

ACHRO/EEO 2022 Fall Training Institute

25th Anniversary Celebration

Pre-Conference October 25, 2022

“Complying with Anti-Sexual Harassment Laws in the Community College District Workplace”

Presented by:

- *Sokha Song, Vice President, HR, Mt. San Antonio Community College District*
- *Ryan Wilson, Director, EEO, Title IX & Leaves Administration, Mt. San Antonio Community College District*
- *Pilar Morin, Partner, Liebert Cassidy Whitmore*

Group Exercise 3

Carlos Jalil is a part-time classified employee at Ocean College who works as a sample maker.

The sex assigned to Carlos at birth was female but he identifies as male. He is also full-time student in the College’s Department of Fashion Design, Merchandising and Production. Carlos is six months pregnant. He depends on financial aid to pay tuition and living expenses. Carlos suffers from Hyperemesis gravidarum, a medical condition that causes severe nausea and vomiting during pregnancy. The symptoms can be very uncomfortable. Carlos vomits at least once every hour, sometimes more. He has become dehydrated, feels constantly dizzy and lightheaded. The condition has also caused him to lose weight.

Out of the blue, for one week, Professor Randall embarrassed Carlos by calling him out when he tried to discreetly leave the class to use the restroom. He yelled out, “again,” and said, “nice of you to rejoin us” when Carlos returned. Randall also teased Carlos about not fitting in the desk, and has started to refer to him as Carlita.

Carlos is a student for part of the day, but also works directly with Randall making samples for one his classes.

Professor Randall has the habit of asking only female students to model in front of the class. He touches their body, including their waist, legs, and arms in fitting dresses on them instead of using mannequins.

Camila complained to probationary faculty member Darius about the way Professor Randall has treated Carlos and about how he uses women in his class as mannequins. Darius also works with Carlos and has heard the comments Randall makes. Darius is uncomfortable with Professor Randall’s actions but he does not know what to do or say. Because Randall is on Darius’ tenure review committee, he is worried about reporting Randall’s conduct to Human Resources.

(30 minutes total for all questions below)

1. Does Darius have any reporting obligations under the Education Code? Does it matter that he is worried Professor Randall may retaliate against him? What consequences does the District face if he fails to report?

2. Darius decides to report what he has seen to the Human Resources Department. Should this be covered by Title IX or California law? Explain why?

3. Assuming that we are going to follow California law, can the District treat Carlos like an employee? Can Carlos argue that the faculty members are his supervisors? Why would it matter?

4. Carlos states he is being harassed on the basis of his gender identity and pregnancy. Does his allegation have merit?

Group Exercise 6

The District decides to process each one of the complaints against Prof. Randall separately. The district initiated the title IX grievance process against Prof. Randall based on the allegations made by student Camila involving *quid pro quo* (Allegation that he conditioned educational benefits, including the opportunity to showcase her work at an important conference, if she submitted to his sexual advances).

Camila had been approached by a famous designer in Los Angeles to work for him. Prof. Randall and the famous designer have been friends for a very long time. After she filed her complaint, the famous designer withdrew his offer of employment. Camila was enraged and ran into Prof. Randall’s class and screamed to everyone that he is a sexual predator and they should look out for him. She told him to watch out because she was never going to forget what he did to her. Later that evening, Camila saw Prof. Randall walking across the parking lot, and she drove her car quickly toward him and told him, “You are a bad teacher and should not exist at this school.”

After reviewing the report prepared by campus police, the President of the College decides to drop Camila from her classes because of her threatening behavior. Camila is very upset and sends a mass email to the campus forwarding text messages from Prof. Randall admitting that he told the famous designer not to work with Camila. She also states she did not threaten him but was simply expressing her opinion that he should not be a faculty member. The President of the College asks Human Resources to place Prof. Randall on paid administrative leave pending the outcome of the title IX grievance proceeding.

(15 minutes total for all questions below)

1. Camila claims she should not have been dropped from her classes. If she is correct, what remedy did the College have to address the allegations that she was threatening Prof. Randall?

2. Prof. Randall claims the College does not have the right to place him on paid administrative leave. If he is correct?

3. Camila's argues that the College should issue a mutual stay away order. Can the College do this?

Group Exercise 7

After receiving the investigation report, the district decides to go forward with discipline against Prof. Randall.

(45 minutes total for all questions below)

- 1. Under California law, does the District need to adopt a new procedure for the disciplinary hearing against Prof. Randall, or can the district use the procedure set forth under the Education Code for terminating a faculty member? Is the answer the same if the conduct falls under IX?*

- 2. Both Prof. Randall though and Carl want to know if the District will be assigning an advisor to assist them through the process?*

3. *Carl's parents hire a prominent high-powered attorney. The attorney intends on cross-examining Prof. Randall. Is this something that Carl's attorney can do? Would your answer change under Title IX?*

4. *Prof. Randall attorney prepares written questions about Carl's prior sexual history. Are such questions allowed to be asked in this proceeding? Would your answer change under Title IX?*

5. *Carl's attorney intends to introduce text messages and video posted on the Internet by a friend of Carl who claims Prof. Randall sexually harassed him. Carl's attorney argues that the evidence is relevant and should be admitted. While this evidence has been available to the public in general, Carl never raised it during the investigation. Is this evidence admissible under the Education Code?*

6. *Prof. Randall approaches Carl and the district to propose engaging in mediation. Prof. Randall would like to resign and go to counseling in the hope of avoiding an order that he was responsible for the sex assault resulting in his termination. Can the parties engage in informal resolution?*
