation, continued

5. Equal Opportunity for Parties

- To present witnesses, including fact & expert witnesses and other inculpatory and exculpatory evidence
- To have an advisor present for any meeting, interview or hearing
  - The advisor should not answer questions or interrupt the party's answers
  - The advisor can ask for a break in between questions

6. No "Gag" Orders or Directives

- Cannot restrict the ability of the Complainant or Respondent to discuss the allegations under investigation or to gather and present relevant evidence
- Likely can direct parties and witnesses not to tamper with evidence

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Investigation, continued

7. Equal Opportunity to Inspect and Review Evidence

- Provide parties with opportunity to meaningfully respond to the evidence *before* the conclusion of the investigation.
- Parties may review evidence that is directly related to the allegations, including evidence which the investigator does *not* intend to rely upon as well as inculpatory and exculpatory evidence regardless of where it was obtained
  - Practice tip: The investigator can receive, review, and place any irrelevant or unrelated evidence into a separate exhibit of the file or report in order to demonstrate the information was reviewed and set aside as having no weight

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Investigation, continued

8. Prepare and Share Draft Report of Evidence

- Before completing the Investigative Report, provide a ***Draft*** **Report of Evidence and Attachments** to both parties and their advisor, if any, via electronic format or a hard copy.
- Provide the parties and advisors, if any, with at least ***10 days to review the Draft Report of Evidence and Attachments*** & submit written responses
- Share any new evidence with the parties and continue the investigation related to new information, if needed
- Consider and incorporate new information and responses in the ***Final Investigative Report***
- Again, consider written agreement with advisors who inspect and review other pupil, employee, health, and/or other private records

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Investigation, continued

9. Investigator Prepares Final Investigative Report

- The report must fairly summarize relevant evidence
- Relevant evidence may include credibility assessments in order to indicate the weight of the evidence

10. Provide Final Investigative Report to Parties

- ***At least 10 days prior to a hearing*** or other time of determination regarding responsibility, send the Final Investigative Report to each party and the party's advisor, if any, in an electronic format or a hard copy, for their review and written response
- Review written responses, revise investigative report if needed, and attach all written responses to the Final Investigative Report

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Pre-Hearing and Hearing Procedures

The Post-Secondary Institution must provide a "live hearing" with cross-examination of the parties and witnesses by the parties' advisors in compliance with **§106.45(b)(6).** In general, the Institution must create Pre-Hearing, Live Hearing, and Post-Hearing Procedures that provide adequate notice, equitable participation, and a fair process. Procedures must address:

1. **Dates, location, recording, and other logistics by Hearing Coordinator**
2. **Appointing Decision-Maker (Hearing officer or panel) & Conflict process**
3. **Notice of Hearing with rights, responsibilities, timeline, & process**
4. **In-Person or Virtual Hearing Options**
   - At the request of either party, the entire live hearing may be conducted with parties located in separate rooms with technology enabling the decision maker(s) and parties to simultaneously see and hear the party or witness answering questions.

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Live Hearing with Cross-Examination

Cross-Examination and Other Questions

- Each party's advisor may ask the other party and any witnesses all relevant, follow-up, and questions challenging credibility
- Cross-Examination must be conducted directly, orally, and in real time by the party's advisor of choice and "never" by a party personally.
- Before a party or witness answers the cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant.
  - *Rape Shield Protections:* Evidence about Complainant's sexual predisposition or prior sexual behavior are ***not relevant*** unless offered to prove someone else committed the alleged conduct or if prior sexual behavior with respondent offered to prove consent
- Decision-Maker's must explain any decision to exclude a question as not relevant

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Live Hearing with Cross-Examination (Title IX)

Cross-Examination and Other Questions, continued:

