AN INFORMATIONAL HEARING OF THE SENATE COMMITTEE ON JUDICIARY

Attaining Equal Opportunity for Girls in California's Secondary Schools: How our Schools are Complying with Title IX

January 20, 2015
2:30 p.m. or upon adjournment of session, John L. Burton Hearing Room (4203)

> **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 educational program or activity receiving federal financial assistance.*

Background

Since the 1970s, both federal and state laws have sought to prevent discrimination in educational institutions that receive public monies on the basis of a person's sex. The California Legislature has acted several times in the last years to enact legislation intended to bring more awareness about Title IX to students and families.

Furthermore, in September of 2013, a Title IX coalition comprised of Association of American University Women (AAUW) of California, California Center for Research on Women and Families, California Women's Law Center, Equal Rights Advocates, and the Legal Aid Society – Employment Law Center, met to discuss creative ways to attain higher compliance with Title IX laws. Over the last several months, various advocacy groups have worked to release reports summarizing their research and studies on the efficacy of Title IX in the realms of sexual harassment and pregnant/parenting teens throughout California's secondary schools.

On Tuesday, January 20, 2015, the Senate Judiciary Committee will review the successes and shortcomings of Title IX in protecting the rights of young women to receive an education free from discrimination throughout California's K-12 schools.

Are the existing anti-sex discrimination laws working? What are the difficulties that schools face in meeting their Title IX obligations? What are some of the programs and policies that have proven to be successful? Can those programs be effectively replicated

in schools across the state? What are community-based efforts that could assist schools in ensuring girls are not precluded from participating in equitable programs and activities, simply on the basis of their sex?

Brief Overview of the Anti-Sex Discrimination Laws

Federal law, generally:

Title IX of the Education Amendments of 1972 to the Civil Rights Act of 1964 prohibits educational institutions that receive federal financial support from engaging in sex-based discrimination. (20 U.S.C. Sec. 1681 et seq.) Specifically, it provides that:

> *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 educational program or activity receiving federal financial assistance.*

Title IX applies not only to students, but it protects all participants in the program from discrimination, including parents and employees. While it applies to all aspects of educational opportunities in public schools, Title IX's most notable success has been opening the door to athletics for girls and women. With respect to enforcement, the Office for Civil Rights (OCR) enforces not only Title IX, but several other federal statutes that prohibit discrimination on the basis of race, color, and national origin, disability, and age in programs and activities that receive federal financial assistance from the Department of Education. These civil rights laws enforced by OCR extend to all state education agencies, elementary and secondary school systems, colleges and universities, and other entities that receive federal funds from the U.S. Department of Education. Programs and activities (such as admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing, and employment) that receive these federal funds must be operated in a non-discriminatory manner.

Any person who believes that an educational institution which receives federal financial assistance has unlawfully discriminated against someone may file a complaint, even if the person is not, him or herself, the victim of the alleged discrimination. Those who wish to file a formal complaint with OCR must do so in writing within 180 days of the alleged discrimination with specified information in a letter or on the Discrimination Complaint Form available from OCR enforcement offices. Notably, individuals are not required to use a school district's grievance procedures before filing a complaint with

OCR; regardless, it is unlawful for a school to retaliate against an individual for bringing concerns to a school's attention, making a complaint to OCR, or otherwise participating in an OCR investigation or proceeding. Additionally, a person may also file suit in court claiming that a school violated Title IX, and can do so without first filing a complaint with OCR.

State law, generally:

As with federal law, California state laws provide a host of nondiscrimination statutes that generally seek to ensure equal opportunities in state educational programs by prohibiting discrimination against protected classes of individuals. (*See* Ed. Code Sec. 200 et seq., entitled Educational Equity; *see also* 5 C.C.R. Sec. 4900 et seq. for regulations that seek to ensure compliance with federal and state nondiscrimination laws.) For example, Section 200 of the Education Code sets forth this state's policy to afford all persons in public schools equal rights and opportunities in the educational institutions of the state, regardless of the person's disability, gender[1], gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the Penal Code's definition of hate crimes. Consistent with that policy, Section 201 of the Education Code provides that California's public schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity. (*See* Ed. Code Sec. 201(a).) Additionally, Education Code Section 220 provides a blanket prohibition against discrimination on the basis the above-protected characteristics in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

