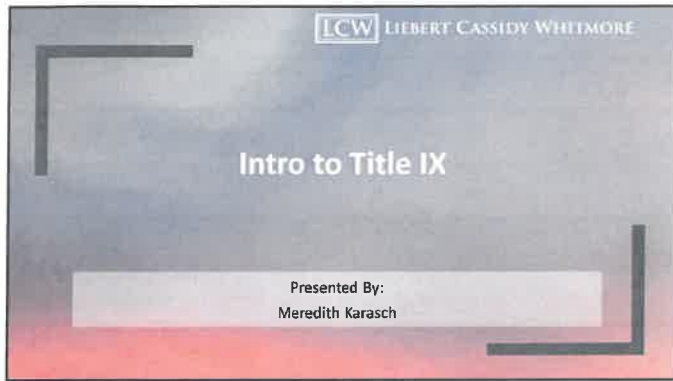


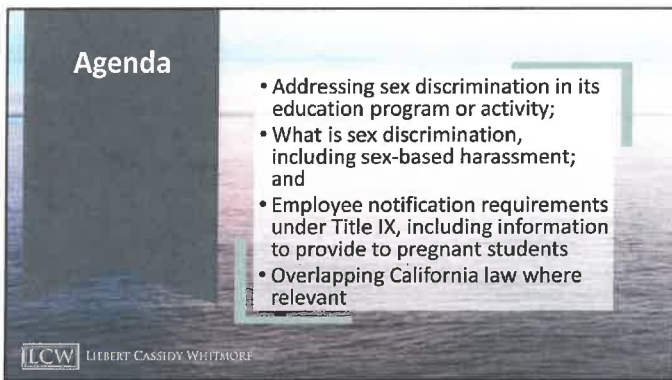
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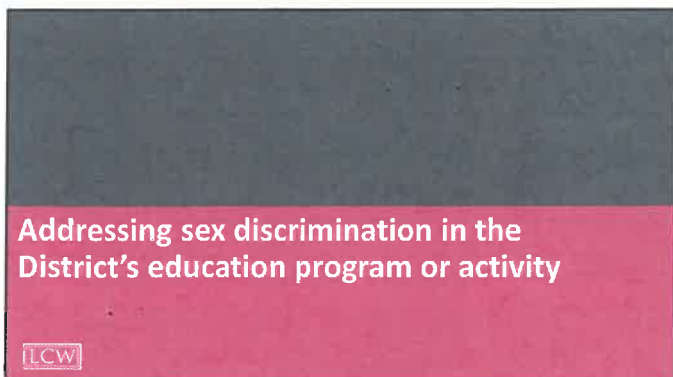
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Title IX

Title IX prohibits discrimination:

- In the United States
- On the basis of sex
- In education programs or activities
- Receiving federal financial assistance

• Discrimination on the basis of sex can include sex based harassment or sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion.

20 U.S.C. § 1681 et seq.
34 C.F.R. § 106 et seq.

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**Education Program or Activity
(34 C.F.R. § 106.31)**

No person shall be excluded on the basis of sex ... from "...any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance."

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**Education Program or Activity
(34 C.F.R. § 106.31)**

- District must address sex-based hostile environment even when conduct occurred outside of education program or activity or outside US
- Includes:
 - Conduct that occurs in a building owned or controlled by a student organization that is officially recognized by the District
 - Conduct subject to District's disciplinary authority.

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Compare with SB 493: Cal. Ed. Code Duties to Students

- Primary concern must be student safety
- Must take reasonable steps to respond to incident of sexual harassment,
 - whether occurring in connection with or outside of its educational activities or programs
 - whether occurring on or off campus
- If there is any reason to believe the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education

Ed. Code § 66281.8(b)(3)

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Basic Requirements (34 C.F.R. § 106.8(a) and (b))

- Must designate at least one employee as Title IX Coordinator
- Adopt, publish, implement nondiscrimination policy and grievance procedures consistent with regulations
- Provide notice of nondiscrimination
 - To students, applicants for admission and employment, and all unions and professional organizations

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San Jose Evergreen CCD

- AP 3433 Prohibition of Sex Discrimination under Title IX
- AP 3434 Responding to Sex Discrimination under Title IX
 - Effective August 1, 2024
 - Incorporate Title IX 2024 regulations
 - For pre August 1, 2024 allegation District will use former procedures