- Title IX Regulations state that if a party or witness does not submit to cross-examination at the live hearing, the Decision-Maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility, however, OCR has stated that it will not enforce this, based on court ruling in *Victim Rights Law Center v. Cardona (2021)*
- Decision-Maker(s) cannot draw an inference about the responsibility based ***solely*** on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions
- Decision-Maker(s) must be trained to rule on relevance of questions and repetitive questions
- Institution must create an audio or audiovisual recording or transcript and make it available to parties for inspection and review

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Determination of Responsibility- After Hearing

Decision-Maker Determines Responsibility per §106.45(b)(7):

- Decision-maker(s) must be trained to apply the standard of evidence ("preponderance" or "clear & convincing") and to understand what evidence may not be relied upon after a failure to submit to cross-examination.
- Decision-maker(s) must issue a written determination of responsibility
- Reminder: The Title IX Coordinator or investigator cannot determine responsibility

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Determination of Responsibility- After Hearing

Written Decision per §106.45(b)(7) must include:

- The allegations potentially constituting sexual harassment
- A description of procedural steps from receipt through determination, including notifications, interviews, evidence gathering & hearings
- Findings of fact supporting the determination;
- Conclusions regarding the application of the code of conduct to the facts;
- Statement of, and rationale for, the result as to each allegation, including determination regarding responsibility, any disciplinary sanctions, and whether remedies will be provided to complainant to restore equal access to education
- Procedures and permissible bases for parties to appeal
- The written decision must be provided to the parties simultaneously

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Appeals

1. Equal Opportunity for Appeal under §106.45(b)(8)

- Both parties must have opportunity to appeal
  - the determination of responsibility, or
  - the dismissal of a formal complaint or allegations

2. Bases for Appeal

- Procedural irregularity that affected the outcome;
- New evidence that was not reasonably available & could have affected outcome; or
- Conflict of interest or bias generally or specifically by Title IX Coordinator, investigator, and/or decision-maker which affected the outcome

Institution may include other bases for appeal if both parties have equal right to use

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Informal Resolution Process

1. Optional Process per §106.45(b)(9)

– May use informal resolution process on a case-by-case basis after formal complaint is filed

2. Informed, Mutual Consent

– Both parties must give voluntary, informed, and written consent but cannot be required as a condition of enrollment/employment

3. Right to Withdraw from Informal Process

– Either party can withdraw from informal process at any time and resume formal process

4. Not Suitable for Student vs. Employee Matters

– No informal process for allegations that an ***employee*** harassed a student

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Recordkeeping

1. A recipient must maintain records for 7 years, including records of:

– Each sexual harassment investigation, including:

- Determination regarding responsibility
- Audio or audiovisual recording or transcript
- Any disciplinary sanctions imposed on Respondent, if applicable
- Any remedies provided to Complainant, if applicable

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Recordkeeping

2. A recipient must maintain records for 7 years, including records of:

- Any appeal and the result of the appeal
- Any informal resolution and the result of the informal process
- All materials used to train Title IX Coordinators, investigators, decision-makers, appeal officers, and any person who facilitates an informal resolution process
  - These training materials must be publicly available on the institution's website
  - If no website, training materials must be available upon request for inspection by the public

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Recordkeeping

3. For each response required under §106.44, a recipient must create and maintain records for 7 years, including records of:

- Any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment.
  - If the recipient did not provide supportive measures, it must document why that decision was not clearly unreasonable in light of the known circumstances
- In each instance, recipient must document
  - Why its response was not deliberately indifferent
  - The measures taken which were designed to restore or preserve equal access to the education program or activity

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RETALIATION

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Retaliation

1. Section 106.71(a) – Retaliation Prohibited

– No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing.

2. Avoiding the Title IX Process May Be Retaliation

– If the alleged behavior falls under Section 106.30 definitions, a recipient cannot use the student conduct process as a way to avoid the rigorous Title IX grievance procedures; such a decision may constitute retaliation.

3. Retaliation Complaints Filed Under Same Process

– Retaliation complaints must be filed under the Section 106.8 grievance process.