Included among these antidiscrimination laws are a series of statutes known as the Sex Equity in Education Act, which, similar to its federal Title IX counterpart, prohibits discrimination in California schools on the basis of sex. (Ed. Code Sec. 221.5 et seq.) Though the Sex Equity in Education Act was officially enacted under that name in 1982 by AB 3133 (Roos, Ch. 1117, Stats. 1982), many of these statutes, such as Section 221.5 (which sets forth the state's policy that elementary and secondary school classes and courses, including nonacademic and elective classes and courses, be conducted without regard to the sex of the pupil enrolled in these classes and courses) date back to 1976. These provisions are applicable to all educational institutions located in the state which

[1] Gender, for the purposes of the chapter on Educational Equity, is defined to mean "sex, and includes a person's gender identity and gender expression." (Ed. Code Sec. 210.7, in relevant part.)

receive or benefit from state financial assistance or enroll students who receive state financial aid (thus including many private educational institutions), and cover many of the same areas as its federal counterpart: academic, extracurricular, research, occupational training programs, sexual harassment, athletics, financial aid programs, and employment (including both academic and nonacademic personnel).

The following provides a brief overview of many of the statutes prohibiting sex discrimination in educational institutions, as summarized for the public on the website of the California Department of Justice, Office of the Attorney General:

- **Education Code Section 221.5**: prohibits class enrollment in public schools based on sex. In addition, career guidance and counseling based upon sexual stereotypes are also forbidden.

- **Education Code section 221.7**: prohibits public funds from being used in connection with any athletic program conducted under the auspices of a school district governing board or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities.

- **Education Code Section 220:** prohibits discrimination based on sex, ethnic group identification, race, national origin, religion, color, mental or physical disability in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

- **Education Code Section 224.5**: establishes a gender equity train-the trainer grant program for the award of grants to school districts and county offices of education of up to $130,000 per year for the purpose of training K-12 teachers to enhance the self-image of female pupils in subjects such as math, science and technology.

- **Education Code Section 231.5:** requires each educational institution to have a written policy on sexual harassment and provides that such policy be disseminated to students, faculty and staff.

- **Education Code Section 233**: provides that the State Board of Education shall adopt policies, guidelines and curricula toward creating a school environment free from discriminatory attitudes, practices, and acts of hate violence. It further requires the State Board of Education to revise the school curriculum to include human relations education, with an aim to fostering an appreciation of the diversity of California's

population and discouraging the development of discriminatory attitudes and practices.

- **Education Code Section 233.5:** provides that each teacher shall endeavor to impress upon the minds of pupils the principles of moral justice free from discriminatory attitudes, practices, events or activities in order to prevent acts of hate violence.

- **Education Code Section 233.8**: requires the State Department of Education, subject to available funding, to provide training to school district personnel in identifying and determining hate violence on school campuses. Pupils and teachers may participate in a grant program focused on fostering ethnic sensitivity, overcoming racism and prejudice, and countering hatred and intolerance, subject to available funding.

- **Education Code Section 235:** prohibits racial, sex or ethnic discrimination in any aspect of the operation of alternative schools, charter schools, or the Demonstration Scholarship Program.

- **Education Code Sections 250-253:** require educational institutions to submit assurances of compliance reports and to conduct compliance reviews pursuant to receipt of state financial assistance or state student financial aid.

- **Education Code Sections 260, 261, and 262.3 along with Education Code Sections 66292-66292.2**: provide for remedies for discrimination and harassment which occur in educational institutions. These include freedom from discrimination, procedures for filing discrimination complaints, appeals and civil law remedies.

With respect to enforcement, under state law, the governing board of a school district is charged with the primary responsibility for ensuring that school district programs and activities are free from discrimination based on protected characteristics and for monitoring compliance with any and all rules and regulations promulgated pursuant to specified law. (Ed. Code Sec. 260.) All complaints or allegations of discrimination or sexual harassment will be kept confidential during any informal and/or formal complaint procedures except when disclosure is necessary during the course of an investigation, in order to take subsequent remedial action and to conduct ongoing monitoring. A written complaint of prohibited discrimination may be made pursuant to specified state laws and regulations but, as with federal Title IX law, a person is able to pursue civil remedies without first exhausting the administrative complaint process. (*See* Ed. Code Secs. 262.3, 262.4; *see also* 5 C.C.R. Sec. 4694.)

