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# Title IX Compliance: A Brief Update

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July 16, 2025

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## Title IX Compliance: A Brief Update



**July 16, 2025**

PRESENTED BY:  
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## Today's Road Map

- Current Legal Landscape
- 2020 Title IX Regulations
- SB 493/Title 5 Overlap
- Workplace Violence Prevention Plan
- Facilities Review



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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).)

## Current Legal Landscape of Title IX: *Nationwide*

## Title IX – Recent Dear Colleague Letters and Executive Orders

- *August 1, 2024* – First Effective date of the 2024 Title IX Regulations
- *January 9, 2025* – *Cardona* Decision (Vacatur)
- *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 Return to 2020 Title IX Regulations
- *February 4, 2025* – Additional DCL Re: 2020 Title IX Regulations
- *February 5, 2025* – Executive Order from President Trump – “Keeping Men Out of Women’s Sports”
- *February 12, 2025* – OCR opened an investigation into the California Interscholastic Federation (CIF) after CIF

## Title IX Overview: *2020 Regulations*

## Title IX Team

### 1. Title IX Coordinator

- Oversees Title IX compliance, accepts initial complaint, implements remedies

### 2. Investigator(s)

- Investigates the complaint and provides written findings

### 3. Hearing Officer/Decision Maker

- Conducts hearing, facilitates “cross-examination” & renders decision

### 4. Appeal Decision Maker

- Addresses appeal requests & renders decision

### 5. Informal Process Facilitator

- If informal process is feasible, likely a separate facilitator

### 6. Advisors of Choice

- If a party does not have an advisor to conduct cross-examination at a live hearing, the institution must provide one to the party

## 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

- 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”

## Actual Knowledge, continued

The Institution should:

- Identify OWAs also in Ed. Code § 66281.8 for Responsible Employees
- 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
  - Providing the Title IX Coordinator all known information
  - Not required to evaluate the complaint or information received unless the OWA is the Title IX Coordinator

## 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.

## Title IX Process Overview

### *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

## Title IX Process Overview

### *Sexual Harassment Defined, continued*

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)

## Intake Process for Reports of Sexual Harassment



## Intake Process

### *Report v. Formal Complaint*

- **Report:** Can come from **either** Complainant directly or someone else with actual knowledge
- **Formal Complaint:** Document from Complainant alleging sexual harassment against Respondent requesting an investigation

## Meeting with Complainant

### *Duties of Title IX Coordinator*

- Promptly schedule meeting with Complainant and listen to allegations and concerns
- If Complainant describes sexual harassment allegations, the Title IX Coordinator explains the Title IX grievance process
- Supportive measures must be confidential, to the extent that such confidentiality would not impair the ability of the Recipient to provide supportive measures

## Meeting with Complainant

### *If NO formal complaint is filed:*

- Title IX Coordinator informs Complainant of right to file a formal complaint at a later time
- Title IX Coordinator 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**
  - Predatory Behaviors?
  - Prior Patterns?
  - Threat to Bodily Injury or Harm?
  - Weapons?

## Meeting with Complainant

### *If formal complaint is filed:*

- Title IX Coordinator determines if complaint falls within scope of **mandatory dismissal**
  - If conduct alleged in the formal complaint would not constitute sexual harassment as defined even if proved, did not occur in the District's education program or activity, or did not occur against a person in the United States
  - Must inform Complainant and Respondent in writing
- NOTE: A **permissive dismissal** is an option for Title IX Coordinator to review during the investigation or the hearing/decision making process if:
  - (1) the Complainant requests to dismiss;
  - (2) the Respondent is no longer at the educational institution; or
  - (3) there are specific circumstances preventing the District from gathering sufficient evidence to make a determination on the formal complaint or allegations.

## Supportive Measures

34 C.F.R. § 106.30

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent.

Available before or after filing of a Formal Complaint or where no Formal Complaint has been filed.