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San Jose Evergreen CCD

- Lead Title IX Coordinator
 - Vice Chancellor of Human Resources
 - Will handle all complaints involving an employee party
- Deputy Title IX Coordinators
 - Vice Presidents of Student Affairs at each college
 - Will handle all complaints involving student v. student

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Complainant (34 C.F.R. § 106.2)

- A student or employee who is alleged to have been subjected to sex discrimination; or
- Other person who is alleged to have been subjected to sex discrimination and who was participating/attempting to participate in the District's education program or activity at the time of the alleged sex discrimination
- Complaints can be verbal or written

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Response Requirements (34 C.F.R. § 106.44(a))

"A recipient with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively..."

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**Response Requirements
(34 C.F.R. § 106.44(f))**

- When notified of conduct that reasonably may constitute sex discrimination:
 - Treat the complainant and respondent equitably;
 - Offer and coordinate supportive measures;
 - Notify complainant of grievance procedures and informal resolution process;

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**Response Requirements
(34 C.F.R. § 106.44(f)(2))**

- Not required to implement response requirements if Title IX Coordinator reasonably determines that alleged conduct could not constitute sex discrimination.

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Two Roads Diverge

- Title IX now has two grievance procedures:
 - § 106.45 sex discrimination allegations (including employees, students and third parties)
 - § 106.46 (involving student parties in sex-based harassment allegations)
- The procedure that applies depends on
 - The nature of the claim (sex discrimination vs. sex-based harassment)
 - The parties involved (student party in sex-based harassment)

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When Does section 106.46 Apply?

- Any complaint of sex-based harassment that involves a student party
- Student can be the Complainant or the Respondent (or both)
- Special case of student employees – context-specific

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Student employees (34 C.F.R. § 106.46(b))

- When a Party is both a student and an employee, conduct fact-specific inquiry to determine whether the District will process the Complaint using the Grievance Procedures for Complaints of Sex-Based Harassment Involving Student Complainants or Student Respondents (.46) or the Grievance Procedures for Complaint of Sex Discrimination (.46)
- At a minimum, consider whether the Party's primary relationship with the District is to receive an education and whether the alleged sex-based harassment occurred while the Party was performing District employment-related work

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What is sex discrimination, including sex-based harassment?

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Discrimination
(34 C.F.R. § 106.10)

- Discrimination on the basis of sex includes:
 - on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity

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Gender Identity / Expression

Districts **Must:**

- Permit people to use the restroom that corresponds to the employee's gender identity/expression
- Refer to people using preferred name, gender, and pronouns
- Cal. Law: Designate single occupancy facilities using gender-neutral signage

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Gender Identity / Expression

Cal. Law: Employers **Must Not:**

- Enforce dress codes more harshly against an employee based on their gender identity/expression
- Discriminate against an applicant for failing to designate a gender or designating a gender that is inconsistent with the applicant's sex assigned at birth
- Inquire about or require documentation or proof of an individual's sex or gender

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Cal. Law: Student Records

Public Higher Ed Institutions:

- Must update a former student's records to include the student's updated legal name or gender upon receipt of government-issued documentation supporting the name or gender change.
- As of 2023-24 graduating class, must provide graduating students option to specify student name on diploma without requiring legal documentation to support the chosen name or gender change.

Ed. Code § 66271.4

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Sex-Based Harassment (34 C.F.R. § 106.2)

Quid pro quo harassment - Conduct by an employee, agent, or other person authorized by the District

- Job or education benefits promised:
 - Explicitly or implicitly
 - In exchange for sexual favors or denied if sexual favors are not given

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Sex-Based Harassment (34 C.F.R. § 106.2)

- *Hostile environment harassment.*
 - Broader definition compared to 2020 regulations
 - Unwelcome sex-based conduct that is subjectively and objectively offensive and is so severe or pervasive (based on totality of circumstances) that it limits or denies
 - List of fact-specific factors to consider

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Sex-Based Harassment: factors to consider (34 C.F.R. § 106.2)

- Whether a hostile environment has been created depends on:
 - Degree conduct affected complainant's access;
 - Type, frequency, and duration of conduct;
 - Parties' ages, roles, previous interactions, other factors about each;
 - Location of conduct and context; and
 - Other sex-based harassment in education program or activity;

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Sex-Based Harassment (34 C.F.R. § 106.2)

Hostile Environment Examples:

- Physical contact
- Sexual rumors/ratings/jokes/proposals/slurs
- Sexually explicit or offensive language
- Refusal to use preferred name or pronouns
- Remarks about body, appearance, dress

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Sex-Based Harassment (34 C.F.R. § 106.2)

- Clery Crimes (rape, fondling, incest and statutory rape)
- Violence Against Women Act Crimes (sexual assault, dating violence, domestic violence, stalking) ...