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Retaliation, Continued

4. Confidentiality Required by Recipient

- Recipient must keep identity of Complainant, Respondent, and witness(es) confidential unless required by law "or as necessary to carry out Title IX proceeding"
- Regulations imply that the improper release of this confidential information could be retaliation

5. First Amendment Rights

- Parties exercising their 1st Amendment rights does not constitute retaliation under Section 106.71(a)

6. False Statement Charge

- Recipient charging an individual with making a false statement in bad faith during Title IX process is ***not*** retaliation
- A responsibility determination (or no responsibility determination) is not sufficient evidence to conclude there was a bad faith false statement

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Title 5, SB 493 & Title IX

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Processing of Complaints: What Laws Do We Follow?

- State and federal law prohibit discrimination or retaliation against persons or groups, or those associated with them on the basis of an actual or perceived characteristic related to ethnic group identification, national origin, immigration status, religion, age, sex, gender, gender identification, gender expression, military and veteran status, marital status, medical condition, race, color, ancestry, sexual orientation, physical or mental disability, or any other characteristic protected under applicable federal or state law
- Community college districts must process complaints of unlawful discrimination in their programs and activities in accordance with the provisions of title 5, California Code of Regulations, section 59300 *et seq*. ("Title 5")
- Specifically with respect to sexual harassment complaints, community college districts must also process such complaints in compliance with federal Title IX requirements, and/or California's SB 493 requirements if a complaint is filed by a student

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Complaint Requirements - Title 5

- "Complaint" means a written or verbal statement made by a student, an employee, a parent of a minor, or an individual with legal authority on behalf of a student or employee. A complaint must allege facts that, if true, would constitute a violation of state or federal laws prohibiting unlawful discrimination
- The complainant may be requested, but shall not be required, to submit the complaint on a form prescribed by the Chancellor or the community college district
- The responsible district officer or designee shall record the verbal complaint in writing. The district shall take appropriate steps to ensure the writing accurately reflects the facts alleged by the complainant

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Overview of SB 493

- Went into effect January 1, 2022 and became enforceable thereafter.
- Amended California Education code section 66262.5
  - Clarifies the definitions in Education Code section 66262.5 regarding sexual harassment
- Provides a grievance procedure set forth in Education Code section 66281.8
  - Seeks to clarify the process and provide grievance procedures for adjudicating student complaints of sexual harassment at postsecondary educational institutions, including sexual or gender-based violence, and dating or domestic violence
- Establishes specific employee training requirements.
- How does SB 493 currently interact with Title IX?
  - Mirrors some of the Title IX regulations
  - Provides additional rights to the parties that are not inconsistent with the Title IX regulations
  - Some provisions of SB 493 are inconsistent with specific provisions of the Title IX regulations
- Apply both Title IX and SB 493 to the extent that SB 493 does not conflict with the current Title IX Regulations

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Some Interactions/ Conflicts with Title IX

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"Responsible Employee" v. "Officials with Authority"

Title IX Regulations	Ed Code 66281.8 (SB 493)	Additional Measures in SB 493, not in Title IX
"For all recipients, notice to the recipient's Title IX Coordinator or to "any official of the recipient who has authority to institute corrective measures on behalf of the recipient" (referred to herein as "officials with authority") conveys actual knowledge to the recipient and triggers the recipient's response obligations"	A "responsible employee" is "an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority"	Title IX has a broader definition than Ed Code 66281.8(a)(2), clients will need to follow the more specific definition under the Ed Code. See also list of "Responsible employee" in the statute

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"Knowledge" Standard

Title IX Regulations	Ed Code 66281.8 (SB 493)	Not in Conflict, SB 493 Above and Beyond
Actual knowledge is, "Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary or secondary school." §106.30	If the institution knows, or reasonably should know, about possible sexual harassment, the institution shall promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond if the institution determines that an investigation is not required	• Conflict when responsible EE's should have known • Must investigate if institution knew or reasonably should have known about harassment