Designed to restore or preserve equal access to the recipient's educational program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment.



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## Emergency Removal Option for Students

1. Institution may remove Respondent per § 106.44(c) by undertaking an individualized safety and 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. Opportunity for Respondent to challenge decision immediately following the removal
4. Process **cannot** modify Respondent's rights under Section 504, or Americans with Disabilities Act (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 ADA
3. Note: California Education Code § 87623 sets forth additional requirements for involuntary paid administrative leave for academic employees

## Academic Employees

- In matters involving an academic employee placed on involuntary paid administrative leave, the district shall complete its investigation within 90 working days of the administrative leave commencing, unless the period of paid administrative leave is extended by agreement of the employee and employer for a period not exceeding 30 additional calendar days. The extension of time provisions of section 59342 shall not apply to investigations involving an academic employee placed on involuntary paid administrative leave.
- Note also regarding PAL for academic employees: Educ. Code section 87623

## Informal Resolution Process

### 1. Optional Process

- May use informal resolution process on a case-by-case basis

### 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 employee harassed a student

## TITLE 5, SB 493 AND TITLE IX

## 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.

## 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.

## 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.

## Some Interactions/ Conflicts with Title IX

## “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.

## “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.	<ul style="list-style-type: none"> <li>• Conflict when responsible EE’s should have known.</li> <li>• Must investigate if institution knew or reasonably should have known about harassment.</li> </ul>



## Cross-Examination

Title IX Regulations	Ed Code 66281.8 (SB 493)	In Conflict
<p>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.</p> <p>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.</p>	<p>“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)</p>	<p>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).</p> <p>Direct conflict with Title IX.</p>

## On/Off Campus Incidents

Title IX Regulations	Ed Code 66281.8 (SB 493)	In Conflict
<p>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.</p>	<p>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.</p>	<p>Ed Code 66281.8 requires institution to address sexual harassment even if institution does not exercise substantial control over respondent and context.</p>

## Hearing

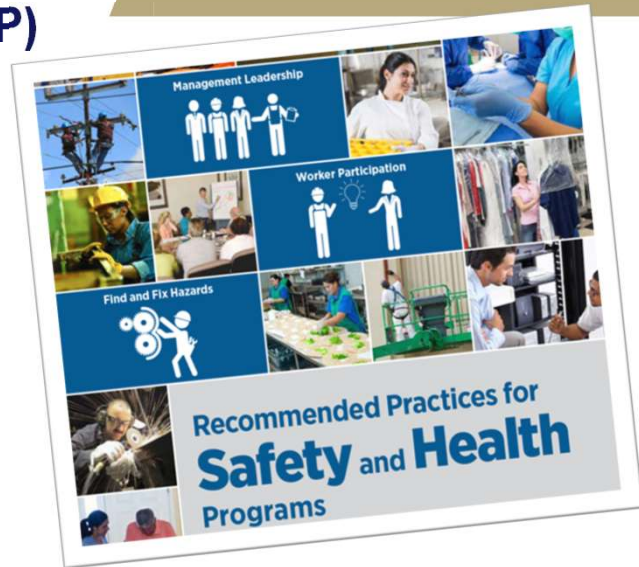
Title IX Regulations	Ed Code 66281.8 (SB 493)	In Conflict
A live hearing must occur when each party requests it.	"The institution shall decide whether or not a hearing is necessary to determine whether any sexual violence more likely than not occurred." Ed Code 66281.8(b)(4)(A)(vii)	<ul style="list-style-type: none"> <li>Title IX prevails</li> <li>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.</li> <li>Doe v. Allee case also supports more due process like a hearing</li> </ul>

## 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.

## Workplace Violence Prevention Plan (WVPP) ("TTCCRIIRD")

- Team
- Training
- Communication and Coordination
- Compliance
- Response
- Identify, Evaluate and Correct
- Investigation
- Review
- Documentation