Title IX coordinators

Generally speaking, under Title IX, each public school district, as well as any state-approved nonpublic special education programs, must have at least one person designated as the "Title IX coordinator" who ensures active compliance with the law. According to information found on the California Department of Education's website, many school districts in California now have a Title IX coordinator in each schoolsite. As described in a 2011 guidance letter by the OCR, the Title IX regulations require a recipient to notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient's compliance with Title IX. This coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints, and should be available to meet with students as needed. In the event that the recipient designates more than one Title IX coordinator, the notice is supposed to also describe each coordinator's responsibilities (e.g., who will handle complaints by students, faculty, and other employees), and the designee is to designate one coordinator as having ultimate oversight responsibility. OCR warns that the Title IX coordinators should not have other job responsibilities that may create a conflict of interest, such as serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest. With respect to sexual harassment, specifically, recipients are required to ensure that employees designated as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. (*See* OCR, *Dear Colleague Letter: Sexual Violence* (Apr. 4, 2011) <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> pp. 7-8.)

School-Sponsored Athletics

Given that almost all public elementary schools and secondary schools and almost all colleges and universities receive some federal funding, their athletic programs are covered by Title IX. Namely, as applied to athletic programs, Title IX requires that schools do three things: (1) offer male and female students with equal opportunities to play sports; (2) treat male and female athletes fairly; and (3) give both male and female athletes their fair shares of athletic scholarship money.

In 2003, California enacted AB 833 (Steinberg, Chapter 660, Statutes of 2003) to codify a three-part test used by the United States Department of Education (USDE) to determine whether a school that receives federal funds complies with Title IX mandates in its

athletic programs within the California Education Code. That three-part test, first developed in 1979 by the USDE to determine whether a school is offering male and female students equal opportunities to directly participate in sports activities, requires a school to show it meets one of the following:

- The percentages of male and female athletes are substantially proportionate to the percentages of male and female students (the "proportionality" test);
- The school has a history and continuing practice of expanding opportunities for the underrepresented gender (the "history" test); or
- Even if it is not providing proportionate opportunities, the school is fully and effectively meeting its female students' interest and ability to participate in sports (the "interest" test).

At the time of AB 833's consideration, this Committee's analysis noted that the three-part test had been upheld in the federal circuit courts, "where cases were brought by women who asserted they had been denied participation opportunities and by men who claimed that the test resulted in cuts to their teams' funding. As noted by the Chalenor court [. . .] '[I]t is worth noting that the interpretation has guided the Office for Civil Rights' enforcement of nondiscrimination in athletics for over two decades, without change from Congress. No court has ever held it to be invalid.'" (Sen. Judiciary Com., analysis of AB 833 (2003-2004 Reg. Session), Aug. 19, 2003, p. 5, quoting *Chalenor v. University of North Dakota* (8th Cir. 2002) 291 F.3d 1042, 1047, Fn. 4).) Since the timing of that 2003 analysis, the Chalenor court's decision has been followed in five other cases in the federal courts. The 9th Circuit, which includes California within its jurisdiction, also similarly upheld the three-part test in *Neal v. Board of Trustees of the California State Universities* (9th Cir. 1999) 198 F.3d 763, which was most recently followed in *Mansourian v. Bd. of Regents of the Univ. of Cal. at Davis* (2011) 2011 U.S. Dist. LEXIS 46606. As stated by the *Neal* court, this three-part test reinforces that "Title IX is a dynamic statute, not a static one. It envisions continuing progress toward the goal of equal opportunity for all athletes." (198 F.3d, at 769.)

In codifying the above three-part test within California's Sex Equity in Education Act, which already provided for equal treatment of both sexes in athletic programs of schools and universities, the state largely mirrored the USDE's language. Specifically, Education Code Section 230, subdivision (d), provides that an educational institution may be found to have effectively accommodated the interests and abilities in athletics of both sexes, using any one of the following tests:

(1) Whether interscholastic level participation opportunities for male and female pupils are provided in numbers substantially proportionate to their respective enrollments.

(2) Where the members of one sex have been and are underrepresented among interscholastic athletes, whether the school district can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interest and abilities of the members of that sex.

(3) Where the members of one sex are underrepresented among interscholastic athletes, and the institution cannot show a history and continuing practice of program expansion as required in paragraph (2), whether the school district can demonstrate that the interest and abilities of the members of that sex have been fully and effectively accommodated by the present program.