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Cross-Examination

Title IX Regulations	Ed Code 66281.8 (SB 493)	In Conflict
The assigned advisor must conduct cross-examination on behalf of the party. Cross-examination must occur "directly, orally, and in real time" during the live hearing Prevails, still ask them to submit questions ahead of time. They still can apply some level of discretion in making sure questioning process runs smoothly. Don't get to change them	"Any cross-examination of either party or any witness shall not be conducted directly by a party or a party's advisor." Cross examination occurs via written questions to hearing officer in advance of hearing. Ed Code 66281.8(b)(4)(A)(vii)(I)	Ed Code 66281.8 promotes indirect cross examination, while Title IX requires advisors to ask the other party and witnesses questions. Title IX does not require that questions be submitted for screening prior to the hearing (or during the hearing) Direct conflict with Title IX

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On/Off Campus Incidents

Title IX Regulations	Ed Code 66281.8 (SB 493)	In Conflict
An "education program or activity" in the United States, includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs.	Occurred "in connection with any educational activity or other program of the institution," or outside of those educational programs or activities if there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education.	Ed Code 66281.8 requires institution to address sexual harassment even if institution does not exercise substantial control over respondent and context.

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Hearing

Title IX Regulations	Ed Code 66281.8 (SB 493)	In Conflict
A live hearing must occur	"The institution shall decide whether or not a hearing is necessary to determine whether any sexual violence more likely than not occurred." Ed Code 66281.8(b)(4)(A)(vii)	• Title IX prevails • Ed Code 66281.8 is lenient, and applies a balancing of factors to determine whether a hearing should occur. Title IX says a hearing shall be held. • Doe v. Allee case also supports more due process like a hearing

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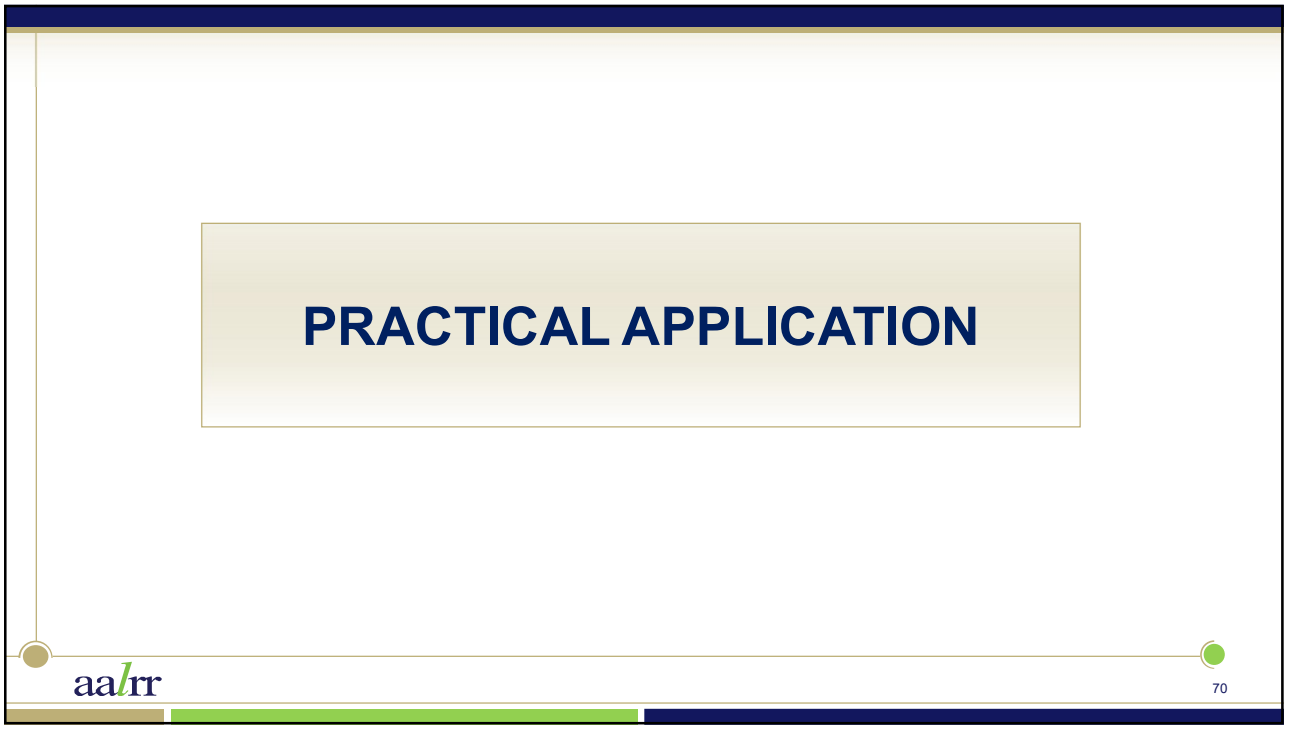
Appeals