## WVPP v. Title IX v. Clery Act

1. Conduct
2. Location
3. Logs
4. Supportive Measures
5. Student Removal
6. Investigations
7. Overlap

## WVPP v. Title IX v. Clery Act

### 1. Conduct

- WVPP = Expansive “threats or use of physical force” that has a high likelihood of injury, psychological trauma or stress
- Title IX = Sexual Harassment / Misconduct
- Clery Act = Specific “on campus crime”

## WVPP v. Title IX v. Clery Act

### 2. Places

- WVPP = Expansive “Places of employment
- Clery Act = campus, adjacent, or property “owned or controlled”
- Title IX = education programs

## WVPP v. Title IX v. Clery Act

### 3. Logs

- WVPP = violence incident log
- Clery Act = Annual Security Report
- Title IX = record keeping

## WVPP v. Title IX v. Clery Act

### 4. Supportive Measures

- WVPP = N/A “post incident measures”
- Clery Act = N/A efforts to improve safety
- Title IX = Required

## WVPP v. Title IX v. Clery Act

### 5. Student Removal

- WVPP = Left to Policies
- Clery Act = Not addressed
- Title IX = 106.44 individualized safety and risk assessment

## WVPP v. Title IX v. Clery Act

### 6. Investigations

- WVPP = Process to investigate “employee concerns” and “workplace violence incidents”
- Clery Act = policy statements to address crime
- Title IX = Title IX investigation process “controls” for sexual misconduct investigations

## WVPP v. Title IX v. Clery Act

### 7. Overlap

**Title IX Violation:** \_\_\_\_\_ has existing programs, processes, and procedures for reporting, assessing, investigating, and adjudicating Title IX Violations. These are unchanged by this WVPP. Incidents reported as Title IX Violations may be cross-referenced to the Title IX Coordinator if appropriate.

**Clery Reportable:** According to the Clery Act, an Incident of Concern or an Incident of Criminal Behavior may be reportable under the Clery Act. \_\_\_\_\_ has existing procedures for collecting and reporting incidents classified as Clery Act Reportable, and these procedures are independent of this WVPP and will continue as currently implemented.

## DON'T FORGET YOUR FACILITIES!

### Renewed Focus on...

1. Comparable Facilities
2. Safety
3. Gender Identity



## 1. Comparable Facilities

The “Equity Walk”

- ☐ A) Identify “Separate Facilities”
- ☐ B) Access Comparability
- ☐ C) Contract Review
- ☐ D) Associated Service Assessment



### A. *Identify “Separate” Facilities*

#### Areas of Inequality

1. Practice & competitive facilities
2. Locker rooms, storage & meeting facilities
3. Training facilities
4. Equipment & supplies
5. Transportation vehicles
6. Coaches & coaching facilities



## B. “Comparable” ≠ Equal

- All Facilities Do Not Need to be the Same
- Must Show:
  - Similar Condition
  - Similar Funding
  - Justification for Differences
  - Areas of Inequality “Balanced Out”

## Locker Rooms



## Locker Rooms



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## C. Contract Review

Identity and Assess All Contracts involving facilities

1. Maintenance
  - Time and Cost of general upkeep
2. Replacement
  - Last replacement; cost; monitoring
3. Safety Review
  - Periodic review of field holes, access points
4. Athlete / Coach Concerns
  - How are they accepted and addressed?
5. Promotion Activities
  - Booster and other signs

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## D. Associated Services

1. Scheduling of games & practice times
2. Publicity
3. Funding
4. Athletic participation opportunities

## 2. Safety Monitoring

1. **Adequate Protection**
  - Call Boxes, Lighting
2. **Remove “Danger Spots”**
  - Dark Areas; Hiding Spots
3. **Limit Public Access**
  - After Hours; Off-Hour Employees
4. **Constant Monitoring**
  - The “Penn State” Situation
5. **Student and Staff Outreach**
  - Uncomfortable Areas



### 3. Gender Identity Issues

- A. Single User Bathrooms
- B. Adequate Signage
- C. “General Safety Procedure”
- D. Watch Monitoring!



