EQUAL EMPLOYMENT OPPORTUNITY COMMISSION & TITLE IX

Recent Settlements EEOC 2018:
- $150,000 Sexual Harassment
- $31,000 Disability Discrimination
- $475,000 National Origin & Disability Discrimination
- $2.66 million & increase in salary University of Denver paid for Equal Pay lawsuit
- $33,000 College of the Siskiyous

FY 2018 – EEOC filed:
- 50% increase from 2017
- 12% increase in sexual harassment charges
- Resolved 141 lawsuits & filed 199 lawsuits on behalf of victims
- Recovered $505 million for victims

Recognize these Names/Places?
- Weinstein
- Spacey
- Cosby
- Penn State
- Baylor University
- Cal Berkeley
- Vanderbilt
- Red Rock Community College
- McLennan Community College
- College of the Siskiyous
**WHAT IS THE EEOC?**

A federal agency that enforces employment law and investigates discrimination based on:

<table>
<thead>
<tr>
<th>Based on:</th>
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<tr>
<td>Race, sex, age, religion, national origin, color</td>
<td>Pregnancy</td>
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<td>Sexual Harassment</td>
<td>Disabilities</td>
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<td>Retaliation</td>
<td>Breach of Contract</td>
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<td>Whistleblower</td>
<td>Emotional Distress &amp; Mental Anguish</td>
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<td>Invasion of Privacy</td>
<td>Negligent hiring, supervision, promotion, retention</td>
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<td>Ancestry</td>
<td>Physical/Mental Disability, Medical Condition</td>
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<td>Marital Status</td>
<td>Age</td>
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<td>Military &amp; Veteran Status</td>
<td>Sexual Orientation</td>
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<tr>
<td>Genetic Information</td>
<td>Equal Pay</td>
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ACTS, LAWS, & CODES

**Title 5**
- Promote staff & faculty equal employment
- EEO Funds

**California Constitution**
- Prop 209

**EEOC**
- Discrimination in Hiring Protection

**FERPA**
- Student Identify Protection

**Title IX**
- Sexual Harassment
- Sexual Violence

**Title VII**
- Discrimination Based on Protected Classes

**California Education Code**

**ADEA**
- Age
- Discrimination in Employment Act

**Title VII**
- Discrimination
- Race
- Color
- National Origin
- Sex (including pregnancy)

**Clery Act**
- Crime Stats Reports
- Criminal Activity Reports
- Campus Safety

**Equal Pay Act**
- Compensation discrimination based on sex

**ADA**
- Americans with Disabilities Act
Overview:

- Prohibition against employment discrimination isn’t new
- What constitutes unlawful discrimination has changed

... but

- Expectations have not changed
Employment Discrimination Includes:

- Refusal to hire
- Rejection from training program
- Discharge from employment/training program
- Any decision affecting compensation, terms, conditions, privileges

... If based on a protected status
THE HIRING CHALLENGE
State Level

Proposition 209*

- Prohibits “preferential treatment” on basis of:
  - Race
  - Sex
  - Color
  - Ethnicity
  - National Origin

- In Public:
  - Employment
  - Education
  - Contracting

*Cal. Const. Art. 1, Sec. 31
THE HIRING CHALLENGE

Prop 209: Legislative Response

• Funding contingent on:

  “Each district employer shall commit to sustained action to devise recruiting, training and advancement opportunities that will result in equal employment opportunities . . .”*

  EC 87101(c)
3 Principles for Lawful EEO Hiring:

1) Protected status of candidates is *never* a factor

2) Infusing a commitment to diversity into the hiring process *does not* involve lowering standards

3) Infusing a commitment to diversity into the hiring process *does* involve assessing candidates against job-related criteria, including:
   - Eliminating irrational (i.e. not job-related) barriers
   - Expanding/updating what you consider to be job related
DIVERSITY IN THE HIRING PROCESS

The Big Picture: Key Steps Precede Application Review

- Remove access barriers from job descriptions/qualifications
- Include job-related criteria that enhance diversity
- Use recruitment strategies to create diverse, qualified applicant pool
- Implement procedures designed to eliminate bias in the decision-making process
EEO IN CALIFORNIA

- State Regulations:
  - Multi-step process to promote diversity
  - Includes mandated training for hiring committees & others involved in hiring
  - EEO PLAN updated every 3 years
  - Annual funding from Chancellor’s Office for efforts made to ensure equal employment.
  - Past two years $50,000 funding annually for Multiple Methods evidence

Title 5, Section 51010, et seq.
Why Does Diversity Matter to CCDs?

• Core mission:
  – Serve California’s diverse community of learners
  – Prepare all students for success in a global society

• Core belief that a diverse staff creates:
  – Better service
  – Stronger community
Enacted by Congress, Title IX seeks to reduce or eliminate barriers to educational opportunity caused by sex discrimination in institutions that receive federal funding.

Other federal laws also address sex discrimination.
What is “sex” under Title IX?

The modern concept of “sex” has evolved and represents a cultural change. In past generations, “sex” usually meant the gender (male or female) assigned at birth based on biological or anatomical factors. “Sex” for Title IX purposes includes:

- Biological/anatomical factors
- Actual or perceived gender identity
- Actual or perceived sexual orientation, including failure to conform to stereotypical notions of masculinity or femininity
Sexual harassment is **subjective**.

It’s about impact **not** intent.

A college should provide avenues for students to raise concerns about unwelcome conduct of a sexual nature.

When the harassment creates a **hostile environment**, there can be serious consequences under Title IX for a college that fails to properly respond.

If an individual feels like he/she been harassed, then have been harassed!

“Sexual violence can be carried out by school employees, other students, or third parties.”

Title IX also covers study abroad, student trips, sporting events.
“[A school] must take immediate and appropriate steps to investigate or otherwise determine what occurred. . . . If an investigation reveals that sexual violence created a hostile environment, the school must then take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.”
“According to OCR’s 2001 *Guidance*, a responsible employee includes any employee:

1. who has the authority to take action to redress sexual violence

2. who has been given the duty of reporting incidents of sexual violence or any other misconduct by students/staff/faculty to the Title IX coordinator or other appropriate school designee

3. whom a student could reasonably believe has this authority or duty.”
“The recipient must inform the Title IX coordinator of all reports and complaints raising Title IX issues, even if the complaint was initially filed with another individual or office or the investigation will be conducted by another individual or office.

- The Title IX coordinator is responsible for coordinating the recipient’s responses to all complaints involving possible sex discrimination.

- This responsibility includes monitoring outcomes, identifying and addressing any patterns, and assessing effects on the campus climate.” (4/24/15 DCL, pg. 3, emphasis added.)
Notice: Define What Triggers Process

Any grievance, complaint, or report that alleges that a policy, procedure, practice, or action is prohibited by the college’s or university’s nondiscrimination policy.

Interim Measures:

Title IX requires a school to take steps to ensure equal access to education programs and activities and protect a Complainant as necessary, including taking interim measures before the final outcome of an investigation.
Investigative Model

Investigation:

- Conduct interviews
- Gather evidence
- Make Investigative Finding
- Determine Sanction
- Making Factual Determination
Voluntary Compliance

“... a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.”
Keep a Healthy Perspective!

The biggest risk is **not** being investigated or a high-profile incident!

The biggest risk is accepting the status quo.

Our culture must see how external constituencies might see it.

Remember the spirit of Title IX.....

Every Student deserves learning success!

**COS must remove barriers to achieving that success!**
Baby Noble says, “Thank you for your attention!”