Title IX Regulations	Ed Code 66281.8 (SB 493)	In Conflict
Appeals must be provided to both parties	Appeals occur only if the institution's grievance process includes an appeal. Ed code 66281.8(b)(4)(A)(vii)(IV)(x)(III)	Ed Code 66281.8 leaves the appeal up to the institution's grievance process, not strict about requiring appeal

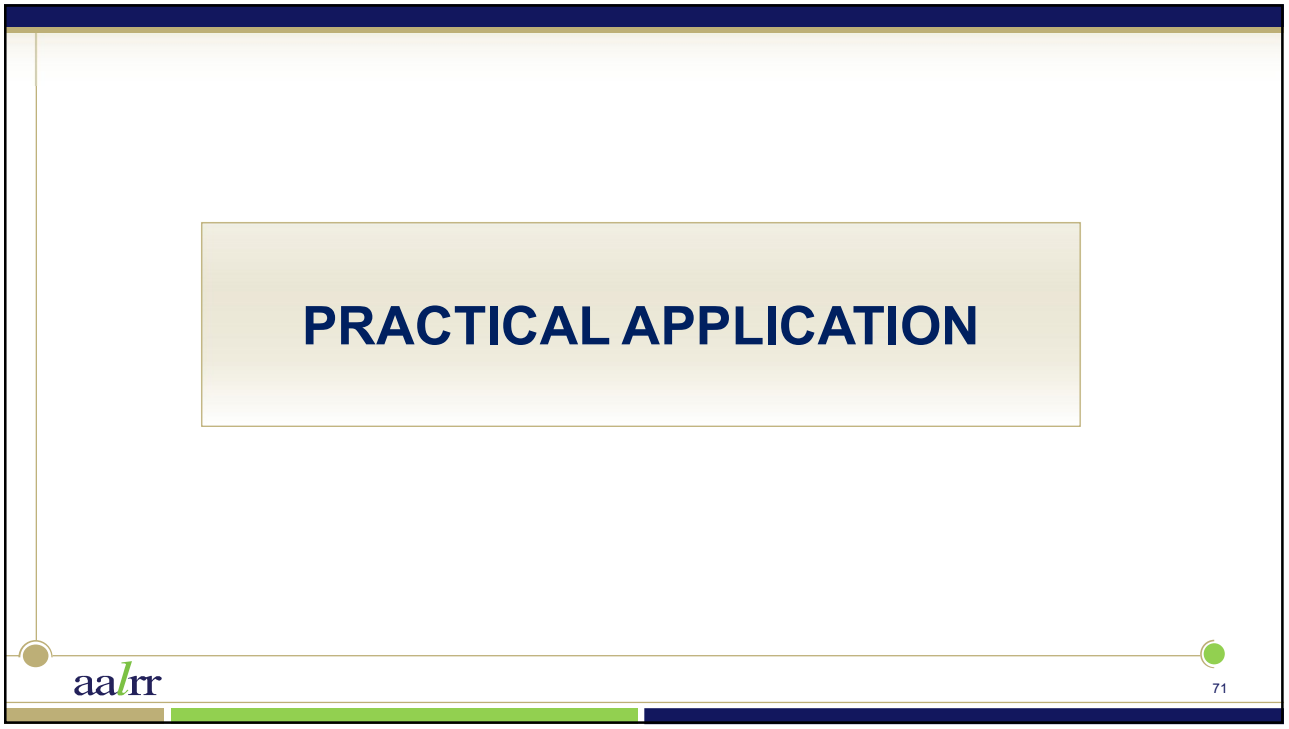
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Hypotheticals 1-3