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### Title IX and Facilities Take Home Points!

- 1. Comparable Facilities
  - Equity Assessment
  - Contract Review
  - Associated Services
- 2. Safety
  - Identity Safety Steps
  - Establish Monitoring Process
- 3. Gender Identity
  - Review Restrooms and Locker rooms
  - Establish Intake Process



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## Reminders and Recommendations

- Adopt Title IX Grievance Process
  - Add SB 493 Procedures to Title IX Grievance Process which do not conflict with Title IX Regulations
- For Complaints Outside of Title IX Grievance Procedures Update Board Policies and Administrative Procedures Consistent with SB 493
- Train Responsible Employees on Reporting
- Train Title IX Team on Specific Roles
- Keep website updated with Nondiscrimination Statement, Title IX grievance process, and post training materials used to train the Title IX team



## Question & Answer Session

# Thank You

For questions or comments, please contact:

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Title IX Compliance Training



Facilities Audit Programing  
& Deck Check



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## Disclaimer

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Melissa 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).

### 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

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## Melissa E. Gallegos

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and has presented at ACSA (Association of California School Administrators) Personnel Academy.

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- Latina Lawyers Bar Association, Member
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Title IX

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Stephen McLoughlin advises public and private agencies on a wide variety of transactional and litigation issues. He represents California community college districts, universities and school districts in education-related matters, providing advice and counsel concerning compliance with Title IX, transgender accommodations, First Amendment, and other constitutional rights of students and employees and related federal and state laws. He represents education clients in grievance arbitrations, administrative hearings, and civil litigation in state and federal court.

Mr. McLoughlin also drafts and negotiates contracts for property and general service matters, including technology-related services. He has experience with various land use issues, including the drafting of licenses, leases, easements and joint use agreements. Mr. McLoughlin has provided clients with analysis and guidance regarding federal regulations such as the American Recovery and Reinvestment Act.

Mr. McLoughlin has experience in all aspects of civil litigation, including claims against public agencies concerning contract administration and public works projects. Mr. McLoughlin also advises and represents school districts and community college districts on all construction-related matters.

### Honors & Recognitions

Mr. McLoughlin was named a 2015 and 2017 Southern California Rising Star by Super Lawyers. This honor is given annually to top attorneys under 40 years old, based on their legal work and peer recommendations.

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Clery Act  
Construction—School Facilities  
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Title IX

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### Events & Speaking Engagements

Mr. McLoughlin is a speaker at many events and conferences. He provides presentations and trainings for postsecondary institutions and school districts focused on compliance with Title IX and the Clery Act, in addition to related confidentiality provisions under FERPA. He has also spoken about federal regulations such as the American Recovery and Reinvestment Act.

### Publications

Mr. McLoughlin is a frequent contributor to the firm's publications and to external publications. His published writing includes:

- Co-author, "Green Materials and Construction" chapter in ABA's *The Law of Green Building*
- "Stewards of Justice in a Business World: How Lawyers Can Use the Theory of Procedural Justice to Keep Their Clients Happy and Protect the Integrity of Alternative Dispute Resolution Forums," *Trinity Law Review*
- Co-author, "California Court of Appeals Clarifies Payment Obligations under Prompt Payment Statutes," *Associated General Contractors of California*, Volume 40 Number 3

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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.

### Events & Speaking Engagements

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

### Publications

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

- ABA Midwinter Meeting Report on 2013 Cases – FMLA

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Education  
Student Discipline  
Title IX  
Workplace Training

## Anna J. Miller

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- 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

### Community & Professional

- Sacramento County Bar Association, Member
- American Bar Association, Labor and Employment Section, Member
- California Council of School Attorneys, Member
- Women Lawyers of Sacramento, Member