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Case Study– Verbal Conduct

Although Georgette was assigned at birth as a male, she recently began presenting as a female, consistent with her gender identity. She notified her co-workers of her new gender identity as she previously identified as a male named George. Rick and John refuse to refer to Georgette by her name or female pronouns and still call her “George” and frequently ask “him” why “he” uses the Women’s Restroom and wears skirts.

Have Rick and John created a hostile work environment?

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Sexual Harassment under the State Law

- “Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:
- Quid pro quo (a condition of or affecting employment, academic status, or progress).
- Hostile Environment: Conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.
 - Includes sexual battery, sexual violence, and sexual exploitation

Cal. Ed. Code §§ 212.5, 66262.5

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Cal. Affirmative Consent Standard

Affirmative, Conscious, and Voluntary Agreement to Engage in Sexual Activity

- Responsibility of each party
- Lack of protest/resistance does not mean consent
- Silence does not mean consent
- Must be ongoing throughout
- Can be revoked at any time

Ed. Code § 67386(a)(1)

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Retaliation (34 C.F.R. § 106.2)

- Intimidation, threats, coercion, or discrimination
- By the District, a student, or an employee or other person authorized by the District to provide aid, benefit, or service
- For the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing, or informal resolution
- Includes peer retaliation

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Case Study

Rudy is a member of the College's business club. The business club hosts its annual gala at a private residence two blocks away from the College. The business club only pays for the advisement and provides student volunteers. Carlos attends the gala and sees Rudy enter the bathroom. Carlos follows Rudy into the bathroom. While in the bathroom, Carlos sexually assaults Rudy. Carlos threatens to hurt Rudy if he tells anyone.

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Case Study con't

Rudy meets with the Title IX Coordinator and asks them to please help him. Rudy states he is afraid for his life and doesn't want to be on campus while Carlos is there. Rudy refuses to attend class.

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Case Study

- Does the Title IX Coordinator have jurisdiction to file a complaint over the incident that took place at the private residence?
- Has Carlos engaged in retaliation?
- If Rudy tells a District employee rather than the Title IX Coordinator, what must that employee do?

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Employee Notification Requirements Under Title IX, Including Information To Provide To Pregnant Students

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Employee Reporting Requirements (34 C.F.R. § 106.44(c))

- All employees of this District are Responsible Employees (excluding confidential employees).
 - must notify Title IX Coordinator upon receipt of information about sex discrimination
- Confidential employees: Case Managers, Mental Health Counselors, Nurses and doctors working within the Student Health Services

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Confidential Employees Requirements
(34 C.F.R. § 106.44(d))

- Confidential employees must explain:
 - Status as confidential, including circumstances in which employee is not required to notify the Title IX Coordinator;
 - How to contact Title IX Coordinator and make complaint; and
 - Title IX Coordinator may be able to offer and coordinate supportive measures and initiate informal resolution process or investigation.

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Case Study

You are a faculty member, and a student writes an essay about a sexual assault that occurred the first day of classes while she was tutoring another student. When you return her paper she tells you not to tell anyone.

What do you do?

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Answer to Case Study:

- Listen without judgment
- Explain your duty to report
 - Contact the Title IX Coordinator
 - The Title IX Coordinator will reach out for support

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Employee Notification Requirements
(34 C.F.R. § 106.40(b)(2))

- Unless employees reasonably believe that the Title IX Coordinator has already received notice, *employees who are directly informed of a student's pregnancy/related conditions* must:
 - Provide student the Title IX Coordinator's contact information;
 - Tell student about Coordinator's ability to take/coordinate specific actions & ensure equal access

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Pregnancy or Related Condition
(34 C.F.R. § 106.2)

- Pregnancy, childbirth, termination of pregnancy, or lactation;
- Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions

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Thank you!

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