1. **Student A offers Student B all of the desserts made during the culinary class if Student B kisses Student A.**
   – Is this sexual harassment under Title IX?
2. **A Professor offers a Student extra credit if the Student buys the Professor groceries**
   – Is this sexual harassment under Title IX?
3. **A Coach recommends Student wear tight clothes to on-campus classes and at practice because it will "help with the Student's future opportunities"**
   – Is this sexual harassment under Title IX?

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Hypothetical 1 - Discussion

1. **Student A offers Student B all of the desserts made during the culinary class if Student B kisses Student A.**
   – Is this sexual harassment under Title IX?
   - Not Quid Pro Quo. This will not qualify as "quid pro quo" harassment under Title IX because the condition must be offered by ***an employee***
   - However, this may be evidence of hostile environment sexual harassment under Title IX and warrants more questions to determine if there was additional sex-based behavior from Student A towards Student B
   - Even if this action does not rise to the level of Title IX's definition of sexual harassment, this action *may* be a violation of the institution's Board Policy and Administrative Procedures prohibiting sexual harassment under Education Code and/or Title 5 regulations
     – Thus, consider notifying the parties of all potential policy violations implicated by the complaint in the Notice of Allegations
   - PRACTICE TIP: The Title IX administrator fielding the allegation must ask questions to understand the full context of the matter

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Hypothetical 2 - Discussion

2. A Professor offers a Student extra credit if Student buys the Professor groceries

- Is this sexual harassment under Title IX?
  - No. Under these facts alone, this is not enough to demonstrate "quid pro quo" sexual harassment because this alleged behavior is not "on the basis of sex." (But ask more questions to confirm)
  - Similarly, this behavior, by itself, is not enough to demonstrate a hostile environment because it is not based on sex nor is it conduct of a sexual nature
  - The Professor's behavior may be addressed as unprofessional and/or inappropriate conduct based on the circumstances and campus expectations for faculty
  - PRACTICE TIP: The Title IX administrator fielding this allegation must ask questions to understand the full context of the matter

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Hypothetical 3 - Discussion

3. A Coach recommends a Student wear tight clothes to on-campus classes and practice because it will "help with the student's future opportunities"

- Is this sexual harassment under Title IX?
  - This is likely an example of "quid pro quo" harassment. The conditioning behavior need not be explicit. The conditioning behavior can be implied
  - If additional allegations of a sexual nature, this could be hostile environment harassment. This may also be unprofessional or inappropriate conduct
  - Query: Must the evidence demonstrate the conditioning behavior is "unwelcome" to the Complainant?
    - The Title IX definition describes an employee who "conditions" the provision of an aid, benefit, or service of the recipient on an individual's participation in the ***unwelcome*** sexual conduct. Prior legal analysis of "quid pro quo" indicates that "going along" with the condition does not necessarily mean it was welcome. Analyze on a case-by-case basis

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Hypotheticals 4-6

4. **Student A enters your office and tells you that Student B touched Student A's buttocks, which made Student A uncomfortable.**
   - What do you need to know?
   - What should you do?
5. **Student A enters your office and tells you that a Professor touched Student A's buttocks in the classroom and made a kissing sound, which scared Student A.**
   - What do you need to know?
   - What should you do?
6. **Respondent asks you to interview Complainant's prior sexual partners**
   - What do you need to know?
   - What should you do?