Additionally, in order to ensure that any reductions in budget funding (whether public or private) would fall equitably on athletic programs for both sexes, AB 833 included provisions that require that if an education institution must cut its athletic budget, it does so in a manner consistent with its legal obligation to comply with state and federal laws (which would include Title IX monies, as well as state-provided funding). Further, AB 833 incorporated into California law the factors, outlined in USDE policy guidance, to be considered when determining whether a post-secondary educational institution appropriating public funds received for athletic programs has provided equal opportunity to both sexes. These factors include, among other things: whether the selection of sports and level of competition offered effectively accommodate the athletic interests and abilities of members of both sexes, provision of equipment and supplies, location and scheduling of games and practices, compensation for coaches, scholarships, and medical services.

According to the National Women's Law Center (NWLC), more than 40 years since Title IX was passed, girls' opportunities are still not at the level boys' opportunities were in 1972; schools still provide 1.3 million fewer chances for girls to play sports in high school. Moreover, girls of color, in particular, NWLC reports, play sports at far lower rates than Caucasian girls with only 64% of African-American and Hispanic girls and 53% of Asian girls playing sports in comparison to 76% of Caucasian girls. (NWLC Fact Sheet, *Title IX 40 Years and Counting*, (June 2012), p. 1.)

Other sources (e.g., the U.S. GAO's report, *Intercollegiate Athletics: Four-Year Colleges' Experiences Adding and Discontinuing Teams*, March 2001) state that prior to enactment of Title IX, there were 32,000 women who participated in college sports, but as of 2001,

there were 163,000 women participating, an increase of more than 400 percent. During the same period in high schools, female participation in athletics soared 847 percent, from 294,015 (in comparison to 3.67 million for boys) to almost 2.8 million girls. According to the 2013-2014 High School Athletics Participation Survey conducted by the National Federation of State High School Associations (NFHS), the number of girls playing has now risen to nearly 3.3 million, compared to just over 4.5 million boys. (NFHS's survey <http://www.nfhs.org/ParticipationStatics/PDF/2013-14_Participation_Survey_PDF.pdf> p. 3.) The same report demonstrates that in California, specifically, there are 324,803 girls playing high school sports, compared to 458,205 boys. (*Id*. at p. 4.)

Notably, Title IX does not simply translate into a requirement of equal participation among both sexes. As described by the NWLC, schools are required to treat their male and female athletes equally with regard to all aspects of their sports programs, including equipment and supplies; scheduling of games, practices, and seasons; financial support for travel and expenses; assignment and compensation of coaches; opportunities to get tutoring where necessary; locker rooms, playing fields, and practice areas; medical and training services; housing and dining; and publicity. Schools need not, however, provide identical benefits and opportunities to men's and women's teams, and spending on those teams need not be equal, as long as the schools' treatment of male and female athletes is equal overall. (NWLC *Barriers to Fair Play* (June 2007) p. 3, internal citations omitted.)

Citing several reports, the NWLC asserts that competitive athletics promotes greater academic and employment success, increased personal skills, and a multitude of health benefits. Not only does the availability of athletic scholarships dramatically increase a woman's ability to pursue a college education and choose from a wider range of colleges, but minority female athletes also perform better academically than their nonathletic peers. (NWLC, *The Battle for Gender Equity in Athletics in Colleges and Universities,* (August 2011) p. 2, internal citations omitted.) It is reported that in particular, black female athletes are 15% more likely to graduate from college and Hispanic female athletes are more likely to graduate from high school and attend college. (*Id*., internal citations omitted.) In general, NWLC writes, "[y]oung women who play sports are more likely to graduate from high school, have higher grades, and score higher on standardized tests than non-athletes. They are also more likely to do well in science classes than their classmates who do not play sports." (NWLC Fact Sheet, *Title IX 40 Years and Counting*, (June 2012), p. 3.)

With respect to health issues, it is asserted that, "[p]laying sports decreases a young woman's chances of developing heart disease, osteoporosis and breast cancer. Research shows that girls who had an opportunity to play sports because of Title IX had a [seven] percent lower risk of obesity 20 to 25 years later . . . . Female athletes have higher levels of self-esteem, a lower incidence of depression, and a more positive body image compared to non-athletes. Female students are also less likely to smoke or use drugs and have lower rates of both sexual activity and pregnancy than non-athletes." (*Id*.)