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Hypothetical 4 - Discussion

- **Student A enters your office and tells you that Student B touched Student A's buttocks, which made Student A uncomfortable.**
  - What do you need to know?
    - Where did it happen? Is it on campus or in a location where recipient exercised substantial control over Student B (Respondent) and the context in which the sexual harassment occurred? Or was it in an off campus building owned or controlled by a student organization that is officially recognized by a postsecondary institution?
    - Was the conduct based on sex? What's the nature of the touch?
    - Was the conduct against Student A's will?
  - What should you do?
    - Contact Title IX Coordinator as this may be sexual harassment or other sexual acts under Title IX
    - Explain Title IX complaint process and how to file a formal complaint
    - Offer Supportive Measures with or without a formal complaint
    - If formal complaint filed, begin the complaint process

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Hypotheticals 5 - Discussion

5. Student A enters your office and tells you that a Professor touched Student A's buttocks in the classroom and made a kissing sound, which scared Student A.

- What do you need to know?
  - Gather additional information as soon as possible about whether the Professor's actions were based on sex or of a sexual nature and how it made the student feel
- What should you do?
  - Contact Title IX Coordinator as this may be sexual harassment or other sexual acts under Title IX
  - If student is a minor, consider notifying parents and filing CPS or police report
  - Consider Paid Administrative Leave and follow requirements of Ed Code 87623, as applicable to academic employees
  - Title IX initiates intake meeting, an investigation, and complaint process, but ok to delay a reasonable time if law enforcement has to gather any evidence

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Hypotheticals 6 - Discussion

6. Respondent asks you to interview Complainant's prior sexual partners

- What do you need to know?
  - Gather additional information from Respondent about the relevance of this request
    - Is Respondent claiming false identification for the allegations? May be relevant. (E.g., Respondent knows there is a resemblance with a prior sexual partner)
    - Is Respondent claiming Complainant has a pattern of sexual behavior with another sexual partner? Not likely relevant
  - Is Respondent claiming a pattern of prior sexual behavior by Complainant with Respondent which may indicate consent? May be relevant
- What should you do?
  - Seek guidance from Title IX Coordinator or legal counsel if you have concerns about scope of the request
  - Conduct additional interviews with Complainant and relevant witnesses or notify Respondent in writing why you will not pursue that line of questioning because irrelevant

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Question & Answer Session

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Thank You

For questions or comments, please contact:

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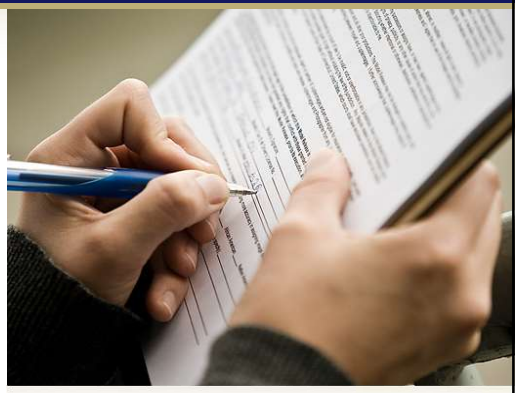
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I feel privileged to have the opportunity to assist people with their problems.

Georgelle 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. She regularly assists school districts, county offices of education, and community colleges in navigating the requirements of the Education Code, Title IX of the Education Amendments of 1972, Title 5 of the California Code of Regulations, the Brown Act, and other state and federal laws. She has represented employers in multi-day administrative hearings.

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 her LL.M. program, Ms. Cuevas served as the Associate Editor of the Berkeley Journal of International Law (BJIL). 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.

Ms. Cuevas is a popular and highly requested speaker. She regularly provides training throughout the nation on a variety of subjects of interest to

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EDUCATION

LL.M, University of California, Berkeley School of Law
J.D., University of Akron School of Law
M.S.M., University of Akron, College of Business Administration
B.F.A., Kent State University

ADMISSIONS

2012, California
2012, Florida
U.S. Court of Appeals, Ninth Circuit
U.S. District Courts, Eastern and Northern Districts of California

PRACTICE AREAS

Administrative Hearings & Arbitrations
Board Governance
Collective Bargaining & Labor Relations
Discrimination & Harassment
Education
Employee Performance & Evaluation
Investigations
Labor & Employment Law
Student Discipline

Georgelle C. Cuevas

K-12 school districts, community colleges, universities, governing boards, and other management teams.

Honors & Recognitions

Ms. Cuevas has been named a Northern California Rising Star by *Super Lawyers* every year since 2022.

Events & Speaking Engagements

Ms. Cuevas regularly provides training addressing subjects that impact the workplace, the educational setting, and collective bargaining. She provides training on the FRISK® model for preparing effective documentation regarding employee substandard performance or conduct; leadership and communication skills; conducting investigations in the educational and workplace environments; conflict resolution; Brown Act compliance, and state-mandated sexual harassment training. She also lectures at webinars and conferences for local, statewide, and national organizations such as ACCCA, ACSA, ACHRO, CASBO, CISOA, CSBA, NSBA, and WACUBO.

Some of the many sessions she has led include:

- Title IX Academy (i.e. Training for the whole Title IX team, including Title IX Coordinators, Investigators, Decision Makers, and Appeals Officers)
- Addressing Complaints: Are Your Investigations Legally Compliant?
- FRISK® Academy (i.e. FRISK® Documentation Model, Framing the FRISK® Message, and the Advanced FRISK® Documentation Model)
- Leaves Boot Camp (i.e. Managing and Understanding Leaves, Making the Interactive Process a Success, and Employee Absenteeism: Managing Attendance Issues)
- Recognizing and Preventing Sexual Harassment and Abusive Conduct
- Employee Evaluations, Common Pitfalls and Best Practices
- Student Discipline 101
- Contract Negotiations (e.g. Negotiating in Times of Economic Uncertainty, Improving the Labor Relationship at and Away from the Table, Close Up on Contract Language, Classified Layoffs and Contract Language)

Title IX

Georgelle C. Cuevas

- Public Records Act: How to Comply Following *City of San Jose*
- Records and Security Issues (e.g. Confidentiality, Records Retention, Data Breach, GPS and Employers/Schools, Campus Security in the 21st Century)
- Managing and Understanding Millennials and Gen-Zers
- Board Governance, the Brown Act, and Conflicts of Interest

2026 Title IX Training Academy for Higher Education Institutions
At Your Desk (Via Zoom), 08.28.2026

HR Legal Playbook Webinar Series
At Your Desk, 08.27.2026

2026 Shell Beach Conference for Higher Education Leaders
The Cliffs Resort at Shell Beach, August 12-14, 2026

Negotiator's WebTrain Series
At Your Desk, August 12 & 26, September 9 & 23

2026 Title IX Training Academy K12
At Your Desk (Via Zoom), 08.11.2026

Pregnancy in the Workplace: Fulfilling Your Legal Obligations Across the Three "Trimesters" of Pregnancy (Higher Education)
At Your Desk (Via Zoom), 07.31.2026

Pregnancy in the Workplace: Fulfilling Your Legal Obligations Across the Three "Trimesters" of Pregnancy (K-12)
At Your Desk (Via Zoom), 07.30.2026

Alerts & Articles

AB 495 Expands Protections for Students, Parents, and Guardians
01.05.2026

AB 495 Expands Protections for Students, Parents, and Guardians
11.20.2025

Ninth Circuit Reinforces First Amendment Protections of Parent Banned from School District in Response to Speech the District Found Offensive
07.23.2025

Preliminary Injunction Granted Regarding Gender Identity Instruction
06.18.2025

Georgelle C. Cuevas

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.