Finally, with respect to employment, the NWLC notes a 2010 National Bureau of Economic Research study which concluded that an increase in female sports participation leads to an increase in women's labor force participation down the road and greater female participation in previously male-dominated occupations—particularly high-skill, high-wage jobs. (*Id*.) Additionally, NWLC reports that four out of five executive businesswomen played sports growing up –the vast majority of which attribute lessons they learned on the playing field as having contributed to their success in business. (*Id*.)

Sexual Harassment/Assault Policies

Title IX prohibits discrimination on the basis of sex, including sexual harassment, in education programs and activities. Recipients of federal financial assistance must comply with the procedural requirements outlined in the Title IX implementing regulations. To do so, a recipient must: (1) disseminate a specified notice of nondiscrimination; (2) designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX; and (3) adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints. (*See* 34 C.F.R. Secs. 106.9, 106.8(a), 106.8(b).) These requirements apply to all forms of sexual harassment, which is described by OCR to mean an "unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence [such as rape, sexual assault, sexual battery or sexual coercion] is a form of sexual harassment prohibited by Title IX." Notably, "Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature." (OCR, *Dear Colleague Letter: Sexual Violence (*Apr. 4, 2011) <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> p. 6.)

Under Title IX, a school has the responsibility to respond promptly and effectively to sexual harassment. A school that receives federal funds may be held legally responsible if it knows about and ignores sexual harassment in its programs or activities. As explained in an OCR 2011 guidance letter, if a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, the school is required to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. This is true even if a student or his or her parent or a third party does not wish to file a complaint or does not ask that the school take any action on the student's behalf; the school must nonetheless promptly investigate to determine what happened and then take appropriate steps to resolve the situation. OCR also advised that schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. "If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus. . . . The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates." Notably, OCR warned in its guidance letter that the school's Title IX investigation is different from any law enforcement investigation—thus, a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct. (*Id*. at p. 4; *see also* OCR, *Know Your Rights: Title IX Prohibits Sexual Harassment and Sexual Violence Where You Go to School*.)

Also under federal Title IX law, schools also are required to publish a notice of nondiscrimination and to adopt and publish grievance procedures for students to file complaints of sex discrimination, including complaints of sexual harassment or sexual violence. This policy must be widely distributed and available on an ongoing basis. Not only must the schools designate at least one employee who is responsible for coordinating the school's compliance with Title IX (i.e. the Title IX coordinator referenced earlier in this paper), including exercising oversight of all complaints of sex discrimination and identifying and addressing any patterns or systemic problems that arise during the review of such complaints, but schools must also ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to properly respond. (*Id*.)

Schools are able to use general disciplinary procedures to address complaints of sex discrimination, but all procedures must provide for prompt and equitable resolution of sex discrimination complaints. Every complainant has the right to present his or her case, which includes the right to adequate, reliable, and impartial investigation of complaints; the right to have an equal opportunity to present witnesses and other evidence; and the right to the same appeal processes, for both parties. Complainants have the right to be notified of the time frame in which: (1) the school will conduct a full investigation of the complaint; (2) the parties will be notified of the outcome of the complaint; and (3) the parties may file an appeal, if applicable. Every complainant also has the right for the complaint to be decided using a preponderance of the evidence standard – in other words, that it was more likely than not that sexual harassment or violence occurred. (*Id*.)

Again, recipients of federal funding who are deliberately indifferent to known acts of student-on-student sexual harassment may be liable for damages under Title IX. A funding recipient's liability is limited by several factors. First, the recipient is liable for its own misconduct, not that of the harasser. (*See Davis v. Monroe County Bd. of Education* (1999) 526 U.S. 629, 640.) If a funding recipient does not engage in harassment directly, it can be liable for damages only if its deliberate indifference "subjects" its students to harassment. Second, funding recipients are deemed "deliberately indifferent" to acts of student-on-student harassment only where the recipient's response to the alleged harassment is "clearly unreasonable in light of the known circumstances." (*Id*. at 648.) Thirdly, the harassment must be "so severe, pervasive, and objectively offensive" that it deprives the victim of access to the educational opportunities and benefits that the school provides. It is not necessary to show that the harassment has physically excluded the victim from an educational opportunity or benefit, but the victim must have been "effectively denied equal access." (*Id*. at 650.) Lastly, whether gender-oriented conduct rises to the level of actionable harassment depends on the surrounding circumstances. Damages are not available for simple acts of teasing or name-calling, even when these comments target differences in gender. (*Id*.) Private damages actions are limited to cases having "a systemic effect on educational programs or activities." (*Id*. at 652.)

Similar to federal law, state law classifies sexual harassment as a form of sex discrimination and, as such, it may result in disciplinary or other action taken by the local agency. The California Sex Equity in Education Act, which, as described earlier in this paper, prohibits discrimination or harassment in state educational institutions

receiving state funding, provides specifically that harassment and other discrimination on the basis of sex includes, but is not limited to, among other things: the exclusion of a person or persons from participation in, denial of the benefits of, or subjection to harassment or other discrimination in, any academic, extracurricular, research, occupational training, or other program or activity, on the basis of sex. It also includes harassment or other discrimination among persons, including, but not limited to, students and nonstudents, or academic and nonacademic personnel, in employment and the conditions thereof, except as it relates to a bona fide occupational qualification, on the basis of sex. (*See* Ed. Code Sec. 230(a) and (g).)

For these purposes, sexual harassment is defined in the Education Code to include any unwelcome sexual advance, unwelcome requests for sexual favors, or other unwelcome verbal, visual, or physical conduct of a sexual nature made by someone from or in the educational or work setting, whether it occurs between individuals of the same sex or of opposite sexes, under any of the following conditions:

(1) submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress;

(2) submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual;

(3) the 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; or

(4) submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution. (Ed. Code Sec. 212.5.)

Pregnant/Parenting Teens

According to a U.S. Department of Education, OCR, "[b]efore Congress passed Title IX in 1972, students who became pregnant or had children were often treated poorly and sometimes were dismissed from high school. Since the passage of Title IX, sex discrimination—including discrimination on the basis of pregnancy, childbirth, and parental status has been prohibited. Encouraging pregnant and parenting students to stay in school will have a positive effect on their lives and in their children's lives. The

nation as a whole will benefit from having a generation of young adults who are better educated and more economically self-sufficient." (OCR, *Supporting the Academic Success of Pregnant and Parenting Students: Under Title IX of the Education Amendments of 1972* (June 2013), p. 4.) As summarized by OCR, the "economic and career prospects for students who drop out of school are limited. In 2010[,] adult women without a high school diploma earned on average only a little more than $17,000 for the year—approximately $8,000 less annually than women with a high school diploma. A 2007 report found that having a high school diploma lowered the probability of needing benefits from Temporary Assistance for Needy Families by 40 percent and from food stamps by 19 percent. And a 2006 report found [that] only about 2 percent of mothers who had a baby before age 18 obtained a college degree by age 30." (*Id.*, internal citations omitted.)

Again, Title IX regulations specifically prohibit discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery from any of these conditions. It is illegal under Title IX for schools to exclude a pregnant student from participating in any part of an education program. In other words, Title IX requires that the school allow such students to participate in classes and extracurricular activities even though they are pregnant—this includes advanced placement and honors classes, school clubs, sports, honor societies, student leadership opportunities, and other activities such as after-school programs operated at the school. While schools may implement special instructional programs or classes for a pregnant student, they must also allow the student to choose whether she wants to participate in special instructional programs or classes for pregnant students; participation must be completely voluntary. To that end, any alternative program must provide the same types of academic, extracurricular and enrichment opportunities as is provided by the school's regular program. Additionally, a school must excuse any absences because of pregnancy or childbirth for as long as the student's doctor deems the absences medically necessary. When a student returns to school, she must be allowed to return to the same academic and extracurricular status. (*See* 34 C.F.R. Sec. 106.40.)

State law also contains similar protections for pregnant/parenting teens. Specifically, Education Code Section 230 prohibits, among other things, the application of any rule concerning the parental, family or marital status of a person, or the exclusion of any person from any activity or employment because of pregnancy or related conditions, on the basis of sex. (Ed. Code Sec. 230(h).) Pursuant to state law, educational institutions are prohibited from excluding or denying any student from any educational program or

activity, including class or extracurricular activity, solely on the basis of a student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom. (5 C.C.R. Sec. 4950 (a).) Pregnant minors and minor parents cannot be required to participate in pregnant minor programs or alternative education programs (though they can voluntarily participate in such alternative programs, which are required to provide educational programs, activities and courses equal to those they would have been in if participating in the regular program). (5 C.C.R. Sec. 4950(c).) As a rule, educational institutions are required to treat such conditions and recovery therefrom in the same manner and under the same policies as any other temporary disabling conditions. (5 C.C.R. Sec. 4950(d).)

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